

Operation Sandon

Special report

2023

Acknowledgement

IBAC acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

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Letter of transmittal

To
The Honourable President of the Legislative Council
and
The Honourable Speaker of the Legislative Assembly

Special report on Operation Sardon

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*,
I present IBAC's special report on Operation Sardon.

IBAC's findings and recommendations are contained in this report.

Yours sincerely



Stephen Farrow,
Acting Commissioner,
Independent Broad-based Anti-corruption Commission

Acting Commissioner Foreword

This report sets out the findings of IBAC's Operation Sandon, which was an investigation into whether any City of Casey councillors had accepted payments, gifts or other benefits, including political donations, in exchange for voting on or influencing Council decisions on planning matters that favoured the interests of developer and planning consultant John Woodman and his clients.

The investigation substantiated those allegations. It found that two Casey councillors – Sameh Aziz and Geoff Ablett – actively promoted the interests of Mr Woodman and his clients in relation to important planning matters before the council. They did so in exchange for significant payments and in-kind support. Many of the elaborate financial arrangements between Mr Woodman and these two councillors were designed to conceal the nature or source of the funds and to give them the appearance of legitimacy. The two councillors repeatedly failed to declare their conflicts of interest. On other occasions, although declaring a conflict of interest and absenting themselves from Council meetings, they continued to seek to influence other councillors on those matters.

Planning for land use and development is an important process for members of the community and the economy more broadly. Many planning decisions have a significant impact on public or private land or public infrastructure. They can also result in significant profits to private landowners, developers, and consultants.

In Operation Sandon, IBAC investigated the process of four planning matters. In each of the four matters, the Casey Council was a decision maker, although for two of the matters the Minister for Planning was responsible for making the final decision. IBAC did not assess the merits of any of these decisions. We examined the decision-making processes, focusing on how transparent and accountable these processes are, how they were manipulated, and how planning policy settings can enable corrupt behaviour.

IBAC found that the planning amendments were able to progress at both the local and state government levels, despite the absence of strategic justification for them and despite them being contrary to the recommendations of experts within the council.

Our investigation exposed significant weaknesses in the process for amending planning permits, with conflicted councillors easily able to manipulate the process for personal gain.

The investigation showed the extent to which a property developer and consultant such as Mr Woodman can invest across the political spectrum to buy access to decisionmakers at the local and state government levels.

It also showed the ways in which lobbyists can be used to target councillors, members of parliament, ministers, ministerial advisers and electorate officers, and how limitations in the current regulation of lobbyists present corruption vulnerabilities.

Operation Sandon demonstrated that, as a group, councillors in the City of Casey exhibited and tolerated behaviour that did not meet the standards required of them. In the case of some councillors, this involved a conscious departure from those standards, while others demonstrated a poor understanding of their obligations as elected officials. Examples included electing a councillor as Mayor only weeks after a misconduct finding, failing to declare and manage conflicts and improperly influencing other councillors.

Operation Sandon was a complex and long running investigation that involved 40 days of public examinations, and included evidence from more than 20 witnesses and five specialist witnesses, with over 450 exhibits logged. Seven witnesses were examined in private. During the active investigation IBAC issued 29 warrants, conducted analysis of 47.4 terabytes of electronic data, including 800 hours of recordings. The investigation was also subject to extended litigation.

During the investigation, one of the City of Casey councillors took their own life. IBAC acknowledges the loss and grief experienced by their family and friends. IBAC has referred to them as Councillor A throughout this report out of respect because they were not able to provide a response to the draft report.

IBAC's statutory functions are to expose and prevent serious and systemic corrupt conduct and police misconduct. Given the significant powers IBAC has, the community rightly expects that these powers will be cautiously and diligently exercised, and that proper consideration is given to the wellbeing and safety of all who are affected by the exercise of these powers. IBAC is unequivocally committed to these objectives, and we have a range of measures and support services in place that witnesses can access throughout the investigation.

Operation Sandon exposed corruption vulnerabilities in Victoria's planning decision-making processes at both a state and local government level. Given the significant impact planning decisions have on the liveability of all Victorians it is essential these decisions are protected from improper influence and corruption.

The 34 recommendations in this special report are designed to ensure that the Victorian public can have confidence that planning decisions are made in the interests of the community. The recommendations aim to improve Victoria's donation regulations to prevent well-resourced individuals from buying greater influence, and its lobbying regulations to reduce the risk that improper access can influence, distort, or possibly corrupt, government decision-making processes. It is vital that government acts to address those integrity risks.



Stephen Farrow,
Acting Commissioner,
Independent Broad-based Anti-corruption Commission

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Glossary

Term	Definition
ABN	Australian business number
ARA	Action Realty Australia Pty. Ltd.: A property investment and development company which was renamed A.C.N. 112 973 476 Pty Ltd on 12 December 2022.
Organisation A	a non-profit community service organisation providing disability services. Councillor A was a member of the board of management from 2015-2017.
Casey Council	City of Casey Council
CCC	Crime and Corruption Commission (Queensland)
CEO	chief executive officer
CLC	Casey Lifestyle Centre: a City of Casey Council property. ARA purchased the leasehold in 2005 and the freehold in 2016.
CMI	Chief Municipal Inspector
Cranbourne West PSP	Cranbourne West Precinct Structure Plan: the master plan for future development in Cranbourne West approved by the Minister for Planning in February 2010, through Amendment C102 to the Casey Planning Scheme.
Dacland	Dacland Pty Ltd: the developer of the Lochaven Estate, adjoining the Alarah and Elysian estates (a development managed by Wolfdene).
DELWP	Department of Environment, Land, Water and Planning: was renamed as Department of Energy, Environment and Climate Action (DEECA) on 1 January 2023 following machinery-of-government changes. See also DTP.
Development Contributions Plan	a plan detailing payments, in-kind works, facilities or services that developers provide towards the supply of infrastructure required to meet the future needs of the community.
Donations & Lobbying special report	IBAC special report released in 2022, titled <i>Corruption risks associated with donations and lobbying</i> .
DPS	Department of Parliamentary Services
DTP	Department of Transport and Planning: was made responsible for planning on 1 January 2023 following machinery-of-government changes.
Elysian Estate	A Wolfdene development adjoining the Lochaven Estate (developed by Dacland)
Electoral Act	<i>Electoral Act 2002</i> (Vic)
en bloc voting	A process where councillors vote on and pass all or a large number of unrelated items on an agenda without debate, unless a councillor requests that an item be 'withdrawn' for a separate vote.
Enterprise Victoria	A Liberal Party-associated entity that is the fundraising and events platform for the party, connecting members and donors with Liberal politicians to fund campaigns.

Term	Definition
GAIC	Growth Areas Infrastructure Contribution
Governance Rules	rules governing the conduct of council meetings from 1 September 2020, as required under the <i>Local Government Act 2020</i> (Vic), section 60(1). Previously known as local laws.
growth area	areas on the fringe of metropolitan Melbourne around major regional transport corridors that are designated for large-scale change over many years, from rural to urban use. Melbourne has seven growth areas: Cardinia, Casey, Hume, Melton, Mitchell, Whittlesea and Wyndham.
Growth Corridor Plans	government policies that set the long-term strategic planning direction to guide the creation of a more sustainable community in growth areas.
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic)
ICAC	Independent Commission Against Corruption (New South Wales)
Law Firm A	Mr Woodman's lawyers
Leighton Properties	Leighton Properties Pty Ltd: a subsidiary of the former Leighton Holdings, now known as the CIMIC Group Limited
LGA 1989	<i>Local Government Act 1989</i> (Vic)
LGA 2020	<i>Local Government Act 2020</i> (Vic)
LGI	Local Government Inspectorate
LGV	Local Government Victoria a government body that provides advice and support to councils, the Department of Government Services and the Minister for Local Government to improve business and governance practices
local laws	rules governing the conduct of council meetings until 31 August 2020, as required under the <i>Local Government Act 1989</i> (Vic), section 91. Now known as Governance Rules.
Lochaven Estate	a Dacland development adjoining the Elysian Estate (managed by Wolfdene)
MAV	Municipal Association of Victoria
MP	Member of Parliament
NGOC	Nehme Group of Companies Pty Ltd: a group of property investment and development companies directed by Andrew Nehme.
Plan Melbourne	<i>Plan Melbourne 2017–2050</i> : a Victorian Government metropolitan planning strategy, which defines the future shape of the city and state over the next 35 years.
planning authority	a body or person authorised under the <i>Planning and Environment Act 1987</i> (Vic) to prepare a planning scheme or planning scheme amendment. This is usually a council, but can be the Minister for Planning or another public authority, as specified in the Act.

Term	Definition
PPV	<p>Planning Panels Victoria:</p> <p>a planning panel allows the public to participate in the planning and environmental decision-making process. It independently assesses planning proposals by considering submissions, conducting hearings and preparing reports. A planning panel can make recommendations but is only advisory. The final decision is left to the appropriate statutory bodies or the Minister for Planning.</p>
planning permit	<p>a legal document that gives a landowner permission to use or develop land in a certain way. It usually includes conditions and approved plans that must be complied with. The applicable council is responsible for deciding on planning permit applications, unless the Minister for Planning appoints themselves as responsible authority.</p> <p>A planning permit is issued under the <i>Planning and Environment Act 1987</i> (Vic) which allows a certain use or development to occur on a particular parcel of land – usually subject to conditions.</p> <p>A planning permit is different from a building permit, which is concerned with safe construction and whether it conforms to building regulations, codes and standards.</p>
planning scheme	<p>controls land use and development in a municipal district by describing the objectives, policies and controls for the use, development and protection of land for each municipality across Victoria.</p> <p>Planning schemes contain state and local planning policies, zones and overlays, and other provisions that affect how land can be used and developed. A planning scheme is a statutory document, and each municipality in the state is covered by one.</p>
planning scheme amendment	<p>a change to the planning scheme. The amendment process is set out in the <i>Planning and Environment Act 1987</i> (Vic). An amendment may involve a change to a planning scheme map (for example, a rezoning), a change to the written part of the scheme, or both.</p>
Progressive Business	<p>Labor Party-associated entity that was responsible for connecting members with the party and raising funds. Energise Victoria was incorporated in 2021 with a similar purpose.</p>
PSP	<p>Precinct Structure Plan:</p> <p>a high-level strategic plan that sets out the preferred spatial location of land uses and infrastructure to guide decisions on staging of development, subdivision permits, building permits and infrastructure delivery.</p>
responsible authority	<p>the decision-maker on planning permit applications. This is usually the council, although the Minister for Planning is also a responsible authority for certain specified types of permit applications.</p>
SCWRAG	<p>Save Cranbourne West Residents Action Group</p>
section 173 agreement	<p>an agreement made under section 173 of the <i>Planning and Environment Act 1987</i> (Vic). This section states that a responsible authority may enter into an agreement with an owner of land, in the area covered by a planning scheme for which it is a responsible authority.</p>
Schutz Consulting	<p>Schutz Consulting Pty Ltd:</p> <p>a planning consultancy company operated by Megan Schutz.</p>
a racehorse bloodstock business	<p>refers to both a company and a related business name that received payments from Mr Woodman's company, Watsons, and made payments to Councillor Aziz</p> <p>Lorraine Wreford's partner was employed as a business manager by this business.</p>
SPPF	<p>State Planning Policy Framework:</p> <p>Every planning scheme includes the SPPF, which contains general principles for land use and development in Victoria. Planning authorities and responsible authorities must consider these general principles and specific policies in their integrated decision-making processes.</p>

Term	Definition
statutory planning	the assessment of planning permit applications for new development proposals and changes to land use activities under the <i>Planning and Environment Act 1987</i> (Vic). This generally involves applying planning scheme provisions to assess what permission should be given.
UDIA	Urban Development Investments Australia Pty Ltd: a company part-owned by Mr Woodman's son.
UGB	Urban Growth Boundary: an area defined by the metropolitan strategy released in 2002 known as <i>Melbourne 2030</i> to coordinate outward expansion. The current UGB was reaffirmed as the outer limit for growth in <i>Plan Melbourne 2017–2050</i> and can be changed only by majority vote in both houses of the Victorian Parliament.
UGZ	Urban Growth Zone: a statutory zone that applies to land identified for future urban development inside the Urban Growth Boundary and land adjacent to regional cities and towns where a strategy has been prepared that identifies the land as suitable for future urban development.
VCAT	Victorian Civil and Administrative Tribunal
VPA	Victorian Planning Authority: a Victorian Government statutory authority that acts under the direction of the Minister for Planning. It was founded in 2006 as the Growth Areas Authority, to plan Melbourne's new suburbs in growth corridors. It later became the Metropolitan Planning Authority, to include planning in urban renewal areas. In August 2016 it was superseded by the VPA. The VPA focuses on land use and infrastructure planning for strategically important precincts and sites in urban renewal areas, greenfield growth areas and regional areas.
Watsons	Watsons Pty Ltd: a development consultancy company owned by Mr Woodman.
WGT	Windfall gains tax
Wolfdene	Wolfdene Pty Ltd: development manager of Elysian, Pavilion and Brompton estates. Mr Woodman's son was a director and shareholder.
zone	A planning scheme uses zones to designate land for particular uses, such as residential, industrial or business. A zone will have its own purpose and set of requirements. It will identify whether a planning permit is required, and the matters that must be considered before deciding to grant a permit. The Victoria Planning Provisions contain a suite of standard residential zones for statewide application.

Naming of individuals and entities

This report makes adverse comments or opinions about a number of persons and entities, that are named or otherwise identified.

The report also names or otherwise identifies individuals and entities which are **not the subject or intended subjects of any adverse comment or opinion**. A full list of these individuals and entities is provided in the appendices. An abbreviated list is provided on this page.

- former Casey City Councillors not otherwise named in this report
- Dacland Pty Ltd
- The Premier, Daniel Andrews
- the head of Enterprise Victoria (2019-2020)
- former Director, Corporate Services, Casey Council (October 2016 – July 2021) and Acting CEO, Casey Council (February 2018 – March 2018)
- Geoffrey Leigh
- Glenn Patterson, CEO, Casey Council (September 2018 – present)
- John Woodman's son
- Labor Party Opposition Leader (2010 – 2014)
- Labor Party Deputy Opposition Leader (2012-2014)
- the landowners with respect to Amendment C219
- the landowners with respect to Brompton Lodge
- landowner of the Pavilion Estate
- Liberal Party Opposition Leader (2018-2021)
- Mike Tyler, former CEO, Casey Council (1994 – 2018)
- Minister for Planning (2014-2018)
- Minister for Planning (2010 – 2014)
- the Minister for Planning's Chief of Staff (2015 – 2022)
- the Minister for Roads (2014 - 2018)
- Organisation A
- Philip Staindl
- the head of Progressive Business (April 2015 – September 2019)
- Treasurer of Victoria (2014 - present)

IBAC is satisfied the naming or identifying of these individuals and entities is necessary to provide an understanding of the relevant facts, and that the references will not cause unreasonable damage to their reputation, safety or wellbeing.

Names of people in this report

City of Casey Council

Name	Role at time of investigation
Ablett, Geoff	Councillor (2008–20). Represented the Balla Ward in the City of Casey. Served three years as mayor (2008/09, 2013/14, 2017/18) and three years as chair of Council's Planning Committee (2011–13 and 2016/17).
Aziz, Sam (Sameh)	Councillor (2008–20). One of two councillors representing the Springfield Ward in the City of Casey. Served three years as mayor (2011/12, 2015/16, 2016/17) one as deputy mayor (2012/13), and two years as chair of Council's Planning Committee (2009–11).
Councillor A	Councillor (2008–20). One of two councillors representing the Mayfield Ward in the City of Casey. Served two years as mayor (2012/13 and 2018/19) and two years as deputy mayor (2013/14, 2017/18).
Crestani, Rosalie	Councillor (2012–20).
Patterson, Glenn	CEO (September 2018–present).
Rowe, Gary	Councillor (2012–16, 2017–20) and former Member for Cranbourne (1992–2002) in the Legislative Assembly of the Victorian Parliament.
Serey, Susan	Councillor (2012–20).
Smith, Wayne	Councillor (1997–2020). One of two councillors representing the River Gum Ward in the City of Casey.
Tyler, Mike	CEO (1994–2018) from the time Council was created until his retirement.

Developers and their associates

Name	Role at time of investigation
Grossi, Tino	Developer based in Narre Warren and CEO of Jim's Group 2018.
Halsall, Janet	Owner of the Halsalls' family business and former City of Casey Councillor (2005–08).
Ms Halsall's spouse	Owner of the Halsalls' family business and former City of Casey Councillor (2010–12).
Ms Halsall's son	Owner of the Halsalls' family business.
Kenessey, Thomas	Director of Kenessey Pty Ltd, employed by Leighton Properties as a development manager for the land now known as C219.
Kostic, Zlatimir	Developer of Kostic Boulevard.
Nehme, Andrew	Director of the Nehme Group of Companies (NGOC), Action Realty Australia (ARA) and 25 other companies.
Schutz, Megan	Managing director of Schutz Consulting, which worked almost exclusively for three entities associated with Mr Woodman and his son: the owners of the Pavilion Estate land in relation to Pavilion Estate, Elysian Group Pty Ltd (Elysian Group) in relation to Elysian Estate, and Leighton Properties in relation to Amendment C219.
Mr Woodman's son	<p>He is associated with:</p> <ul style="list-style-type: none"> • Wolfdene – director and shareholder • Elysian Group (through the SBPM Property Trust and SBPM Equity Trust) • Wolfdene Foundation.
Woodman, John	<p>Developer, consultant and investor with extensive dealings in the property development industry. He is associated with:</p> <ul style="list-style-type: none"> • Watsons – sole director and shareholder • Swan Bay Project Management Pty Ltd (Swan Bay) – a director and shareholder, along with his son • Lockdee Pty Ltd (Lockdee) – director, secretary and sole shareholder. <p>Mr Woodman has business relationships with a number of other registered companies, including the Wolfdene group of entities and Schutz Consulting. For convenience, this report refers to Mr Woodman as a land developer, consultant and representative of Watsons as appropriate, on the basis that he was managing director of Watsons, which provides a range of services including land development consultancy.</p>

Professional lobbyists and community groups

Name	Role at time of investigation
Leigh, Geoffrey	Registered lobbyist operating as All Weather Solutions with Mr Staindl (2006–12). Involved in establishing Business First in 2009 – an entity in part created to raise funds for the Liberal Party – and served as the chair until 2011. Liberal Member of the Victorian Parliament for Malvern (1982–90) and Mordialloc (1992–2000).
Staindl, Philip	<p>Registered lobbyist, president of Progressive Business until 2010, and member of the Australian Labor Party.¹ Director of several companies, including Staindl Strategic Pty Ltd, which, according to the Victorian Public Sector Commission's lobbyist register, has Watsons as a client. In March 2021, Mr Staindl removed himself from the register.</p> <p>Mr Staindl previously worked in government relations for two decades, including for a federal MP and as a senior ministerial advisor to a number of Victorian ministers during the 1980s and early 1990s.</p>
Walker, Ray	President of SCWRAG.
Wreford, Lorraine	<p>Registered lobbyist, Member of the Victorian Parliament for Mordialloc (2010–14) and former City of Casey Councillor (2003–10) and mayor (2009/10).</p> <p>The Australian Government Lobbyists Register records that Ms Wreford's lobbying business's only client is Swan Bay Project Management, an entity part-owned by Mr Woodman.</p>

Ministers and Members of Parliament

Name	Role at time of investigation
Andrews, Daniel	Premier of Victoria (2014–present).
Graley, Judith	<p>Member for Narre Warren South (2006–18), with roles that included Parliamentary Secretary to the Deputy Premier and the Minister for Education, and Deputy Chair of the Parliamentary Committee on Outer Suburban Development.</p> <p>Councillor at Mornington Peninsula Shire Council (1997–2003), during which time she came to know Mr Woodman when he attended council meetings as an applicant.</p>
Perera, Jude	Member for Cranbourne (2002–18).
Richards, Pauline	<p>Member for Cranbourne (2018–present).</p> <p>Previously a councillor at the City of Whitehorse (2005–07), during which time she was also a political organiser for the Electrical Trades Union. She then worked as an electorate officer for federal MPs. In 2014, she unsuccessfully ran for the Victorian Parliament and took a role as an advisor to the Minister for Health.</p>

¹ Millar R 2010, 'Labor Party scraps fund-raising event', *The Age*.

The demand for housing in Victoria is high, with the state's population projected to grow to eight million by 2050.² There is particularly high demand for housing in Melbourne's outer suburbs, including in the City of Casey Council area in Melbourne's south-east. Victorians rely heavily on the private sector to supply housing for the community's needs, and property developers play an essential role in the growth of our cities and regions, including the supply of housing through the development of greenfield sites. Profits associated with property development can be significant.

The Independent Broad-based Anti-corruption Commission (IBAC) started Operation Sandon in August 2018 to investigate whether a number of City of Casey councillors had accepted payments, gifts or other benefits, including political donations, in exchange for supporting Council decisions on planning matters that favoured the interests of developer and planning consultant John Woodman and his clients.

The investigation found that for over a decade, Mr Woodman improperly sought to influence Casey councillors to facilitate favourable Council decisions. This conduct was able to flourish unchecked because the Casey Council lacked adequate safeguards to ensure core standards of integrity were met.

In a response to IBAC, Mr Woodman has asserted that none of the benefits he provided were illegal or improper. IBAC does not accept this assertion.

Operation Sandon established that Casey councillors Sam Aziz and Geoff Ablett actively took steps to promote Mr Woodman's and his clients' interests and received financial and in-kind compensation in return. Each of these councillors received over \$550,000 from Mr Woodman or related entities over several years. They failed to declare conflicts of interest about their involvement with Mr Woodman or his companies on many occasions throughout this time.

IBAC did not find that any other Casey councillor received a direct benefit in exchange for promoting Mr Woodman's interests on the Casey Council. However, Mr Woodman sought to implicitly influence two other Casey councillors by providing various forms of support (such as donating to election campaigns and causes beneficial to those councillors). In this way, Mr Woodman sought to ingratiate himself, gain trust, and bring those councillors on side so that they would promote his interests on the Casey Council. These Casey councillors were improperly influenced by his support and failed to meet their obligations as public officials.

The investigation also found that Mr Woodman sought to influence state government decision-making by paying lobbyists, and cultivating relationships with or funding state political candidates, political staff, MPs and ministers.

While Operation Sandon relates to Mr Woodman's conduct, IBAC's main concern is not only the conduct of an individual developer. IBAC's focus is on weaknesses in the Casey Council processes and procedures that enabled private interests to improperly affect Council decision-making. Operation Sandon showed that the Casey Council lacked adequate safeguards to prevent deliberate improper conduct, protect against implicit forms of improper influence and ensure its councillors understand their obligations as public officials to maintain the integrity of Casey Council decision-making processes.

The Casey Council was dismissed following a report by the Municipal Monitor in 2020 and will continue to be run by administrators until 2024. However, the corruption risks highlighted by Operation Sandon are not limited to the City of Casey. Planning matters and other contested or discretionary matters that require decisions of public officers – elected or not – are vulnerable to improper influence. As the investigation also showed, weaknesses in the regulation of political donations and lobbying can enable privileged access to, and opportunities to improperly influence, both state and local government decision-makers. It is therefore essential that the Victorian Government acts to address the integrity risks identified in Operation Sandon.

² Victorian Government 2017, *Plan Melbourne 2017–50*, Summary, p 3, www.planmelbourne.vic.gov.au/__data/assets/pdf_file/0009/377127/Plan_Melbourne_2017-2050_Summary.pdf.

This special report makes 34 recommendations (listed in section 1.7) to address corruption risks identified in Operation Sandon by:

- **Promoting greater transparency and accountability in planning decisions:** rezoning decisions and decisions about changes in land use can give significant windfall gains to landowners and developers. This can create incentives for corrupt conduct. The risk is heightened due to a lack of transparency and high level of discretion around planning decisions. To address this, IBAC recommends:
 - improvements to the processes for progressing and approving planning scheme amendments, including clearer criteria, improved transparency and a focus on the merits of an application
 - strengthening the integrity of decision-making processes, including providing avenues for redress when the proper process is not followed.
- **Enhancing donation regulation and overhauling lobbying regulation:** Mr Woodman was able to exercise improper influence on planning decision-making in large part by using donations and lobbying to explicitly or implicitly gain favour. More robust regulation of lobbying activity is needed to ensure transparency and promote community confidence in public officials. IBAC's recent Donations & Lobbying special report sets out some of the most pressing risks and reform recommendations in this area.³ This report endorses and builds on those recommendations.
- **Strengthening council governance:** IBAC recommends extensive reforms to strengthen council governance. This includes reforms to introduce consistent obligations across councils, improve transparency in decision-making, prevent improper influence, improve reporting and data collection, strengthen processes for declaring and managing conflicts of interest, and improve redress for improper conduct and ensure associated penalties are adequate. These reforms are necessary to ensure that the community can have confidence in the integrity of councils and public officials.

IBAC understands that implementing these reforms requires careful consideration, including input from subject matter experts. Therefore, it recommends the establishment of an Implementation Inter-departmental Taskforce (the Taskforce), to be chaired by the Department of Premier and Cabinet. The Taskforce would coordinate the implementation of IBAC's recommendations where immediate action can be taken, and progress consideration of longer-term reforms with appropriate expert input and stakeholder consultation. The Premier will be required to report on the implementation of recommendations relating to the Taskforce by 27 January 2025.

IBAC welcomes the Casey Council's amendments to its Councillor Code of Conduct in March 2023⁴ as a necessary first step to restoring public confidence. The implementation of recommendations in this special report will help ensure public trust can be achieved and maintained in future. The revised Governance Rules,⁵ which were adopted in April 2023 and include procedures for declaring conflicts of interest about Casey Council matters, will also assist with building public confidence in Council decision-making.

1.1 Structure of this report

This report details IBAC's investigation, findings, its assessment of corruption risks and its recommendations, as follows:

- Chapter 1 provides an overview of IBAC's investigation, key findings and recommendations.
- Chapter 2 outlines the background to the investigation, including the context in which IBAC's investigation arose and details of how the investigation was conducted.
- Chapter 3 details the conduct investigated by IBAC and its findings.
- Chapters 4 to 7 set out IBAC's assessment of the corruption risks observed in Operation Sandon and its recommendations about planning, donations, lobbying and council governance.

³ IBAC 2022, *Special report on corruption risks associated with donations and lobbying*, IBAC, www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-donations-and-lobbying.

⁴ Casey Council 2023, 'Councillor Code of Conduct', www.casey.vic.gov.au/policies-strategies/councillor-code-of-conduct. Importantly, the amended Councillor Code of Conduct includes a comprehensive section on land use planning, with guidance for councillors on responding to requests for advice from interested parties and ensuring they do not place themselves in a compromised position by appearing to be an advocate for or against any proposal that may come before Council for a decision.

⁵ Casey Council 2023, 'Governance Rules', www.casey.vic.gov.au/policies-strategies/governance-rules.

1.2 Scope of Operation Sandon

In November 2017, IBAC authorised a preliminary inquiry into allegations of serious corrupt conduct concerning Mr Sameh Aziz, a Casey councillor. In August 2018, IBAC started a full investigation, using its coercive powers.

IBAC expanded the investigation in October 2018 to consider the conduct of developer Mr Woodman, as well as another Casey councillor, Mr Geoff Ablett, and whether other Casey councillors had accepted undeclared payments, gifts or other benefits, including political donations, in exchange for favourable Casey Council outcomes.

IBAC's investigation was primarily concerned with four planning matters involving Mr Woodman and his associates. Each matter involved the Casey Council as decision maker to varying extents, and two required the Minister for Planning to make a determination. As a result, IBAC's investigation examined the conduct of public officers at both state and local government levels.

1.3 The nature of IBAC's findings

IBAC can publish a special report relating to the performance of its duties and functions at any time. This includes a special report about an investigation into suspected 'corrupt conduct'.

Corrupt conduct is defined in section 4 of the IBAC Act. It includes conduct that involves a breach of public trust, such as the misuse of a public power or position, and can include misuse of information gained by a public officer. The misuse can be for private gain, or advantage of that person or another person. The definition requires that the conduct would constitute a relevant criminal offence.

However, IBAC is not a court. It is prohibited from including in its reports any finding or opinion that a person is guilty of or has committed a criminal or disciplinary offence, or that a person should be prosecuted for any such offence. Unlike a court, IBAC is not bound by the rules of evidence and, in producing a special report, it is not required to apply the criminal standard of proof (proof beyond reasonable doubt).

In a special report, IBAC can make findings of fact and can express comments or opinions about a person's conduct. In doing this, IBAC applies the civil standard of proof (proof on the balance of probabilities), according to what is commonly referred to as the *Briginshaw* principle. Under this principle, IBAC has regard to the seriousness of the finding, the inherent likelihood or unlikelihood of the fact in question, and the gravity of the consequences that may flow from the finding.

IBAC's findings are based on the evidence gathered during an investigation and reflect the evidence available to IBAC at that point in time.

1.4 Key findings – planning matters

1.4.1 Amendment C219

Amendment C219 concerned a proposal by landowners to rezone land in Cranbourne West as residential to increase its value. Mr Woodman was paid to represent the landowners. To succeed, both the support of the Casey Council and the approval of the Minister for Planning were necessary.

Mr Woodman and his associates sought to advance the proposal using different methods over several years, including directly paying Councillor Aziz and Councillor Ablett for their support, and cultivating relationships with and providing support to other Casey councillors (for example, by donating to their election campaigns). Between 2014 and 2019, the Casey Council progressed this matter in various ways, and voted in its favour on several occasions.

A core group of three Casey councillors were instrumental in this: Councillor Aziz, Councillor Ablett and a third councillor, who is referred to as Councillor A in this report (and is not named as they are deceased). All three councillors voted in favour of the amendment at various times and engaged in other ways to promote it. Council processes were insufficient to prevent improper conduct, manage conflicts of interest and ensure that integrity was maintained.

Mr Woodman and his associates also lobbied, cultivated or financially supported state political candidates, political staff, MPs and ministers who they believed could affect the proposal's outcome, including by helping fund a residents' action group. Some of these activities were legitimate, while some were improper. Government processes were insufficient to manage against improper influence and to ensure that conflicts of interest were appropriately managed. The Minister for Planning ultimately rejected the amendment in 2020.

1.4.2 H3 intersection

In 2018, the Casey Council considered the construction of an interim T intersection, known as the H3 intersection, to allow traffic between two housing estates. Mr Woodman's son was a director and shareholder of one of two companies holding planning permits to build along the relevant road. IBAC does not suggest that Mr Woodman's son acted improperly.

The planning permits set out conditions under which the companies would fund the intersection's construction. Mr Woodman and his associates worked to ensure that the other company would bear the bulk of costs for the construction. They did this by supporting a residents' action group seeking to promote the intersection's speedy construction, paying Councillor Aziz and Councillor Ablett in exchange for their support on Council, and by Mr Woodman continuing to cultivate his relationship with Councillor A to implicitly influence their decisions on Council.

These efforts were successful, and the other company was made to bear the bulk of construction costs.

1.4.3 Pavilion Estate

In 2017, shortly after the Casey Council approved a development permit for the Pavilion Estate, the landowner asked it to consider an application to amend the permit by reducing open-space requirements and road-reserve widths and charging the Casey Council for the cost of constructing a road. Mr Woodman's son was a director and shareholder of the company managing the estate's development. The changes requested would decrease its costs and provide it with more land to develop and sell on behalf of the landowners.

Mr Woodman and his associates worked with Councillor Aziz to draft and move motions in favour of the amendment. As noted above, Councillor Aziz was paid for his support on Council. In 2018, Council approved the amendment without debate, despite Council's planning officers advising that the proposal be rejected.

1.4.4 Brompton Lodge

In 2007, the owners of 108 acres of rural land in Cranbourne South, now known as the Brompton Lodge Estate, sought to have their land included within the Urban Growth Boundary and subsequently rezoned for residential development.

Through various arrangements, Mr Woodman, his son and two political lobbyists were engaged to progress these changes with the Casey Council and state government decision-makers. The strategy was successful. The land was included in the UGB in 2012 and rezoned in 2016. In 2018, the land was sold to a company associated with a company co-owned by Mr Woodman's son. That company has since commenced development of approximately 1500 dwellings.

In this matter, IBAC found improper conduct only by certain Casey councillors as set out in section 3.4. However, the matter provides an example of the heightened risk of privileged access and improper influence that is common to all rezoning matters because of the potential for windfall gains. It also further illustrates Mr Woodman's strategy in seeking to influence planning decision-making through lobbying and political donations.

1.5 Key findings – individuals and entities

1.5.1 Mr Woodman and Watsons

IBAC found that developer, consultant and investor Mr Woodman sought to achieve planning outcomes that were favourable to his own and his clients' interests at state and local government levels by:

- providing inducements to Casey councillors Aziz and Ablett in exchange for promoting his own and his clients' interests
- providing funds and in-kind support to additional Casey councillors with a view to influencing them over time
- lobbying and engaging registered lobbyists to assist in buying access to, and influence with, state and local government politicians, executives, political staff and political candidates
- donating to fundraising entities to cultivate influence, including through donations, membership fees and tickets to attend fundraising events
- directly and indirectly funding the election campaigns of local and state government candidates, including seven of the members elected in the 2016 Casey Council elections
- covertly funding, and helping form and direct, the activities of a residents' action group.

Responding to this report, Mr Woodman has asserted that there is 'no evidence that the work [he undertook ...] as a Consultant was to improperly influence' nor did he 'rely on the supposed core group of councillors'.

As noted above, some of Mr Woodman's activities were legitimate, whereas others were improper. Conduct is described in this report where it is either improper or exposes corruption risks or gaps in systems and processes that undermine integrity in decision-making.

1.5.2 Councillors Sameh Aziz and Geoff Ablett

IBAC found that Councillor Aziz and Councillor Ablett promoted Mr Woodman's and his clients' interests on Council in exchange for payment and in-kind support. Both councillors failed to declare conflicts of interest about their involvement with Mr Woodman or his companies on many occasions.

Councillor Aziz marketed his ability to influence Casey Council decisions to developers at a time when they had commercial interests in its decisions. Between 2017 and 2019, Councillor Aziz received around \$600,000 from Mr Woodman and entities he controlled in the form of investment returns, consultancy fees and cash.

Councillor Aziz promoted Mr Woodman's business interests in relation to Amendment C219, including by identifying and coordinating the campaigns of a group of candidates for the 2016 Casey Council elections (covertly financed by Mr Woodman) who were supportive of or amenable to Amendment C219. He was also instrumental in introducing motions that benefited Mr Woodman about the H3 intersection and the Pavilion Estate permit.

Councillor Aziz also marketed his ability to influence decisions at the Casey Council to various other parties who had commercial interests in those decisions, and on several occasions received financial benefits in exchange for doing so. Between 2016 and 2019, those benefits totalled over \$450,000.

Councillor Ablett solicited financial support from Mr Woodman in exchange for promoting Mr Woodman's interests on Council. He personally received more than \$550,000 in payments and other financial benefits from Mr Woodman between 2010 and 2019.⁶ In evidence, both he and Mr Woodman stated that Mr Woodman offered him a financial reward if Amendment C219 was approved. Councillor Ablett also successfully pushed for the removal of Casey Council CEO Mr Mike Tyler, who opposed Amendment C219.⁷

Mr Woodman also made donations to Councillor Ablett's state and local election campaigns, including a \$40,000 donation received via the Liberal Party, which was the subject of a 2015 Victorian Ombudsman investigation.⁸

1.5.3 Other Casey councillors

IBAC did not find that other Casey councillors received a direct benefit in exchange for promoting Mr Woodman's or his clients' interests on Council. However, Mr Woodman sought in various ways to exert implicit influence over several Casey councillors to ensure that they voted in alignment with his interests.

Mr Woodman donated funds to several candidates' local and state election campaigns, hosted fundraising events, donated prizes for fundraising, donated to causes important to particular Casey councillors, and funded Casey councillors' travel and participation in events.

IBAC did not find that these Casey councillors actively pursued a transactional relationship with Mr Woodman. It is not clear to what extent each councillor was aware of the improper nature of Mr Woodman's conduct. However, each of these councillors was improperly influenced by Mr Woodman. As a result, they promoted Mr Woodman's interests on the Casey Council, including voting in his favour on several occasions. They also held meetings with Mr Woodman, at times about Casey Council matters, consulted Mr Woodman and his associates on matters affecting the Casey Council or discussed them with him and his associates, and liaised with other councillors to promote the matters when they had declared a conflict of interest and could not themselves vote.

These councillors failed to declare and manage their conflicts of interests appropriately, and to meet their obligations as public officials, including in some instances as City of Casey mayor. They also failed to meet their reporting obligations when running for office.

Casey Council processes were improperly influenced as a result.

⁶ For further details about payments and inducements, see section 3.6.

⁷ For details of Councillor Ablett's involvement in Amendment C219, see section 3.1.

⁸ Victorian Ombudsman 2015, *Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations*, VO, pp 20 and 25.

1.5.4 Lobbyists and residents' groups

Mr Woodman worked with and contracted lobbyists to assist him in promoting his and his clients' interests. The lobbyists' knowledge of and involvement in Mr Woodman's improper conduct varied. One lobbyist engaged by Mr Woodman ferried cash payments to Councillor Aziz on Mr Woodman's behalf. Others played more limited roles.

The lobbyists Mr Woodman worked with engaged with Casey councillors to develop strategies to promote Mr Woodman's and his clients' interests, arranged the transfer of funds (at times covertly) for candidates during local election campaigns, organised fundraising events, and lobbied councillors, government executives, political candidates, political staff, MPs and ministers in support of Mr Woodman's interests.

Mr Woodman and his associates also helped create and fund a residents' action group which lobbied in support of the C219 Amendment (and later also the H3 intersection). Though the group mostly consisted of local residents and purported to represent their interests, it was originally conceived by Mr Woodman's associates, and was subsequently funded for the purpose of promoting his own and his clients' interests. The group's leadership did not disclose its funding or the involvement of landowners and developers in submissions and representations made as part of decision-making processes. This was part of Mr Woodman's strategy of promoting his own and his clients' interests in ways that enabled him to appear removed from the processes. It undermined the integrity of these processes.

1.5.5 Mr Woodman's associates

Mr Woodman worked with several associates to promote his own and his clients' interests. They included planning consultants, development managers, business owners and former councillors.

Their knowledge of and involvement in Mr Woodman's conduct varied. Some associates worked closely with Mr Woodman on multiple projects, while others had limited involvement.

Mr Woodman's associates engaged in activities including:

- working with Mr Woodman to develop and implement strategies to influence Casey Council and Victorian Government decision-making processes
- drafting motions for some Casey councillors
- coaching some Casey councillors on motions
- preparing parliamentary petitions for a state government MP to table in the Victorian Parliament
- lobbying state political candidates, political staff and parliamentarians
- providing support to groups of candidates in Casey Council elections
- using other businesses to move funds to selected candidates.

1.5.6 Other public officials and associated entities

Mr Woodman also promoted his own and his clients' interests by seeking to influence state government decision-making processes. Mr Woodman attempted to influence several Victorian Government MPs, ministers and political staff. He succeeded in two instances, when he donated to the election campaigns of two MPs and successfully lobbied them to advocate for his interests in relation to Amendment C219.

Mr Woodman also sought access to state government decision-makers by donating to the fundraising entities of both major parties. Between 2010 and 2019 his donations totalled over \$470,000. Both entities agreed to accept membership payments in separate portions from different accounts or entities. This meant that Mr Woodman did not have to declare the contributions at the federal level. These fundraising entities were an important way of buying access to elected officials and senior decision-makers without transparency.

1.6 Key findings – corruption risks

Operation Sandon exposed a range of deficiencies in planning processes, donation and lobbying regulation, and council governance. These corruption vulnerabilities are not unique to the individuals and matters that were the subject of IBAC's investigation, so it is important for all state and local government decision-makers to be alert to them.

Operation Sandon demonstrated the need for significant reform to minimise these corruption risks. IBAC highlighted several of these risks in its 2022 Donations & Lobbying special report. IBAC has made recommendations in both special reports that if implemented would give the public confidence that planning decisions are made in the interests of the community by ensuring:

- robust planning processes promote the importance of strategic justification for proposals and amendments to guard against improper influence
- donation regulations allow individuals and organisations to express their support for a political party, while preventing well-resourced individuals from buying greater influence
- lobbying regulations recognise and preserve the legitimate role of lobbying as a means by which the public can seek to access and influence public officers, while reducing the risk of improper access and influence that may distort, or possibly corrupt, government decision-making processes
- ministerial advisors and electorate officers are more accountable and transparent, particularly regarding their dealings with lobbyists
- councillors are accountable for their council's governance as a group and are well-supported by administrative processes to make informed decisions, and that there are effective mechanisms to deal with instances of councillor misconduct.

1.6.1 Planning

Some planning decisions involve changes to the permissible use of land, which can result in windfall gains, incentivising corrupt conduct. The risk of corruption is exacerbated by the broad discretion available to decision-makers in the planning scheme amendment process and by the lack of transparency around decision-making.

In Operation Sandon, IBAC observed that the proposal to change the permissible land use of an area from commercial to residential in Amendment C219 was repeatedly identified as lacking strategic justification by Casey Council planning officers and Victorian Government planning officers. Despite this, the Casey Council progressed the proposal against the advice of planning officers,⁹ often without reasons recorded, until the Minister for Planning rejected it at the final stage.¹⁰

Operation Sandon also highlighted corruption vulnerabilities in statutory planning¹¹ – generally involving council decisions on planning permits and permit amendments – in circumstances where conflicted councillors with limited expertise in planning were the key decision-makers.

IBAC's recommendations in this report about planning aim to:

- reduce the incentive to engage in corrupt conduct by capturing (e.g. by tax) a proportion of all windfall gains over a certain threshold where a decision alters the permissible use of land
- safeguard the strategic planning decision-making process against manipulation by strengthening the need to focus on strategic justification and by increasing transparency
- mitigate the risk of improper influence in statutory planning decisions by delegating the decision-making authority to council officers and an independent expert panel in a way that:
 - reduces the risk of decision-makers having conflicts of interest
 - ensures a higher level of planning expertise among the decision-makers
 - increases transparency in the delegation and decision-making processes.

1.6.2 Donations

Operation Sandon showed how significant political donations can be used to gain access to decision-makers by elevating a donor's profile. It also showed how candidates and political parties actively solicited donations through their associated entities (Progressive Business for the Labor Party and Enterprise Victoria for the Liberal Party) and through fundraising events for specific candidates. The investigation illustrated how soliciting donations has the potential to compromise an MP once they are elected.

In Operation Sandon, donors and candidates made efforts to conceal donations by:

- splitting payments to avoid disclosure requirements at the federal level
- donating goods and services that were not declared
- donating to a political party with a request to direct funds to a particular candidate, to obscure the link between donor and recipient
- using third-party campaigners at the local government level to reduce the likelihood of a candidate having to later declare a conflict.

At the time of the conduct under investigation, there were few, if any, regulations governing donations at the Victorian Government level. As a result, Mr Woodman's significant financial contributions to the state Labor Party and Liberal Party at the time of IBAC's investigation were not publicly scrutinised.

Operation Sandon provides an example of the risks and system vulnerabilities that IBAC highlighted in its Donations & Lobbying special report. While the regulation of political donations was enhanced at the Victorian Government level in Victoria in 2018 through donor caps and disclosure requirements, gaps remain.¹² Enhanced transparency and accountability is required to ensure that government decisions are made in the public interest and seen to be free from improper influence.

⁹ In particular, the Casey Council moved motions to seek authorisation from the Minister for Planning and they authorised the amendment, contrary to the advice of council planning officers and the Department respectively, as discussed in section 4.1.

¹⁰ In a statement to IBAC, the Minister for Planning indicated that: they are under no obligation to follow the advice of planning officers under the *Planning and Environment Act 1987*; their decisions to progress the proposed amendment were conditional on further strategic work being performed; and there is no evidence they were ever satisfied the proposal was strategically justified to a sufficient extent or that they intended to approve Amendment C219 despite its lack of strategic justification.

¹¹ Statutory planning is the assessment of planning permit applications for new development proposals and changes to land use activities under the *Planning and Environment Act 1987* (Vic). It generally involves applying planning scheme provisions to assess what permission should be given.

¹² *Electoral Legislation Amendment Act 2018* (Vic).

The conduct in Operation Sandon illustrates the need for reforms to:

- prevent developers and other high-risk groups from using donations to gain privileged access to decision-makers
- make it harder for donors and candidates to conceal donations
- improve the monitoring and reporting of donations
- reduce the pressure on parties and candidates to solicit donations.

1.6.3 Lobbying

Operation Sandon highlighted how an individual such as Mr Woodman could use registered lobbyists *and* engage in unregulated lobbying to seek to influence planning decisions and progress his interests. Mr Woodman understood the importance of political support – at both the local and state government levels – to achieve his objectives. He cultivated relationships with elected officials and those he thought had influence or potential influence (including candidates in strategically important areas) through lobbying and donations. The integrity risks surrounding lobbying were recently highlighted in IBAC’s special reports on Donations & Lobbying and Operation Clara.¹³ These reports and investigations demonstrate how the current system of lobbying regulation in Victoria is too narrow in its scope, lacks transparency, and has comparatively weak lobbying controls and enforcement mechanisms. As seen in Operation Sandon, without meaningful regulation, lobbying can enable privileged access to decision-makers and others who have influence (including through networking forums and fundraising events). This creates the risk that the decision-making process may be distorted or corrupted, while also eroding trust in government.

Although Mr Woodman and his associates primarily focused their lobbying efforts on ministers, MPs and councillors, they also targeted ministerial advisors and electorate officers. Operation Sandon showed how the corruption risks presented by this conduct were exacerbated by the limited transparency and oversight arrangements governing political staff in Victoria. In particular, IBAC identified that an electorate officer was a target for lobbying activity in circumstances where the relevant MP was absent due to ill health for an extended period, during which the officer was not formally supervised.

Stronger controls around lobbying are required to address the systemic vulnerabilities exposed by Operation Sandon. Previous IBAC investigations and special reports, including Operation Daintree¹⁴ and the Donations & Lobbying special report, noted many of these risks and recommended reforms to manage them. In particular, reform is needed to:

- strengthen the monitoring of lobbying and enforcement of associated controls in Victoria
- broaden the scope of lobbying regulation to focus on the activity being undertaken and capture all contact designed to influence government and parliamentary functions
- ensure transparent dealings between lobbyists and public officials – including ministerial advisors and electorate officers – through strengthened and broadened record-keeping requirements
- strengthen the accountability and oversight of ministerial advisors and electorate officers.

¹³ Operation Clara was an IBAC investigation into the alleged corrupt conduct of a public sector board member. The investigation found that the member had engaged in improper lobbying practices and failed to register a lobbying client. It included several recommendations to strengthen lobbying regulations: IBAC 2023, *Operation Clara: Special report*, IBAC, www.ibac.vic.gov.au/publications-and-resources/article/operation-clara-special-report.

¹⁴ Operation Daintree was an IBAC investigation that highlighted compromised procurement processes and improper influence for a \$1.2 million contract awarded to a union-affiliated training group by the Department of Health and Human Services. The investigation identified inappropriate conduct by ministerial advisors and corruption risks concerning the lack of oversight and accountability governing their conduct: IBAC 2023, *Operation Daintree: Special report*, IBAC, www.ibac.vic.gov.au/node/891.

1.6.4 Council governance

Operation Sandon highlighted corruption risks in council governance. IBAC found that several Casey councillors repeatedly failed to declare clear conflicts of interest about matters involving Mr Woodman's interests. Moreover, when a number of Casey councillors did declare a conflict of interest, they sought to influence how other councillors would vote on those matters.

IBAC's investigation clearly demonstrates that conflict-of-interest provisions must be strong enough to deter conflicted councillors from attempting to influence other councillors, and administrative supports must be in place to assist councillors to make clear and accurate declarations. Stronger provisions would help to safeguard against ill-intentioned councillors being able to claim ignorance of their conflict-of-interest obligations.

Operation Sandon also indicated that local government CEOs lack the authority to act on identified integrity issues involving councillors, and that the mechanisms to address poor councillor conduct are slow and lack transparency. IBAC identified that councillor codes of conduct vary unnecessarily between Victorian councils, and do not make clear what mechanisms are available to council officers and the public to raise concerns about councillor conduct.

Meeting procedures also vary unnecessarily between councils. Better practices adopted by councils that are more proactive or have experienced particular challenges are not reflected in the governance rules of all councils.

Accordingly, IBAC's recommendations in relation to council governance aim to:

- strengthen legislative conflict-of-interest provisions by expressly prohibiting councillors from attempting to influence other councillors if they have a conflict of interest, and applying appropriate sanctions for breaching those provisions
- promote greater consistency across local government by mandating that councils adopt model governance policies and procedures, including councillor codes of conduct, governance rules and transparency policies
- make procedural changes to help councillors identify possible conflicts of interest and make it more difficult for councillors to claim they did not know they had a conflict
- facilitate the review and improvement of council complaint mechanisms, including by collecting and publishing complaints data and decisions, and councillor conduct panels to better understand the interaction and efficacy of these mechanisms
- support local government CEOs to address councillor misconduct by mandating:
 - reporting of material conflicts of interest that the CEO suspects on reasonable grounds have not been properly declared to the Chief Municipal Inspector
 - a standard contract of employment for CEOs
 - panels to determine matters relating to the CEO's employment, performance and remuneration, which comprise a majority of independent members, including an independent state government chair.

1.6.5 The need for coordinated implementation of recommendations

Operation Sandon identified a wide range of corruption risks involving planning, donations, lobbying, councillors and local government governance. Given the scope and complexity of these issues, it is important that IBAC's recommendations for reform are progressed in a practical, timely and coordinated way.

Recognising that reform will require in-depth consideration of technical issues and broader implications, and considered coordination across the set of recommendations, IBAC recommends that the Premier establishes a Taskforce to coordinate implementation of IBAC's recommendations, progress consideration of longer-term reforms, and report on action taken, as specified in Recommendation 1.

It is important that the Taskforce work with those in government progressing IBAC's recommendations in the Donations & Lobbying special report, including giving Sandon-specific advice to the Election Review Expert Panel appointed by the Victorian Government in May 2023 to review the 2018 amendments to the *Electoral Act 2002* (Vic). A joined-up approach will ensure that the lessons learnt from Operation Sandon are translated into effective regulatory improvements, helping to better manage the risks of improper influence and privileged access in the future.

1.7 Section 159 recommendations

Recommendation 1

IBAC recommends that the Premier establishes an Implementation Inter-departmental Taskforce (the Taskforce) that is:

- (a) chaired by the Department of Premier and Cabinet and comprises senior representatives of other relevant departments and agencies including, but not limited to, the:
 - Department of Transport and Planning
 - Department of Government Services
 - Victorian Public Sector Commission
 - Local Government Inspectorate
 - Victorian Electoral Commission.
- (b) responsible for:
 - coordinating implementation of IBAC's recommendations, where immediate action can be taken
 - progressing consideration of longer-term reforms proposed in the special report that require expert analysis and stakeholder consultation
 - making sure that the proposed reforms meet the principles and outcomes set out in IBAC's report, and that these reforms are implemented for each of the strategic issues
 - reporting quarterly to IBAC, detailing the progress of action taken in response to IBAC's recommendations
 - reporting publicly within 18 months on action taken in response to IBAC's recommendations, noting that IBAC may further publicly report on the adequacy or otherwise of those proposals.

In undertaking this work, the Taskforce should consult IBAC officers on the development of an implementation plan and the drafting of legislative amendments.

Report Section 4.0

Planning

Recommendation 2

IBAC recommends that the Premier ensures that the Taskforce considers and recommends measures to address the corruption risks associated with windfall gains from changes in permissible land use, drawing on any lessons learnt in the development and implementation of the *Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021* (Vic).

Report Section 4.3.1

Recommendation 3

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) so that authorisation of a planning scheme amendment operates as a transparent and accountable gateway process by:

- (a) amending section 8A(7) to facilitate proper consideration of the strategic justification and timely authorisation of planning scheme amendments
- (b) setting clear criteria that the Minister for Planning must consider in exercising their discretion to authorise progression of an amendment, including satisfaction of strategic justification
- (c) specifying a presumption against amendment for an appropriate period, noting that the reasons for any exemptions should be clear and details made publicly available.

Report Section 4.3.3

Recommendation 4

IBAC recommends that the Premier ensures that the Taskforce considers and recommends amendments to the *Planning and Environment Act 1987* (Vic) to ensure that the number of possible outcomes that could be considered 'correct' decisions in response to a given proposal at the adoption and approval stages of a planning scheme amendment is narrowed by specifying criteria that must be addressed to the satisfaction of:

- (a) the planning authority to adopt an amendment
- (b) the Minister for Planning to approve an amendment.

Report Section 4.3.4

Recommendation 5

IBAC recommends that the Department of Transport and Planning reviews and clarifies guidance to help prioritise competing policy criteria when assessing the merits of a planning scheme amendment, including, but not limited to:

- (a) the factors that should be considered in assessing strategic justification
- (b) the hierarchy of broader-scale plans.

Report Section 4.3.4

Recommendation 6

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) to require the decision-maker to record the reasons for decisions at relevant points in the planning scheme amendment process.

Report Section 4.3.5.1

Recommendation 7

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) and/or amends ministerial guidance to require every applicant and person making submissions to a council, the Minister for Planning or Planning Panels Victoria to disclose reportable donations and other financial arrangements that parties have made or have with relevant decision-makers in relation to that planning matter (with reference to the New South Wales provisions).

Report Section 4.3.5.2

Recommendation 8

IBAC recommends that the Minister for Planning issues Ministerial Directions for Planning Panels Victoria panels to specify that there is a presumption in favour of the existing planning scheme and state policy settings.

Report Section 4.3.6.1

Recommendation 9

IBAC recommends that the Premier ensures that the Taskforce considers and recommends amendments to the *Planning and Environment Act 1987* (Vic) to deter submitters from attempting to improperly influence a council, the Minister for Planning or Planning Panels Victoria in their role in the planning scheme amendment process, including, but not limited to, specifying relevant offences together with appropriate penalties.

Report Section 4.3.6.2

Recommendation 10

IBAC recommends that the Premier ensures that the Taskforce engages subject-matter experts and consults stakeholders to develop a model structure for independent determinative planning panels for statutory planning matters that addresses the integrity risks identified in Operation Sandon, having regard to:

- (a) the skills mix and method of appointing panel members and the efficacy of rotating panel members
- (b) the scope of panel coverage, being whether all councils should be required to use an independent planning panel, including the option of shared or regional panels in areas where councils handle fewer planning permits
- (c) the referral criteria that should apply statewide to make clear which matters should be determined by planning panels rather than by council planning officers
- (d) decision-making process and reporting requirements to ensure transparency and accountability of panel decisions
- (e) arrangements to handle complaints about planning panels and review their performance to ensure continuous improvement.

Report Section 4.3.7.3.7

Recommendation 11

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) to:

- (a) remove statutory planning responsibilities from councillors
- (b) introduce determinative planning panels for statutory planning matters, where a local council is currently the responsible authority.

This is to give effect to the model developed by the Taskforce in response to Recommendation 10.

Report Section 4.3.7.3.7

Recommendation 12

IBAC recommends that the Premier ensures that the Taskforce engages subject-matter experts and consults with key stakeholders to assess the operation of Part 4AA of the *Planning and Environment Act 1987* (Vic) and recommends whether further amendments are required to give full effect to independent panels as the decision-makers for all statutory planning matters, including those where the Minister for Planning is the responsible authority.

Report Section 4.3.7.3.7

Donations

Recommendation 13

IBAC recommends that the Premier ensures that the Taskforce considers and recommends whether the regulatory regime governing donations in Victoria would be strengthened by identifying and prohibiting high-risk groups (including, but not limited to, property developers) from making political donations to political entities and state and local government candidates.

Report Section 5.4

Recommendation 14

IBAC recommends that the Premier ensures that the Taskforce advises the independent panel review of the 2018 electoral reforms to ensure its report appropriately addresses the corruption risks of political donations highlighted in Operation Sandon.

Report Section 5.4

Lobbying

Recommendation 15

IBAC recommends that the Premier ensures that the implementation of Recommendations 3 and 4 from the Donations & Lobbying special report appropriately addresses the lobbying risks highlighted in Operation Sandon.

Report Section 6.4

Recommendation 16

IBAC recommends that the Department of Parliamentary Services develops guidelines to apply to electorate officers when a Member of Parliament is on extended leave, to ensure electorate officers are appropriately supervised and are subject to clear lines of accountability.

Report Section 6.4

Council governance

Recommendation 17

IBAC recommends that the Minister for Local Government:

- (a) ensures that Local Government Victoria develops and maintains a Model Councillor Code of Conduct that includes better practice provisions that will apply to *all* councils, noting that councils can adopt additional provisions to the extent that they are consistent with the minimum standards specified in the Model Councillor Code of Conduct
- (b) develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic), or amends relevant regulations to specify that councils must adopt the Model Councillor Code of Conduct.

Report Section 7.3.1.1

Recommendation 18

IBAC recommends that the Minister for Local Government uses an appropriate mechanism, such as amendments to the *Local Government Act 2020* (Vic) or relevant regulations, to require that councillors undertake mid-term refresher training on governance, leadership and integrity.

Report Section 7.3.1.2

Recommendation 19

IBAC recommends that the Minister for Local Government:

- (a) ensures that Local Government Victoria develops and publishes Model Governance Rules to operate as the minimum standards for council meeting procedures
- (b) develops and introduces to Parliament amendments to the *Local Government Act 2020*, or amends relevant regulations to specify that councils *must* adopt the Model Governance Rules
- (c) ensures that Local Government Victoria maintains the Model Governance Rules in a way that promotes better practices that apply to all councils, noting that councils can adopt additional rules to the extent that they are consistent with the minimum standards specified in the Model Governance Rules.

Report Section 7.3.2.1.2

Recommendation 20

IBAC recommends that the Minister for Local Government encourages diligent, considered councillor decision-making by providing guidance and training to councils on administrative and council meeting best practice.

Report Section 7.3.2.3

Recommendation 21

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria includes in the Model Code of Conduct for Councillors a clear statement of expectations to guide councillors and staff in their interactions with each other.

Report Section 7.3.2.4

Recommendation 22

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria:

- (a) develops and publishes a Model Transparency Policy to specify the minimum standards for council openness and transparency
- (b) ensures that the Model Governance Rules and Model Transparency Policy:
 - highlight the importance of open government and the related risks in holding pre-council meetings
 - note the limited circumstances in which it may be appropriate to hold pre-council meetings immediately before a public council meeting, such as to discuss procedural arrangements for the meeting
 - make clear that councillors must not discuss the substance of agenda items in detail, reach agreements on council agenda items in private, and that briefings should involve the presentation of information only
- (c) develops further guidance to explain to councillors *why* deliberation on an agenda item (not just voting) in public is important, particularly for planning matters.

Report Section 7.3.3.1

Recommendation 23

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules expressly prohibit voting en bloc in council meetings.

Report Section 7.3.3.2

Recommendation 24

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules require council meeting minutes to state:

- (a) the names of councillors who spoke on each motion
- (b) the names of councillors who voted for and against each motion (regardless of whether a division was called).

Report Section 7.3.3.3

Recommendation 25

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria undertakes a review, and introduces related reforms, to ensure that councillor breaches of the conflict-of-interest provisions are addressed in a timely and effective manner.

Report Section 7.3.4.1.1

Recommendation 26

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules stipulate that:

- (a) council officer reports on local government planning matters be accompanied by:
 - a schedule of reportable donations and other financial arrangements that parties have made or have with councillors (as discussed in Recommendation 7)
 - a statement of the interested parties that includes details of the parties affected by the motion before council, such as the names of personnel, company names and registered addresses
- (b) councillors must acknowledge that they have read the schedule of reportable donations and other financial arrangements and the statement of involved parties before declaring whether they have a conflict of interest in the relevant agenda item for any local government planning matters.

Report Section 7.3.4.2

Recommendation 27

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules (such as through an amendment to clause 18.3 of the draft rules):

- (a) provide a clear process for disclosing all conflicts of interest, including those that involve privacy matters. This process must set out:
 - precisely what matters will be included in the declaration and public register
 - how declarations involving privacy matters will be recorded
 - how long records will be retained
- (b) require councillors to disclose, in sufficient detail, the circumstances that give rise to a conflict of interest, including, but not limited to, the names of the people or entities associated with the conflict and their relationship to the councillor.

Report Section 7.3.4.3

Recommendation 28

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria develops model conflict-of-interest training, and an associated strategy to ensure that its completion is enforceable, to consistently reinforce conflict-of-interest obligations across councils. The training should:

- (a) explain why a councillor cannot or should not participate in the decision-making process for a matter in which they have a conflict, during or outside council meetings
- (b) ensure that councillors understand their obligation to:
 - familiarise themselves with the parties who donate to any political, charitable or community interests with which the councillor has an involvement
 - assess whether those donations give rise to a conflict of interest for particular council matters
 - provide precise details of the nature of the conflict when declaring a conflict of interest.

Report Section 7.3.4.3

Recommendation 29

IBAC recommends that the Minister for Local Government develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic) to:

- (a) expressly prohibit councillors with a conflict of interest from attempting to influence other councillors (with reference to the Queensland provisions)
- (b) specify an appropriate penalty for councillors who contravene this provision.

Report Section 7.3.4.4

Recommendation 30

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria reviews the available sanctions for misconduct to ensure that the options provided are adequate and applied in an appropriate way. This includes, but is not limited to, ensuring that the option to direct that a councillor be ineligible to hold the position of mayor after a finding of misconduct can be applied in a way that is both proportional to the conduct and timebound.

Report Section 7.3.5.1

Recommendation 31

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria includes in the Model Councillor Code of Conduct a clear statement that:

- (a) council officers and members of the public may make a complaint to the Chief Municipal Inspector
- (b) a CEO must notify IBAC under section 57 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) if they suspect on reasonable grounds that a breach of the Model Councillor Code of Conduct involves corrupt conduct.

Report Section 7.3.5.2

Recommendation 32

IBAC recommends that the Minister for Local Government develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic) to require that the Principal Councillor Conduct Registrar collate and publish data annually on:

- (a) the internal arbitration process, including:
 - the number of applications received
 - the number of applications withdrawn
 - the nature of the issues raised
 - the outcome of completed arbitration processes
 - the cost to the council of dealing with arbitrated matters, including staff costs
- (b) councillor conduct panels, including:
 - the number of applications received
 - the number of applications withdrawn
 - the nature of the issues raised
 - the outcome of completed panel processes
 - the cost to the council of dealing with panel matters, including staff costs.

Report Section 7.3.5.3

Recommendation 33

IBAC recommends that the Premier ensures that the Taskforce identifies the most appropriate mechanism to support a council CEO in making a mandatory notification about serious misconduct. This includes suspected breaches of the conflict-of-interest provisions by councillors – in particular, breaches involving material conflicts of interest – noting that the Chief Municipal Inspector has the authority to apply to a councillor conduct panel or prosecute a councillor for misuse of position due to a conflict of interest, but is not currently authorised to receive a mandatory notification concerning a councillor from a CEO, under the *Public Interest Disclosure Act 2012* (Vic).

Report Section 7.3.6

Recommendation 34

IBAC recommends that the Minister for Local Government develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic), or amends relevant regulations, and institutes related enabling processes, to promote greater consistency and independent oversight of recruitment and employment of council CEOs by:

- (a) mandating that councils use a standard employment contract for CEOs that:
 - covers, among other things, the role of the CEO, performance review and management, and termination payment (including limits on such payments)
 - bans non-disclosure agreements between councils and CEOs or former CEOs
- (b) amending section 45 to require each council to establish a committee to determine matters relevant to the recruitment, employment and remuneration of the CEO. The committee must be chaired by an independent professional with executive experience in local or state government, and the majority of its members must be external to the council.

Report Section 7.3.6

2.1 Context

2.1.1 The City of Casey Council

The City of Casey occupies a land area of 409 km² and is situated approximately 30 km south-east of the Melbourne CBD, on the edge of the Urban Growth Boundary (UGB), as shown in Figure 1.¹⁵



Figure 1: The City of Casey

At present, primary production is the main land use in the municipality. However, residential use is growing at a rapid rate.¹⁶ In terms of growth and development, the City of Casey's Housing Strategy 2019 notes:

Casey is one of the fastest growing regions in Australia with approximately 313,521 (as at 2016 Census) and forecast to increase to approximately 549,190 residents by 2041. Over the past 15 years, the City has changed dramatically resulting in a diverse community with a range of ages, backgrounds, interests, expectations and aspirations.¹⁷

In 2018, 1171 planning-permit applications were considered in relation to the City of Casey planning scheme, the 13th-highest number in the state.¹⁸

As of February 2020, the Casey Council had an annual budget of \$558.64 million and employed approximately 1614 staff.¹⁹ At the time of IBAC's investigation, the Casey Council comprised 11 elected members. However, in February 2020 the Victorian Parliament dismissed the Casey Council following the recommendations of the municipal monitor (see section 2.1.5 overleaf).²⁰

Operation Sandon focused on four planning and development matters in four greenfield Precinct Structure Plans (PSPs) in the City of Casey, as shown in Figure 2.²¹ PSPs are high-level strategic plans that set out the preferred location of land uses and infrastructure to guide decisions about development, subdivision permits, building permits and infrastructure delivery.

¹⁵ Figure 1 taken from City of Casey 2016, *Annual Report for the year ending 30 June 2016*, p 19. The City of Casey is one of 18 councils that are only partially within the UGB. See sro.vic.gov.au/greater-melbourne-map-and-urban-zones for more details.

¹⁶ See City of Casey 2022, 'City of Casey community profile', profile.id.com.au/casey/about, which notes the following composition of land use: primary production 40 per cent, parkland 13 per cent, residential 28 per cent and other 19 per cent.

¹⁷ Casey Council 2019, *Housing strategy 2019*.

¹⁸ Note that in comparison, Mornington Peninsula Shire considered the highest number of planning permit applications (2023), while West Wimmera Shire considered the least (three) in the same period.

¹⁹ Municipal Monitor 2020, *City of Casey Municipal Monitor Report*, Victorian Government, p 3; City of Casey 2022, *Annual Report for the year ending 30 June 2022*.

²⁰ *Local Government (Casey City Council) Act 2020* (Vic).

²¹ Based on VPA, Casey Fields South interactive map, vpa.vic.gov.au/greenfield/interactive-status-map/.



Figure 2: Sites subject to IBAC's investigation

2.1.2 Victorian Ombudsman's 2015 report

In May 2014, IBAC received a complaint alleging corrupt conduct at the Casey Council involving a number of its councillors. The matter was assessed by IBAC as a protected disclosure, and in August 2014 allegations of improper influence concerning Councillor Ablett were referred to the Victorian Ombudsman for investigation under section 73 of the IBAC Act.

In November 2015, the Victorian Ombudsman tabled a report on her investigation into allegations involving several Casey councillors, including concerns that these councillors had received donations to their 2014 state election campaigns from property developers in return for favourable planning decisions.²²

The Ombudsman found that Councillor Ablett and Councillor A received \$76,575 in donations from Mr Woodman's company Watsons in connection with the 2014 state election. This included \$65,000 donated via the Liberal Party with a request to direct \$40,000 to Councillor Ablett's campaign and \$25,000 to Councillor A's (the latter partly comprised proceeds from a fundraiser).²³ The Ombudsman also found that Councillor Ablett and Councillor A thereafter participated in planning decisions made by the City of Casey Council that concerned Watsons.²⁴

The Ombudsman did not identify evidence that the donations were requested, offered or received in return for Councillor Ablett's or Councillor A's involvement in the relevant planning decisions, but noted that both councillors exercised their right to decline to answer questions when the Ombudsman summonsed them.²⁵

²² Victorian Ombudsman 2015, *Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations*.

²³ Ibid., p 24.

²⁴ Ibid., p 19.

²⁵ Ibid., pp 20 and 25.

As a result of that investigation, the Ombudsman recommended that the Victorian Government consider placing restrictions on donations to candidates and political parties by property developers, and requiring details of all donations to a candidate or political party to be published on a publicly available register within 30 days of the relevant election.²⁶

In response, the Special Minister of State said that the state government would consider reforming Victoria's political donation laws through federal harmonisation, but would look at other options to deal with deficiencies in the regulation of political donations during the remainder of its term if federal harmonisation was not achieved.²⁷

Federal harmonisation was not achieved. In June 2018 the Victorian Parliament passed legislation capping political donations and imposing disclosure requirements at the state level, but stopped short of banning donations from developers.²⁸ Although the then Attorney-General did not make direct reference to the Ombudsman's report, his Second Reading Speech noted that there had been 'a number of reports by experts and Parliamentary committees' since 2009 that raised issues relating to a lack of regulation and transparency, and community concern regarding the potential for political donations to improperly influence the political process.²⁹

2.1.3 Commencement of Operation Sandon

In November 2017, IBAC authorised a preliminary inquiry into the conduct of Councillor Aziz, which led to the formal start of Operation Sandon on 7 August 2018. The investigation initially focused on Councillor Aziz's conduct, but expanded in October 2018 to consider the conduct of Mr Woodman, Councillor Ablett and other Casey councillors in matters of planning or property development.

2.1.4 *The Age* reporting

In October 2018, *The Age* published the article 'Casey council, where riches are made with the stroke of a pen', which discussed the decisions on Amendment C219, the H3

intersection and Pavilion Estate. In particular, the article flagged a number of motions introduced by Councillor Aziz, noting that some had been 'so questionable that the council received legal advice warning it about "unlawful" decision-making'. The article also discussed 'astroturfing' (where a concealed group or organisation initiates and directs activity to create a misleading impression of a grassroots or community-based movement) by developers under the guise of a residents' action group, and Mr Woodman's donations to both the Labor Party and the Liberal Party.³⁰

In November 2018, *The Age* published a further article, 'Labor MPs in Leighton rezoning row'. That article continued the discussion of Mr Woodman's donations to the Labor Party and the Liberal Party. It noted that three Labor MPs, including Jude Perera and Judith Graley, as well as Liberal candidates Geoff Ablett and Councillor A (who also ran for state election) had accepted donations from Mr Woodman in the lead-up to the 2014 state election. The article also discussed associated lobbying on Amendment C219 and observed that the 'revelations highlight the murky confluence of planning, property, politics and cash in the burgeoning Casey municipality, one of the fastest-growing in Australia'.³¹

2.1.5 Appointment of a municipal monitor

In November 2019, following the first session of public hearings by IBAC, the Victorian Government appointed a municipal monitor to the City of Casey. On completing her review in February 2020, the municipal monitor tabled a report that highlighted a number of governance concerns with the City of Casey's councillors.³² The municipal monitor ultimately recommended that the City of Casey be dismissed and administrators appointed for a term beyond the October 2020 local government general elections.³³

The following week, the Victorian Parliament passed legislation to dismiss the City of Casey, which came into operation on 20 February 2020,³⁴ and in May 2020 the Minister for Local Government announced that a panel of long-term administrators had been appointed until the 2024 general council election.³⁵

²⁶ Ibid., p 15.

²⁷ Victorian Ombudsman 2016, *Report on Recommendations*, p 18.

²⁸ Electoral Legislation Amendment Bill 2018.

²⁹ Attorney-General Pakula, 10 May 2018, Second Reading Speech, Electoral Legislation Amendment Bill 2018, *Hansard*, p 1348.

³⁰ Millar R, Schneiders B, Lucas C 2018, 'Casey council, where riches are made with the stroke of a pen', *The Age*.

³¹ Millar R, Schneiders B 2018, 'Labor MPs in Leighton rezoning row', *The Age*.

³² Municipal Monitor 2020, *City of Casey Municipal Monitor Report*.

³³ Ibid., p 10.

³⁴ *Local Government (Casey City Council) Act 2020* (Vic).

³⁵ Minister for Local Government 2020, 'Media release: Administrators appointed to Casey Council'.

2.2 The investigation

2.2.1 The investigation at a glance – August 2014 to December 2020

Date	Activity
19 August 2011	<i>The Age</i> published an article, 'Lib donors poised to hit paydirt', linking Mr Woodman's donations to Casey councillors Geoff Ablett and Lorraine Wreford to the Brompton Lodge approval.
25 August 2014	IBAC referred a number of allegations to the Victorian Ombudsman for investigation into the conduct of four Casey councillors.
24 November 2015	The Victorian Ombudsman tabled the report <i>Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations</i> .
29 November 2017	IBAC authorised a preliminary inquiry into the conduct of Councillor Aziz.
7 August 2018	IBAC began Operation Sandon to investigate allegations of serious corrupt conduct by Councillor Aziz.
23 October 2018	IBAC amended the scope and purpose of Operation Sandon to include Councillor Ablett and Mr Woodman.
28 October 2018	<i>The Age</i> published an article, 'Casey council, where riches are made with the stroke of a pen', which discussed questionable development decisions in the City of Casey.
18 November to 6 December 2019	IBAC conducted a first round of public examinations.
27 November 2019	The Victorian Government appointed a municipal monitor to the City of Casey.
11 February 2020	The municipal monitor recommended that the Casey Council be dismissed.
18 February 2020	The Victorian Parliament passed legislation to dismiss the Casey councillors. The legislation came into operation on 20 February 2020.
2–17 March 2020	IBAC conducted a second round of public examinations.
14 May 2020	Administrators were appointed to the City of Casey until the 2024 general elections.
9 November to 15 December 2020	IBAC conducted a third round of public examinations.

2.2.2 The early stages of the investigation – Councillor Sameh Aziz

During IBAC's preliminary inquiry, it was confirmed that Councillor Aziz had been involved in decision-making at the Casey Council on a number of developments in which Mr Woodman had an interest, and for which Councillor Aziz did not declare any associated conflicts of interest.

2.2.2.1 The allegations

As a result of IBAC's preliminary inquiries, on 7 August 2018 IBAC began the investigation known as Operation Sandon under section 60(1)(c) of the IBAC Act.

Operation Sandon sought to determine whether:

- Councillor Aziz engaged in corrupt conduct through the receipt of undeclared gifts or other benefits from property developers, in return for favourable Council decisions
- Councillor Aziz failed to disclose political donations or other interests connected to Council decisions in which he was involved
- any persons had influenced, or attempted to influence, Casey councillors or other persons employed or engaged by the City of Casey, in order to obtain favourable Council decisions.

2.2.2.2 Requests for information

In the early stages of the investigation, the Victorian Ombudsman provided IBAC with relevant information gathered during her 2014–15 investigation into political donations made by Mr Woodman's company Watsons to Casey councillors.

From January 2018, financial records relating to Mr Woodman and his associated entities were sought from financial institutions to assist IBAC's investigation.

2.2.3 The investigation expands – Mr Woodman and Councillor Geoff Ablett

2.2.3.1 The allegations

In October 2018, following a review of available evidence, the scope of Operation Sandon was expanded to include Mr Woodman and Councillor Ablett. This decision was made after IBAC found credible information that Councillor Aziz and Councillor Ablett were receiving payments and undeclared benefits from Mr Woodman, in return for favourable Casey Council decisions.

Specifically, the scope of the investigation was amended to consider whether:

- Councillor Ablett had:
 - acted corruptly by receiving undeclared gifts or other hospitality from property developers, in return for favourable Casey Council decisions
 - failed to fully disclose political donations or his other interests
- any Casey councillors corruptly influenced, or attempted to corruptly influence, Casey Council decisions relating to planning or property development in the broader City of Casey area
- Mr Woodman or his business associates had corruptly influenced, or attempted to corruptly influence, or conspired to influence, decisions of any public officer in the City of Casey, in order to obtain favourable outcomes for the purposes of planning or property development in Victoria.

2.2.3.2 Further requests for information

In September 2019, five separate summonses were issued and served on:

- the City of Casey Council
- Councillor A, Councillor Gary Rowe and Councillor Susan Serey
- the owner of an agistment business in relation to a horse part-owned by Councillor Ablett.

2.2.3.3 Execution of search warrants

In September 2019, IBAC investigators executed 14 search warrants and seized a large quantity of documentary and digital exhibits.

2.3 Private examinations

IBAC conducts examinations in private unless the criteria for public examinations under the IBAC Act (discussed below) are met.

In Operation Sandon, IBAC examined 13 witnesses in private between October 2019 and December 2021.

These examinations provided investigators with valuable information on the connections between various individuals, businesses and companies, as well as providing context for, and explanations of, documents obtained by IBAC.

Information obtained under summons also gave investigators new avenues of inquiry, such as the identity of other individuals able to assist with IBAC's investigation.

2.4 Public examinations

Public examinations are an important tool that enables IBAC to investigate, expose and prevent serious corrupt conduct. IBAC is conscious that public examinations can impinge upon an individual's legal and human rights, which is why holding public examinations must be justified by the gravity of the conduct being exposed and the public interest to be served.

2.4.1 Legal basis for holding public examinations

The statutory safeguards on the conduct of public examinations are provided in section 117 of the IBAC Act. These include requirements for IBAC to consider on reasonable grounds that the conduct that is the subject of the investigation may constitute serious corrupt conduct, that there are exceptional circumstances, that it is in the public interest to hold a public examination, and that a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing.

Following a review of material obtained under warrant, evidence from interviews and private examinations, and consideration of the criteria in section 117 of the IBAC Act, IBAC determined that section 117 criteria had been satisfied.

The public examinations in Operation Sandon took place over two sittings in 2019 and 2020. On 1 January 2020, between the first and second round of examinations, the IBAC Act was amended to include a provision whereby if IBAC decides to hold an examination in public, it may, on the application by a witness or of its own motion, hold any part of an examination in private. In deciding whether or not to hold part of the examination in private, IBAC may have regard to the public interest in keeping that part of the examination open to the public, and whether holding an examination in private is necessary to prevent unreasonable damage to a person's reputation, safety or wellbeing.

No witnesses who appeared in the March 2020 sittings for the Operation Sandon public examinations made an application to have their examination held in private.

2.4.2 Witness wellbeing

IBAC's approach to witness wellbeing aims to balance the performance of its functions with the rights of individuals. Before deciding to conduct an examination, IBAC conducts risk assessments for each witness, which include an assessment of witness wellbeing risks.

IBAC continues to monitor risks when investigative powers are being used, to make sure that appropriate treatment options are in place, noting that IBAC may ultimately determine not to undertake a proposed operational activity if it considers that the wellbeing risk is unacceptable and cannot be reasonably managed.

All witnesses, regardless of whether they pose a high risk with regard to their wellbeing, are offered free, confidential, independent counselling services during an IBAC investigation. Witnesses can also speak with certain people about an investigation including with their treating health practitioner(s).

2.4.3 Further safeguards on the conduct of IBAC public examinations

Before it makes a public announcement of its intention to hold public examinations, IBAC must first notify the Victorian Inspectorate, IBAC's oversight body. Further, the IBAC Act requires that IBAC provide the Victorian Inspectorate with reasons why IBAC has decided to hold a public examination.

2.4.4 Overview of the public hearings

In Operation Sandon, 40 days of public examinations took place, beginning in November 2019, and involved 20 witnesses and five specialist witnesses. Most witnesses were legally represented.

The public hearings were adjourned in March 2020 due to the COVID-19 pandemic, reconvened in November 2020 and concluded in December 2020.

More than 450 exhibits were logged during the public examinations.

2.4.5 Benefits derived from the public hearings

Public examinations are a critical tool for investigating and exposing corrupt conduct. In particular, they assist in informing the community and public sector of the risks that corrupt conduct poses to good public administration, and can lead to action to prevent such conduct from recurring.

Following the announcement of Operation Sandon's public hearings, IBAC received more than 100 approaches from members of the public, offering information that these individuals believed to be relevant to this investigation, or making other complaints about planning and development decisions or the local government sector.

2.4.6 Submissions from witnesses with specific expertise

IBAC also sought input from five academics and practitioners with expertise relevant to Operation Sandon. These specialists were asked to respond to specific questions with a view to obtaining a range of views and options to inform IBAC's consideration of key issues, including:

- donations and lobbying
- conflicts of interest
- the Victorian planning system
- council governance.³⁶

At the end of the third round of public examinations, IBAC heard from the five specialist witnesses. Topics covered were informed by issues identified over the course of IBAC's investigation, as well as questions received from the public on planning, donations and lobbying, and council governance.³⁷

2.5 Surveillance and telephone interception systems

During the investigation, IBAC lawfully deployed a number of surveillance devices under the *Surveillance Devices Act 1999* (Vic) in various locations.

Similarly, IBAC used lawful telephone intercepts under the *Telecommunications Act (Interception and Access) Act 1979* (Cth) to progress the investigation – for example, to help establish the extent of the suspected corrupt conduct.

2.6 Action taken by other councils

Following public reporting on Operation Sandon, several councils stated that they were taking action to identify any irregularities in planning and development activities involving Mr Woodman and his associates. IBAC has been liaising with those councils about their work.

³⁶ Details of these submissions can be found on IBAC's website. See IBAC, 'Operation Sandon', web page, www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/operation-sandon.

³⁷ More than 115 questions were received from 18 individuals or organisations.

3.1 Amendment C219

3.1.1 Overview

In 2014, landowners approached the Casey Council with a proposal to amend the Cranbourne West PSP to rezone approximately 200 hectares of their land from mixed-use commercial to residential. The proposed amendment was known as 'Amendment C219'.³⁸

Two parties owned the land subject to Amendment C219. Leighton Properties owned approximately 123 hectares, and the other landowner owned approximately 80 hectares. Both parties stood to benefit financially from Amendment C219 from an increase in land value estimated by the Casey Council to be approximately \$35 million.³⁹

From 2014 to 2019, the Casey Council considered the proposal on several occasions, prepared several reports, undertook extensive public consultations and sought approval of the proposed amendment from the Minister for Planning, who appointed a Planning Panels Victoria (PPV) panel and referred the proposal for consideration.

From late 2013 onwards, representatives of Leighton Properties and the other landowner promoted Amendment C219 through Casey Council and state political channels. In early 2014, Mr Thomas Kenessey, a development manager at Leighton Properties, engaged the services of Mr Woodman and Ms Megan Schutz, a planning consultant and managing director of Schutz Consulting, to help devise and execute a strategy aimed at influencing the Casey Council, PPV and the Minister for Planning in favour of Amendment C219.⁴⁰

Mr Kenessey and Mr Woodman sought to influence decisions through the relationships that Mr Woodman had cultivated with councillors over a number of years, through the establishment and activities of the Save Cranbourne West Residents Action Group (SCWRAG), and by lobbying state political candidates, political staff and MPs, including the Minister for Planning, who had the ultimate discretion to approve or reject the amendment application.⁴¹

In different ways, Councillor Aziz, Councillor Ablett and Councillor A were instrumental in seeking to influence Casey Council processes and decisions in favour of Amendment C219. All three had conflicts of interest in the matter, due to direct and indirect financial benefits received from Mr Woodman, which they either failed to disclose or to act on with transparency and integrity. Councillor Aziz and Councillor Ablett sought to gain personal benefit from Mr Woodman in exchange for supporting his interests on the Casey Council. Councillor A's failure to appropriately manage their conflict of interest resulted in Casey Council processes being influenced in favour of Mr Woodman's interests.

In 2018, the Minister for Planning deferred a decision on Amendment C219, pending a departmental review of the location and availability of industrial land in Melbourne, before ultimately rejecting the amendment in April 2020, citing a shortage of industrial land.

38 The Cranbourne West PSP was first incorporated into the Casey Planning Scheme on 3 February 2010, when the Minister for Planning approved Amendment C102. Amendment C159 updated the Cranbourne West PSP on 7 June 2012.

39 Casey Council, 1 April 2014, meeting agenda.

40 Prior to his engagement by Leighton Properties in mid-2014, Mr Woodman was initially contracted by the other landowner to assist with the proposed rezoning. With respect to Amendment C219, Operation Sandon focused on the conduct of Mr Woodman and Mr Kenessey in their capacity as consultants for or employees of Leighton Properties. IBAC did not identify any improper conduct by or on behalf of the other landowner or their employees.

41 For planning scheme amendments (including rezoning applications), the Minister for Planning's authorisation is required before an amendment can be prepared. If the planning authority cannot resolve a contentious amendment proposal, the Minister can appoint an independent panel to consider submissions. An amendment only becomes part of the planning scheme when it is approved by the Minister and notice is published in the Victoria Government Gazette. See Department of Transport and Planning 2023, 'The role of the Minister', web page, www.planning.vic.gov.au/guide-home/the-role-of-the-minister.

In summary, IBAC found that:

- Between 2014 and 2019, Mr Woodman, Mr Kenessey and Ms Schutz sought to manipulate Casey Council decisions, a PPV hearing and ministerial approval processes, to push for Amendment C219.
- Mr Woodman, Mr Kenessey and Ms Schutz earned fees exceeding \$645,000 each from Leighton Properties for their work on Amendment C219. Mr Woodman and Mr Kenessey were also entitled to success fees if the application was approved.
- Mr Woodman influenced a group of Casey councillors (Councillor Aziz, Councillor Ablett and Councillor A) by giving them direct and indirect financial benefits while Amendment C219 was before the Casey Council. The relationships with Councillors Aziz and Ablett were explicitly transactional, while the influence on Councillor A was implicit and gradual. The councillors' actions in seeking to influence Council processes and decisions lacked transparency and integrity.
- Councillor Aziz never declared a conflict of interest with respect to Mr Woodman. In contrast, Councillor Ablett first declared a conflict of interest arising from his dealings with Mr Woodman in March 2015, but this was more than a year after the Casey Council first considered the rezoning matter. Despite declaring a conflict of interest, he continued to seek to influence Casey Council decisions in the background. For example, together with Councillor Aziz, Councillor Ablett pushed for the removal of Casey Council CEO Mr Mike Tyler, who opposed the rezoning.
- Councillor A first declared a conflict of interest arising from their dealings with Mr Woodman in March 2015, more than a year after the Casey Council first considered the rezoning matter. Prior to this date, Councillor A did not declare a conflict of interest, but stated in evidence that they left the room during Casey Council meetings when relevant matters were discussed and voted on. Both before and after formally declaring a conflict of interest, Councillor A was involved in discussions and activities related to Casey Council decisions on matters relating to the rezoning. This included pushing for the removal of Casey Council CEO Mr Mike Tyler, who opposed the rezoning.
- In a response to IBAC, Mr Woodman stated that he did not rely on 'the supposed core group of councillors', and that 'at no stage did Councillor Ablett and [Councillor A] seek to influence Council decisions regarding C219'. IBAC rejects these assertions. The evidence gathered through Operation Sandon shows the crucial role that Councillor Aziz, Councillor Ablett and Councillor A played in initiating and pushing for the approval of Amendment C219 by the Casey Council.⁴²
- From 2014 onwards, Mr Woodman, Mr Kenessey, Ms Schutz and their associates also cultivated relationships with a range of other Casey councillors to promote Amendment C219.
- In 2015, Ms Schutz, with input from Mr Kenessey, established SCWRAG, purportedly to represent the 'voice of the community'. SCWRAG was financed by Leighton Properties and directed by Mr Woodman and his associates behind the scenes to promote their own interests, initially for Amendment C219 and later for other projects. Mr Ray Walker and his spouse (the Walkers), who were president and secretary of SCWRAG, received approximately \$190,000 in consulting and data-collection fees from Watsons and Schutz Consulting.⁴³
- In 2016, Mr Woodman funded 11 candidates – including Councillor Aziz, Councillor Ablett, Councillor Smith and Councillor A – for the Casey Council elections in a way that concealed the source of funding. Councillor Aziz coordinated the group of funded candidates and none of these candidates declared the funding, nor did they declare a conflict of interest.
- Mr Woodman and his associates also provided financial support to the election campaigns of local state MPs and candidates Mr Perera, Ms Graley and Ms Richards.
- Ms Graley and Mr Perera (and his staff) sought to influence Victorian Government decision-makers, including the Minister for Planning, in favour of Amendment C219.
- Mr Woodman engaged registered lobbyists Ms Wreford and Mr Staindl to assist in buying access to, and influence with, senior politicians, including through contributions to the Labor Party's fundraising arm Progressive Business, and the Liberal Party's fundraising arm Enterprise Victoria.

⁴² See sections 3.1.5.1 – 3.1.5.4 for further evidence of the role Councillor Aziz, Councillor Ablett and Councillor A played in supporting Amendment C219.

⁴³ See sections 3.5.4 and 3.5.5 for details of how Leighton Properties and Watsons financially supported SCWRAG.

3.1.2 Who stood to benefit?

Leighton Properties and the other landowner stood to benefit directly from the strategies devised by their representatives – Mr Kenessey, Mr Woodman and Ms Schutz – to promote Amendment C219. As outlined in the overview above, if the amendment was approved, the land value would increase by approximately \$35 million. A Casey Council officers' report evaluating Amendment C219 in April 2014 stated that 'the uplift of value in the land by rezoning to residential could amount to approximately \$35M whilst increasing unfunded developer contribution liabilities by something in the order of \$7.8M which will fall to Council'.⁴⁴

In addition to the profits to landowners, Leighton Properties provided significant financial incentives to Mr Woodman, Ms Schutz and Mr Kenessey to secure Amendment C219. During the first half of 2014, Mr Woodman negotiated consultancy agreements for himself and Ms Schutz with Mr Kenessey. Over the next five years, Mr Woodman's agreement provided fees of \$762,000. Additionally, according to Mr Kenessey, 'if Leightons sold the land and the purchaser of that land didn't agree to novation of his services, then he [Mr Woodman] would be paid, from off the top of my head, 2.5 per cent of the sale price, which from memory is about \$2 million'.

Ms Schutz was initially given a one-year contract with Leighton Properties in 2014 for which she was paid \$90,000. That contract was subsequently replaced by further agreements. Excluding disbursements paid by Ms Schutz to SCWRAG over this period, she received approximately \$645,000.

In 2016, Mr Kenessey left his employment with Leighton Properties and became a consultant, working primarily, but not exclusively, for Leighton Properties. Over the next three years, he received approximately \$750,000 and was entitled to a success fee of \$130,000 if the Amendment C219 rezoning was approved.

Registered lobbyist Philip Staindl also stood to benefit as Mr Woodman had initially engaged his services in return for a success fee of \$250,000. In evidence, Mr Staindl stated that this arrangement was shortly thereafter replaced by a monthly retainer and hourly rate as he (mistakenly) understood that the introduction of the Victorian Government Professional Lobbyists Code of Conduct in November 2013 had effectively prohibited the use of success fees.

3.1.3 Key decision points – how events unfolded

Between 2014 and 2018, the Casey Council considered Amendment C219 on at least 11 occasions and routinely passed motions progressing the rezoning without dissent. Between 2015 and 2017, the Casey Council sought ministerial approval of the amendment, subject to various conditions. During this time, the Casey Council also applied to the Minister for Planning to appoint a PPV panel to consider the proposed amendment. The table below highlights important decisions at Casey Council meetings in purple, PPV's consideration in grey and ministerial decisions in black.

In between Casey Council meetings and other decision points, Mr Kenessey, Mr Woodman and Ms Schutz devised and implemented a strategy to push for approval of Amendment C219.

44 Casey Council, 1 April 2014, meeting agenda.

Date	Actions, processes and outcomes
Late 2013	Mr Kenessey explored using Mr Woodman as a consultant for the Cranbourne West rezoning.
3 February 2014	Mr Woodman emailed Councillor Aziz and Councillor A, also addressing Councillor Ablett, enclosing a draft notice of motion.
4 February 2014	Councillor Aziz 'sought leave to introduce an item of urgent business relating to the rezoning of a parcel of land in Cranbourne', in which he moved that the Casey Council liaise with owners of approximately 200 hectares of industrial-zoned land in the Cranbourne West PSP 'to validate their request for Council to consider the possibility of preparing an amendment to the PSP from industrial to residential'. Casey Council officers were required to provide a report for the first Council meeting in April. The resolution was confidential and passed in a closed meeting.
11 February 2014	Leighton Properties and Mr Woodman (for the other landowner) presented the Casey Council with a written request to consider a rezoning proposal.
19 March 2014	The Department of State Development, Business and Innovation responded to Council, opposing the proposed rezoning. ⁴⁵ Note: From mid-2014, all relevant Victorian Government departments opposed the rezoning proposal that became known as Amendment C219 and continued to do so over the next five years.
1 April 2014	Casey Council officers' report opposed providing 'in-principle' support for the proposed rezoning, stating: <i>Council is being asked to consider this request on the basis of a four page letter which provides limited rationale and is based around some misleading information. The request is out of line with established Ministerial guidelines for such considerations and represents poor planning practice for a matter of such significance ...</i> <i>officers have undertaken a thorough assessment and as detailed in this report conclude that the current proposal is short sighted, inconsistent with state and local policy and will undermine a key Council objective for the creation of a robust and diverse local economy to support the Casey community.</i> The Casey Council accepted the recommendation that it should not provide 'in-principle' support to prepare an amendment, and additionally resolved that Casey Council officers identify opportunities for further alternative forms of development, including some mixed-use development (including residential).
Mid-2014	Mr Kenessey and Ms Schutz engaged with Casey Council officers, the Victorian Planning Authority (VPA) and the Department of Economic Development, Jobs, Transport and Resources about their ideas for rezoning.
17 June 2014	The Casey Council accepted the recommendation made by council officers that, among other things, consultation begin with relevant state government departments and other major landowners, developers and consultants in the Cranbourne West PSP area.
21 October 2014	The Casey Council officers' report noted that there was 'not adequate justification' for 'conversion of employment land to conventional residential land'. The Casey Council adopted the report, which proposed revisions to the Cranbourne West PSP to maximise employment opportunities with the introduction of additional mixed-use land, but also resolved that the PSP be further amended by designating the land in question as being 'totally residential'.

⁴⁵ Casey Council, 1 April 2014, meeting agenda.

Date	Actions, processes and outcomes
21 October 2014 to 2 February 2015	The Casey Council exhibited the proposed amendments to the PSP for public consultation.
21 January to 24 February 2015	The Casey Council undertook public consultation on a draft Amendment C219 plan. Ms Schutz and Mr Kenessey liaised to seek support from residents by organising letter drops, doorknocking and a petition. They set up community consultation days and organised a community information day on 7 February 2015 which was resourced by Leighton Properties and attended by Casey Council officers and councillors. Following the community day, they established SCWRAG, with Mr Walker as president.
10 March 2015	The Casey Council officers' briefing on community survey results noted that residents' submissions were 'potentially affected by misinformation'.
17 March 2015	The Casey Council considered the results of the community consultation process, set out in the 10 March 2015 briefing. The Casey Council resolved to request a meeting between Council representatives and the Minister for Planning and that: <i>If appropriate, following that meeting, the Council officers prepare an amendment to the Casey Planning Scheme to implement the Council's preferred PSP in accordance with the plan subject to recent consultation.</i>
15 April 2015	Local MP Mr Perera met with the Minister for Planning to discuss the departmental process for dealing with the rezoning.
28 April 2015	A member of SCWRAG rang the Minister for Planning's office and was given a standard response about the rezoning process.
5 May 2015	Councillor Rowe tabled in Casey Council a petition in support of the Cranbourne West PSP, signed by 730 residents.
7 May 2015	Mr Perera tabled the same petition in the Victorian Parliament, signed by 730 residents for SCWRAG and largely coordinated by Ms Schutz.
3 June 2015	The Minister for Planning met with representatives from the Casey Council.
16 July 2015	The Minister for Planning toured the site that was subject to the Amendment C219 proposal.
28 August 2015	Ms Schutz, on behalf of Leighton Properties and the other landowner, lodged a package of proposed amendment documentation with the Casey Council. Mr Perera wrote to the Minister for Planning about the residents' support for rezoning.
30 September 2015	The Casey Council lodged with the Minister for Planning a request to authorise preparation of the rezoning amendment.
17 December 2015	The Minister for Planning authorised the amendment subject to conditions.
29 December 2015	The Minister for Planning advised the Casey Council and the Metropolitan Planning Authority that he had authorised the amendment subject to conditions, including that before exhibition the Casey Council undertake further work considering 're-designating only the southern portion of the subject land from employment to residential'.
12 January 2016	Mr Perera met with planning departmental representatives.

Date	Actions, processes and outcomes
7 June to 19 July 2016	Having been unsuccessful in seeking further clarification of the conditions set by the Minister for Planning, ⁴⁶ the Casey Council resolved to include 66 per cent of the 200 hectares initially proposed to be rezoned from industrial to residential as land to be rezoned in the amended PSP. The effect of the resolution was to resubmit Amendment C219 to include in the rezoning approximately 123 hectares of Leighton Properties land, and 10 hectares of the other owner's land.
27 July 2016	Mr Woodman noted that local MP Judith Graley had advised him that the Minister for Planning supported the amendment, although both Ms Graley and the Minister dispute this.
11 October 2016	Mr Perera tabled a second petition in the Victorian Parliament, coordinated largely by Ms Schutz.
21 March 2017	The Casey Council resolved to exhibit Amendment C219 once the Minister for Planning, having been provided with additional information, confirmed the Casey Council's understanding of the conditions of the authorisation.
23 March 2017	The Department of Environment, Land, Water and Planning (DELWP) confirmed the authorisation, and the amendment was placed on exhibition between 29 June and 31 July 2017.
21 July 2017	Mr Perera wrote to the Minister for Planning supporting Amendment C219.
19 September 2017	A Casey Council officers' report on submissions on Amendment C219, including a submission from SCWRAG, noted that a number of other submissions (opposing Amendment C219) raised concerns that SCWRAG had provided misleading or unreliable information, and that it did not represent the views of most residents. Opposers of the amendment included a number of state agencies that asserted the changes were not strategically justified and were inconsistent with regional and metropolitan strategies. The proposed amendment was referred to PPV for consideration. ⁴⁷
8–15 November 2017	PPV hearings were held into Amendment C219. Ms Schutz and Leighton Properties organised and paid for SCWRAG's legal representation at the hearings.
4 January 2018	A PPV report recommended that the 133 hectares be rezoned as proposed and exhibited by the Casey Council, subject to conditions relating to density of development, provision for shopping, provision for open space and the location of a connector road. The report was presented to the Minister for Planning.
15 May 2018	The Casey Council resolved to adopt Amendment C219 and refer it to the Minister for Planning for approval.
24 May 2018	The Casey Council submitted the amendment to the Minister for Planning.
16 October 2018	The Minister for Planning wrote to the mayor advising that a determination on Amendment C219 had been deferred, pending a planning departmental review of the location and availability of industrial land in Melbourne.

⁴⁶ A chronology prepared by Ms Schutz for Mr Walker in late 2018 recorded that the City of Casey mayor had written to the Minister for Planning seeking to confirm that it was only the northern section of the land in question that was being referred to in his letter of authorisation. Ms Schutz, Mr Kenessey and Casey Council representatives had been meeting with various government departments to seek feedback on the Minister's authorisation.

⁴⁷ PPV 2018, *Panel Report, Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*, Executive summary and p 7. The report notes that agencies opposed to the amendment included the Victorian Planning Authority; Department of Economic Development, Jobs Transport and Resources; Department of Education and Training; Cardinia Shire Council; and Frankston City Council.

Date	Actions, processes and outcomes
After 18 October 2018	Mr Woodman and Ms Schutz agreed that, in view of the deferral, it was necessary to rely on SCWRAG and on lobbying politicians to secure Amendment C219. They discussed the preparation of a letter to be sent by SCWRAG to the Casey Council, the Minister for Planning's chief of staff and other politicians.
28 October 2018	<i>The Age</i> published the first of two articles alleging that Mr Woodman had cultivated influence over the Casey Council and in state politics.
13–14 December 2018	In lawfully intercepted telephone calls, Mr Woodman and Ms Schutz discussed the possibility of using Councillor Aziz to put forward a motion at the Casey Council to rework its recommendations on Amendment C219.
19 December 2018	In a lawfully intercepted telephone call with Mr Woodman, Mr Kenessey asked whether it would be possible to go over the Minister for Planning's head to the Premier of Victoria in relation to Amendment C219, but Mr Woodman declined to do so.
13 March 2019	Leighton Properties General Manager advised the Casey Council that Leighton Properties had sold its interest in the land that was the subject of Amendment C219, to a Dacland-related entity.
4 April 2020	A briefing from DELWP advised that its review of industrial land had found that the land in question was regionally significant industrial land, and that it should be retained for industrial and employment purposes.
20 April 2020	Notice of the Minister for Planning's refusal was gazetted.

3.1.4 Development of the C219 strategy

To increase the landowners' profits by rezoning 200 hectares of land in Cranbourne West, Mr Kenessey, Mr Woodman and his associates sought to influence decisions and recommendations made by the Casey Council, PPV and the Minister for Planning by:

- using Casey councillors aligned with Mr Woodman to move and support motions to approve Amendment C219 and to influence other Casey councillors in the amendment's favour
- establishing and using SCWRAG to create the impression that the community was in favour of the proposed rezoning
- lobbying particular state political candidates, political staff, MPs and the Minister for Planning to gain their support for the amendment.

Before developing the C219 strategy, which focused on Casey Council processes, Mr Kenessey had sought rezoning through the Metropolitan Planning Authority. By late 2013, it was apparent to him that this approach was unlikely to succeed.

At that time, Mr Woodman was acting for the other landowner. Mr Kenessey approached Mr Woodman to discuss whether he would act for Leighton Properties. In January 2014, Mr Kenessey offered Mr Woodman a contract to provide consultancy services to Leighton Properties, subject to him being able to secure indications of support from councillors. Ms Schutz was offered a contract of employment with Leighton Properties a few months before Mr Woodman.

During examinations, Mr Woodman and Mr Kenessey gave conflicting accounts of who was responsible for initiating the C219 strategy at the Casey Council. IBAC's investigation ultimately found that Mr Kenessey was not involved in all aspects of the strategy. As stated above, on 4 February 2014 Councillor Aziz introduced an item of urgent business regarding the landowners' request for the Casey Council to consider an amendment to the PSP to rezone the land from industrial to residential. In evidence, Mr Kenessey said he had not authorised Mr Woodman to seek a Casey Council resolution affecting Leighton Properties' interests. He became aware 10 days later that a resolution had been passed. The letter of request on behalf of both Leighton Properties and the other landowner, which the resolution purported to validate, was not sent until 11 February 2014.

In evidence, Mr Woodman maintained he had 'no awareness' of the resolution of 4 February 2014. However, he had met with Councillor Aziz and Councillor A to discuss the rezoning. On 3 February 2014, he emailed Councillor Aziz and Councillor A, also addressing Councillor Ablett, enclosing a draft notice of motion prepared by him 'as discussed'. The attachment was essentially a briefing note with arguments to support an amendment to the PSP. On 4 February 2014, he emailed lobbyist Mr Staindl, advising:

Will send the briefing note the (LIB) Councillors are using to get this started tonight and the [Labor councillors] will have a field day with the controls now in place due [to the Minister for Planning's] change in zoning brought in last year. Ring to discuss [once] you have read.

This evidence shows that Mr Woodman was not only aware of, but was instrumental in, conceiving and promoting the resolution of 4 February 2014.

By 19 June 2014, Mr Woodman reported to Ms Schutz that Mr Kenessey thought things were going 'swimmingly' and that 'the Megan gun' might not be needed until later. Mr Woodman noted that Amendment C219 was now 'heavily depending on a Labor victory'. Mr Woodman emailed Mr Kenessey, stating that he was very encouraged that the Casey Council seemed to be 'edging towards the cliff slowly, each workshop'.

3.1.5 Implementation of the C219 strategy

To implement the C219 strategy, Mr Woodman and his associates relied on exploiting relationships with networks of Casey councillors, local politicians, political candidates and members of the community. As outlined in section 3.7, Mr Woodman had cultivated these networks over years, by providing direct and indirect financial support in the form of campaign donations and financing, personal payments and loans, employment and in-kind support. Over the five years during which Mr Woodman and Mr Kenessey pursued Amendment C219, Mr Woodman relied on these networks to manipulate decision-making processes and outcomes. IBAC's investigation ultimately found that Mr Kenessey was not involved in aspects of the strategy involving Councillor Aziz, Councillor Ablett and Councillor A.

3.1.5.1 Use of a core group of councillors to influence decisions

Mr Woodman initiated the C219 strategy by briefing and providing a draft motion to three Casey councillors in February 2014. Mr Woodman's financial support for and commercial arrangements with Councillor Aziz and Councillor Ablett were extensive, as described in section 3.6. He also sought to cultivate Councillor A through election campaign donations, and by providing considerable financial and professional support for Organisation A, a community organisation which provided services to Councillor A's family member.⁴⁸

In examination, Ms Wreford said that Mr Woodman was conscious that Councillor Aziz and Councillor Ablett frequently had their hands out for money and agreed that Councillor Aziz thought of Mr Woodman as a 'bottomless ATM'.

Councillor Aziz, Councillor Ablett and Councillor A all pushed for approval of Amendment C219. In a submission to IBAC, Casey Council CEO Mr Glenn Patterson noted that 'the Council, especially with respect to C219 and H3, continuously chose to make decisions that were contrary to the advice of the Casey City Council officers, and which were likely to achieve the purpose of the persons of interest'. As outlined below, Councillor Aziz, Councillor Ablett and Councillor A had a conflict of interest due to a commercial arrangement with or donations from Mr Woodman or a Woodman entity. However, Councillor Aziz never declared a conflict of interest. Councillor Ablett and Councillor A also did not declare a conflict of interest until 2015. All three attempted to influence other Casey councillors outside Casey Council meetings, even after Councillor Ablett and Councillor A had declared conflicts of interest.

3.1.5.2 Councillor Aziz

Mr Woodman's financial arrangements with Councillor Aziz

Councillor Aziz received payments, benefits and political contributions from Mr Woodman during the period that Amendment C219 was before the Casey Council (2014-18). Councillor Aziz never declared a conflict of interest about Amendment C219 or any other matter involving the commercial interests of Mr Woodman or his associates.

IBAC financial analysis shows that between 2017 and 2018, Councillor Aziz received a total of \$270,063 from Mr Woodman in relation to a purported \$600,000 'investment' that he had made with Mr Woodman in 2017 (see section 3.6.3), in addition to Mr Woodman 'holding' \$600,000 of Councillor Aziz's money to assist Councillor Aziz during a divorce settlement. Councillor Aziz also received support from Mr Woodman for his 2012 and 2016 local government election campaigns (see section 3.7.2).

As outlined above, on 4 February 2014, Councillor Aziz moved the first motion to initiate the Casey Council's consideration of Amendment C219 in accordance with Mr Woodman's briefing. Over the next five years, Councillor Aziz continued to actively support Casey Council resolutions in favour of Amendment C219.

Councillor Aziz's promotion of Amendment C219 extended to cultivating support from other Casey councillors. In the lead-up to the 2016 Casey Council election, he and Mr Woodman devised a scheme whereby Mr Woodman covertly funded candidates who supported Amendment C219. This was intended to enable them to say they were unaware of the source of funds at the time.

⁴⁸ IBAC did not identify any improper conduct on the part of Organisation A and does not suggest that Councillor A or Councillor A's family member received preferential treatment because of Mr Woodman's donations.

The level of financial support to these candidates far exceeded that which was required to be declared. However, Councillor Aziz, Councillor Ablett and Councillor A did not declare these funds, nor did those who were aware of the source of the funds declare a conflict of interest when they voted on projects associated with Mr Woodman.

A similar strategy was also used to fund the election campaigns for local candidates for the 2012 Casey Council election, with Mr Woodman providing financial assistance that was channelled through an associate's business, supporting Councillor Aziz, Councillor Smith and Councillor A.

Councillor Aziz's failure to declare a conflict of interest in projects associated with Mr Woodman reflects a broader lack of transparency in their relationship and activities during this period. This was part of Mr Woodman's strategy to give the appearance of dealing with the Casey Council and its officers at arm's length.

Mr Woodman initially gave evidence that, other than in the company of Casey Council officers, he had met Councillor Aziz approximately three times since 2014. However, when referred to telephone intercepts and documents, he acknowledged numerous meetings or contacts with Councillor Aziz over several years. The lack of transparency in their dealings was also arguably part of Councillor Aziz's personal strategy to build influence inside the Casey Council and, in effect, to create a voting bloc, which he could use for personal gain.

3.1.5.3 Councillor Ablett

Mr Woodman's financial support for Councillor Ablett

As outlined in sections 3.6-3.7, Councillor Ablett received numerous payments, benefits and political contributions from Mr Woodman going back to at least 2010.

Around the time Councillor Aziz initiated the motion on Amendment C219 on 4 February 2014, Mr Woodman personally transferred \$25,000 to Councillor Ablett's accounts, using false details. Councillor Ablett was mayor at the time. Later that year, Mr Woodman contributed \$40,000 to Councillor Ablett's state election campaign.

In evidence, both Mr Woodman and Councillor Ablett admitted that Mr Woodman offered Councillor Ablett a financial reward if the C219 rezoning was approved, although their evidence on this issue differs. According to Councillor Ablett, Mr Woodman said they might buy some expensive horses together and money might come his way if the rezoning was successful. In contrast, Mr Woodman referred to his agreement to buy part of Councillor Ablett's Curwen Road property (for which Mr Woodman had paid \$150,000 of an agreed \$370,000 at the time of examination) as 'a friendship agreement that I would share some of the profits ... associated with [Amendment C]219'.

Councillor Ablett met with Mr Woodman, together with Councillor A and Councillor Aziz, to discuss the rezoning proposal in the lead-up to the Casey Council meeting on 4 February 2014. He was also a recipient of Mr Woodman's email on 3 February 2014, which attached the draft motion on Amendment C219, moved by Councillor Aziz the following day.

In evidence, Councillor Ablett initially maintained that he did not become aware of Mr Woodman's interest in Amendment C219 until 2017 or 2018. However, Councillor Ablett ultimately agreed that he would have known of the link between Mr Woodman and his company, Watsons, since an article was published in *The Age* in 2011 that highlighted the connection.⁴⁹ He also acknowledged that Mr Woodman's and Watsons' interest in the rezoning was apparent from the Casey Council officers' report provided with the agenda for the Casey Council meeting on 1 April 2014. Despite this knowledge, between 1 March and 16 September 2014, Councillor Ablett voted on the C219 rezoning on at least five occasions without declaring a conflict of interest.

On 17 March 2015, Councillor Ablett declared a conflict of interest for the first time before a vote on Amendment C219, on the basis that he owned a racehorse in partnership with a person who 'works for Watsons Surveyors who may get work if the Cranbourne West Precinct becomes residential from industrial'. During examination, Councillor Ablett maintained that he became aware of the need to declare a conflict between February 2014 and March 2015, when Mr Woodman told him that he was hoping to make money out of the rezoning.

On 3 January 2015, Councillor Ablett entered into a 'horse management' memorandum with Mr Woodman, which emphasised that Councillor Ablett was not only precluded from voting on projects associated with Mr Woodman, but was also 'not to suggest how another Councillor should vote'. Despite initial evidence to the contrary, Mr Woodman eventually stated that the memorandum was entered into because of the scrutiny of his relationship with Councillor Ablett that was expected to result from the Victorian Ombudsman's investigation into allegations of corrupt conduct at the Casey Council (see section 2.1.2). The Ombudsman's office had interviewed Councillor Ablett in November 2014 as part of its investigation, before the Ombudsman tabled her report on the investigation in November 2015.

From March 2015, Councillor Ablett did not vote on projects in which Mr Woodman had an interest. When Mr Woodman's projects were before the Casey Council, Councillor Ablett would either not attend or would declare a conflict. Councillor Ablett's declarations of conflict did not mention his continuing financial dependence on Mr Woodman, but referred only to a shared interest in a horse or to Mr Woodman's contribution to his 2014 election campaign.

In a lawfully intercepted conversation on 16 October 2018, Ms Schutz commented to Mr Woodman that Councillor Ablett was the best person to be mayor, but it was a pity he was conflicted. She went on to say, 'I don't know why we ever, ever, declared a conflict in respect to him; it's bullshit.' In a submission to IBAC, Ms Schutz stated that this statement to Mr Woodman was 'characteristic of the many inane conversations I had with John Woodman that were often jocular' and reiterated that she had no control over or responsibility for Councillor Ablett's obligation to declare a conflict of interest under the *Local Government Act 1989* (LGA 1989).

49 Millar R 2011, 'Lib donors poised to hit paydirt', *The Age*.

3.1.5.4 Councillor A

Mr Woodman's financial support for Councillor A

Mr Woodman sought to ingratiate himself with Councillor A and gain their support at the Casey Council by providing campaign donations and supporting Organisation A, a community organisation that Councillor A was closely associated with.⁵⁰

During the period that the Amendment C219 was before the Casey Council, Mr Woodman donated \$25,000⁵¹ to Councillor A's state election campaign in 2014,⁵² as outlined in section 3.7. Councillor A gave evidence that they understood the donation had been made by Mr Woodman directly to the Liberal Party head office. Councillor A became aware of this donation via an email from their campaign manager, who had been notified by the Liberal Party head office.

Mr Woodman also made donations and provided pro bono support to Organisation A, which provided services to Councillor A's family member. IBAC did not find that Councillor A or Councillor A's family member received preferential treatment from Organisation A. However, Councillor A and Councillor A's family member benefited from Mr Woodman's donation to Organisation A, which, according to Councillor A, meant that an 'out-of-program' program attended by Councillor A's family member could exist, heavily subsidised.

From November 2015 to July 2017, Councillor A was a member of Organisation A's board of management. With pro bono assistance from Ms Schutz, Organisation A sought to determine whether it was possible to rezone some of its green-zone land for accommodation. She estimated that the market value of her pro bono services was approximately \$20,000. Ms Schutz also gave evidence that once it was apparent that rezoning could not be achieved, Mr Woodman's son's company Wolfdene entered into discussions with Organisation A about a proposal to provide accommodation on a different site owned by Wolfdene. Ms Schutz estimated that Wolfdene's financial contribution to the project (which included a deposit for the lots, seed funding and a proportion of the mortgage) was in excess of \$1 million. On 14 May 2020, a 20-year lease was signed with the Wolfdene Foundation for a property on Bales Road, for which Organisation A paid commercial market rent. According to Councillor A, neither Councillor A nor Councillor A's family member received a personal benefit from this arrangement, as the services in question were not relevant to Councillor A's family member.

⁵⁰ Evidence before IBAC shows that Mr Woodman regularly gave donations to a range of other organisations and causes, including those associated with Casey councillors.

⁵¹ IBAC note that a portion of this amount comprised proceeds from a fundraiser for Councillor A that Mr Woodman hosted.

⁵² Mr Woodman also donated to Councillor A's local government election campaigns in 2012 and 2016, but he did so anonymously in both instances. It is not clear whether Councillor A was aware of the source of the donations. As noted above, local government candidates are not permitted to accept donations of over \$500 from undisclosed sources.

Like Councillor Ablett and Councillor Aziz, Councillor A was involved in discussions with Ms Schutz and Mr Woodman prior to the Casey Council meeting on 4 February 2014. Councillor A also received Mr Woodman's email on 3 February 2014 with a draft motion on Amendment C219.

In February 2014, Mr Woodman pledged to provide funding for Councillor A's 2014 state election campaign.⁵³ In Councillor A's initial evidence, Councillor A suggested that, from that point on, they were aware they were conflicted about Mr Woodman's commercial interests and acted to keep these matters at arm's length when they came before the Casey Council. Councillor A was not present at the Casey Council meeting on 4 February 2014 in which Councillor Aziz introduced a vote on 'urgent business'. On 1 April 2014, Councillor A voted on a resolution relating to Amendment C219, even though, according to Councillor A's evidence, Councillor A had discussed their conflicted position with Mr Woodman following his pledge to contribute to Councillor A's campaign. The resolution was necessary for the future success of Amendment C219. It resolved that a future amendment on the matter would be prepared, and that the Casey Council would conduct a review to further explore the matter.

In June and October 2014, Councillor A absented themselves from votes on the rezoning. In evidence, Councillor A denied that the decision to absent themselves was prompted by the Victorian Ombudsman's investigation at that time, during which they, like Councillor Ablett, had been interviewed. Councillor A stated that they did not wish to declare a conflict of interest prior to the November 2014 state election, in which they were a candidate, in order to protect the names of their supporters. There was a fractious political climate within the Liberal Party, and Councillor A believed that identifying their supporters would have threatened their campaign resources and support.

Councillor A stated that they consistently absented themselves from Casey Council decision-making on these matters by leaving the room at the appropriate time in Council meetings in the period before they formally declared a conflict of interest. The Casey Council voted on motions relating to Amendment C219 at seven meetings during the period prior to Councillor A's formal declaration of a conflict of interest. Of these, Councillor A:

- was absent three times
- left the room twice
- voted in favour of the motion (and did not leave the room) twice. One of these motions was considered as part of pre-Casey Council meetings, in which several items were bundled into one motion and voted on in bulk. It is possible Casey councillors were not across the details of each item when voting to carry that motion. The other motion was in early 2014 and supported the preparation of a future amendment on the matter, and that the Casey Council carry out a review to explore the matter.

Like Councillor Ablett, Councillor A first declared a conflict of interest on 17 March 2015. From that point on, Councillor A regularly declared a conflict of interest, but in incomplete terms. In evidence, Councillor A agreed that, over the next few years, they declared the conflict incompletely. For example, on 17 March 2015, Councillor A declared a conflict on the basis that 'a person who may benefit ... attended events of mine last year'. Councillor A did not refer to any other form of support they received from Mr Woodman. Councillor A also continued to be involved in discussions and activities with Mr Woodman and Councillors Ablett and Aziz, about Casey Council decisions on these matters.

⁵³ Victorian Ombudsman 2015, *Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations*, p 24.

3.1.5.5 The use of other Casey councillors

In addition to the core group of councillors, Mr Kenessey, Mr Woodman and his associates sought to influence other Casey councillors in favour of Amendment C219. From 2014 onwards, they cultivated relationships with Councillor Rowe and Councillor Serey.

In 2016, Mr Woodman funded 11 candidates for the Casey Council elections, in a way that concealed his role as the source of that funding (via Ms Wreford and her partner), with Councillor Aziz coordinating the group of funded candidates.

Following the election, when the C219 rezoning issue came before the Casey Council, some of the Casey councillors who had received funding from Mr Woodman routinely voted in favour of it without fully or formally declaring a conflict of interest. Some or all may not have been aware of the source of funds, so would not have known of the donor's connection to the matter. Regardless, it was unlawful for candidates to accept anonymous donations.

3.1.5.5.1 Councillor Rowe

Mr Woodman's financial support for Councillor Rowe

Mr Kenessey and Mr Woodman cultivated a relationship with Councillor Rowe from 2014, on the basis that Councillor Rowe supported rezoning industrial land. However, Mr Woodman did not provide financial support to Councillor Rowe until 2016, when Mr Woodman organised a fundraising event to support Councillor Rowe's Casey Council election campaign. The event raised \$10,000.

Councillor Rowe was unable to identify individual donations from the fundraising event. Consequently, he provided an addendum to his donation return, stating that he had received advice from the Local Government Inspectorate that he was not expected to provide details of multiple small donations at a fundraising event, even if the aggregate amount was more than \$500. He did not, however, declare Mr Woodman's contribution to the event, which would have exceeded the prescribed limit.

To support the C219 strategy, Mr Kenessey and Mr Woodman fostered a relationship with Councillor Rowe. Throughout his evidence, Councillor Rowe maintained that he had always been committed to rezoning the industrial land and that he understood Mr Woodman to be a consultant on Amendment C219.

There is no evidence, other than an assertion by Mr Woodman, that Mr Kenessey unduly influenced Councillor Rowe to support Amendment C219. However, Mr Kenessey appears to have pursued a relationship with Councillor Rowe to gain access to the Casey Council and its officers to support his own and Leighton Properties' commercial interests. In evidence, Mr Kenessey said he met Councillor Rowe in about mid-March 2014, at a meeting with Mr Woodman and the other landowner, around the same time as the rezoning issue first came before the Casey Council. Following that meeting, Mr Kenessey said he became 'totally engaged' with Councillor Rowe in devising strategies and promoting the rezoning.

Unlike Councillor Aziz, Councillor Ablett and Councillor A, Councillor Rowe was not involved in the process that led to Councillor Aziz initiating the 'urgent business' resolution on 4 February 2014. However, following the initial Casey Council resolutions in early 2014, Councillor Rowe helped Mr Kenessey to communicate with Casey Council officers on the merits of the proposed rezoning. In evidence, Councillor Rowe said that he worked closely with Mr Kenessey to enable Mr Kenessey to have access to all Casey councillors to discuss the rezoning ahead of the Casey Council's consideration of the amendment in October 2014. On 21 October 2014, Casey Council officers recommended to the Casey councillors that alternative uses (that is, other than industrial) should be explored for the land owned by Leighton Properties and the other landowner. Councillor Aziz chaired the meeting and Councillor Rowe moved that the land should be rezoned as 'totally residential'.⁵⁴ In a submission to IBAC, Ms Schutz stated that she drafted the alternative motion introduced by Councillor Rowe, asserting that:

- on 16 October 2014 she 'provided advice to client re Councillors powers to move an alternative motion and the mechanisms available under the Local Law'
- on 17 October 2014 she was 'requested to draft an alternative motion'.

54 Casey Council, 21 October 2014, meeting minutes, section 8, 'Planning for Casey's Community', item 1.

Although Councillor Rowe supported the rezoning, it appears that his awareness of the relationships between Mr Woodman and Mr Kenessey and Ms Schutz, and their involvement and interests in Amendment C219, was limited. In evidence, Councillor Rowe stated that he was not aware of the commercial arrangements between Leighton Properties, Mr Kenessey, Mr Woodman and Ms Schutz. Nor was he aware of their role in establishing, funding and directing the activities of SCWRAG, including the payments to the Walkers (who were president and secretary of SCWRAG), as discussed below. However, Councillor Rowe became concerned about SCWRAG's role when he observed the Walkers' involvement in the H3 intersection matter, outlined in section 3.2.

3.1.5.5.2 Councillor Serey

Mr Woodman's and Mr Kenessey's financial support for Councillor Serey

Councillor Serey was a Casey councillor throughout the period the proposed C219 rezoning was before the Casey Council. During that time, Mr Woodman provided financial support to her election campaigns when she stood for the state seat of Narre Warren South. This included contributions (through his companies) of \$6000 in 2014 to the Liberal Party's Narre Warren South Electorate Council account, and \$10,000 in 2018 to the Liberal Party's Narre Warren South account.⁵⁵ In evidence, Mr Kenessey agreed that he was told of Mr Woodman's 2014 contribution and attended a 2018 fundraising event for Councillor Serey that Mr Woodman hosted and paid for. In June 2018, Councillor Rowe gave Mr Kenessey the banking details for contributions to the Serey campaign. When asked during his examination, Mr Kenessey was unable to explain his involvement in contributions to the Narre Warren South account to support the Liberal candidate, Councillor Serey.

In November 2018, Councillor Serey sent Mr Kenessey a text message seeking assistance from Mr Woodman to pay for the mailout of 9000 campaign flyers. Mr Kenessey liaised with Mr Woodman to arrange for Mr Woodman's office to pay for the mailout at an eventual cost of \$16,335. The arrangement breached the Leighton Properties Code of Conduct. In evidence, Mr Kenessey asserted that 'in my mind he [Mr Woodman] was well within his rights to say "No, I don't want to do that. I don't want to be involved." ... There was no instruction that, "You must do this."' In evidence, Councillor Serey could not recall whether she reported the arrangement to the Liberal Party.

⁵⁵ In a submission to IBAC, Councillor Serey reiterated that, as the Liberal candidate for Narre Warren South, she did not handle money and was not a signatory to this account.

As they did with Councillor Rowe, Mr Kenessey and Mr Woodman fostered a relationship with Councillor Serey with a view to promoting their own commercial interests. Mr Kenessey and Councillor Serey became friends after Councillor Rowe introduced them in 2014, when Councillor Serey was running for a seat in the Victorian Parliament. In evidence, Mr Kenessey said he helped Councillor Serey and Councillor Rowe in their political campaigns by handing out leaflets or how-to-vote cards. He maintained that he made it clear to both of them that he could not donate to their campaigns as it would breach Leighton Properties' policy. Despite this, Mr Kenessey attended fundraising events for both councillors with Mr Woodman, whose financial support for their campaigns was facilitated by Leighton Properties' consultancy fees.

In evidence, Mr Kenessey said that he met with Councillor Serey 'quarterly at a guess', but that they rarely spoke about Amendment C219. The day after being served with a warrant in relation to IBAC's investigation, Mr Kenessey met with Councillor Serey, but noted in evidence that this lunch catch-up had been pre-booked. During examination, Mr Kenessey attempted to characterise the relationship as a friendship and initially avoided the question, but ultimately conceded that Leighton Properties' interests did have something to do with his friendship with Councillor Serey, stating, 'In looking back I suppose it must have, yes. You'd think so, given that's the context we met in.'

In evidence, Councillor Serey confirmed that she had a general awareness that Leighton Properties was involved in Amendment C219, and that Mr Kenessey worked for Leighton Properties. However, she maintained that she voted throughout on motions about the rezoning unaware that Mr Woodman had an interest in Amendment C219.

3.1.5.5.3 *Controlling the casting vote*

Part of the C219 strategy included exerting influence through the offices of the City of Casey mayor and deputy mayor. In the five years between 2014 and 2019, Councillor Aziz, Councillor Ablett and Councillor A each served as mayor, except for 12 months from October 2014 to October 2015. For most of this period, the deputy mayor was either Councillor A or another Casey councillor considered to be 'friendly', as outlined below. These roles were vital to the C219 strategy because the mayor held the casting vote in the event of a tie. The casting vote would pass to the deputy mayor if the mayor was absent (for example, due to a conflict of interest). If both were conflicted, they would vote on the appointment of a chair with the casting vote before leaving the chamber.

The importance of the casting vote is evident in conversations around the time of the Casey mayoral election in late 2018. In a lawfully intercepted call, Mr Woodman expressed concern to Ms Schutz about the possibility of losing the casting vote. Councillor A raised concerns that Councillor Aziz was wavering between voting for Councillor A or Councillor Ablett for the office of mayor. On 29 October 2018, immediately after the Casey Council election, Councillor Aziz, in a series of communications with lobbyist Ms Wreford, confirmed that the 'blood donor' (Mr Woodman) was happy with the appointment of Councillor A as mayor, while also reporting that 'we've still got control of the council'.

During the examination, Councillor Aziz explained how Casey councillors, even those with a conflict of interest, could participate in choosing the chair of the meeting, who would have the casting vote. He claimed to have no idea why Ms Wreford, after he explained the process to her, commented 'that just means that the blood donor can sleep at night', or why he responded, 'Of course he can.'

Mr Woodman and Ms Schutz discussed this selection process on various occasions, including in a telephone conversation on 27 November 2018. At that time, the vote of the proposed chair – in that case, Councillor Rosalie Crestani – may have been needed to ensure the passage of motions on the H3 intersection, as discussed in section 3.2. In evidence, Mr Woodman conceded that the process allowed Councillor Ablett and Councillor A to prevail even if they were not in the chamber.

3.1.5.6 Removing opposition – Council CEO Mike Tyler

Mr Tyler was CEO of the City of Casey for 23 years until his retirement in February 2018. Mr Tyler opposed Amendment C219. In evidence, Mr Woodman stated that Mr Tyler was an impediment to Amendment C219. The evidence suggests that Councillor Aziz, Ablett and Councillor A worked in the background to push for Mr Tyler's retirement, though during examination each contested their level of involvement. The extent of Mr Woodman's influence in this matter could not be conclusively determined.

Councillor Ablett played a central role in the push for Mr Tyler's retirement. On 12 February 2018, Councillor Ablett, who was mayor at the time, prepared a draft letter to Mr Tyler which Mr Tyler subsequently received. The letter advised that lawyers had been engaged to review his performance, and that Casey councillors had lost confidence in him. The letter went on to say that if the terms of the CEO's departure could not be agreed by 14 February 2018, 'an item will be added to the next Council meeting agenda for our meeting on 20 February 2018'. The day after that Casey Council meeting, Mr Tyler's resignation was formally announced by the Casey Council, effective 22 February 2018.

Initially, Councillor Ablett gave evidence that he was not aware that Mr Woodman had any issues with Mr Tyler, nor that Mr Tyler was opposed to the C219 rezoning. He asserted that Mr Woodman was not involved in seeking to have Mr Tyler removed. However, when challenged during examination, Councillor Ablett changed his evidence about his awareness of Mr Tyler's opposition to the rezoning. In a lawfully intercepted telephone call on 2 November 2018, Councillor Ablett told an associate that he had been 'rigging' things at the Casey Council and that he had got rid of Mr Tyler. Contrary to Councillor Ablett's evidence that Mr Woodman was not involved, Mr Woodman said he had previously shared his thoughts with Councillor Ablett about Mr Tyler's 'inappropriate attitude' with respect to Amendment C219 and had later asked Councillor Ablett to consider whether Mr Tyler's time was up.

In evidence, Councillor A stated that they supported Councillor Ablett's efforts to remove Mr Tyler. Councillor A saw Councillor Ablett's draft letter to Mr Tyler and contributed material to assist him. In evidence, Councillor A said that their view that Mr Tyler should be replaced was founded on concerns about his performance and capacity as CEO. According to Councillor A, they discussed with Councillor Ablett, Councillor Smith and Councillor Aziz, and others whom they could not recall, 'the merits of having Mr Tyler remain or asked to go'. On 29 December 2018, in a lawfully intercepted telephone call, Councillor A and Councillor Aziz discussed how Councillor Ablett could not have pulled off the 'coup' against Mr Tyler without their help.

Councillor A was aware of Mr Tyler's opposition to Mr Woodman and the proposed rezoning. In evidence, Councillor A agreed that they may have discussed with Mr Woodman his antipathy to Mr Tyler, and Mr Tyler's antipathy to Mr Woodman, but said that Mr Woodman did not express a desire to remove him. Councillor A asserted that they did not discuss concerns about Mr Tyler with Mr Woodman at any time before Mr Tyler's leaving, but also said that they may have spoken to Mr Woodman about problems experienced with Mr Tyler.

The extent of Mr Woodman's role in councillors' efforts to push for Mr Tyler's resignation is unclear. Mr Woodman stated to IBAC that he had never seen the letter that was prepared by Councillor Ablett, nor did he provide input into it. However, the evidence shows that Mr Woodman was at least aware of the core group of councillors seeking to remove Mr Tyler from his position, and that he considered Mr Tyler's departure to be beneficial to his commercial interests. This conclusion is supported by a lawfully intercepted telephone call between Mr Woodman and Ms Schutz on 21 December 2018, in which they discussed the new Casey Council CEO, Mr Patterson, and Ms Schutz noted that it was a lot easier for them now that they had Mr Patterson in the CEO role.

3.1.5.7 The relationship between Mr Woodman and Mr Kenessey

From around 2016 or 2017, it appears that Mr Kenessey was concerned about Mr Woodman's approach to Amendment C219 and other projects, including the H3 intersection. In evidence, Mr Kenessey stated that, possibly as early as 2016, Councillor Rowe advised him to end the engagement of Mr Woodman and Ms Schutz. Councillor Rowe doubted the integrity of Councillor Aziz and Councillor Ablett, who were each appointed mayor in 2016 and 2017 respectively.

Mr Kenessey gave evidence that in about early 2017, Mr Woodman demanded a large increase in consultancy fees for him and Ms Schutz. According to Mr Kenessey, Mr Woodman threatened that if his request was not agreed to, he would put the rezoning at risk. Mr Kenessey's evidence suggested that although he was ambivalent about Mr Woodman, he needed Mr Woodman's influence at the Casey Council. In evidence, Councillor Rowe stated that after the PPV process was completed in mid-2018, Mr Kenessey told him he no longer wanted Mr Woodman involved, but did not explain how he intended to achieve that.

In evidence, Mr Kenessey suggested that his apparent complicity in and support for Mr Woodman's strategy was a subterfuge. The Leighton Properties Code of Conduct prohibited the use of political financial contributions. Mr Woodman's contract required that he comply with the Code of Conduct. According to Mr Kenessey, he intended to obtain written admissions by Mr Woodman of conduct that was improper or in breach of the code of conduct. If obtained, this would justify cancelling Mr Woodman's contract.

In contrast to Mr Kenessey's suggestion of subterfuge, Mr Woodman said that his role was to buy political influence while Mr Kenessey and Leighton Properties remained at arm's length. He further asserted that Mr Kenessey understood that this was Mr Woodman's role. In a lawfully intercepted telephone call on 17 January 2019, Mr Woodman and Mr Kenessey had the following exchange:

- Mr Woodman: *Um, I'm just, uh, writing this strategy and ... after reflecting on what we'd talked about and I mean I don't – I don't understand how you and I and [the Leighton Properties General Manager] are not going to finish up either in jail or somewhere, uh, in a very un-nice place if I start writing the sort of email that I should be writing if I'm going to tell the truth.*
- Mr Kenessey: *... I understand what you're saying and I'm with you.*
- Mr Woodman: *So, I mean I – I don't understand – one of the reasons why we worked right from day one for five years on a fixed price is because some of the things that where – though they're not illegal, [they] certainly don't line up with CIMIC's or Leightons'... internal policy that I'm supposed to be adhering to and ... I'm just sort of sitting here going, 'Well, you know, I – I don't – I just don't understand' ...*
- Mr Kenessey: *I think you're probably right (laughs). Um, uh, yeah.*
- Mr Woodman: *I mean me, uh, paying Judith Graley, um, you know, and other people to talk to [the Treasurer], um, you know, your policy is you're not supposed to do that so how can I – how can I write that in a policy document and then, you know, forget about, you know, me writing that, you know, I've been liaising with, um, um, Pauline Richards and Susan Serey to the tune of, you know, \$50,000 in November ...*

Mr Kenessey: *... is there another way that we can solve this issue? Um –*

Mr Woodman: *Well, as you and I know that as soon as you start putting something in writing ...*

Mr Kenessey: *Well, no ... you and I – we've for years avoided putting anything – that sort of crap, you know?*

During the examination, Mr Kenessey rejected Mr Woodman's assertion that his role was to keep Mr Kenessey and Leighton Properties at arm's length and said he had never believed or accepted that Mr Woodman was making political contributions to seek to influence politicians. Mr Kenessey also sought to minimise his own role in Mr Woodman's activities. Mr Woodman stated to IBAC that his company that facilitated the donations did not adhere to Leighton Properties' internal policy forbidding political donations because it donated on behalf of itself, not its clients, and had made donations to a wide range of candidates over 30 years.

However, the evidence shows that Mr Kenessey was aware of, and in some instances directly supported, Mr Woodman's activities. Mr Woodman sought to justify his fees by reporting to Mr Kenessey on his pursuit of political influence through contributions to political campaigns, attending and paying for fundraising events, and attending dinners and lunches organised to provide access to politicians. In evidence, Mr Kenessey agreed that he had attended many of these events as Mr Woodman's guest and did not pay to attend.

In the case of Councillor Serey and Ms Richards, Mr Kenessey was directly involved in arranging Mr Woodman's financial support. Further, when Mr Woodman provided an itemised account of monthly expenses in January 2019, it included a contribution of \$10,000 to Ms Richards' campaign and \$16,335 for the cost of the mailout for Councillor Serey's campaign, which Mr Kenessey facilitated.

It appears that it was only after the articles published in *The Age* in late 2018 raised questions about Mr Woodman's role and SCWRAG's credibility that it was decided, in Mr Kenessey's words, to have Mr Woodman 'piss or get off the pot'. Even then, Mr Kenessey and Leighton Properties continued Mr Woodman's engagement on a revised fee structure while they developed and implemented alternative strategies to promote Amendment C219, as described below.

3.1.5.8 Use of SCWRAG to influence the Casey Council, PPV and the Minister for Planning's office

Over the period in which Amendment C219 was considered by the Casey Council, PPV and the Minister for Planning, SCWRAG sought to influence decisions in favour of the rezoning. As set out in section 3.1.3, Mr Woodman and his associates coordinated SCWRAG's activities, while Leighton Properties provided financial support for the group. This included helping to draft letters and submissions to the Casey Council, the Minister for Planning and other politicians, preparing community petitions to the Casey Council and the Victorian Parliament, and engaging and paying for SCWRAG's legal representation at the PPV hearing.

SCWRAG's role in promoting the perception of public support for Amendment C219 was perhaps best demonstrated in the PPV panel process. The panel's report on Amendment C219 noted that SCWRAG's counsel had submitted that SCWRAG was 'the voice of the people' and that 'The amendment is an example of participatory democracy at work ... giving voice to the community's concerns and aspirations.' In IBAC's examinations, evidence differed on whether the panel members were aware of who funded the SCWRAG legal team. Ms Schutz stated that it was common knowledge that Leighton Properties had offered to fund SCWRAG's representation at the panel, while Mr Kenessey recollected that Mr Walker had told the panel that Leighton Properties was paying the lawyer. In contrast, after initially stating that he did not know if the panel was informed that a developer was paying SCWRAG's legal fees, Mr Walker ultimately accepted the proposition that the panel was left with the impression that his organisation was funding the process.

In a subsequent submission to IBAC, Mr Walker commented on the transparency of SCWRAG's funding arrangements:

In the first 6 to 9 months at least ... many of the key parties were aware that SCWRAG was set up and funded by the landowners through Megan Schutz. We had no bank account. It was not a secret ...

Later on there were several instances where I did not disclose as President of SCWRAG that we were being funded by the developers. Rightly or wrongly if I stated up front that we were funded by developers we may have been summarily dismissed or not even considered [emphasis added].

SCWRAG was established in early 2015, following the Casey Council's endorsement of the proposed rezoning and initiation of a public consultation process for Amendment C219. In response, Ms Schutz began a community campaign of letterbox drops, doorknocking and community surveys.⁵⁶ To support these efforts, Leighton Properties gave Ms Schutz approximately \$20,000 to set up a community information day on 7 February 2015. As discussed in section 3.5, Mr Kenessey met the Walkers at the information day.

The Walkers supported the rezoning, and Mr Kenessey encouraged them to establish a community group. Following the information day, Ms Schutz coordinated the establishment of SCWRAG, with the Walkers as president and secretary. From July 2016 onwards, the Walkers received approximately \$191,000 from Watsons and Schutz Consulting in payment for 'consultancy' and 'data collection' services, unrelated to SCWRAG. Leighton Properties also paid for SCWRAG's 2017 legal representation before the PPV, at a cost of \$28,798.

Following the Minister for Planning's deferral of the decision on the amendment on 18 October 2018, Mr Woodman and Ms Schutz reviewed the C219 strategy, and concluded that they needed to lobby politicians and would need to rely on SCWRAG. Although it is apparent that Mr Walker genuinely supported the rezoning as a member of the Cranbourne West community, his role in advocating for Amendment C219 and other projects through SCWRAG was compromised by his personal financial arrangements with Mr Woodman and Ms Schutz, his awareness that Leighton Properties financed SCWRAG, and his knowledge that Mr Kenessey, Mr Woodman and his associates were using SCWRAG to promote their commercial interests.

IBAC did not find that the Minister for Planning or his office acted improperly in relation to Amendment C219.

3.1.5.9 Using local candidates and members of the Victorian Parliament to influence decisions

In addition to enlisting the support of 'friendly' councillors by providing financial support, Mr Woodman targeted candidates for state elections, providing financial support to candidates across the political spectrum.

Mr Woodman tried to garner support for Amendment C219 by influencing state politicians, including local MPs Mr Perera, Ms Graley and Ms Richards. As outlined in section 3.7, Mr Woodman provided financial support to their election campaigns of between \$10,000 and \$27,000 each. On 17 January 2019, Mr Woodman discussed this strategy with Mr Kenessey, asserting that he paid 'Judith Graley and other people to talk to [the State Treasurer]', and went on to speak about his 'liaison with Pauline Richards and Susan Serey to the tune of ... \$50,000 in November'. When Amendment C219 came before the Casey Council for the first time in 2014, Mr Woodman emphasised to his associates that he anticipated local politicians Ms Graley and Mr Perera playing a role in having the rezoning approved.

In addition to funding, Mr Woodman, Ms Schutz and lobbyist Mr Staindl regularly briefed these politicians on Amendment C219. Both Mr Perera and Ms Graley promoted the issue with the Minister for Planning and his office, but it does not appear that they revealed they had been lobbied by Woodman interests to do so. In a submission to IBAC, the Minister stated:

I have always found that Mr Perera and Ms Graley were respectful of my role in Parliament and of my role as the Minister for Planning and I never identified anything inappropriate about their communications or interactions with me.

He added:

I was unaware of any potential impropriety in relation to planning matters in the City of Casey, and dealt with queries about those matters from MPs in the same way that I would deal with a query on any other matter.

⁵⁶ In a submission to IBAC, Ms Schutz noted that this doorknocking was carried out by Schutz Consulting and that all Schutz Consulting contractors wore name badges with the company logo on them.

During the examination, Ms Graley denied knowing that Mr Woodman donated \$20,000 to her campaign and stated that 'I was never promoting Mr Woodman's interests.'

As outlined in Chapter 6, Mr Perera was ill for periods between 2009 and 2017, during which times his electorate officer ran his office. The electorate officer worked with Ms Schutz to promote the rezoning. Mr Perera was also aware that the 'community view' in support of rezoning was based on information provided by SCWRAG and Ms Schutz and, to the extent that this support existed, had been generated by them.

In 2018, the Labor Party preselected Ms Richards to replace Mr Perera. As outlined, Mr Woodman targeted her with the offer of financial support and a commitment to provide additional support if she supported the rezoning. Her interactions with residents apparently revealed no community concerns about the need to rezone industrial land. There was no evidence before IBAC that Ms Richards approached the Minister for Planning or his office on this matter. In evidence, Ms Richards acknowledged that she could have been more circumspect in her acceptance of Mr Woodman's 'generous offer' of campaign funding, but denied doing anything to further Mr Woodman's interests. IBAC accepts this.

3.1.5.10 Lobbying political candidates and politicians

To support the C219 strategy, Mr Woodman engaged lobbyists Ms Wreford and Mr Staindl. Mr Staindl worked with Mr Woodman to develop and implement a strategy to exert pressure on the Minister for Planning to approve the amendment. The strategy was founded on buying access to, and influence with, senior politicians and local members by making large donations, either directly to local politicians (as outlined above) or through contributions to the Labor Party's fundraising arm Progressive Business, as outlined in section 3.7.

Mr Staindl briefed and liaised with local politicians, and arranged access to the Premier and senior ministers. He anticipated that these politicians and ministers might intercede with the Minister for Planning to support the rezoning. Mr Staindl also sought to develop, directly and indirectly, lines of communication and influence with staff in the Minister for Planning's office.

By the time of the 2014 state election, Mr Staindl believed that the Labor Party had undertaken to 'at least kick start' approval of the Amendment C219 rezoning if elected. In a statement to IBAC, the Minister for Planning stated that any representation by Mr Staindl to the effect that he would have direct contact with the Minister's office by means of back-channel communications was absolutely false.

During the examination, Mr Kenessey conceded that Mr Woodman had promoted his ability to pull levers with numerous politicians and claimed that he would get them to intervene with the Minister for Planning. Mr Kenessey agreed that Mr Woodman had, for years, been telling him he had donated to political parties to build relationships with politicians. Mr Kenessey stated that he regularly attended fundraising functions because without doing so it was very difficult to see ministers and councillors. When asked if he knew that Mr Woodman used politicians to build influence in relation to Amendment C219, he responded, 'that's the only way you can speak to politicians, the decision-makers. The system dictates it.' However, he asserted he didn't believe that this strategy was used for Amendment C219.

3.1.6 Articles in *The Age* – managing the fallout

As outlined in section 2.1.4, in October and November 2018, *The Age* published two articles revealing the close relationships between Mr Woodman and certain Casey councillors, donations made by Mr Woodman to the Labor Party and Liberal Party, and the link between developers and SCWRAG. Despite this adverse publicity, Mr Woodman, Ms Schutz and Councillors Aziz and Ablett and Councillor A, continued their efforts to promote a favourable outcome for Amendment C219 and other projects, including the H3 intersection.

Following publication, Mr Woodman and his associates attempted to:

- discredit the articles in *The Age*
- conceal their activities from public scrutiny
- distance Leighton Properties from Mr Woodman and his activities.

The first article, published on 28 October 2018, alleged – among other things – a close association between some developers and councillors. It suggested that such relationships created influence over Casey councillors' decisions.⁵⁷ The article referred to the unlawful decision of the Casey Council on the H3 intersection (see section 3.2), and the relationship between SCWRAG, Leighton Properties, Ms Schutz and Mr Woodman.

Before publishing the article, *The Age* contacted Mr Woodman and Megan Schutz. Mr Woodman and Ms Schutz discussed whether Ms Schutz could be linked to the registration of the domain name 'savecranbournwest.com'. On 25 October 2018, Ms Schutz told Mr Woodman that she did not want to return the journalist's call because if she was asked about the text messages, she didn't want to lie. Ms Schutz appears to have wanted to avoid putting herself in a position where she might be required to provide information revealing her 'briefing of the councillors ... because it's not normal process and it's not ... it's not right'.

In the same call, Mr Woodman and Ms Schutz spoke about the fact that Mr Walker had also been contacted for comment, and they discussed what he might say. Ms Schutz indicated that Mr Walker would call the journalist back 'because Ray has nothing to hide', and Mr Woodman responded (in relation to the H3 intersection):

Exactly, and Ray is very good in saying 'I don't care who builds the intersection. I don't care if [it's] Wolfdene, I don't care if [it's] Dacland, it's dangerous.' He's got the best story because he's the man.

Ms Schutz then added (on Amendment C219):

And ... yes [Mr Walker] has met me, he has met me on the Leightons' property and yes, SCWRAG was established as part of rezoning that land, because Leightons and the community had the same objective!

Following publication of the first article in *The Age* in October 2018, Mr Kenessey put pressure on Mr Woodman to justify his services to Leighton Properties. On 19 October 2018, Mr Kenessey emailed Mr Woodman, noting his disappointment with the 'sudden lack of result', meaning the Minister for Planning's deferral of the decision on Amendment C219. Mr Kenessey advised Mr Woodman that Leighton Properties would 'require a written strategy for consideration that restores faith in our project team'. Mr Woodman replied that the deferral was a 'mystery', asserted that local MPs Ms Graley and Ms Richards advised him that the Minister for Planning's chief of staff had told them the amendment would be approved on 11 October 2018, and added that he was to meet Ms Graley and Ms Richards on 23 October 2018. In evidence, the Minister for Planning's chief of staff denied making any such statement, Ms Richards asserted that she did not make any representations to the Minister or their office in support of the amendment, and the Minister stated that they could not recollect Ms Richards making any contact with them or their office.

Mr Kenessey also sought to distance Leighton Properties from Mr Woodman's activities. On 30 and 31 October 2018, Mr Kenessey exchanged an email with the general manager of Leighton Properties, summarising their discussion on how to manage Mr Woodman's consultancy, to which the general manager replied, 'Good summary, thanks ... I think I need to draft a response to John W following yesterday's meeting so that CIMIC/Leighton Propertie's expectations going forward are clear'. Mr Kenessey set out options: to stand down Mr Woodman, sideline him or continue his consultancy. Mr Kenessey said he had spoken to Mr Woodman, who was amenable to a process where 'current payments would now stop and any further work would need to be signed off [sic]', noting that the rezoning project would need to be 'distanced' from Mr Woodman and Ms Schutz. In effect, Mr Woodman's consultancy continued, with an added expectation that he provide itemised monthly accounts.

⁵⁷ Millar R, Schneiders B, Lucas C 2018, 'Casey council, where riches are made with the stroke of a pen', *The Age*.

The publicity at this time was also considered in discussions about an agreement executed between a company associated with Dacland and Leighton Properties. It provided for Leighton Properties to sell its interest in the C219 land and included a 'Rezoning Payment Deed'. The agreement was due for final settlement on 9 October 2018. In a series of emails on 9 and 13 November 2018, Mr Kenessey advised the design and planning manager at Dacland that a strategy had been developed 'to ensure the rezoning occurs and does so ASAP'. Under the heading 'Avoid negative media', the strategy included meeting with 'Ray Walker (SCWRAG) to find out their strategy and encourage them to lay low during the election, given the Minister has only delayed and not rejected the rezoning'. Mr Woodman and Ms Schutz were to be kept at a distance but retained to act on direct instructions.

Around this time, Mr Kenessey considered engaging a different consultant, other than Mr Woodman and Ms Schutz, to assist with C219, and more direct ways to contact the Minister for Planning's office, rather than going through Mr Staindl.

On 18 November 2018, *The Age* published a second article linking Leighton Properties to Amendment C219 and discussing Mr Woodman's donations to both the Labor and Liberal Parties.⁵⁸ Before its publication Mr Woodman and Councillor Ablett discussed how to respond to any suggestion that they jointly owned a farm at Curwen Road, Mountain View (described in section 3.2.6.2), although ultimately this matter was not discussed in the article. Mr Woodman told Councillor Ablett to say that Mr Woodman had sorted out a boundary realignment pro bono.

On 5 December 2018, in a series of emails to the Leighton Properties general manager, Mr Kenessey expressed doubt about the continuing use of SCWRAG – because its credibility had been compromised – but still proposed to continue paying Mr Woodman, even if his services were suspended.

Mr Kenessey anticipated that Mr Woodman's strategy would be to:

- seek information from politicians (including Ms Richards, Ms Graley, the Treasurer and the Minister for Roads)
- sue *The Age* and seek a retraction
- use Ms Richards to lobby the Minister for Planning and to present them with a letter from the Casey Council dated 11 November 2018
- seek to have panels, rather than public servants, involved in the review of industrial land.

In these emails, Mr Kenessey proposed that they require Mr Woodman to provide a written strategy, and to suspend his services if he did not do so. On 30 January 2019, Mr Woodman provided a written strategy very similar to that which Mr Kenessey anticipated. In his evidence to IBAC, the Minister for Planning stated that they could not recollect being approached by Ms Richards as strategised by Mr Kenessey and Mr Woodman.

During this period, Mr Woodman and his associates continued to seek to influence Victorian politicians in favour of Amendment C219. At an event in late 2018 for Labor Party fundraising entity Progressive Business, Ms Schutz, in the presence of others, asked the Minister for Planning what their approach would be if an amendment was recommended for approval by an independent panel. In response, the Minister and their office refused to have any further communication with her. By that stage, Ms Schutz believed that Amendment C219 was 'dead in the water' unless Cabinet members and local MPs from the Minister for Planning's political faction put pressure on the Minister.

⁵⁸ Millar R, Schneiders B 2018, 'Labor MPs in Leighton rezoning row', *The Age*.

On 21 December 2018, in a lawfully intercepted telephone conversation, Ms Schutz spoke to Mr Woodman about talking to the Treasurer at a function with the Premier the night before.

From December 2018 onwards, Mr Woodman continued to express concern about the articles in *The Age* and discussed ways to lessen their consequences. For example, in January 2019, Mr Woodman and Mr Kenessey considered pressuring Casey Council officers and Councillor Rowe to make statements on what they knew about the information published by *The Age* on 28 October and 18 November 2018. Mr Woodman also discussed the matter with Councillor A, stating that in his view the C219 rezoning application had been deferred because of *The Age* articles, and that he had been told the only way it would get over the line would be if they could discredit the articles.

3.1.7 Conclusion

Over a five-year period, Mr Woodman and his associates devised and implemented a strategy designed to influence planning decisions made by the Casey Council, recommendations made by PPV, and ultimately decisions made by the Minister for Planning, in favour of Amendment C219. If successful, the rezoning of 200 hectares of land from industrial to residential would have generated a significant windfall – approximately \$35 million – for the landowners.

To achieve this outcome, Leighton Properties engaged the services of Mr Woodman, Ms Schutz and Mr Kenessey (initially a Leighton Properties employee and later a consultant). Each received around \$600,000-700,000 for their services. Mr Woodman and Mr Kenessey were also entitled to a success fee if the amendment was approved, which, in Mr Woodman's case, would have been an additional \$2 million.

In different ways, Mr Woodman and his associates relied on a core group of councillors, comprising Councillor Aziz, Councillor Ablett and Councillor A, to implement the strategy. Mr Woodman cultivated relationships of influence with these three councillors through direct and indirect payments and in-kind support. Councillor Aziz received financial support from entities linked to Mr Woodman for his 2012 and 2016 Casey Council election campaigns, in addition to the direct financial benefits obtained in 2017 as discussed in section 3.6.3. Councillor Ablett's financial arrangements with Mr Woodman extended back to at least 2010 and continued throughout the period in which Amendment C219 was before the Casey Council. It appears he expected to receive some form of financial reward if Amendment C219 was approved. Both of these relationships were explicitly transactional: Mr Woodman provided Councillor Aziz and Councillor Ablett with material benefits in exchange for their support in Casey Council matters. Councillor A received financial support for three election campaigns from Mr Woodman: the 2014 state election, and the 2012 and 2016 Casey Council elections. This included donations, event hosting and in-kind support. In 2016, Councillor A also benefited from a donation Mr Woodman made to Organisation A, which enabled the creation of a heavily subsidised program that Councillor A's family member subsequently attended.

Mr Woodman briefed this core group in early 2014, and Councillor Aziz initiated the rezoning strategy by moving a motion of urgent business on 4 February 2014. The Casey Council approved this motion before a formal written application had been lodged with it. From this point onwards until October 2018, the Casey Council routinely passed, without dissent, motions progressing the rezoning.

Prior to 2015, Councillor Aziz, Councillor Ablett and Councillor A did not declare a conflict of interest about Amendment C219. From March 2015, Councillor Ablett and Councillor A declared conflicts of interest. However, their declarations were incomplete. In addition, both continued to engage with other Casey councillors in discussions and other activities about the matters for which they had declared a conflict. Councillor Aziz did not declare a conflict of interest in any decisions on Amendment C219.

To increase their influence, this core group of councillors actively sought the casting vote on the Casey Council through the roles of mayor or deputy mayor. Between them, they occupied the role of Casey mayor for most of the time Amendment C219 was before the Casey Council.

The actions of Councillor Aziz and Councillor Ablett appear to be inconsistent with their obligations to not misuse their position as a councillor under the LGA 1989. These councillors received financial and in-kind support from Mr Woodman in exchange for supporting his interests at the Casey Council. They made limited disclosures that they had conflicts of interest when issues arose at the Casey Council.

Mr Woodman and his associates cultivated support from other Casey councillors considered to be 'friendly' or aligned with their interests, which extended to establishing a system of covert campaign funding for candidates in the 2016 Casey Council election, coordinated by Councillor Aziz, who was assisted by Ms Wreford and Ms Halsall. Six councillors elected in 2016 had been supported by this scheme. However, those examined claimed that they were unaware Mr Woodman was the source of funds, and they did not declare the funds when elected to the Casey Council. This may have been inconsistent with the prohibition under the LGA 1989 on accepting anonymous donations of \$500 or more. Nor did they declare a conflict of interest when voting on matters associated with Mr Woodman.

In early 2018, Councillor Ablett sought to replace Casey Council CEO Mr Tyler, who opposed the Cranbourne West rezoning. Councillor Aziz, Councillor Smith and Councillor A supported Councillor Ablett's efforts, and Mr Tyler was replaced by Mr Patterson.

SCWRAG was crucial to the C219 strategy, purporting to represent the 'voice of the community'. Ms Schutz helped to establish SCWRAG to generate Casey Council and political support for the rezoning. Over the next three years, Leighton Properties spent more than \$300,000, through Ms Schutz, financing SCWRAG's activities. Ms Schutz and Mr Kenessey were instrumental in directing SCWRAG's activities, often helping to compose or review submissions and other documents generated by SCWRAG. As president and secretary of SCWRAG, the Walkers personally supported the rezoning. However, they also benefited financially from their association with Mr Woodman, receiving around \$191,000 in consultancy and data-collection fees from Schutz Consulting's clients Watsons, Elysian Group and the owners of the Pavilion Estate land.

Mr Woodman and his associates also attempted to cultivate support from local state MPs and candidates Mr Perera, Ms Graley and Ms Richards, by providing financial support to their election campaigns. In the case of Ms Richards, it appears that Mr Woodman expected to receive a commitment to his project in return for campaign donations. However, IBAC did not find any evidence to suggest that Ms Richards approached the Minister for Planning or their office on this issue.

Mr Woodman also engaged lobbyists Ms Wreford and Mr Staindl, to assist in developing and implementing a strategy to influence the Minister for Planning. The strategy sought to buy access to, and influence with, senior politicians and local MPs, through either direct donations or contributions to the Labor Party's fundraising arm Progressive Business.

During examinations, Mr Kenessey contested the assertion that Mr Woodman's role was to keep Leighton Properties at arm's length from the C219 strategy. Mr Kenessey sought to minimise his own role in Mr Woodman's efforts to influence decisions. However, the evidence shows that Mr Kenessey was aware of, and in some instances directly supported, Mr Woodman's activities in relation to Amendment C219. Mr Kenessey only sought to end Mr Woodman's engagement by Leighton Properties in 2019. This decision followed adverse publicity in late 2018 about Mr Woodman in *The Age*.

3.2 The H3 intersection

3.2.1 Overview

In 2018, the Casey Council considered the construction of an interim signalised T intersection on Hall Road in Cranbourne West, known as the H3 intersection, which would enable vehicle access to and from two housing estates: Lochaven Estate, developed by Dacland, and the Alarah and Elysian Group Estates (referred to in this report as Elysian Estate), a development owned by Elysian Group and managed by Wolfdene. From September to December of that year, the Casey Council made a series of decisions that affected the timing and allocation of responsibility for construction.

Hall Road is a major road, running from Cranbourne West to Carrum Downs. Various housing estates are located along Hall Road. Wolfdene and Dacland both held permits to build estates along Hall Road: Wolfdene for Elysian Estate on the south side of Hall Road, and Dacland for Lochaven Estate to the north. Because the two developments shared the proposed (four-way) intersection known as H3, both permits included a trigger to construct an interim signalised (three-way) intersection at H3. The developers of the two estates were not able to reach an agreement to share the cost of building the complete intersection. In practice, this meant that the first developer to reach the relevant trigger in its permit would be obliged to construct three arms of the intersection (an interim T intersection). The second developer would then be required to construct the fourth arm of the intersection in line with its estate development.⁵⁹

Council papers show that Wolfdene was represented by Watsons, and Elysian Group was represented by Schutz Consulting.⁶⁰ Mr Woodman's son is a director and shareholder of several corporate entities bearing the Wolfdene name. These entities both owned and developed land, as well as providing development management services. Wolfdene was managing the development of Elysian Estate, and Mr Woodman's son was a director and part-owner of the landowning entity of Elysian Estate, Elysian Group Pty Ltd.

Over the course of 2018, Mr Woodman and Ms Schutz sought to influence Casey Council decisions in favour of Wolfdene and Elysian Group's interests in relation to construction of the H3 intersection. They did so through the relationships Mr Woodman cultivated with Councillor Aziz, Councillor Ablett and Councillor A, and through the activities of SCWRAG.

By influencing Casey Council decisions, Mr Woodman sought to make Dacland responsible for constructing the interim T intersection, so that the development Wolfdene was managing would contribute less to the overall construction cost of the final intersection. In a lawfully intercepted call on 18 October 2018, Mr Woodman told Ms Schutz, 'Wolfdene will only pay for their part and the other idiots will pay for the majority. What a wonderful outcome.'

The strategy succeeded. On 18 December 2018, Dacland agreed to build the majority of the H3 intersection (and provided a monetary security equivalent to 150 per cent of works required) as a condition of the Casey Council's approval to defer its obligation to construct the intersection.⁶¹ This decision shifted costs away from Wolfdene and Elysian Group by effectively guaranteeing that Dacland would build the majority of the intersection.

⁵⁹ Casey Council, 4 September 2018, meeting agenda.

⁶⁰ Ibid.

⁶¹ Casey Council, 18 December 2018, meeting agenda and minutes.

Summary of IBAC's main findings

Over the course of 2018, Mr Woodman and Ms Schutz devised and implemented a strategy to influence Casey Council decisions so that a significant portion of the construction costs of the H3 intersection went to Dacland:

- Ms Schutz was involved in an informal working group to develop and implement the H3 intersection strategy. Its members included Ms Schutz, Councillor Ablett, Councillor A, the Walkers (president and secretary of SCWRAG), and Mr Woodman's personal assistant at Watsons.
- Councillor Aziz, Councillor Ablett and Councillor A promoted Wolfdene's interests by engaging in Casey Council processes and decisions on the H3 intersection in ways that lacked transparency and integrity.
- Councillor Aziz played a leading role in implementing the H3 intersection strategy. Despite receiving benefits from Mr Woodman, he did not declare a conflict of interest and proactively pushed for Casey Council decisions on the H3 intersection by moving alternative motions and seeking to influence other Casey councillors' decisions. Those alternative motions were drafted by Ms Schutz, who also provided Councillor Aziz with talking points in order to further the interests of her clients.
- Both Councillor Ablett and Councillor A declared a conflict of interest in relation to the H3 intersection, although neither disclosed the extent of their conflict. They each withdrew from votes on the matter, but continued to have discussions and engage with other Casey councillors about it.

In terms of financial interests in the H3 decision:

- Mr Woodman's company, Watsons, represented Wolfdene and provided a personal guarantee for a loan to the landowning entity Elysian Group, of which Mr Woodman's son was a majority stakeholder.
- Ms Schutz's company, Schutz Consulting, represented the landowning entity, Elysian Group, of which Mr Woodman's son was a majority stakeholder.

In terms of benefits:

- Over the period during which the H3 intersection matter was before the Casey Council, Councillor Ablett and Councillor Aziz received payments that can be traced to Watsons. In addition, they had benefited from donations or other financial support from Mr Woodman dating back to at least 2012.
- Councillor A did not receive financial support from Mr Woodman during the period that the H3 intersection was before the Casey Council. However, Councillor A had a conflict of interest due to support they had previously received from Mr Woodman and his associates.
- Councillor Smith did not receive direct payments from Mr Woodman during this period, but previously accepted financial contributions from Mr Woodman.
- Despite receiving benefits from Mr Woodman, Councillor Smith did not declare a conflict of interest, and chaired Casey Council meetings which considered the H3 intersection in the absence of the mayor and the other deputy mayor, using his casting vote to pass the alternative motions moved by Councillor Aziz.
- Mr Walker, president of SCWRAG, had consultancy agreements with Watsons and Schutz Consulting while lobbying in relation to the H3 intersection.
- Mr Walker put positions to Casey councillors and others on behalf of SCWRAG, without disclosing that he was in a commercial relationship with Mr Woodman and Ms Schutz.

3.2.2 Who stood to benefit?

The landowner of Elysian Estate, Elysian Group, and the development manager, Wolfdene, stood to benefit from the strategies devised by their representatives, Mr Woodman and Ms Schutz, in relation to the H3 intersection. By influencing Casey Council decisions, the strategy aimed to reduce construction costs and ultimately the cost of developing the estates.

Specifically, a summary of Woodman Group entities seized in a search of Wolfdene's premises showed that at the time:

- Elysian Group Pty Ltd was recorded as being 70 per cent owned by The SBPM Property Trust
- The SBPM Property Trust was recorded as being fully owned by The SBPM Equity Trust
- The SBPM Equity Trust was recorded as being fully owned by Mr Woodman's son.

During the examination, Mr Woodman said his involvement in the H3 matter was limited to his engagement as a consultant for the landowners, and that he had no financial interest in the matter. However, bank documents indicate that Mr Woodman was among several guarantors of a \$14.11 million loan from the National Australia Bank to Elysian Group Pty Ltd in January 2015.

On 14 November 2018, in a lawfully intercepted telephone call, Mr Woodman and Ms Schutz discussed a contract for the sale of land in Elysian Estate worth approximately \$20 million, in which Mr Woodman's son had an interest. In the call, Mr Woodman told Ms Schutz:

I've got 20 million sitting out there and I need something to happen ... [my son] has sold 5 hectares for 20 million dollars and ... the contract is waiting to be signed. The only reason it hasn't been signed is because he's agreed with them until we start building the intersection that they won't – are not going to sign the contract ...

In examinations, Mr Woodman asserted that the group of people who owned the land (including his son) 'had an offer of \$20 million for the balance of five hectares that remained on the estate'. Mr Woodman conceded that his son would have benefited financially had the intersection been built, allowing the \$20 million transaction to go ahead, but added that the contract did not go ahead.

Days earlier, in a lawfully intercepted conversation, Mr Woodman told Councillor Ablett:

... it just drives me crazy that we've got to put [up] with idiots ... when we're trying to do the right thing. I mean, both Cranbourne West, both Pavilion, both Hall Road ... Okay, okay, I benefit financially and other people benefit financially, but at the – at the nub of it the community benefit more than what I do. I mean, fuck – you know, like – like, what are you supposed to do on every situation? Say, 'Oh, look, I – I can't afford to benefit on this.' I mean what the fuck? Well, that's what we're in business for.

In examinations, Mr Woodman said that this comment referred to a financial benefit for his business, not to him personally.

3.2.3 Key decision points – how events unfolded

In 2018, the Casey Council considered the matters affecting the construction of the H3 intersection on four occasions. On all but the last occasion, the Casey Council was divided, and the matter was the subject of fierce debate. The table below highlights key decision points at Casey Council meetings in purple. In between Casey Council meetings, Mr Woodman and his associates devised and implemented their strategy to shift costs for constructing the H3 intersection away from the Elysian Estate development, managed by Wolfdene and owned by Elysian Group.

Date	Actions, processes and outcomes
29 July 2018	In an email titled 'Briefing for meeting with GA [Geoff Ablett] today', Ms Schutz advised Mr Woodman she had 'arranged to meet with GA for a briefing on Hall Road' among other things. The email further stated that Ms Schutz had become aware that 'Dacland was trying to kick the can down the road on delivering their Hall Road intersection' and noted that she had spoken to Councillor Ablett and Mr Walker about the issue.
27 August 2018	Councillor Ablett, Ms Schutz, Mr Woodman's personal assistant and the Walkers met at a café. A typed record of notes from the meeting states that Councillor Ablett 'said to mention that safety and mental health issues are important' and 'said it was very important to have residents at the meeting to show the council we want action'.
31 August 2018	A letter from Mr Walker, as president of SCWRAG, was sent to Councillor Ablett as Casey mayor: <ul style="list-style-type: none"> • thanking the mayor for meeting with the group to discuss safety issues relating to Hall Road, Cranbourne West • attaching a crash history review prepared by a transport planning consultancy • noting that 'SCWRAG requests that Council ensure the H3 intersection is delivered without further delay'.
2 September 2018	An email titled 'Hall Road' from Ms Schutz to Mr Woodman and his son noted that Ms Schutz spent three hours with Councillor Ablett briefing him on Item 6.6 in the Casey Council's upcoming agenda, so that he could brief Councillor Aziz. A document attached to the email titled 'Aziz notes' contains speaking notes to accompany an alternative recommendation drafted previously by Ms Schutz.

Date	Actions, processes and outcomes
4 September 2018	<p>The Casey Council officers' report on the safety of Hall Road recommended that Casey councillors note the report and that the Casey Council write '... to VicRoads reaffirming that an upgrade of the Hall and Evans Road intersection is a priority and that funds collected to date on behalf of VicRoads through the Cranbourne West Development Contributions Plan are available to support the design and delivery of the project'.⁶²</p> <p>Before a vote was taken on the Casey Council officers' recommendation on the Hall and Evans roads intersection, Councillor Aziz moved the alternative motion that, among other things, the Casey Council require Dacland to construct an interim signalised T intersection at H3. In effect, this required Dacland to deliver 75 per cent of the H3 intersection and bear the associated costs, reducing the financial obligation on Wolfdene. To make sure that Dacland undertook the work immediately, Councillor Aziz also sought to impose a restriction that would limit Dacland from further developing Lochaven Estate until the intersection was constructed.⁶³</p> <p>In moving this alternative motion, Councillor Aziz relied on what he claimed to be legal advice (which was not tabled), a letter from SCWRAG and a report prepared by transport planning consultants.</p> <p>Councillor Ablett left the chamber after declaring a conflict of interest. Both Councillor Ablett and Ms Schutz texted Councillor Aziz during the debate, instructing him on what to say.</p> <p>The Casey Council vote was divided: four in favour and four against. However, the motion passed on the casting vote of the deputy mayor, Councillor Smith, who chaired that portion of the meeting. Subsequently, concern was raised as to the 'fairness' and legality of the alternative motion introduced by Councillor Aziz.</p>
5–15 September 2018	<p>In a series of emails on 5 September, Ms Schutz and Mr Woodman considered the need to obtain legal advice through a third-party on the lawfulness of the resolution the previous night, with Ms Schutz noting:</p> <p><i>It would be damaging if this ends up before the Ombudsman and then they bring up Morison Road too [reference to Pavilion Estate]. Two projects that have achieved an advantage with Sam Aziz moving both motions. With Morison Road, Gary [Rowe] got out of the room as did Susan Serey. In this case, Susan left the room but Gary did not.</i></p> <p>On 13 September, Mr Walker, as SCWRAG president, emailed all councillors about the Hall Road safety issues. Councillor Aziz forwarded the email to the Casey Council's acting CEO, seeking legal advice on using the SCWRAG proposal as 'an alternate [sic] recommendation to what was passed at the last council meeting'. Through Councillor Ablett, Ms Schutz requested that Councillor Aziz also seek advice 'on an alternative resolution that achieves the community's objectives of getting the intersection built as soon as possible'.</p> <p>On 15 September, Ms Schutz told Councillor Aziz (via messages to Councillor Ablett) that she wanted Councillor Aziz to move a new motion at the Casey Council to address the fairness issue of the 4 September 2018 motion, and that she would prepare 'some' words for him.</p>

⁶² Casey Council, 4 September 2018, meeting agenda.

⁶³ Ibid.

Date	Actions, processes and outcomes
18 September 2018	<p>The 4 September 2018 motion was rescinded on the basis that it was unlawful.⁶⁴</p> <p>The rescission of Councillor Aziz's motion of 4 September 2018 meant that Dacland was no longer required to construct the H3 intersection immediately and was not prevented from further developing Lochaven Estate until the intersection was constructed. Councillor Aziz moved a new alternative motion:</p> <p><i>That council officers advise Council what further steps might be taken to achieve the construction of the H3 intersection at the earliest opportunity to resolve community safety issues.</i>⁶⁵</p> <p>The motion also called in any request by either party that would have the effect of deferring the construction of the intersection, by requiring that Casey Council officers refer any such requests to the Casey councillors for consideration.</p> <p>This alternative motion was again subject to much debate among Casey councillors. During the Casey Council meeting, Ms Schutz messaged Councillor Aziz suggesting responses to the debate. The motion was once again carried on the casting vote of the deputy mayor, Councillor Smith, after the Casey Council divided three in favour and three against.⁶⁶</p>
12–15 October 2018	<p>On 12 October, in a lawfully intercepted call, Councillor Aziz and Councillor Ablett discussed the need for a new resolution, during which Councillor Aziz stated that he would need an alternative resolution and Councillor Ablett responded that 'they're working on it'.</p> <p>On 14 October, Mr Woodman emailed Victoria Police statistics on traffic accidents on Hall Road to Councillor Ablett, who forwarded the document to Councillor Aziz. Councillor Aziz used this information to support his argument before the Casey Council on 16 October.</p> <p>On 15 October, in a lawfully intercepted call with Councillor Aziz, Councillor Ablett discussed the H3 intersection and noted that a deferment would be sought the following night, so that Dacland and Wolfdene could meet to discuss construction of the intersection.</p>
16 October 2018	<p>The Casey Council considered an officers' report relating to a formal request from Dacland to allow the release of stages in Lochaven Estate out of sequence, which would effectively defer Dacland's obligation to construct the H3 intersection.⁶⁷</p> <p>Ms Schutz liaised extensively with Councillor Aziz before and during the Casey Council meeting to put forward and argue for an alternative motion, and suggested some amendments to a draft letter sent on behalf of SCWRAG to support the motion, which in a lawfully intercepted telephone call she told Councillor Aziz to read out.</p> <p>Before a vote was taken on the Casey Council officers' report regarding Dacland's request, Councillor Aziz moved an alternative motion, referring to accident data and a letter from SCWRAG.⁶⁸ That motion proposed not to support Dacland's request to release stages out of sequence, and that VicRoads and SCWRAG be notified of the decision.⁶⁹</p> <p>The Casey Council debated the alternative motion. For a third time, the motion was carried on the casting vote of the deputy mayor, Councillor Smith, the Casey Council having divided four in favour and four against.⁷⁰ Consequently, Dacland was refused permission to re-sequence the stages of Lochaven Estate.</p>

64 Casey Council, 18 September 2018, meeting minutes.

65 Ibid.

66 Councillor Ablett and Councillor A declared a conflict of interest about the rescission and were absent from the vote. Two other Casey councillors were also absent from the 18 September 2018 meeting.

67 Casey Council, 16 October 2018, meeting agenda.

68 The crash data report considered at the 16 October 2018 meeting suggested there were, in fact, no collisions at the proposed site of the H3 intersection in the five years from 2013 to 2017. The lack of vehicle accidents is not surprising because an intersection did not yet exist at that location. Further, the Casey Council officers' report noted: 'We agree that the delivery of both the H3 signalised intersection and upgrade of the Evans Road intersection are ultimately needed to improve the capacity and safety of Hall Road. However, the transport planning consultancy report does not establish that intersection H3 is so critical that it requires delivery before the release of any further stages of Lochaven Estate.'

69 Ibid., Item 6.10.

70 Councillor Ablett, Councillor Serey and Councillor A declared a conflict of interest in relation to Item 6.10 and were absent from the vote.

Date	Actions, processes and outcomes
19 November 2018	In a lawfully intercepted call, Councillor Aziz told Councillor A that he had an idea for the H3 intersection and needed Councillor A to get several Casey councillors on board and then to pursue the idea with the Casey Council CEO, Mr Patterson. Councillor Aziz also told Councillor A that he had just met with Mr Woodman and that the idea had come from him.
23 November 2018	In a lawfully intercepted call between Councillor Ablett and Ms Schutz, Ms Schutz stated that a letter covering certain issues with the H3 intersection would be sent to Councillor Ablett by Mr Walker. Councillor Ablett stated that he would go to the Casey Council CEO, Mr Patterson, with those issues so that they could be put in an addendum to the Casey Council officers' report, and asked that the email be sent to all Casey councillors and the Casey Council CEO.
28 November 2018	In a lawfully intercepted call between Councillor Aziz and Ms Wreford, the pair discussed several topics, including the H3 intersection. During the call, Councillor Aziz sought to discuss a loan that Ms Wreford was brokering for him. Ms Wreford changed the subject and told Councillor Aziz that he should be more concerned about what was going up to the Casey Council in relation to H3 and how Councillor Crestani would vote. Ms Wreford asked about the relationship between Councillor Crestani and Councillor Aziz. Councillor Aziz then spoke of other Casey councillors who had influence with Councillor Crestani.
29 November 2018	In a lawfully intercepted call between Councillor Ablett and Mr Woodman, Councillor Ablett informed Mr Woodman that he had caught up with the Casey Council CEO, Mr Patterson, who told him that Dacland had agreed to build the culverts and pits with Development Contributions Plan money.
11 December 2018	An email from Ms Schutz to Councillor Ablett titled 'H3 Resolution for next week's Council meeting' asked: 'When we speak this afternoon, can we please discuss the proposed resolution for the H3 intersection going up to council on Tuesday night next week. Do you know what is proposed?' Later the same day, Councillor Ablett sent an email to Ms Schutz titled 'Lochaven', to which were attached three Casey Council documents relating to Dacland's request.
18 December 2018	<p>The Casey Council considered another request from Dacland to re-sequence the stages in Lochaven Estate before construction of the intersection.</p> <p>In a lawfully intercepted call prior to the Casey Council meeting, Councillor A advised Councillor Aziz that they had 'sent an SOS' to Ms Wreford, who 'went and spoke to the appropriate people', and that issues with the culverts had all been sorted out and the land was being released.</p> <p>As a condition of the Casey Council's approval to re-sequence the stages in Lochaven Estate, Dacland agreed to build the majority of the H3 intersection. Dacland provided monetary security to the value of 150 per cent of works required, which would be returned to Dacland progressively on construction of the H3 intersection.</p> <p>The Casey Council passed Dacland's request unanimously, without debate.⁷¹</p>

⁷¹ Casey Council, 18 December 2018, agenda and minutes.

While the Casey Council's decision on 18 December 2018 deferred Dacland's obligation to construct the H3 intersection due to the re-sequencing, Dacland's undertaking to construct the majority of the intersection (guaranteed by a monetary security to the value of 150 per cent of the works) shifted costs away from Wolfdene's Elysian Estate development.

In a lawfully intercepted telephone conversation on 12 February 2019, Mr Woodman advised Ms Schutz that because they did not have to build the H3 intersection, they, through Elysian Estate, 'made about \$1.75 million'. During examination, Mr Woodman initially denied that he or his associates derived a financial benefit of this order, but ultimately conceded that the financial benefit of a Casey Council decision on the H3 intersection favourable to Elysian Estate (a development managed by Wolfdene and owned by Elysian Group) was in excess of \$1.75 million.

Requests to councils seeking permission to re-sequence stages of developments are not unusual and are often delegated to council planning officers for determination. Indeed, this is how four earlier requests to defer delivery of the H3 intersection in line with the permit conditions for Elysian Estate had been handled between June 2014 and August 2017.⁷² In examinations, Councillor Rowe said, 'there was no reason to get in the way of it', with reference to Dacland's request to re-sequence its development of Lochaven Estate, adding:

... bogus road safety issues were brought up and there was a concerted effort to get enough votes to defeat what was normally just a normal part of business of every day at council.

3.2.4 How Mr Woodman sought to influence Casey Council decisions on the H3 intersection

To reduce Wolfdene's contribution to construction of the H3 intersection, Mr Woodman and his associates sought to influence the Casey Council's decisions by:

- using councillors aligned with Mr Woodman to move and support alternative motions to place greater responsibility on Dacland for construction of the H3 intersection
- using the purported independence of SCWRAG to push for the construction of the intersection for safety reasons
- lobbying particular state political candidates and politicians to gain their support.

During examinations, Mr Woodman and Ms Schutz provided conflicting accounts of who was responsible for developing the strategy to influence Casey Council decisions on the H3 intersection.

Mr Woodman asserted that Ms Schutz drove the strategy, claiming that his only part was telling Ms Schutz that Dacland was seeking to release a stage in advance of constructing the intersection, stating, 'and from that moment on she conducted, I would consider, the strategising of how that was going to be rectified'. He went on to say that 'for whatever reason', Ms Schutz advised Councillor Aziz that a motion should be moved before the Casey Council 'that required a developer to develop the H3 intersection in conjunction with another stage of development'.

In contrast, Ms Schutz said that Mr Woodman instructed her on the strategy, even though Elysian Group was her client and she reported to Mr Woodman's son, who was the head of the developer Wolfdene. Ms Schutz also said that Mr Woodman was running the planning strategy.

The evidence shows that Mr Woodman was actively involved in formulating and promoting the strategy to get the H3 intersection built quickly and with as little cost to Wolfdene as possible.

⁷² Casey Council, 16 October 2018, meeting agenda, Item 6.10, which notes Elysian Estate has deferred construction of the intersection in a number of different ways, including through amending the applicable Condition of Permit (condition 72 b), as well as amending the stage sequencing of the subdivision.

3.2.5 The informal H3 working group

By August 2018, Ms Schutz's role was to develop and implement the strategy for the H3 intersection. Ms Schutz was involved in an informal working group to execute the strategy. At different times this group included Ms Schutz, Councillor Ablett (then mayor), Councillor A, the Walkers (president and secretary of SCWRAG) and Mr Woodman's personal assistant. The group met twice in August and once in November 2018.

As noted above in the table of decision points, on 27 August 2018 Ms Schutz, Councillor Ablett, Mr Woodman's personal assistant and the Walkers met to discuss the Hall Road network. A written record of the meeting notes that, among other things:

- Councillor Ablett reported speaking to a state MP, two state candidates and a Casey Council officer. The group discussed a planning permit.
- Mr Walker would contact state election candidate Ms Richards to ascertain her position on Hall Road.
- Mr Walker would arrange for SCWRAG to send a letter to the Casey mayor (Councillor Ablett) outlining the community's concerns.

On 31 August 2018, Mr Walker, in his capacity as president of SCWRAG, sent a letter to the Casey mayor, Councillor Ablett, enclosing a report from a transport planning consultancy. The letter is likely the same letter and associated traffic report referred to by Councillor Aziz in support of his alternative motion to the Casey Council on 4 September 2018 given the similarity of the content and timing.

The same day, the group met again. Handwritten notes from the meeting indicate that the group discussed the need for SCWRAG members to attend the Casey Council meeting on 4 September, letters to be drafted, and the fact that Councillor Ablett and Ms Schutz would be meeting with Councillor Aziz to brief him.

In evidence, Ms Schutz acknowledged that the informal H3 working group was a 'private developers working group', and that it was not appropriate for the mayor, Councillor Ablett, to be a part of this working group, stating, 'I don't think it's transparent for him [Councillor Ablett] to attend a meeting of this nature, to suggest actions coming out of this meeting'.

Ms Schutz ultimately conceded:

... my recollection of the planning strategy on this matter was that it was a commercial interest dressed up in a strong community safety argument and, yes, we were using the community as the basis for my client's commercial interests. Yes.

When presented in examinations with notes of the 31 August 2018 meeting, Councillor Ablett conceded that 'there would have been a meeting', but asserted that he could not remember the meeting.

3.2.6 Use of Casey councillors to influence decisions

Councillor Ablett, Councillor Aziz and Councillor A promoted decisions in the Casey Council that shifted responsibility for construction of the H3 intersection. As outlined below, all three had a conflict of interest due to a commercial arrangement with or donations from Mr Woodman or a Woodman entity. In particular, in examinations, Ms Schutz agreed that Councillor Aziz was 'compliant' with Mr Woodman's requirements, and that Councillor Ablett appeared to be totally in his thrall, stating, 'I think Geoff hung off every word Woodman said to him, really ... if John wanted him to do something, you know, he would – Geoff would make himself available'.

Each time the issue of the H3 intersection was introduced by Councillor Aziz or otherwise came before the Casey Council for a decision, Councillor Aziz did not declare a conflict of interest. Instead, he proposed alternative motions, which in effect supported the interests of Mr Woodman's clients. While Councillor Ablett and Councillor A each withdrew themselves from these decisions, both still engaged in discussions and other activities in the background, which may have influenced the outcome in Wolfdene's favour.

3.2.6.1 Councillor Aziz

Mr Woodman's financial arrangements with Councillor Aziz

As detailed in section 3.6.3, Mr Woodman's financial support for and commercial arrangements with Councillor Aziz were extensive. During the time the H3 matter was before the Casey Council, Councillor Aziz proposed that Mr Woodman purchase Councillor Aziz's family home on Barak Avenue and allow Councillor Aziz to live in the property rent-free. Mr Woodman told IBAC he did not agree to the proposal, but the evidence indicates that he instead agreed to an alternative commercial arrangement with Councillor Aziz.

Under the alternative arrangement, Councillor Aziz received monthly payments of approximately \$25,000 from Mr Woodman. The payments comprised \$23,000 paid into accounts Councillor Aziz nominated and \$2000 in cash. IBAC identified 12 such bank transfers between December 2018 and October 2019, totalling \$276,000. In March 2019, Mr Woodman and Councillor Aziz executed a contract purportedly about the provision of services by Councillor Aziz for a project called the Little River Project. Mr Woodman denied that this was a sham project, but the evidence shows that this agreement was made in an attempt to legitimise and facilitate Mr Woodman's payments to Councillor Aziz.

Despite Mr Woodman's financial arrangements with Councillor Aziz, Councillor Aziz did not declare a conflict of interest about the H3 intersection matter. As shown below, not only was no declaration made, but Councillor Aziz made his assistance conditional on Mr Woodman's financial support.

On 14 November 2018, lobbyist Ms Wreford messaged Councillor Aziz, indicating that Mr Woodman wanted to delay the Barak Avenue purchase due to the publication of articles in *The Age*.⁷³ In response, Councillor Aziz messaged Ms Wreford, stating:

You have placed me in a corner where I have nothing to lose and I will be seeing a lawyer at 3pm today. I have had significant pressure to reverse the decision on Hall Road and that is what I will now do through a notice of motion on Tuesday 20 November.

Shortly after, Councillor Aziz sent a further message, stating:

I am so sick and tired of doing every one's dirty work and getting treated like shit. I have deadlines to manage, and I have not let anyone down in managing their priorities, but when it comes to me, I can't even get a call returned. Sorry I won't play that way anymore.

In evidence, Ms Wreford agreed that the only interpretation open was that Councillor Aziz 'linked the payment of money to his vote on Hall Road'. Ms Wreford agreed that she had understood that to have been the nature of the relationship between Mr Woodman and Councillor Aziz for some time.

⁷³ In particular, the 28 October article referred to the 4 September 2018 Casey Council decision concerning the H3 intersection that was rescinded on 18 September 2018 in a section on 'Unlawful decision-making'. See: Millar R, Schneiders B, Lucas C 2018, 'Casey council, where riches are made with the stroke of a pen', *The Age*.

Councillor Aziz played a pivotal role in progressing the matter of the H3 intersection through the Casey Council. He sought to influence the decisions on the H3 intersection in favour of Wolfdene's interests by:

- discussing the outcome that Mr Woodman and Ms Schutz were seeking for the H3 intersection, introducing alternative motions drafted by Ms Schutz, and being coached by her during the Casey Council debate
- liaising with Ms Wreford regarding his continued support for the H3 strategy
- discussing the H3 matter with Councillor Ablett and Councillor A, despite knowing they had declared a conflict of interest
- working with Councillor Ablett and Councillor A to secure the votes of other Casey councillors to get the motions he moved passed by the Casey Council.

Mr Woodman and Ms Schutz relied on the relationship with Councillor Aziz as a key element of their strategy for the H3 intersection. Whereas Mr Woodman distanced himself so that he was perceived to be at arm's length, Ms Schutz liaised extensively with Councillor Aziz. In evidence, Mr Woodman stated he knew that Councillor Aziz would conceal from other Casey councillors the fact that Ms Schutz had provided the advice he relied on in support of one motion, because those other councillors would not consider the advice to be independent.

Ms Schutz denied providing Councillor Aziz with a script or telling him what he should say about the H3 matter, stating, 'I wrote him some briefing notes and I also wrote him a speech that he could use if he wanted to', later adding:

I'm a planning advocate and I – I guess sometimes I passionately champion the arguments that I've put together, and I think it was a case of passionately championing the arguments that I had put together, and I assume that – you know, Councillor Aziz was the person I was briefing in relation to the alternative recommendation.

Casey Council meeting 16 October 2018 – interactions between Ms Schutz and Councillor Aziz

Just after 9am, Ms Schutz told Councillor Aziz by telephone that SCWRAG was writing a letter, before correcting herself to say, 'well, I have written a letter which is going to be circulated this morning'. Ms Schutz then told Councillor Aziz that the letter was 'basically your speaking notes' and that it contained crash data from the last six months. Ms Schutz said she would send Councillor Aziz an alternative recommendation to his personal email address.

At approximately 9.40am, Ms Schutz messaged Councillor Aziz to say that the SCWRAG letter would be sent within the hour. Councillor Aziz later telephoned Ms Schutz about a letter sent to the Casey Council from Dacland. He forwarded the letter to her. Ms Schutz told him she would look at it and get back to him.

That afternoon, Ms Schutz spoke with Councillor Aziz and outlined what he should argue in response to Dacland's request. Councillor Aziz asked, 'What is the recommendation that we're seeking tonight?' Ms Schutz responded, 'Okay. So your recommendation tonight is that Council does not support the grant of secondary consent to defer the intersection works'. Ms Schutz instructed him to say that the motion should not be supported, because of

community safety. Councillor Aziz asked her to write down the arguments she wanted him to raise. Ms Schutz told Councillor Aziz to just read out the letter from SCWRAG, and that she had drafted an alternative recommendation for him to put forward.

Ms Schutz watched the live stream of the Casey Council meeting. During the debate, she sent Councillor Aziz messages directing him to make particular points and coaching him on what to say. For instance, Ms Schutz told Councillor Aziz to read out the SCWRAG letter in the chamber. Councillor Aziz responded that he had used some of it. Ms Schutz then told Councillor Aziz that his argument was muddled and that he needed to 'read it out in full', and urged him to state that lives were at risk.

As instructed, Councillor Aziz moved to reject the request from Dacland, and proposed an alternative resolution that sought to have Dacland commence construction of the H3 intersection immediately. Councillor Aziz referred to the accident data provided by SCWRAG, and to a letter from the group. The resolution was passed with the casting vote of the deputy mayor, Councillor Smith.

Following the meeting, Ms Schutz told Mr Woodman that Councillor Aziz had done a 'crap job' and said that numerous times he did not do what Ms Schutz had asked of him. She said that Councillor Aziz had muddled the argument and he should have 'stuck to the fucking script'.

During examination, Ms Schutz conceded that Councillor Aziz was not particularly interested in her brief and gave her the impression that he would do as she asked even though he did not understand what he was supporting. Ms Schutz asserted that she did not tell Councillor Aziz what to say during the Casey Council debate on 16 October 2018, maintained that all she was doing was lobbying and advocating for a certain position, and argued that it was ultimately a matter for Councillor Aziz whether he argued for it or not.

3.2.6.2 Councillor Ablett

Mr Woodman's financial support for Councillor Ablett

As outlined in section 3.6.2, Councillor Ablett accepted significant donations and other payments from Mr Woodman from at least 2014. In a contract dated 28 May 2018, Councillor Ablett agreed to sell part of his property in Curwen Road, Mountain View, to Mr Woodman for \$350,000. The contract provided that Mr Woodman would make payments to Councillor Ablett in intervals, with the final payment being subject to obtaining building permits for the purchaser's land within five years. Mr Woodman made three payments of \$50,000 (\$150,000 in total) to Councillor Ablett in May 2018, August 2018 and August 2019 towards the purchase of a section of Councillor Ablett's property at Curwen Road.

When Councillor Ablett was examined by IBAC in December 2019, a building permit had not been obtained, so Councillor Ablett had received \$150,000 while still having use of, and holding the legal title to, the land. In a lawfully intercepted telephone call between Mr Woodman and Councillor Ablett on 22 November 2018, Mr Woodman described the payments for the Mountain View property as a reward to Councillor Ablett for his role in the C219 rezoning.

As noted above, Councillor Ablett declared a conflict of interest about the Casey Council's consideration of the H3 intersection – although he did not disclose the full extent of his interests with Mr Woodman – and recused himself from the decision-making process. During IBAC's examination, Councillor Ablett stated that he understood that, having declared a conflict in a matter, he should not seek to influence another councillor. When presented with the evidence that he did precisely that, Councillor Ablett responded, 'I hadn't remembered that bit.'

Despite declaring a conflict of interest, in the background Councillor Ablett sought to influence decisions on the H3 intersection in favour of Wolfdene's interests by:

- seeking to influence Casey councillors' votes
- discussing with both Councillor Aziz and Mr Woodman which Casey councillors he thought he could encourage to support the motions
- seeking Mr Woodman's advice on whether or not to support the Casey Council officers' recommendations, and what to say to the councillor who would chair the Casey Council meeting in December 2018
- attending strategy meetings with the informal H3 working group (outlined above)
- speaking with Ms Schutz about the H3 intersection and acting as a conduit by passing information from Ms Schutz to Councillor Aziz
- instructing Councillor Aziz through text messages in a Casey Council debate on the H3 intersection from which he had withdrawn due to a conflict of interest.

According to Councillor Ablett, he discussed the H3 intersection with Ms Schutz and Mr Woodman at a meeting in mid-2018, well before the matter was first before the Casey Council in September 2018. In evidence, he agreed that Ms Schutz and Mr Woodman initiated the discussion, stating, 'It was in relation to who paid for the intersection ... That Dacland pay for the H3 intersection'. He initially claimed he did not speak with Mr Woodman or Ms Schutz about the matter after that occasion. However, when presented with evidence to the contrary, Councillor Ablett conceded that he had.

As an example of Councillor Ablett's role in executing the H3 strategy, Councillor Ablett sent text messages to Councillor Aziz during the Casey Council debate on 4 September 2018, telling Councillor Aziz what to say and encouraging him to take on the Casey Council officer. During examination, Councillor Ablett said he did this to assist Councillor Aziz and for the overall benefit of Hall Road. Councillor Ablett agreed that it was a misuse of his position to act as a conduit in a matter in which he had declared a conflict, but asserted that he did it in the interests of the safety of Hall Road.

Similarly, during the Casey Council debate on 16 October 2018, Councillor Ablett declared a conflict of interest about the item concerning the H3 intersection, left the chamber and then texted a fellow councillor seeking their support for Councillor Aziz's alternative motion; however, that councillor declined to support the motion.

3.2.6.3 Councillor A

Mr Woodman's financial support

Councillor A did not receive direct payments from Mr Woodman during the period in which the H3 matter was before the Casey Council. However, as outlined in section 3.7, Mr Woodman donated to Councillor A's state election campaign in 2014.⁷⁴ At the time, there was no cap on donations to candidates in local or state elections. IBAC found that Mr Woodman also made donations and gave pro bono support (via Ms Schutz) to Organisation A, a community organisation which provided support services to Councillor A's family member. In 2015-2017, Councillor A was a member of Organisation A's board of management.

Like Councillor Ablett, Councillor A declared a conflict of interest regarding the Casey Council's consideration of the H3 intersection, but did not make a full disclosure. Councillor A recused themselves from the decision-making process. During examinations, Councillor A indicated they understood that when a councillor declared a conflict of interest in a matter, the councillor was to have 'zero' involvement in that matter. However, Councillor A's actions did not reflect this understanding.

After declaring a conflict regarding the Casey Council's consideration of the H3 intersection, Councillor A:

- met with Mr Woodman and discussed the H3 intersection
- attended a meeting with members of the informal H3 working group
- discussed the H3 intersection with Councillor Aziz and indicated they were aware that a motion was being prepared for him to put to the Casey Council.
- discussed with Councillor Aziz which Casey councillors they needed to get 'on board'
- sought Ms Wreford's assistance to talk with Casey councillors about the issue
- updated Ms Wreford on Casey Council officers' recommendations.

Part of the H3 intersection strategy involved ensuring that Casey councillors who were conflicted (and therefore could not vote on particular matters) instead influence the votes of other Casey councillors in favour of the interests of clients of Mr Woodman and Ms Schutz. Councillor A discussed with Councillor Aziz how to obtain Councillor Crestani's support, including as chair of the Casey Council meeting in December 2018. Councillor Crestani was unaware of this. She ultimately seconded the alternative motions moved by Councillor Aziz in relation to the H3 intersection.⁷⁵

In relation to the informal H3 working group meeting on 14 November 2018, Councillor A stated that their intention was to get Casey Council officers to meet with the developers to find some common ground. However, although Councillor A claimed to want a resolution between the developers, Councillor A did not meet with Dacland or their representatives. Councillor A met only with Mr Walker (purportedly representing residents), and Ms Schutz and Ms Wreford, representing the interests of Elysian Group and Mr Woodman respectively. In evidence, Councillor A stated that they did this because these were the parties Councillor A knew. Councillor A also set up another meeting with both sides and council officers, which Councillor A did not attend.

⁷⁴ Mr Woodman also donated to Councillor A's local government election campaigns in 2012 and 2016, but he did so anonymously in both instances. In 2012, he did so through the Halsalls' family business. In 2016 he donated to a group of councillors pooling their resources together.

⁷⁵ Casey Council, 4 September, 18 September and 16 October 2018, meeting minutes.

3.2.7 The roles of other councillors

The H3 intersection strategy also involved seeking to ensure that Casey councillors who were conflicted influenced others to support their position. In particular, they sought to gain Councillor Crestani's support. In a lawfully intercepted telephone call, Ms Wreford told Councillor Aziz she had spoken to Councillor A about trying to bring Councillor Crestani on board as much as possible, because her vote was needed, not just for the H3, but for other things as well. As stated above, Councillor Crestani was unaware of this.

On 22 November 2018, in advance of Councillor Crestani chairing the Casey Council meeting of 18 December 2018, Councillor Ablett asked Mr Woodman to send him words that he could pass on to Councillor Crestani for her to put forward on the H3 matter. In evidence, Councillor Crestani asserted that she did not use any such wording at the Casey Council meeting, and expressed shock at this exchange. She agreed that a conversation such as the one between Councillor Ablett and Mr Woodman was inappropriate, and suggested that it 'makes people puppets', but asserted that she had not been used as a puppet.

From the evidence, it is clear that Mr Woodman believed that Councillor Ablett had influence over Councillor Crestani. On 27 November 2018, Mr Woodman told Ms Schutz that Councillor Ablett was like a 'ventriloquist', with control over Councillor Crestani. He described how, when the H3 matter came before the Casey Council, Councillor A would declare a conflict and Councillor Crestani would be nominated to chair the meeting, ensuring they had the casting vote.

Although Mr Woodman and Councillor Ablett sought to influence Councillor Crestani, she testified that her vote on the H3 matter was largely influenced by the letter from SCWRAG (detailed below). Councillor Crestani noted that she thought it was particularly significant that SCWRAG had 1100 members.

Councillor Smith assumed the role of acting chair and used his casting vote to break the deadlock in relation to three votes on the H3 intersection on 4 September, 18 September and 16 October 2018, as a result of which Councillor Aziz's alternative motions were carried. Councillor Smith's installation as chair on each of these occasions was consistent with the Casey Council's local laws, which specified that the deputy mayor should take the chair if the mayor is not available – assuming the deputy mayor did not have a conflict. The problem with Councillor Smith was that, like the other deputy mayor, Councillor A, he too had a conflict⁷⁶ but had failed to declare it.

In examinations, Councillor Smith told IBAC that he voted in support of Mr Woodman on these matters because 'I voted on the merit of the debate ... Sam [Aziz] is an extraordinary debater, very persuasive debater'.

3.2.8 Use of SCWRAG to influence the Casey Council

As outlined in section 3.5, SCWRAG was established in 2015 purportedly to represent the voice of the community against a planned industrial park in Cranbourne. In fact, Mr Woodman and his associates were instrumental in establishing SCWRAG for the purpose of promoting their own interests across a range of developments in the City of Casey, including the H3 intersection.

Mr and Ms Walker were president and secretary of SCWRAG, respectively. In April 2018, Ms Schutz proposed to Mr Walker the possibility of SCWRAG working on a project that she called 'the Hall Road project', which involved lobbying for the immediate construction of the H3 intersection when it became apparent that the neighbouring developer, Dacland, was about to seek an amendment to defer its obligation to construct the intersection. In evidence, Ms Schutz said Mr Woodman asked her to engage the Walkers to conduct market research and to lobby in relation to Hall Road, recalling that it was Mr Woodman's idea to engage them to 'lobby Council and State Government and to gain community support'.

⁷⁶ See sections 3.6.5.2 and 3.7.2.

On 23 April 2018, Ms Schutz sent the Walkers a letter briefing them on the Hall Road project. She outlined that the Walkers were to lobby the state and local governments to upgrade and widen Hall Road as a matter of urgency, due to the significant safety risk to the community. In evidence, Mr Walker said that, in his view, the safety concern was broader than the H3 intersection. He believed that a much larger section of Hall Road should be included in the community safety concerns.

The Walkers were paid \$2500 per month for Hall Road and \$2500 per month for market research. Schutz Consulting was the invoicing entity. Ms Schutz instructed Mr Walker to submit invoices for 'market research' and the Hall Road project. Schutz Consulting then invoiced Elysian Group and Watsons to cover the payments to the Walkers. This payment process obscured the financial connection between Mr Woodman, Mr Walker and SCWRAG. Ms Schutz gave evidence that this arrangement was not put in place to obscure the connection between Mr Woodman and the Walkers, but rather 'out of administrative convenience to Elysian Group and Watsons'.

Mr Walker said that his role was to meet with councillors to determine the status of the H3 intersection. The evidence demonstrates that, in at least some of these meetings, they discussed strategies to help ensure the matter passed through the Casey Council. Mr Walker attended these meetings in his capacity as president of SCWRAG, not as an interested independent community member.

As part of the strategy, Mr Walker wrote letters to Casey councillors, the Casey mayor and the Minister for Roads in SCWRAG's name with Ms Schutz's assistance, outlining the community's purported safety concerns about Hall Road. Mr Walker and Ms Schutz also met with the Minister for Roads' staff to discuss the H3 intersection. Ms Schutz would identify when SCWRAG's input would benefit her client and would instruct Mr Walker accordingly.

SCWRAG's influence on Casey Council processes

According to Ms Schutz, the developers used the community's objectives like a 'Trojan horse'.

Before the H3 matter went before the Casey Council, Ms Schutz obtained advice from a transport planning consultancy at Mr Woodman's request. Watsons paid for the report. Ms Schutz provided the report to SCWRAG. SCWRAG sent the report to the Casey Council, with a covering letter that Ms Schutz helped to prepare. In the Casey Council debate on 4 September 2018, Councillor Aziz referred to the letter and report to support his alternative motion.

When questions were asked about the validity of the alternative motion passed on 4 September 2018, Mr Woodman instructed Ms Schutz to obtain legal advice about the matter. She arranged for SCWRAG to seek advice from a barrister, funded by Watsons. The intention was to provide that advice to the Casey Council if it would assist Ms Schutz and Mr Woodman's client. In evidence, Mr Walker said he was in an uncomfortable position and felt he was being used by Ms Schutz, but he reluctantly agreed, because he was also concerned about the safety issues and wanted the intersection completed quickly. Ms Schutz provided the legal advice to Councillor Aziz, who used it to support the alternative motion proposed during the next Casey Council meeting on 18 September.

Ms Schutz also arranged for SCWRAG to write to the Casey Council proposing an alternative resolution that if either developer tried to re-sequence or delay delivery of the intersection, the Casey Council (as opposed to council officers) should consider the application. Ms Schutz helped write the letter and the alternative recommendation. The documents were sent to Councillor Ablett, who gave them to Councillor Aziz to enable him to obtain advice on the legal validity of the proposed recommendation.

Following the rescission motion on 18 September 2018, Mr Walker actively engaged with the Casey Council, expressing disappointment and proposing a way forward that would 'address the concerns of Councillors ... whilst still meeting the community's needs'.

Ms Schutz said that, following the 16 October 2018 Casey Council meeting, she informed Mr Woodman and Mr Walker that she no longer wanted to be involved in the matter, so Mr Woodman began dealing directly with Mr Walker.

However, the evidence shows that Ms Schutz continued to be involved in meetings about the H3 intersection, including a meeting of the informal H3 working group on 14 November 2018 (discussed above). She continued to take instructions from Mr Woodman on the H3 intersection and helped draft SCWRAG correspondence to Casey councillors in November, which she admitted to during examination.

In evidence, Mr Woodman denied using SCWRAG as part of a strategy to influence Casey Council decisions on the H3 intersection. However, a telephone conversation with an associate on 28 October 2018 contradicts his denial. During the conversation, Mr Woodman stated that he was 'able to convince Councillors, through a community group, that the road was a black spot and could potentially cost lives'.

Ms Schutz similarly denied that SCWRAG's involvement was part of an overall strategy. In evidence, Ms Schutz asserted that, while she engaged the Walkers in their personal capacity, it was Mr Walker who brought SCWRAG into the matter. However, when asked whether it was apparent to her that Mr Woodman gave Mr Walker a job thinking he would be able to exert influence over Mr Walker, she stated, 'I think in 2016 I didn't join the dots. I can see on reflection that's been the effect, yes', later adding, 'I agree that it [the continued employment] was ensuring that Ray [Walker] and [his spouse] maintained their enthusiasm in relation to the community lobbying, which John Woodman wanted them to do'.

This observation went to the heart of Mr Woodman's strategy – offering assistance, usually financial, to those who need it but who might ultimately also be of use to him. In this instance, Mr Walker was well placed as president of SCWRAG to be of use in executing the H3 intersection strategy.

3.2.9 Lobbying political candidates and politicians

When Ms Schutz retained the Walkers in April 2018, their responsibilities included lobbying the Victorian Government on the Hall Road issue, which, according to Ms Schutz, was not limited to the H3 intersection.

The Walkers' first task was to write to the Minister for Roads outlining road safety problems and community concerns. Ms Schutz directed Mr Walker to request a meeting with the Minister for Roads, which she would also attend. Ms Schutz also suggested that Mr Walker prepare a petition to be tabled in the Victorian Parliament. Ms Schutz offered to assist, as she considered the format of the petition to be critical.

On 1 May 2018, the Walkers met the Minister for Roads' staff to discuss the Hall Road issue. On 16 June 2016, the Walkers met with the Minister for Roads at a 'meet and greet' and spoke with them about the issue. In evidence, Mr Walker asserted that he did so as president of SCWRAG, and so did not disclose that he was being paid to lobby for construction of the intersection.

In June 2018, Ms Schutz arranged for her and Mr Walker to meet with local MP Mr Perera and state election candidate Ms Richards to discuss Hall Road. In evidence, Mr Walker said that Mr Woodman and Ms Schutz wanted Ms Richards' support as the potential new Member for Cranbourne.

At the informal H3 working group meeting on 27 August 2018, it was agreed that Mr Walker would contact Ms Richards to ascertain where the Hall Road project sat at that time. Approximately a week before that meeting, Councillor Ablett had spoken to the Minister for Roads about Hall Road and reported to the working group that '[the Minister for Roads] is now on board with it'. The meeting notes indicate that the group agreed that a letter should be sent to the Minister for Roads requesting funding for Hall Road.

Throughout 2018, the Walkers met with and wrote to politicians, political candidates and councillors to lobby on behalf of SCWRAG for the provision of the H3 intersection. The evidence demonstrates that in most cases the Walkers did not disclose that they were being paid by or on behalf of the developer. These interactions lacked transparency. In evidence, Mr Walker asserted that he attended those meetings in his capacity as president of SCWRAG, and on the basis that he was advocating on behalf of the community. The lack of transparency meant that those he met and communicated with were not able to make an informed assessment of his representations.

3.2.10 Conclusion

The H3 intersection matter demonstrates how Mr Woodman used relationships with Casey councillors and state politicians, which he had cultivated over a number years, to influence Casey Council processes and decisions in favour of the Elysian Estate development (owned by Elysian Group and managed by Wolfdene). As the director of Wolfdene and major stakeholder in Elysian Group, Mr Woodman's son stood to gain financially. When asked about the H3 intersection, his son stated, 'the interest from a financial perspective was mine and mine alone'. However, Mr Woodman also had a financial interest in the matter as he had guaranteed a loan to Elysian Group.

Over several years, Mr Woodman provided financial and commercial support to Councillor Aziz and Councillor Ablett in return for their support on Casey Council matters that affected his interests. This included direct payments to Councillor Aziz and Councillor Ablett in 2018, when the H3 matter was before the Casey Council. Evidence before IBAC suggests that Councillor Aziz made his support for the H3 matter dependent on Mr Woodman's continued financial support to Councillor Aziz. As described above, Mr Woodman also provided financial support to Councillor A primarily through donations to their local and state campaigns. All three councillors acted (knowingly or otherwise) to influence Casey Council processes, decisions and other councillors, in accordance with Mr Woodman's strategy.

Ms Schutz was involved in developing the H3 strategy and implemented it, while Mr Woodman remained at a distance from the Casey Council's decisions. In evidence, Ms Schutz ultimately agreed with the proposition that Councillor Aziz and Councillor Ablett had done whatever Mr Woodman wanted them to do, and she saw them as people who were acting in Mr Woodman's interests. Yet Ms Schutz was unwilling to concede that any of this behaviour lacked integrity, acknowledging only that it was a process that was controlled.

Mr Woodman also used his commercial relationship with the Walkers to use SCWRAG to push for the Casey Council decisions that ultimately favoured Wolfdene and Elysian Group's interests. The use of SCWRAG, purporting to represent the 'community's voice' of more than 1000 members, lacked transparency. Although Ms Schutz

asserted that it is common for stakeholders with the same objective to form an alliance, the role SCWRAG played appears to have influenced Councillor Crestani's position on the H3 intersection in favour of Wolfdene and Elysian Group's interests, in circumstances where Councillor Crestani was unaware of the link between SCWRAG and Mr Woodman.

The strategies used by Mr Woodman, his associates and the councillors who benefited from his support lacked transparency and integrity. A significant number of people supported Mr Woodman and Ms Schutz to achieve their objectives despite being in positions of conflict, material or otherwise. This conduct is serious, given that their duty as public officials was to act in the best interests of those they were elected to serve.

Some individuals may have supported Mr Woodman's activities without being aware that they were doing so. That this could occur highlights the systemic corruption risks inherent in council processes described in section 7.3.4.2.

IBAC does not consider that Councillor A engaged in corrupt conduct. However, it is clear that Councillor A did not comply with their obligations to manage their conflict of interest. Operation Sandon clearly shows how important it is for councillors to comply with obligations and processes that exist to ensure that conflicts of interest are properly managed.

Councillor Aziz was pivotal in executing the H3 strategy. He sought to obtain financial gain for himself, repeatedly failed to declare a conflict of interest, and advanced the objectives of Mr Woodman at Casey Council meetings. These actions were inconsistent with his obligations to not misuse his position as a councillor under the LGA 1989.⁷⁷ Councillor Ablett and Councillor A similarly misused their positions by attempting to influence Casey Council decisions in favour of Wolfdene and Elysian Group, while making limited disclosures that they had conflicts of interest when H3 matters arose at the Casey Council. The actions of all three councillors were also contrary to the Councillor Code of Conduct.⁷⁸

⁷⁷ LGA 1989 s 76D specified that a councillor must not misuse their position to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person. The *Local Government Act 2020* (LGA 2020) s 123(1) similarly specifies that a councillor must not use their position to gain or attempt to gain a direct or indirect advantage for themselves for any other person; or cause, or attempt to cause, detriment to the Council or another person.

⁷⁸ LGA 2020 s 139(3)(a) and Local Government (Governance and Integrity) Regulations 2020 r 12, Sch 1, cl 4.

3.3 Pavilion Estate

3.3.1 Overview

Shortly after approving a development permit for housing development Pavilion Estate in November 2017, the Casey Council considered an application made by Schutz Consulting Pty Ltd on behalf of Wolfdene Pty Ltd (lodged in December 2017) to amend the permit.⁷⁹ That amendment sought to reduce open-space requirements and road-reserve widths, and make the Casey Council financially responsible for the cost of constructing Morison Road. In effect, these changes would decrease the costs of the developer, Wolfdene, and provide it with an extra 1725 square metres of net developable land to sell on behalf of the owners of the Pavilion Estate land. Mr Woodman has stated that the '1725 m2 comprised a 6-metre width of land adjacent to the Casey Fields Sporting Complex ... set aside for the landing of rugby balls kicked from the adjacent rugby fields inside Casey Field'.

To obtain the Casey Council's approval of the application, Mr Woodman, Ms Schutz and Ms Wreford worked with Councillor Aziz to draft and move motions in favour of the amendment. In April 2018, the Casey Council approved the amendment without debate, despite advice from the Casey Council's planning officers that the proposal should be rejected. As a result, the community lost much-needed open space in a densely populated area. The Casey Council officers' report stated that the changes requested in the amendment had been discussed at length and rejected during the original application process, and that they were also inconsistent with the relevant PSP and Casey Council policy.⁸⁰

3.3.2 Who stood to benefit?

The owners of the Pavilion Estate land were the primary beneficiary of the amendment to the Pavilion Estate development permit, because it expanded the area of saleable land. The Pavilion Estate development was managed by Wolfdene, of which Mr Woodman's son was a director and shareholder.

Whether Mr Woodman had any other financial arrangement with his son is unknown, but the contemporaneous documentation and detail of conversations obtained by IBAC do not indicate that Mr Woodman's son played any part in the course plotted by his father and Ms Schutz in the Pavilion Estate strategy.

⁷⁹ Casey Council, 3 April 2018, meeting agenda and minutes.

⁸⁰ Ibid, Item 6.1.

3.3.3 Key decision points – how events unfolded

Between December 2017 and April 2018, Mr Woodman, Ms Schutz, Ms Wreford and Councillor Aziz implemented a strategy to obtain the Casey Council's approval to amend the development permit for Pavilion Estate. The table below highlights key decision points at the Casey Council meetings in purple.

Date	Actions, processes and outcomes
20 December 2017	Schutz Consulting, acting on behalf of the owners of the Pavilion Estate land, applied to delete two conditions from the development permit for the Pavilion Estate housing subdivision that abutted Casey Fields recreational areas. ⁸¹
12 February 2018	Schutz Consulting, acting on behalf of the owners of the Pavilion Estate Land, sought to delete a third condition from the Pavilion Estate subdivision permit. ⁸²
10 March 2018	Councillor Ablett forwarded a Casey Council email to Mr Woodman from the Manager City Planning to the Casey Fields Steering Committee outlining concerns about the effects of the permit application on the Casey Fields sporting precinct.
15 March 2018	Ms Halsall's spouse sent an SMS message to Mr Woodman, stating, 'I caught up with Wayne [Smith] he is completely on board. He will follow Sam's [Aziz] lead'. Ms Halsall's spouse then described how this affected the voting of other councillors at the City of Casey, concluding, 'so I think you have the numbers'.
19 March 2018	Lobbyist Ms Wreford emailed Councillor Aziz background material that Ms Schutz had prepared ahead of the Casey Council's consideration of the application.
20 March 2018	The Casey Council deferred consideration of the amendment. Councillor Rowe successfully moved a motion to defer consideration of Wolfdene's application for two weeks. During the meeting, Councillor Aziz reported to Ms Wreford, 'we were ambushed'.
22 March 2018	Councillor Aziz, Ms Wreford, Mr Woodman and Ms Schutz met at a club where they were photographed by IBAC.
1 April 2018	Ms Schutz provided Councillor Aziz with draft wording for a motion to support the application.
3 April 2018	The Casey Council officers' report opposed the amendment, because it created detriment both to the Casey Fields sporting complex and to the future residents of the estate. ⁸³ Contrary to this recommendation, Councillor Aziz successfully moved a motion (provided by Ms Schutz) supporting the amendment. The motion was carried by the Casey Council without debate.

⁸¹ Casey Council, 20 March 2018, meeting agenda.

⁸² Ibid, Item 6.3.

⁸³ Casey Council, 3 April 2018, meeting agenda.

3.3.4 The role of Councillor Aziz

Financial arrangements between Mr Woodman and Councillor Aziz

From at least 2017, Councillor Aziz received significant personal benefits through a range of financial arrangements with Mr Woodman, as outlined in section 3.6.3. Around the time when the Pavilion Estate amendment was before the Casey Council, Councillor Aziz received payments purportedly for a \$600,000 'investment' he had made with Mr Woodman in 2017. In evidence, Councillor Aziz agreed that Mr Woodman was party to an arrangement preventing Councillor Aziz's first spouse from accessing money as part of their divorce settlement.

As stated for Amendment C219 and the H3 intersection, Councillor Aziz was part of a core group of councillors cultivated by Mr Woodman to influence planning and development decisions in the City of Casey. In evidence, Councillor Aziz denied meeting with developers, and initially denied meeting with Ms Schutz or Mr Woodman in relation to Pavilion Estate, other than in the presence of Casey Council officers. He gave evidence that if a councillor was to meet with a developer to discuss a matter before the Casey Council, a Council officer should be present. However, he ultimately agreed that he advocated for Mr Woodman on the Pavilion Estate amendment in March and April 2018, and introduced the motions outlined above, stating that he had been 'mediating' the matter between the applicant and Casey Council officers.

Councillor Aziz also agreed that he probably met with Ms Schutz, Ms Wreford and Mr Woodman on 22 March 2018 to discuss the 'ambush' at the Casey Council meeting two days earlier. He also gave evidence that it was not unusual for third parties, with or without a financial interest in a matter, to lobby councillors before and during Casey Council meetings.

Councillor Aziz did not declare a conflict of interest in relation to the Pavilion Estate amendment. In evidence, he acknowledged that he was obliged to do so, and should not have promoted the Pavilion Estate amendment – either inside or outside the Casey Council chamber. However, Councillor Aziz said that he did not declare a conflict of interest because his arrangement with Mr Woodman was coming to an end.

3.3.5 The role of Councillors Ablett and Smith

As noted above, in March 2018 Councillor Ablett improperly shared a Casey Council email with Mr Woodman, outlining concerns about the effects of the permit amendment application on the Casey Fields sporting precinct, prior to the Casey Council's consideration of the application.

The evidence also shows that Mr Woodman indirectly briefed Councillor Smith on certain projects, including Pavilion Estate, through Ms Halsall's spouse. For example, in a text message on 15 March 2018, Ms Halsall's spouse told Mr Woodman, 'I caught up with Wayne [Smith] and he is completely on board. He will follow Sam's [Aziz] lead ... I think you have the numbers'. Four days later in an email to Ms Halsall's spouse, Mr Woodman referred to 'a further briefing note for Wayne [Smith]', highlighting again the fact that council officers have made major mistakes on two adjacent projects to Pavilion and expecting us to fix, thanks'. In evidence, Councillor Smith agreed that Ms Halsall's spouse had acted as an intermediary between himself and Mr Woodman, but Councillor Smith also maintained that he was not aware that Watsons had been involved in the Pavilion Estate, Amendment C219 or the H3 intersection. In a submission to IBAC, Ms Halsall's spouse asserted that this text message exchange 'in no way demonstrates that I was briefing Councillor Smith or lobbying on behalf of anyone'.

3.3.6 Conclusion

The Pavilion Estate amendment provides another example of how Mr Woodman and his associates sought to influence Casey Council processes. Together, they developed and implemented a strategy to promote a permit amendment that would ultimately increase the development's financial returns, benefiting Wolfdene and the owners of the Pavilion Estate land, who had engaged Watsons for this work. Mr Woodman relied on Councillor Aziz to move and support motions at the Casey Council in favour of the amendment. In evidence, both Councillor Aziz and Mr Woodman initially sought to minimise the extent of their relationship, both denying that meetings and other communications had taken place.

Communications between Ms Halsall's spouse and Mr Woodman also suggest that Councillor Smith had assured Ms Halsall's spouse that he would vote in support of the permit amendments proposed by Councillor Aziz.

Once again, Councillor Aziz was key to developing and implementing the strategy. He obtained a personal financial gain through his arrangements with Mr Woodman while promoting Mr Woodman's interests. Yet he again failed to declare a conflict of interest. Like his actions in relation to Amendment C219 and the H3 intersection, Councillor Aziz's actions in relation to Pavilion Estate were inconsistent with his obligations under the LGA 1989 to not misuse his position as a councillor.⁸⁴

3.4 Brompton Lodge

3.4.1 Overview

Operation Sandon revealed how Mr Woodman and his associates sought to influence planning decision-making to further their interests in relation to Amendment C219, the H3 intersection and Pavilion Estate. During Operation Sandon, a further planning matter also came to IBAC's attention. It related to a 108-hectare parcel of rural land in Cranbourne South (now known as Brompton Lodge Estate) and efforts to have the land included within the Urban Growth Boundary (UGB) and rezoned for residential development. IBAC's ability to gather evidence about Brompton Lodge was constrained because key events and decisions occurred before IBAC's investigation commenced.

IBAC did not find any improper conduct by the owners of the relevant land,⁸⁵ people employed by the landowners, or public officials, except for several Casey Councillors who failed to appropriately declare and manage related conflicts of interest (see section 3.4.3.2).

Rather, Brompton Lodge is noted in this report because it provides an example of the heightened risk of privileged access and improper influence that is common to all rezoning matters because of the potential for windfall gains. The land that now constitutes Brompton Lodge was purchased for approximately \$400,000 between 1966 and 1978. The land was rezoned in 2016. In 2018, it sold for \$55 million.

Similar to the strategies used to promote other planning matters discussed in this report, Operation Sandon showed that Mr Woodman and his associates sought to advance Brompton Lodge by seeking to build relationships with, and gain the support of, Casey councillors, lobbying local and state government decision-makers, and making donations. These activities gave Mr Woodman privileged access and opportunities to influence beyond what is usually available to members of the public. These activities carry the risk of improperly influencing or corrupting decision-makers. The matter of Brompton Lodge highlights the need for reform to manage this risk.

⁸⁴ LGA 1989 s 76D specified that a councillor must not misuse their position to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person. The *Local Government Act 2020* s 123(1) similarly specifies that a councillor must not use their position to gain or attempt to gain a direct or indirect advantage for themselves for any other person; or cause, or attempt to cause, detriment to the Council or another person.

⁸⁵ Operation Sandon did not identify any improper conduct by the landowners in seeking to rezone and sell the land, nor does IBAC imply that they were aware of or involved in any improper activities. In response to IBAC's report, the landowners noted that their efforts to have the land rezoned, and the profits they subsequently made, were consistent with those of other nearby and bordering landowners, who enjoyed the good fortune of having their land being rezoned as a result of urban sprawl. The landowners added that the land was used for farming and as a family home for decades before being sold and noted that the Casey Council had supported the inclusion of the Brompton Lodge land in the UGB since 2001.

3.4.2 How events unfolded

In 2005, the UGB was extended. However, despite a Casey Council request, the Brompton Lodge land was not included.⁸⁶ In 2007, the landowners engaged a company part-owned by Mr Woodman's son, Urban Development Investments Australia Pty Ltd (UDIA), to help seek inclusion of the land in the UGB and approval for urban development. UDIA employed Mr Woodman's company Watsons to assist with this strategy, as well as lobbyists Philip Staindl and Geoffrey Leigh. For the purpose of this report, UDIA refers to a group of companies that Mr Woodman's son had part ownership of and which were involved in planning and development matters in the City of Casey.

At a meeting on 19 August 2008, the Casey Council agreed to again promote the inclusion of the Brompton Lodge land in the UGB. The following month, the Casey Council wrote to the Minister for Planning and the CEO of the Growth Areas Authority to promote this position, before voting to continue advocating for the land's inclusion on 3 August 2010.⁸⁷

In 2011, following a state election the previous year, the new Minister for Planning appointed an advisory committee to review the UGB and consider further inclusions.⁸⁸ The committee reported in November 2011, recommending that both the Brompton Lodge Precinct and a neighbouring golf course be included in the UGB.⁸⁹ The Victorian Government accepted only the recommendation to include Brompton Lodge. In 2012, the Minister for Planning approved inclusion of the land.⁹⁰

The approval stipulated that any urban development of Brompton Lodge would require further planning and approvals, including a PSP.⁹¹ In October 2013, the Casey Council considered a draft PSP for Brompton Lodge (prepared by UDIA) and resolved to write to the Growth Areas Authority seeking delegated planning authority status for the matter.⁹² The PSP was to be introduced through an amendment (C190) to the Casey Planning Scheme.⁹³

The Metropolitan Planning Authority, formerly the Growth Areas Authority, subsequently prepared Amendment C190 to Casey Planning Scheme and exhibited it in late 2015. A PPV panel reviewed and reported on the PSP in June 2016, recommending the amendment be approved subject to numerous amendments.⁹⁴ In 2016, the Minister for Planning approved the PSP, including residential zoning.⁹⁵

In January 2018, the land was sold to another development entity related to Mr Woodman's son, 1050 Western Port Highway Pty Ltd. Wolfdene has since commenced development, with plans for approximately 1500 dwellings. IBAC notes that this arrangement replaced an earlier 2012 signed agreement between UDIA and the landowners, under which UDIA was to develop the land in exchange for 50 per cent of the profits generated by the development.

3.4.3 The strategy to rezone Brompton Lodge

As noted above, Mr Woodman was engaged to assist in rezoning Brompton Lodge for residential development in Melbourne's UGB.

Two key planning changes were required to achieve this:

- inclusion of the land in the UGB. This change relied on the Casey Council's support, but ultimately required approval from the Minister for Planning
- rezoning of the land for residential development. Different elements of the rezoning process required the Casey Council's support, a PPV panel review and approval from the Minister for Planning.

Consequently, Mr Woodman sought to influence decision-making at both Casey Council and Victorian Government levels by lobbying, working with lobbyists and making political donations. He also relied on Casey councillors with whom he had cultivated relationships through donations and other benefits to support the rezoning at the Casey Council.

86 PPV 2009, *Panel Report, Amendment C102 – Cranbourne West PSP*, p 152. Inclusion was sought as part of the review of Melbourne's UGB and on the basis that the Casey C21 *A vision for our future strategy* designated the property for future large lot residential and rural residential development.

87 Casey Council, 3 August 2010, meeting agenda.

88 Casey C170 Explanatory Report Approval Gazetted.

89 PPV, 14 June 2016, *Panel Report, Casey Planning Scheme Amendment C190, Brompton Lodge Precinct Structure Plan*.

90 Minister for Planning, 12 June 2012, *Reasons for decision to exercise power of intervention, Amendment C170 to the Casey Planning Scheme*; 'Notice of Approval of Amendment C170', 13 September 2012, *Victoria Government Gazette*, no. G37; Casey C170 Explanatory Report Approval Gazetted; and Casey C170 Map 14 Approval Gazetted.

91 Casey C170 Explanatory Report Approval Gazetted.

92 Casey Council, 15 October 2013, meeting minutes.

93 PPV 2016, *Panel Report, Casey Planning Scheme Amendment C190, Brompton Lodge Precinct Structure Plan*.

94 Brompton Lodge Precinct Structure Plan – Draft MPA Plan – November 2015 – Amendment C190; PPV, 14 June 2016, *Panel Report, Casey Planning Scheme Amendment C190, Brompton Lodge Precinct Structure Plan*; and Casey C190 Explanatory Report.

95 Notice of Approval of Amendment C190, 15 December 2016, *Victoria Government Gazette*, No. G50.

IBAC has no evidence that these engagements did unduly influence decision-makers. Rather, IBAC's focus is on the strategy that Mr Woodman and his associates employed in seeking to influence decision-makers regarding Brompton Lodge.

3.4.3.1 Influencing the Victorian Government

UDIA engaged lobbyists Mr Staindl and Mr Leigh to support the Brompton Lodge UGB application. Mr Staindl and Mr Leigh worked in partnership in the firm All Weather Solutions between 2006 and 2021. Mr Staindl was associated with the Labor Party, while Mr Leigh was associated with the Liberal Party. Mr Woodman worked with Mr Staindl and Mr Leigh, whom he referred to as 'political facilitators', to help gain access to and influence state and local government decision-makers.

In August 2011, *The Age* published an article titled 'Lib donors poised to hit payday'. The article reported that the Brompton Lodge landowners, Mr Leigh and Watsons were pushing the rezoning of Brompton Lodge with the state government and made reference to alleged political donations made by Watsons and the landowners, and engagements with decision-makers at fundraising events.⁹⁶

In a statement to IBAC, representatives for the landowners stated that the landowners did not engage in active lobbying and that their donations were not an attempt to influence the rezoning of their land. They clarified that they had made state government political donations of \$2500:

- \$1000 to a Liberal candidate in 2010 who was the daughter of a long-term friend
- \$500 to another Liberal candidate
- \$1000 to Councillor Ablett, who unsuccessfully stood as the Liberal Party candidate for the state seat of Cranbourne in the November 2010 election.

In evidence, Councillor Ablett claimed he did not know whether Mr Woodman was involved in any contributions to that campaign. Official contribution disclosure returns indicate that Mr Woodman's entities contributed between \$13,800 and \$15,000 to the Liberal Party that financial year.

3.4.3.2 Influencing local council – the role of key Casey councillors

Financial arrangements between Mr Woodman and key councillors

As outlined in section 3.7, the evidence before IBAC shows that Councillor Janet Halsall and her spouse had received financial benefits from Mr Woodman since at least 2008. A memorandum by Mr Woodman on 20 June 2008 reported that 'Watsons are assisting Janet's re-election in the forthcoming election in November 2008'. This timing coincided with Councillor Halsall's support for inclusion of the Brompton Lodge land in the UGB. Subsequently, the Halsalls received various financial benefits, and helped Mr Woodman make covert payments to Casey Council candidates before the 2012 and 2016 Council elections.

Councillor Aziz and Councillor Ablett received significant personal financial benefits from Mr Woodman in exchange for their support during the period the Brompton Lodge matter was before the Casey Council, as outlined in section 3.6. Councillor A also gained financial benefit and in-kind support from Mr Woodman and his associates during this period, as described in the same section. Mr Woodman provided financial support to Councillor Aziz from at least 2017, but also assisted Councillor Aziz and a group of Casey Council candidates with their election campaigns in 2012 and 2016.

Councillor Ablett received various payments and benefits from Mr Woodman, going back as far as 2010, when Mr Woodman contributed between \$10,000 and \$15,000 towards the purchase of interest in a horse.

The strategy to include Brompton Lodge in the UGB and have it rezoned for residential development included efforts to gain the Casey Council's support. Mr Woodman promoted Brompton Lodge with the Casey Council by relying on councillors with whom he had cultivated relationships through donations and other benefits. Two examples are detailed below.

⁹⁶ Millar R 2011, 'Lib donors poised to hit payday', *The Age*.

On 19 August 2008, Casey councillors considered a Council officers' report which made recommendations on proposed amendments to the Cranbourne West PSP, Amendment C102.⁹⁷ The report briefly referred to Brompton Lodge, noting that the Casey Council had unsuccessfully sought to have the land considered as part of the 2005 UGB review.⁹⁸ The report did not make any recommendations about the Brompton Lodge land.

Councillor Halsall, then the mayor, successfully moved an alternative motion which included '[t]hat the Council request the Minister [for Planning] and the growth areas authority include land at 1050 Westernport Highway, Cranbourne West within the UGB in the event that the UGB is reviewed by the State Government'. This resolution referred to the Brompton Lodge land.

In evidence, Ms Halsall initially denied that Mr Woodman or his employees had contacted her about Brompton Lodge, noting that more than 10 years had passed since the events in question. However, memoranda show that in the 10 months before the vote, Mr Woodman reported to others that Councillor Halsall had been briefed on the issue, had shown 'overwhelming support' and was 'leading the charge' on this issue. During her examination, Ms Halsall ultimately agreed that she must have been briefed and must have talked to Mr Woodman about the issue. As noted above, on 20 June 2008 Mr Woodman reported in a memo that his company, Watsons, was assisting Councillor Halsall's re-election in November.

On 18 August 2008, the day before the Casey Council vote on amending the Cranbourne West PSP, Mr Woodman emailed Councillor Halsall suggesting she move motions to improve the motions proposed in the Casey Council officers' report. It appears that Councillor Halsall did not move those motions, though she did move an alternative motion in support of including Brompton Lodge in the UGB. Mr Woodman's email to her highlights the extent to which he expected her support.

Councillor Halsall did not declare a conflict of interest in this matter. In evidence, Councillor Halsall ultimately acknowledged that her involvement in the Brompton Lodge issue and her failure to declare a conflict of interest was an error of judgment which she deeply regretted.

As noted above, Mr Woodman purchased an interest in a horse from Councillor Ablett on 10 August 2010. In evidence, Councillor Ablett asserted that he knew nothing of Mr Woodman before this and did not become aware that he was a developer until a couple of years later. He was unable to explain how Mr Woodman had come to him, as he had not advertised an interest in a horse for sale. The horse never raced.

In evidence, Councillor Ablett denied that this arrangement might have influenced the Casey Council vote on Brompton Lodge's inclusion in the UGB on 3 August 2010, a week before the purchase. He maintained that it was not until 2013 or 2014 that he became aware of Mr Woodman's interest in Brompton Lodge.

However, Councillor Ablett's assertion that he did not know about Mr Woodman's interest in Brompton Lodge before 2013 or 2014 is untenable given his interactions with Mr Woodman since 2010 and the detail included in the 2011 article in *The Age* about Brompton Lodge, in which Councillor Ablett and Watsons are named, and Councillor Ablett is quoted in response to questions from *The Age*.

3.4.4 Conclusion

IBAC did not find any improper conduct by the landowners or their employees, or by public officials, except for several Casey Councillors who failed to appropriately declare and manage their related conflicts of interest. IBAC does not seek to imply that any further improper conduct occurred in relation to the Brompton Lodge matter.

The strategies Mr Woodman employed in obtaining rezoning approval for Brompton Lodge shared common features with other developments discussed in this report, including the use of political lobbying and donations, and providing financial benefits to Casey councillors.

The Brompton Lodge matter, together with the other planning matters discussed in this report, shows how opportunities to influence decision-making in favour of private interests can be bought by those with the means to make political donations and employ political lobbyists. Together they highlight the corruption risks present in planning and vulnerabilities in Victoria's regulation of political funding and lobbying. Mr Woodman and his associates were able to exploit these vulnerabilities to promote their interests in Brompton Lodge and later developments.

⁹⁷ Casey Council, 19 August 2008, meeting agenda.

⁹⁸ *Ibid.*, Item 10.

3.5 Save Cranbourne West Residents Action Group

3.5.1 Overview

The Save Cranbourne West Residents Action Group (SCWRAG) was established in early 2015. According to the SCWRAG website, the group was started by residents who wanted to 'stand against the planned industrial park in Cranbourne West'.⁹⁹ SCWRAG claimed to represent the 'voice of the people'. While IBAC does not dispute that there was local support for Amendment C219, the evidence is that certain landowners, developers and their associates were instrumental in establishing, directing and funding the operation of SCWRAG to support their private commercial interests.

Once established, SCWRAG's activities aligned with the commercial interests of Leighton Properties, one of the owners of the land subject to Amendment C219.¹⁰⁰ Mr Kenessey, a Leighton Properties employee and later consultant, worked with consultants Mr Woodman and Ms Schutz to establish and direct SCWRAG to promote the amendment. Cranbourne West residents the Walkers, who were concerned about the industrial zoning, became president and secretary of SCWRAG. As stated previously, Leighton Properties financed SCWRAG's activities relating to Amendment C219.

From 2015 onwards, SCWRAG sought to influence key decisions on Amendment C219, and later the H3 intersection. SCWRAG made submissions to the Casey Council, was legally represented at a PPV panel hearing on Amendment C219, prepared petitions to the Casey Council and the Victorian Parliament, and wrote to key decision-makers, including the Minister for Roads and the Minister for Planning. When doing so, SCWRAG did not disclose the primary source of its funding, nor the involvement of representatives of particular landowners and developers who shaped and directed its activities.

Although it is not possible to assess the extent of SCWRAG's influence over key decisions, SCWRAG formed part of an overall strategy of promoting those commercial interests while appearing to be at arm's length. This approach lacked transparency and, together with the other relationships of influence cultivated by Mr Woodman and his associates, undermined the integrity of these decision-making processes.

In 2018, SCWRAG's activities expanded to align with the interests of the development manager (Wolfdene) and landowning entity (Elysian Group) for Elysian Estate regarding the H3 intersection.¹⁰¹ At the same time, Elysian Group and Watsons each engaged Mr Walker in two separate consultancy agreements.

In addition to the consultancy payments made to Mr Walker, Ms Schutz arranged payment of SCWRAG's expenses by Leighton Properties (in relation to Amendment C219) and Watsons (in relation to the H3 intersection), thereby concealing the influence of the landowners and consultants over SCWRAG's actions, and creating the impression that SCWRAG was at arm's length from their commercial interests.

3.5.2 SCWRAG strategy – commercial interests cloaked in the 'community voice'

As outlined in section 3.1, in October 2014 the Casey Council approved the proposed rezoning of industrial land to residential land under Amendment C219. The Casey Council then initiated a public consultation process that ran until February 2015. At this point Mr Woodman, Mr Kenessey and Ms Schutz devised a strategy to generate community support for the amendment (see section 3.5.3 below). One motivation may have been Ms Schutz's belief that the Minister for Planning was anti-development and favoured 'community groups and public interests'. Local MPs Ms Graley and Mr Perera had also apparently told Mr Woodman that unless they had community support for the amendment, it would not proceed.

⁹⁹ SCWRAG, 21 September 2017, newsletter.

¹⁰⁰ For discussion of Amendment C219, see section 3.1.

¹⁰¹ For discussion of the H3 intersection, see section 3.2.

Ms Schutz was crucial in establishing SCWRAG. However, in evidence, Ms Schutz sought to minimise her role, suggesting that she merely facilitated the establishment of the group, in that she 'worked with the local community to assist them'. Ms Schutz ultimately admitted that establishing the community group to promote the rezoning was part of the Amendment C219 strategy.

Although some residents were concerned about the industrial zoning, the landowners and those representing them used the genuine concerns of residents as a platform to push their own agenda. When asked in her examination, 'Who devised that strategy?', Ms Schutz said it would have been Mr Woodman. During examination, Mr Kenessey conceded that SCWRAG was a 'creature' of Mr Woodman and Ms Schutz, but contended that the group had a genuine role to play in the C219 application.

In evidence, Mr Woodman and Ms Schutz agreed that, for SCWRAG to be effective, it had to be seen to be independent. However, they maintained that politicians would generally have been aware that such community organisations were usually funded by a developer or landowner. During examinations, Mr Woodman gave evidence that having a property owner or developer fund a community group should not have come as a surprise to anyone, including the Minister for Planning, as it was common practice.

According to Ms Schutz, the resourcing of SCWRAG 'allowed the community to have a voice in the planning process'. Ms Schutz said she was aware of other examples in Victoria, and elsewhere, of using a community group as part of a planning strategy. Her view was that the Minister for Planning must have known of the connection between SCWRAG and the developers, because community groups could not otherwise afford to engage in the type of conduct in which SCWRAG engaged in relation to Amendment C219.

The evidence shows that some local MPs were made aware of Mr Woodman's influence over SCWRAG.¹⁰² However, SCWRAG's submissions would have carried little weight if ministers and their staff had truly understood it was funded by a developer or landowner. Once departmental staff became aware of the possibility that SCWRAG was linked to the landowners and developers, they raised this concern repeatedly in ministerial briefings.

SCWRAG's facade of independence was also essential for influencing Casey councillors who were not otherwise subject to Mr Woodman and his associates' influence. For example, in evidence, Councillor Crestani said she was largely influenced by a letter from SCWRAG when voting on the H3 intersection, noting that she thought it was significant that SCWRAG had 1100 members.

By contrast, Councillor Rowe, who supported Amendment C219, said that by September 2018 he had suspicions about the independence of SCWRAG. In evidence, he said that in his view it was apparent that SCWRAG had 'been corrupted'. He felt that it had gone beyond being a community group and was being used by Ms Schutz and her team to achieve a particular result in the H3 matter. Councillor Rowe questioned the origins of a letter from SCWRAG dated 13 September 2018, because he did not think Mr Walker had written the letter, as they were 'not his words'.

Similarly, if the community had been aware of the source of funding and input of Mr Woodman and his associates, it may have affected the level of community support for SCWRAG. However, in evidence, Mr Walker denied any suggestion he had tried to keep Leighton Properties' funding a secret. He said that in early 2016 he published on the local community Facebook page that SCWRAG received financial support from Leighton Properties. He also thought this funding might have been referred to in some SCWRAG newsletters and on Ms Walker's Facebook account. However, although SCWRAG had a Facebook page, there was no mention of Leighton Properties' financial support. In evidence, Mr Kenessey recalled that Mr Walker announced the Leighton Properties funding at a couple of public meetings.

¹⁰² See section 3.5.8.

The importance of maintaining SCWRAG's appearance of independence is also evident in its involvement in the PPV panel hearing on Amendment C219, as discussed in section 3.1.5.8. SCWRAG's counsel claimed at the hearing that SCWRAG was 'giving voice to the community's concerns and aspirations'. The credibility of this claim may well have been questioned if the panel had been aware that the legal team was paid for and briefed by the landowners' representatives. When asked during examination about the transparency of this arrangement, Ms Schutz responded that there was no requirement to disclose that fact and 'the question wasn't asked'.

In October 2018, *The Age* published articles that connected SCWRAG to Leighton Properties, as discussed below.¹⁰³ The response of Mr Woodman and his associates confirms their intention to maintain SCWRAG's facade of independence, as they sought to prevent the journalists from making a connection between SCWRAG and Leighton Properties, and to discredit the allegations.

As the Amendment C219 matter became more drawn out, Mr Woodman and Ms Schutz became more convinced they had to rely on SCWRAG to get the application approved. It became even more important for the community group to appear to be independent. As Ms Schutz said in evidence, 'they had to be a bona fides, authentic community group'.

3.5.3 Setting up SCWRAG

When the Casey Council initiated the public consultation process on Amendment C219 in October 2014, Ms Schutz sought to generate community support through doorknocking, surveys and community days. Ms Schutz helped draft the survey and said that it was 'fine-tuned' by others, including Mr Kenessey and Mr Woodman. According to Ms Schutz, between 500 and 600 people were surveyed, with 92 per cent supporting residential rezoning. Ms Schutz gave evidence that the idea of a community group subsequently evolved following Leighton Properties holding a community information day on 7 February 2015.

At the community information day, Mr Kenessey met the Walkers, who had become aware of the industrial zoning of the land in early February 2015, after doorknockers visited their home. Mr Kenessey considered that Mr Walker was very passionate about the rezoning and suggested to him that he needed 'a voice'. Mr Kenessey encouraged Mr Walker to find like-minded residents and set up a community group. Mr Kenessey introduced Mr Walker to Ms Schutz, and the three of them discussed setting up a group.

In a series of emails on 18 March 2015, Ms Schutz, Mr Woodman, Mr Kenessey and lobbyist Mr Staindl discussed the need for a flyer and potentially other activities informing the community that the Casey Council had listened by supporting the rezoning, and urging them to write to the Minister for Planning to voice their support. As shown in Figure 3, Ms Schutz suggested they set up a 'savecranbournewest' website and publish the details on the flyer. The following day, Ms Schutz registered the domain name 'savecranbournewest.com', providing her own name, address, mobile telephone number and email address.

¹⁰³ Millar R, Schneiders B, Lucas C 2018, 'Casey council, where riches are made with the stroke of a pen', *The Age*.

Re: Council Resolution

From: Megan Schutz [REDACTED]
To: John Woodman [REDACTED], Tom Kenessey [REDACTED]
Cc: [REDACTED] Phil Staindl [REDACTED]
Date: Wed, 18 Mar 2015 13:57:52 +1100

Slightly too wordy but exactly the message

I was thinking a flyer using the consistent branding sent out to the email database, letterbox dropped, text message, door knocked again??,

I think we should be setting up a "www.savecranbournewest.com.au" website referred to on the flyer

Flyer to say:

Council have rejected Government Bureaucrats call for Industrial to Stay
They have listened to the Cranbourne West community and taken action

To make the change to Housing, the Planning Minister must hear the community's voice directly.

Please write to the Minister for Planning TODAY and let him know you want housing and not industrial on the land.

You must act now to make the change!

Write to:email address"

For further information, visit the community's website: www.savecranbournewest.com.au



Megan Schutz
Director
LLB(Hons) BA Planning



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From: John Woodman [REDACTED]
Date: Wednesday, 18 March 2015 1:47 PM
To: 'Tom Kenessey' [REDACTED]
Cc: Megan Schutz [REDACTED]

[REDACTED] "Phil Staindl" [REDACTED]

Subject: RE: Council Resolution

>

Guys I am thinking we prepare an email for circulation by all concerned to the Minister Dick Wyne and Jude/Judith as CC's as follows : "Casey Council at its meeting on the 17/3/2015 unanimously resolved to support the proposed change of zoning for the Kelly and Leighton properties located in Cranbourne West PSP area from employment to residential (as shown on the attached recently exhibited draft PSP) and we the local residents now request the Labor Government Planning Minister to also support the Council and local community who are overwhelmingly wanting this change." Your thoughts !

John Woodman

Managing Director

Figure 3: Email exchange on 18 March 2015 between Mr Woodman and Megan Schutz discussing the need to establish a community group

On or about 21 March 2015, Ms Schutz met with a small group of concerned residents, including the Walkers. In a submission to IBAC, Mr Walker recalled the events at that first meeting as follows:

Megan Schutz very early on advised the meeting that she had established a web site, registered a group name, Save Cranbourne West Residents Action Group (SCWRAG), established an email address and produced a logo for the group. I said that I would be interested in being involved in a leadership role.

On 22 March 2015, Ms Schutz emailed the group, suggesting they form a residents' action group 'to have a unified voice speaking on behalf of the community'. She urged the group to encourage others to write to the Minister for Planning to voice its strong opposition to the industrial zoning and desire for more housing. The email noted that the group had agreed to call itself the Save Cranbourne West Residents Action Group.

In that email, Ms Schutz noted that the objectives of the group were to:

- lobby against the current designation of the land for an industrial park
- lobby the Minister for Planning and other relevant stakeholders to change the land's use from industrial to housing
- continue to encourage the community to actively lobby for housing on the land, by directly writing to the Minister for Planning to tell them what they want.

Ms Schutz listed the agreed action items, many of which her consulting company was to lead. These actions covered matters she had suggested to Mr Woodman, Mr Kenessey and Mr Staindl, including erecting signage, finalising the website, making letterbox drops, and calling residents to urge them to contact the Minister for Planning, as well as preparing a draft petition and writing to the Minister, on behalf of SCWRAG, requesting a meeting. Mr Walker was appointed president and his spouse was appointed secretary. During examination, Mr Kenessey did not dispute the suggestion that the community group was set up in this manner with his blessing.

On 22 June 2017, SCWRAG incorporated. A formal committee was established, comprising eight residents who met approximately every three months. According to Ms Schutz, SCWRAG incorporated partly because the group wanted to make a representation during the formal public exhibition process for Amendment C219, and could do so only if it was a legal entity.

From its inception, SCWRAG had community support. Residents joined the group and a few attended SCWRAG meetings. Over time, the number of members (and supporters of the rezoning more generally) became difficult to ascertain. Some members completed membership forms, some did not, others signed up online, and some did not include an email address so were unable to be contacted.

From 2017, SCWRAG kept a membership database and required members to sign forms. At that time, SCWRAG claimed to have approximately 1050 members. In evidence, Mr Walker conceded that it was difficult to ascertain whether those residents who supported the rezoning in 2015 continued to support it over the following years. He cited a lack of resources to follow up members and supporters as an impediment to ascertaining their continued support. Despite this, SCWRAG claimed that its position was put on behalf of its 1000 passionate supporters.

3.5.4 Financial support

SCWRAG did not have a bank account or own any assets, nor did it generate an income. Instead, Leighton Properties funded SCWRAG. Ms Schutz arranged for Leighton Properties to pay SCWRAG's expenses for its activities in relation to Amendment C219. In evidence, Ms Schutz said she did not make any payments herself or through her own company. Rather, she sent invoices to Leighton Properties or Watsons for payment. Leighton Properties funded items such as the SCWRAG website, incorporation, doorknockers, counsel appearing for SCWRAG at the PPV panel hearing, the community day and signage.

In evidence, Mr Kenessey estimated that Leighton Properties would have contributed between \$70,000 and \$80,000 to SCWRAG and its activities. He confirmed that none of the money went directly to SCWRAG. Rather, all payments went through Ms Schutz or directly to the provider of the service. Mr Kenessey said that Ms Schutz was interposed to deal with SCWRAG on Leighton Properties' behalf to manage the perception that Leighton Properties may have been driving the community group. In 2017, Leighton Properties paid for SCWRAG's legal representation at the PPV panel hearing, at a cost of \$28,798.

When SCWRAG later became involved in the H3 intersection matter, Watsons funded expenses incurred by the group, or by Ms Schutz on behalf of the group. Ms Schutz acted as a conduit for payments to conceal the connection between SCWRAG and Mr Woodman or related entities. In addition, Watsons employed the Walkers as consultants.

3.5.5 The Walkers' role and consultancy arrangement

The Walkers were appointed president and secretary of SCWRAG following its establishment in 2015. As stated above, they were concerned about industrial land in Cranbourne West, and supported the rezoning of land as residential under Amendment C219.

Mr Walker worked closely with Ms Schutz in particular, and at times with Mr Kenessey and Mr Woodman, to direct and implement SCWRAG's operations. For example, as stated in other sections of this report, Ms Schutz helped Mr Walker draft letters and submissions to the Casey Council and the Victorian Government, helped prepare petitions, and introduced and briefed SCWRAG's lawyer at the PPV panel hearing. The Walkers were also part of the informal H3 intersection working group together with Ms Schutz and Councillor Ablett, among others.¹⁰⁴

In evidence, Ms Schutz described herself as having had 'input' into correspondence from SCWRAG on most occasions. In general, Mr Walker would draft correspondence that Ms Schutz would review. Ms Schutz would then edit the correspondence and return it to Mr Walker to finalise and send. For instance, in a lawfully intercepted telephone conversation between Ms Schutz and Councillor Ablett on 16 October 2018, Ms Schutz told Councillor Ablett that Mr Walker had drafted a letter to the Casey Council from SCWRAG, which she 'spent a couple of hours on ... just beefing it up', and confirmed that Mr Woodman was fine with it, adding, 'everyone's on board. It's all good'. In evidence, Mr Walker said that, even when Ms Schutz was involved in drafting correspondence, he was always 'acting for SCWRAG in the interest of the residents'.

Ms Schutz's ultimate aim was to promote her clients' interests. In evidence, Ms Schutz acknowledged, 'I made suggestions to them about ways in which the community could be active in relation to the rezoning, and those suggestions were suggestions that had come from my client's planning strategy'. Ms Schutz confirmed that Mr Woodman thought they could use SCWRAG to send letters that supported the position of Mr Woodman and his associates. For example, following a meeting with Mr Walker in October 2018, Ms Schutz told Mr Woodman that Mr Walker would support their strategy, saying, 'All good, Ray is on board'. Mr Woodman responded, 'You have trained him well'. During examinations, Ms Schutz said the Walkers were resourced to get SCWRAG to advocate certain positions. Notwithstanding, Ms Schutz maintained that SCWRAG was independent.

The Walkers' roles as president and secretary of SCWRAG were voluntary. However, from 2016 onwards, Mr Woodman engaged the Walkers as paid consultants. In total, the Walkers received approximately \$191,000 in payments from Watsons and Schutz Consulting for 'consultancy' and 'data collection' services, as discussed below.

¹⁰⁴ For further details on the informal working group, see section 3.2.5 on the H3 intersection.

Mr Walker – consultancy services

In 2016, Mr Walker encountered some financial hardship and approached Ms Schutz about the possibility of her arranging some consulting work. According to Ms Schutz, Mr Walker told her that he would be unable to continue his role with SCWRAG if he didn't find work. Ms Schutz considered that it would be very helpful to give Mr Walker a job. In evidence, Mr Walker claimed that only then did he become aware of any connection between Watsons or Mr Woodman and Ms Schutz.

On 19 July 2016, Watsons began paying Mr Walker \$5500 per month in accordance with a written agreement. Under the agreement, Mr Walker was to collect data relating to land sales in housing estates in Casey and Cardinia, and prepare fortnightly reports for Watsons. The agreement was for a six-month period.

Although payments to Mr Walker's business account began in July 2016, it appears the parties did not execute a written agreement until 13 February 2017. According to Mr Walker, the arrangement was renewed and continued for approximately three-and-a-half years. Mr Walker claimed that when he entered into the arrangement with Watsons, he was unaware that Mr Woodman had any interest in Amendment C219.

Ms Schutz also went on to introduce Mr Walker to other potential clients and engaged him directly to undertake work for her clients. For instance, Ms Schutz introduced Mr Walker to companies associated with Mr Woodman (including Swan Bay Developments and a company linked to Mr Woodman's son-in-law), which made direct arrangements with Mr Walker. Ms Schutz also stated that Schutz Consulting engaged Mr Walker under a number of different arrangements paid for by Elysian Group, Watsons and the owners of the Pavilion Estate land.

For instance, from April 2018, Mr Walker was on a retainer to Schutz Consulting, acting on behalf of Elysian Group, to provide consultancy services on the Hall Road project, including the H3 intersection. However, a file note by Mr Walker indicates that he first discussed the H3 intersection with Ms Schutz in January 2018. The file note records that Mr Walker was to contact Councillor Rowe to ask why Hall Road was not being prioritised, given the safety concerns. He was to ask about the money collected from the developers for the construction and upgrade to Hall Road, and what they intended to do with it.

According to Ms Schutz, in January 2019, Mr Woodman told her to engage Mr Walker at a fee of \$5000 a month for the work done for Hall Road and the market research on the south-east corridor. A draft agreement dated 18 January 2019 between Mr Walker and Watsons recorded the overall arrangement. However, the agreement did not give detail of the work Mr Walker was to do on the H3 intersection/Hall Road matter.

The failure to give details of Mr Walker's work on the H3 intersection is consistent with the invoicing process, which concealed the financial arrangements between Mr Woodman, Mr Walker and SCWRAG. For example, on the H3 intersection, in accordance with instructions from Ms Schutz, Mr Walker submitted to Schutz Consulting invoices for 'market research'. Schutz Consulting then invoiced Elysian Group for the payments to Mr Walker. When asked during examinations about this payment arrangement, Ms Schutz agreed that there was no commercial reason why her company should be the conduit. Ultimately, Ms Schutz conceded that she thought, in hindsight, that she had been used by Mr Woodman to conceal the relationship between Mr Woodman, Mr Walker and SCWRAG.

During examinations, Mr Walker said he realised Elysian Group and/or Watsons were funding SCWRAG on the H3 intersection, not long after Ms Schutz approached him about lobbying in the matter. Mr Walker said he understood that Ms Schutz and Mr Woodman expected him to use his position in SCWRAG to gain access to the Minister for Roads and advocate for Hall Road and the H3 intersection. In evidence, Mr Kenessey said that when he was told Mr Walker was going to be employed by one of Mr Woodman's entities, he felt uncomfortable about the arrangement, as he felt it removed the independence between the parties.

Ms Schutz said that her agreement with the Walkers engaged them as community members, not as members of SCWRAG. However, a briefing note from Ms Schutz to Mr Walker in April 2018, outlining the scope of the work on the H3 intersection, does not support this assertion. Further, during examinations, Ms Schutz agreed that when she suggested doorknocking or letterbox drops, she was suggesting that these be done in SCWRAG's name. Ms Schutz conceded that Mr Woodman employed Mr Walker to secure Mr Walker's 'enthusiasm' and loyalty when it came to lobbying. She observed that Mr Walker's loyalty increased over the years during which Mr Woodman employed Mr Walker.

Mr Walker became aware that he was serving dual interests. On 23 May 2018, in an email to Ms Schutz about things Ms Schutz wanted SCWRAG to do to promote the H3 intersection as part of the campaign on the Hall Road network, Mr Walker indicated he was not comfortable with some of the things being proposed. Ultimately, he observed:

I am trying to make it a win win and that SCWRAG is working in residents best interests while serving your master's needs if that makes sense.

Similarly, Mr Walker described being uncomfortable when Ms Schutz approached him, in September 2018, with an alternative Casey Council motion on the H3 intersection (discussed below). Mr Walker said he felt used in that situation, but wanted to get the intersection built, so he agreed to Ms Schutz's suggestion.

Mr Walker considered the consultancies he had with Ms Schutz and Mr Woodman to be an important source of income. He did not recognise the position of conflict in which he placed himself by accepting these consultancies. During examinations, when Mr Walker was asked about this conflict of interest, he said that, despite the fact he was getting paid by a company with a financial interest in Amendment C219, he was not being paid for work relating to Amendment C219 – rather, he was being paid to do market research. Therefore he did not feel the need to disclose to the SCWRAG committee the fact that he was being paid by Watsons. There is no evidence that the community which Mr Walker represented were aware that he was also being paid by a company with a financial interest in the outcomes that SCWRAG was promoting.

IBAC accepts that the Walkers, as residents of Cranbourne West, held genuine concerns about industrial zoning. However, the commercial arrangements between Mr Walker, Ms Schutz and Watsons compromised Mr Walker's independence. His role in advocating through SCWRAG for Amendment C219 and on the H3 intersection lacked transparency, because he knew that Mr Kenessey, Mr Woodman and his associates were using SCWRAG to promote their own commercial interests while claiming to represent the voice of the community. Mr Walker was further compromised by his personal financial dependence on Mr Woodman and Ms Schutz, and by his awareness that Leighton Properties and Watsons financed SCWRAG.

3.5.6 SCWRAG's involvement in Amendment C219

Mr Walker, acting as the president of SCWRAG, undertook many activities to advocate for Amendment C219, including:

- holding SCWRAG meetings to plan action items to advocate for the amendment
- distributing newsletters to residents, seeking support for the rezoning
- writing to the Minister for Planning, and meeting with state politicians, political candidates, the landowners and individual councillors
- writing to and preparing a submission to the Casey Council
- arranging petitions from concerned residents, which were tabled in the Victorian Parliament
- being involved in the PPV panel hearing on the amendment.

The following table lists the main activities. SCWRAG's contributions to the Casey Council are highlighted in purple, and its participation in the PPV panel review of Amendment C219 is highlighted in grey.

Date	Actions, process and outcome
24 March 2015	Mr Walker wrote to the Minister for Planning, advising him that SCWRAG had 'been formed to represent the interests of the majority of Cranbourne West residents who are strongly opposed to the proposed Cranbourne West Employment Precinct'. Mr Walker invited the Minister to visit the area and meet with residents.
18 April 2015	Mr Walker wrote a letter to Mr Kenessey on behalf of SCWRAG, requesting the support of Leighton Properties to 'promote the objectives of SCWRAG by placing signage on its land confirming that it is opposed to the development of industry on the land', and welcoming the opportunity to work with Leighton Properties towards the common goal of having the land rezoned.
May 2015 and October 2016	Two petitions on Amendment C219 were prepared on behalf of the community, which the Member for Cranbourne Mr Perera tabled in the Victorian Parliament. Ms Schutz said she assisted with 'putting them together', which she clarified to mean that she made sure they complied with the parliamentary guidelines for petitions and had input into the wording of the petitions. Ms Schutz said she was not responsible for finalising the petitions.
19 September 2017	A Casey Council officers' report on submissions on Amendment C219, including a submission from SCWRAG, noted that a number of other submissions (opposing Amendment C219) raised concerns that SCWRAG provided misleading or unreliable information, and that it did not represent the views of most residents. The Casey Council applied to the Minister for Planning to appoint a PPV panel to consider the proposed amendment.
November 2017	Over six days of hearings, a PPV panel took submissions and heard evidence to determine if there was sufficient need to maintain the industrial zoning of the land that was subject to Amendment C219. At Ms Schutz's suggestion, SCWRAG was represented by counsel at the hearings. In suggesting this, Ms Schutz claimed that she was supporting Mr Walker's wish to have legal representation. Mr Walker said he preferred not to be legally represented and to speak on behalf of the group himself. However, he said he reluctantly agreed, and Ms Schutz engaged counsel to represent SCWRAG. Mr Walker said that he did not brief counsel and did not know who did, nor what the fees were or who was paying. Ms Schutz claimed that she did not instruct counsel, but did provide an initial brief and some material, before introducing counsel to Mr Walker. As noted above, Leighton Properties paid for SCWRAG's legal representation. Counsel for SCWRAG submitted to PPV that the group had 1000 members and represented 'the voice of the people'. Counsel also referred to the overwhelming level of community support as crucial to the authorisation by the Minister for Planning of Amendment C219. ¹⁰⁵
4 January 2018	The PPV panel report noted that the panel received 77 submissions, 36 of which opposed the amendment. It further noted that the submissions from residents were evenly split in favour and against the rezoning. ¹⁰⁶ Ultimately, the panel recommended that Amendment C219 be adopted.
October 2018	Mr Woodman and Ms Schutz discussed a meeting they had scheduled with local MP Mr Perera for the following week, and noted that Mr Perera was expecting a letter from SCWRAG before that meeting. Mr Woodman told Ms Schutz, 'we can write that today' or after they met with Mr Walker.

¹⁰⁵ PPV, 4 January 2018, *Panel Report, Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*, pp 19 and 25.

¹⁰⁶ PPV, 4 January 2018, *Panel Report, Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*.

Date	Actions, process and outcome
October 2018	<p>Mr Woodman, Ms Schutz, Mr Kenessey and lobbyist Mr Staindl discussed sending the Minister for Planning a letter following the Minister's deferral of a decision on Amendment C219, pending an industrial land review. Mr Woodman and Ms Schutz agreed to help draft a letter, purportedly from SCWRAG, which Mr Staindl would provide to the Minister's chief of staff for review and feedback.</p> <p>According to Ms Schutz, this idea came from either Mr Staindl's or Mr Perera's office. The reason for having the letter reviewed was to 'make sure the letter said what it needed to say' before it was sent to the Minister.</p> <p>According to Mr Staindl, he approached the chief of staff to the Minister for Planning with a letter. However, in evidence the chief of staff repeatedly stated that they could not recall being approached by Mr Staindl.</p>
22 October 2018	<p>Ms Schutz emailed Mr Staindl, attaching a letter to the Minister for Planning purportedly from SCWRAG. The letter urged the Minister to ensure that if DELWP's industrial land review changed the proposed amendment, the relevant parties be given the opportunity to review DELWP's submission. It noted that an independent panel had considered the matter, and that DELWP had not made a submission at that time.</p>

3.5.7 SCWRAG's involvement in the H3 intersection

As discussed in section 3.2.8, SCWRAG was instrumental in pushing for expedited construction of the H3 intersection, based on road safety concerns associated with Hall Road. In doing so, SCWRAG's activities supported Mr Woodman and his associates' strategy to reduce the costs of construction for the H3 intersection as part of the Elysian Estate development, a project managed by Wolfdene.

In April 2018, Mr Woodman instructed Ms Schutz to engage the Walkers to lobby the Casey Council and the Victorian Government in relation to Hall Road. Ms Schutz claimed that the Walkers' role was not limited to the H3 intersection, but extended to Hall Road generally, including duplication of the road and improving road conditions. Ms Schutz told the Walkers they were being engaged because she believed the Victorian Government and the Casey Council would listen to the community that was living with the problems presented by Hall Road.

Mr Woodman, Ms Schutz and Mr Walker worked much more closely in formulating and executing the strategy for the H3 intersection than they did for Amendment C219. Watsons funded expenses incurred by the group or by Ms Schutz on behalf of the group. Ms Schutz acted as a conduit for payments that concealed the connection between SCWRAG and Mr Woodman or related entities. Mr Woodman has asserted that 'the financial assistance of the local community group SCWRAG is neither illegal or improper'.

Mr Walker lobbied councillors and state politicians, including the Minister for Roads, on behalf of SCWRAG about the H3 intersection and Hall Road, without disclosing that he was in a commercial relationship with Mr Woodman and Ms Schutz. Nor did he disclose that Mr Woodman's company, Watsons, was contributing funds towards SCWRAG's activities.

As outlined in section 3.2, Watsons represented Wolfdene (the development manager of Elysian Estate), and Ms Schutz represented Elysian Group (the landowners of Elysian Estate). Mr Woodman's son had an interest in the development of Elysian Estate as the majority stakeholder in Elysian Group and as the director of Wolfdene.

Mr Walker, as president of SCWRAG, undertook a range of activities to advocate for expedited construction of the H3 intersection, including:

- lobbying the Victorian Government and the Casey Council by writing to and meeting with the Minister for Roads, ministerial staff, councillors and the mayor
- participating in an informal H3 working group
- making submissions to the Casey Council, including proposing alternative motions, and providing a report on traffic concerns, which Ms Schutz obtained and Watsons paid for
- seeking legal advice on Casey Council motions as directed by Ms Schutz.

In evidence, Mr Woodman estimated a saving of \$1.75 million by avoiding paying for the required intersection.

The following table lists the key activities. SCWRAG's contributions to Casey Council meetings are highlighted in purple.

Date	Actions, process and outcome
23 April 2018	<p>Ms Schutz engaged the Walkers to lobby the Casey Council and the Victorian Government to upgrade Hall Road as a matter of urgency. A briefing note from Ms Schutz outlined the scope of work, stating that Mr Walker was to raise community awareness and support, as well as lobby Council and government. Tasks included:</p> <ul style="list-style-type: none"> • writing to the Minister for Roads about the dangerous conditions and the 'community outrage' at the state of the road • requesting a meeting with the Minister for Roads to discuss the issues, which Ms Schutz would also attend • using letterbox drops, doorknocking and/or Facebook to generate community support.
April 2018	Mr Walker responded by letter to Ms Schutz expressing concern about 'selling' her proposal to residents. He said that, unless Hall Road was part of an overall strategy incorporating other road-safety issues, 'it will be a hard sell for us', but that he believed if they incorporated some of the broader community concerns on road safety, they could sell it to the residents.
1 May 2018	Ms Schutz and Mr Walker met with staff of the Minister for Roads. Mr Staindl's office arranged the meeting. Mr Walker attended as SCWRAG president.
Late May 2018	Mr Walker and Ms Schutz met with local MP Mr Perera, and with state election candidates including Ms Richards, to discuss Hall Road. Ms Schutz arranged the meetings.
16 June 2018	The Walkers met with the Minister for Roads at a 'meet and greet' in their electorate and discussed Hall Road for 10 to 15 minutes. Mr Walker did not disclose that he was being paid to lobby for the construction of the H3 intersection.
June 2018	A community day was held by Dacland that related to both Amendment C219 and the Hall Road Network. SCWRAG was represented. Mr Walker launched a new campaign, 'Fix the Hall Road Network', and sought community support for developing the road, including construction of the H3 intersection.
27 June 2018	Mr Walker wrote to SCWRAG members outlining the outcome of the PPV panel hearing for Amendment C219 and introducing SCWRAG's new campaign, 'Fix the Hall Road Network'. He outlined his recent meetings with Mr Perera, candidates for the upcoming state election including Ms Richards, the Minister for Roads, the Victorian shadow Minister for Planning, and the Casey mayor (Councillor Ablett). He called for community support for the campaign, especially in the lead-up to the state election.
27 August 2018	The Walkers attended a meeting of the informal H3 working group convened by Ms Schutz.
31 August 2018	Mr Walker attended a meeting of the informal H3 working group convened by Ms Schutz.
31 August 2018	Mr Walker wrote to the Minister for Roads on behalf of SCWRAG, raising safety concerns around Hall Road and 'the strong community outrage at the current state of the road'. He requested a meeting.
31 August 2018	Mr Walker sent a letter to Councillor Ablett, referring to a report by a transport planning consultancy which detailed traffic accidents on Hall Road. Mr Walker referred to the report in support of SCWRAG's request to signalise the H3 intersection and duplicate Hall Road. Ms Schutz provided the report, paid for by Watsons.
4 September 2018	A Casey Council meeting was held in which Councillor Aziz relied on the same transport planning consultants' report mentioned above when moving an alternative motion. Ms Schutz had drafted the motion.

Date	Actions, process and outcome
11 and 13 September 2018	<p>Mr Walker, as SCWRAG president, sent letters to the Casey Council about Hall Road safety issues, including one proposing an alternative motion that if either developer made an application to re-sequence its development, the matter had to be determined by the Casey Council. Ms Schutz was heavily involved in drafting the letters and alternative motion.</p> <p>Councillor Aziz forwarded the email to the acting Casey Council CEO, seeking legal advice on the proposed alternative motion.</p>
18 September 2018	<p>A Casey Council meeting was held in which the motion moved by Councillor Aziz at the 4 September meeting was rescinded on the basis that it was unlawful.¹⁰⁷ Councillor Aziz relied on legal advice obtained by Mr Walker on behalf of SCWRAG regarding the legal validity of his motion of 4 September when moving a new alternative motion. Ms Schutz directed Mr Walker to obtain the advice 'on behalf of the community' from a barrister she had selected. Watsons paid for the advice.</p>
16 October 2018	<p>A Casey Council meeting was held in which Councillor Aziz relied on Victoria Police crash statistics for Hall Road to support his position before the Council. Mr Walker had sent the statistics from SCWRAG to Councillor Aziz to use in the meeting. Ms Schutz helped draft a letter that morning which was signed by Mr Walker as president of SCWRAG, to support the alternative motion put forward by Councillor Aziz.</p>
18 October 2018	<p>At Mr Woodman's request, Ms Schutz organised a meeting attended by Mr Woodman, Ms Schutz and Mr Walker.</p>
14 November 2018	<p>Mr Walker attended a meeting of the informal H3 working group convened by Ms Schutz.</p>
23 November 2018	<p>Ms Schutz helped Mr Walker draft a letter to Casey councillors on behalf of SCWRAG. Ms Schutz called Mr Woodman, and the three discussed the letter and, specifically, what the focus of the letter should be.</p>

¹⁰⁷ Casey Council, 18 September 2018, meeting agenda and minutes, Item 11.

3.5.8 Articles in *The Age* – allegations of astroturfing

On 28 October 2018, *The Age* published an article that alleged SCWRAG was engaged in ‘astroturfing’, where a concealed group or organisation initiates and directs activity to create a misleading impression of a grassroots or community-based movement.¹⁰⁸ In this instance, it alleged that SCWRAG was established and funded by the landowner, Leighton Properties, which would benefit from the outcome for which SCWRAG was campaigning.

Before publication, *The Age* contacted Mr Woodman, Ms Schutz and others. The prospect of the article caused considerable concern. On 19 October 2018, in a lawfully intercepted telephone conversation, Mr Woodman and Ms Schutz discussed how to maintain the appearance of distance between SCWRAG and the landowners and their representatives. Mr Woodman asked Ms Schutz about the possibility of any connection being made between them and SCWRAG, and whether her details were on the registration documentation. In response, Ms Schutz said she hadn’t registered SCWRAG but would check the documentation. In a submission to IBAC, Ms Schutz stated, ‘the intention was that I would deny the connection between SCWRAG and myself if I could’, but that this was out of concern that the media reporting would be biased.

On 25 October 2018, in a lawfully intercepted telephone conversation, Ms Schutz told Mr Woodman that she had spoken to Mr Walker and that Mr Walker was going to say he had met her on the Leighton Properties’ land and that ‘SCWRAG was established as part of rezoning that land, because Leighton and the community had the same objective’. Mr Woodman asked what Mr Walker would say if asked about Ms Schutz providing the legal advice that Councillor Aziz referred to during the Casey Council meeting of 4 September. Ms Schutz told him, ‘Ray [Walker] agrees with me that I have not provided legal advice to the community’.

During the same conversation, Mr Woodman wondered what Mr Walker would say if asked whether he was working for Wolfdene, to which Ms Schutz responded by reassuring Mr Woodman she had already been through that with Mr Walker, stating, ‘he doesn’t work for Wolfdene. He doesn’t work for Watsons’, and assuring Mr Woodman that Mr Walker was ‘in line’.

Ms Schutz and Mr Woodman were trying to conceal the extent of their commercial relationship with Mr Walker, and Ms Schutz tried to encourage Mr Walker to do the same.

As reported in *The Age*, Mr Walker responded to the request for comment. He defended SCWRAG’s integrity, while confirming that it had been funded in part by Leighton Properties.¹⁰⁹ In evidence, Mr Walker disputed that this was his first public acknowledgement of SCWRAG’s financial involvement with Leighton Properties.

On 8 November 2018, Mr Walker wrote to Ms Richards, then the Labor Party candidate for Cranbourne, discussing the article, defending SCWRAG and urging her to disregard the allegations. He claimed the article was ‘false, misleading and defamatory to our Group’, and asserted that SCWRAG represented genuine community concern about the rezoning. He expressed outrage at the suggestion that SCWRAG was a ‘puppet of the landowner’, calling it ‘disgraceful’ and ‘totally false’. However, he confirmed that SCWRAG had received financial support from the landowner.

Outside of his statement to *The Age* the previous month, this appears to be the first time Mr Walker directly declared to Ms Richards (and potentially to anyone else he met and corresponded with as president of SCWRAG) that SCWRAG had received this support. If this is the case, Mr Walker’s assertion in evidence that Leighton Properties’ financial support of SCWRAG was known to ‘all persons in our community and decision-makers’ was incorrect.

¹⁰⁸ Millar R, Schneiders B, Lucas C 2018, ‘Casey council, where riches are made with the stroke of a pen’, *The Age*.

¹⁰⁹ Ibid.

As discussed in section 3.1.6, the article in *The Age* also suggested that Mr Woodman was linked to Councillors Aziz, Ablett and Serey and Councillor A. As a member of the informal H3 working group, Mr Walker was aware that these councillors were working with Ms Schutz and Mr Woodman to pursue the outcomes they wanted. However, in evidence, Mr Walker said he did not think the allegations were as serious as they turned out to be. As noted above, he further said that his financial relationship with Mr Woodman and Ms Schutz provided an important source of income for him.

After the article was published, Mr Walker was instructed to invoice Schutz Consulting – rather than Watsons, as he had done previously – for his work on the market data. In evidence, Mr Walker said that this change in arrangement did surprise him.

On 18 November 2018, *The Age* published a second article,¹¹⁰ which focused on donations from Watsons to state MPs and candidates who lobbied in favour of the C219 rezoning. It highlighted SCWRAG's role in lobbying the Casey Council and local MPs, and noted Ms Schutz's link to SCWRAG.¹¹¹

The allegations of 'astroturfing' in *The Age*, which linked SCWRAG to Mr Woodman, Ms Schutz and Leighton Properties, compromised SCWRAG's claim to represent the 'voice of the people'. As stated in section 3.1.6, on 5 December 2018, in a series of emails to the Leighton Properties General Manager, Mr Kenessey expressed doubt about continuing to use SCWRAG, because its credibility had been compromised.

3.5.9 Conclusion

Although it claimed to be an independent community group, SCWRAG championed only two causes: Amendment C219 and the H3 intersection/Hall Road matter. As described in sections 3.1 and 3.2, Mr Woodman and Ms Schutz had a commercial interest in both matters. In evidence, Ms Schutz sought to justify the use of SCWRAG by relying on the fact that the developer and the community had a common interest in the outcome, albeit for different reasons. However, IBAC found that Ms Schutz, Mr Kenessey and Mr Woodman to varying degrees were instrumental in establishing SCWRAG to create the appearance of a community voice, which they used to promote their own commercial interests and those of their clients.

To be effective, it was essential that SCWRAG appeared to be an independent and genuine voice of the people. Despite claiming otherwise, IBAC found that Mr Woodman and Ms Schutz, as well as Mr Walker but to a lesser degree, sought to conceal SCWRAG's connections (both financial and operational) to landowners, developers and their representatives. SCWRAG's influence was undermined by the articles in *The Age* in 2018, which revealed these connections and alleged that SCWRAG was engaged in astroturfing on behalf of landowners who stood to benefit from its activities.

Although SCWRAG may have had a level of genuine community support, it formed a key part of Mr Woodman and his associates' overall strategy to promote their commercial interests and those of their clients, while appearing to operate at arm's length. SCWRAG's operations lacked transparency and consequently undermined the integrity of decision-making processes in relation to Amendment C219 and the H3 intersection.

¹¹⁰ Millar R, Schneiders B 2018, 'Labor MPs in Leighton rezoning row', *The Age*. See section 3.1.6 for further details.

¹¹¹ Ibid.

3.6 Payments and inducements

3.6.1 Overview

Each of the case studies on Amendment C219, the H3 intersection, Brompton Lodge, Pavilion Estate and SCWRAG illustrates Mr Woodman and his associates' fundamental strategy of buying influence to promote their own commercial interests. Over the course of these projects and several other transactions, Mr Woodman, his associates and others provided payments and other financial inducements to individual councillors, in return for their efforts to influence decisions in the City of Casey.

The nature of these payments and inducements varied. They included election campaign donations, direct deposits to bank accounts, fees for consultancies and other services, property purchases, loan arrangements, discounted investments, in-kind services and pro bono support to associated organisations.

A common feature of most of these payments and inducements was an intention to conceal their true nature and origin. In some instances, recipients declared the amount and source of donations, and declared a conflict of interest (albeit often in misleading or limited terms). However, in many other instances, the existence of the payment or its source was concealed, often through complex invoicing arrangements or by falsely characterising it as a fee for service or property interest.

The scale of benefits offered to Casey councillors, and level of influence exercised over them, varied. In many instances, it appears that individual councillors received payments or other forms of inducements opportunistically and differed in their sense of obligation. For example, as outlined in sections 3.1, 3.2 and 3.7, some councillors were unaware of the source of campaign funds or were cultivated because their positions aligned with the interests of Mr Woodman and his associates without being aware that they were being targeted.

However, some Casey councillors, as identified in this section, proactively sought personal financial benefits. For example, as described below, Councillor Ablett personally received more than \$550,000 in payments and other financial benefits from Mr Woodman between 2010 and 2019 through a range of complex financial arrangements. As described in sections 3.1 and 3.2, Councillor Ablett was part of a core group, comprising Councillor Aziz, Councillor Ablett and Councillor A, that Mr Woodman and his associates cultivated and influenced in different ways to promote their interests.

In the case of Councillor Aziz, he actively positioned himself to 'sell influence' to Mr Woodman. He privately called Mr Woodman 'the blood donor'. Councillor Aziz also sought out other individuals and entities with commercial interests in Casey Council decisions, offering to advance their interests at the Casey Council in exchange for some form of financial support. Between September 2016 and October 2019, Councillor Aziz personally received benefits exceeding \$600,000 (in addition to Mr Woodman 'holding' \$600,000 of Councillor Aziz's money to assist Councillor Aziz during a divorce settlement) for promoting various commercial interests at the Casey Council, as described below.

Ultimately, the strategy of buying, and in Councillor Aziz's case selling, influence in the Casey Council operated for at least a decade, compromising the integrity of decision-making in favour of individuals and entities willing to pay Casey councillors directly and indirectly to promote their own commercial interests.

This section of the report describes payments and other financial benefits, other than political donations, which Mr Woodman and others provided to four Casey councillors, focusing primarily on Councillor Ablett and Councillor Aziz. Donations to election campaigns and political parties are covered separately in section 3.7.

3.6.2 Councillor Ablett's financial dealings with Mr Woodman

Councillor Ablett's promotion of Mr Woodman's interests on the Casey Council

Councillor Ablett was first elected to the Casey Council in 2008. He was mayor on three occasions for 12-month periods in 2008–09, 2013–14 and 2017–18. He was also chair of the Council Planning Committee in 2010–13 and 2016–17. In November 2010 and 2014, he stood unsuccessfully for the state seat of Cranbourne as a Liberal Party candidate.

As discussed in sections 3.1 to 3.4, Councillor Ablett was part of a core group of councillors whom Mr Woodman and his associates cultivated over a period of years in order to favour their commercial interests. Councillor Ablett appears to have been one of the first of that core group targeted by Mr Woodman, beginning with the purchase of an interest in a horse, Good Call, in 2010, as discussed below. Over the next nine years, Councillor Ablett received benefits exceeding \$550,000.¹¹²

From 2010 onwards, Councillor Ablett promoted Mr Woodman and his associates' interests through Casey Council decisions and processes. Councillor Ablett initially provided support for the inclusion of the Brompton Lodge land in the UGB, and later for its rezoning as residential land.¹¹³

From 2014 onwards, Councillor Ablett actively promoted Amendment C219 by supporting Casey Council resolutions, influencing other councillors, and successfully pushing for the removal of Casey Council CEO Mr Tyler, who opposed the amendment.¹¹⁴ When the H3 intersection matter came before the Casey Council in 2018, Councillor Ablett similarly promoted the interests of Mr Woodman and his associates.¹¹⁵

Before March 2015, Councillor Ablett did not declare a conflict of interest in relation to projects in which Mr Woodman had an interest, despite receiving personal financial benefits from Mr Woodman from as early as 2010. Councillor Ablett declared a conflict from March 2015 onwards and absented himself on matters associated with Mr Woodman.¹¹⁶ The terms of these declarations were misleading and lacked adequate detail of the nature of the conflicting associations.

Councillor Ablett continued to seek to influence other Casey councillors in the background, acting as a conduit for resolutions that Mr Woodman sponsored. He assisted in preparing strategies to achieve Mr Woodman's aims, and sought to manipulate voting processes and the composition of the Casey Council in his absence.

¹¹² The sources and amounts of these benefits are detailed below.

¹¹³ For details of Councillor Ablett's involvement in the Brompton Lodge rezoning, see section 3.4.

¹¹⁴ For details of Councillor Ablett's involvement in Amendment C219, see section 3.1.

¹¹⁵ For details of Councillor Ablett's involvement in the H3 intersection, see section 3.2.

¹¹⁶ For details of Councillor Ablett's continuing involvement after declaring a conflict of interest, see section 3.1.

3.6.2.1 The relationship between Mr Woodman and Councillor Ablett

In return for considerable financial payments and benefits, Councillor Ablett closely aligned himself with Mr Woodman and his associates' financial interests. For instance, lobbyist Ms Wreford confirmed in evidence that Mr Woodman was conscious that Councillor Aziz and Councillor Ablett frequently had their hands out for money.

In evidence, when asked to comment on the relationship between Mr Woodman and Councillor Ablett, Ms Schutz stated:

I think Geoff [Ablett] hung off every word Woodman said to him, really. I think he was, you know, he really looked up to John Woodman.

When it was put to her that this suggested Councillor Ablett was totally within Mr Woodman's thrall, Ms Schutz observed:

Look, if John [Woodman] wanted him to do something, you know, he would – Geoff would make himself available, yes.

3.6.2.2 2010 – purchase of an interest in Good Call

Cheque for interest in Good Call

In examinations, Councillor Ablett stated that the earliest financial benefits he received from Mr Woodman were for the purchase of an interest in a horse, Good Call. According to Councillor Ablett, in 2010 Mr Woodman gave him a cheque for between \$15,000 and \$20,000 in return for a one-third interest in the horse.

In evidence, Mr Woodman stated that he believed his first association with Councillor Ablett, involving the joint ownership of horses, arose in about 2012. In contrast, Councillor Ablett gave evidence that he and Mr Woodman had owned horses together from 2010. During examinations, Councillor Ablett produced a document recording Mr Woodman's purchase of an interest in a three-year-old gelding, Good Call, on 10 August 2010. Mr Woodman had also sponsored a program on community radio presented by Councillor Ablett from approximately 2010.

Councillor Ablett stated that he first met Mr Woodman around 2010. Councillor Ablett owned Good Call and possibly one other horse as a hobby trainer. Mr Woodman arrived, apparently unannounced, and provided a cheque in return for a one-third interest in the horse, to be recorded in the names of his daughter and daughter-in-law. Councillor Ablett claimed that he knew nothing of Mr Woodman before this and did not become aware that he was a developer until a couple of years later. Councillor Ablett was unable to explain how Mr Woodman had come to him. He had not advertised an interest in a horse for sale. The horse never raced.

During examinations, Councillor Ablett denied that the arrangement might have been influenced by a crucial Casey Council vote on the inclusion of Brompton Lodge in the UGB on 3 August 2010, a week before the asserted purchase of the horse. As stated in section 3.4, he maintained that he was not aware of Mr Woodman's interest in Brompton Lodge until 2013 or 2014. As previously detailed in section 3.4.3.2, IBAC does not consider Councillor Ablett's account to be plausible.

3.6.2.3 2013 to 2014 – payment of Councillor Ablett's credit card debt and horse upkeep

Bank transfers to Councillor Ablett

In late 2013 and early 2014, Mr Woodman made three cash payments and a bank transfer to Mr Ablett's accounts, totalling \$25,000. Specifically:

- On 25 November 2013, Mr Woodman withdrew \$5000 cash from the CBA bank account for his company Alwood Drafting, while on holiday in Port Douglas. Shortly after, Woodman paid the same amount in cash to Councillor Ablett's ANZ credit card account and hand wrote the name 'G Williams' as the depositor on the ANZ deposit slip.
- On 17 January 2014, Mr Woodman deposited a further \$5000 cash into Councillor Ablett's account.
- On 17 February 2014, Mr Woodman withdrew \$8000 cash from the same CBA bank account for Alwood Drafting at a branch on St Kilda Road, Melbourne, and deposited \$7500 cash into Councillor Ablett's ANZ bank account at an ANZ branch on St Kilda Road, Melbourne, later the same day.
- On 17 February 2014, a further \$7500 was paid via BPAY from a Watsons bank account to Councillor Ablett's credit card account.

In evidence, Mr Woodman was initially unable to explain these four transactions totalling \$25,000, other than to suggest that they might have related to the 'equine relationship'. However, when he gave evidence the following day, he purported to have refreshed his memory from emails, and recalled that the cash payments to Councillor Ablett were to support Councillor Ablett's candidacy in the 2014 state election. He explained that Councillor Ablett sought help because he had only \$40 left in his account and was concerned that this fact would be used as a political tool against him. Mr Woodman could not recall why he used the name 'G Williams' in November 2013, nor whether he gave Councillor Ablett cash on other occasions.

Councillor Ablett initially speculated that the money he received from Mr Woodman in late 2013 and early 2014 may have been for the upkeep of Good Call (who was retired in the months that followed). At one point, he suggested that after three years of not charging Mr Woodman fees relating to his share in the racehorse, 'I thought that would be probably a fair thing', adding that he was hesitant to ask for money, given that the horse never raced.

In evidence, Councillor Ablett was reminded of the publicity surrounding Mr Woodman's evidence on this issue, and ultimately recalled that he sought Mr Woodman's help to pay a \$15,000 credit card debt in the lead-up to the Liberal Party preselection for the state seat of Cranbourne. However, he could not explain the deposits made to his non-credit card account. Records located by IBAC show that the day after the November 2013 cash deposit, Councillor Ablett forwarded an email to Mr Woodman that set out concerns raised by a member of the public about the Brompton Lodge development.

When asked if Mr Woodman made contact at this time with Councillor Ablett regarding his interest in Amendment C219, Councillor Ablett stated, 'in the last couple of years, I became aware of his interest in that', but denied that the deposits were linked to matters associated with Mr Woodman which were to be considered by the Casey Council, including the vote that initiated Amendment C219 on 4 February 2014, discussed in section 3.1.

On 17 September 2019, IBAC seized an invoice and receipt book from Councillor Ablett's home. It included a carbon copy of a receipt for \$15,000, dated 22 April 2014, issued by Councillor Ablett to Watsons Surveyors for '30% of a racehorse named Prima Facie'. IBAC has been unable to find any contemporaneous bank records, suggesting that this transaction was yet another pretext to justify, if necessary, the transmission of funds from Mr Woodman to Councillor Ablett.

During examinations, Mr Woodman appeared to know very little about the horse Prima Facie. He did not know how old it was, nor was he aware whether it was a gelding, stallion or mare. Councillor Ablett stated that he had stopped working with Good Call around the time that Mr Woodman purchased an interest in Prima Facie. He said he charged Mr Woodman very little for the maintenance of both horses because he didn't want to charge until he got them to race.

3.6.2.4 2014 to 2019 – regular invoices for ‘Management of the Family Equine Interests’

Invoices and transfers to Councillor Ablett

Between October 2015 and September 2019, IBAC identified 40 electronic transfers of funds from Mr Woodman-related entities (namely Swan Bay Project Management, Cordwood, Alwood Drafting, Watsons and BWTW Developments) to Councillor Ablett. The amounts of these transactions varied between \$2500 and \$10,000, and totalled \$208,000. Of the 40 transactions, 38 were able to be reconciled with invoices issued by Councillor Ablett. During this period, Mr Woodman also paid a \$353.50 veterinarian fee on behalf of Councillor Ablett.

As noted in section 2.1.2, Councillor Ablett, together with several other Casey councillors, was the subject of a Victorian Ombudsman’s investigation into allegations of improper conduct.¹¹⁷ The investigation began in August 2014 and the Ombudsman unsuccessfully sought to interview Councillor Ablett. Mr Woodman prepared a document dated 5 January 2015, titled ‘Memo ... Management of the Family Equine Interests’ (the memo). In evidence, Mr Woodman confirmed that the memo was drafted in anticipation of the Ombudsman’s report. Mr Woodman was aware that publicity about their relationship would require Councillor Ablett to declare a conflict of interest.

The memo recorded that Councillor Ablett would submit monthly invoices in return for regularly inspecting and reporting on, as well as keeping an inventory of, all horses owned by the Woodman family, attending races and overseeing the training team, approving accounts submitted by the training organisations and providing advice on potential purchases of horses. In evidence, Councillor Ablett stated that the memo reflected a pre-existing verbal agreement. Mr Woodman gave evidence that, following this agreement, he started to pay Councillor Ablett \$5000 a month to cover expenses for the horses they jointly owned, to provide advice about other horses in which Mr Woodman had an interest, and to look for horses to purchase.

Significantly, the introductory section of the memo specified that Councillor Ablett would declare a conflict of interest whenever matters in which Mr Woodman was involved came before the Casey Council, and would ‘play no part in the decision-making processes’. However, although Councillor Ablett declared a conflict of interest and did not cast a vote himself, he continued to play an improper and pivotal role in promoting Mr Woodman and his associates’ interests with other Casey councillors.¹¹⁸

IBAC found that the memo was a pretence to legitimise ongoing payments to Councillor Ablett. Councillor Ablett did not have substantial knowledge of or involvement with other horses owned by Mr Woodman. He stated that the trainer/manager of Mr Woodman’s other horses told Councillor Ablett he did not want him involved in managing those horses. Councillor Ablett did not know the names of most of Woodman’s other horses nor substantial information about them. He prepared no reports and approved no accounts. He kept no inventory and provided no advice as to potential purchases, other than finding and purchasing a filly in 2018–19.

Despite this lack of knowledge and service, the receipt book seized from Councillor Ablett’s home contained regular invoices from Councillor Ablett to Mr Woodman’s companies dated from September 2015 to September 2019. The invoices sought payments totalling \$205,000. IBAC has identified corresponding transfers totalling \$200,000 from Mr Woodman to Councillor Ablett’s bank accounts. Two payments in September 2017 of \$3500 and \$4500 respectively (a total of \$8000) identified from Mr Woodman’s Alwood Drafting account to Councillor Ablett’s bank account cannot be reconciled with the entries in the invoice and receipt book. The invoices usually referred to services including ‘equine reporting and recommendations’ and were generally for amounts of \$2500, \$5000 or \$10,000, the wording reflecting the services listed in the January 2015 memorandum, which Councillor Ablett did not perform.

¹¹⁷ Victorian Ombudsman 2015, *Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations*.

¹¹⁸ For an outline of Councillor Ablett’s activities promoting Mr Woodman and his associates’ interests, see sections 3.1 and 3.2.

3.6.2.5 2012 to 2018 – work on Curwen Road property and purported sale to Mr Woodman

Payments in kind for boundary realignment

IBAC's investigation identified that Mr Woodman made 17 payments totalling \$20,311.49 to other parties, on behalf of Councillor Ablett, in relation to a boundary realignment on Councillor Ablett's Curwen Road property. These included:

- \$14,471.16 in legal fees paid to Law Firm A between September 2015 and October 2018
- \$5840.33 for the purchase of land from a neighbour in February 2017 to correct a boundary issue relating to Councillor Ablett's Curwen Road property, in preparation for subdivision.

Watsons' own records also noted that by September 2019 the company had undertaken \$66,454.16 worth of engineering, planning and surveying work on the property that had not been paid for by Councillor Ablett.

Payments direct to Councillor Ablett and payments in kind relating to the sale of property

IBAC's investigation identified that Mr Woodman also made three payments of \$50,000 (\$150,000 in total) to Councillor Ablett in May 2018, August 2018 and August 2019, towards the purchase of a section of Councillor Ablett's property at Curwen Road.

Mr Woodman also paid \$5830 to another law firm in June 2018, for Councillor Ablett's legal fees for the sale of the Curwen Road property, and a further nine invoices issued by Law Firm A between February 2018 and November 2019, totalling \$12,982.56, for corporate advice concerning the property.

IBAC's findings regarding the transactions made are based on the evidence available to IBAC at the point in time of its investigation. Other transactions may have occurred outside the period of IBAC's active investigation.

Beginning in 2012, Mr Woodman arranged survey work to realign the boundary of Councillor Ablett's property in Curwen Road, Mountain View. The survey was undertaken in advance of a subdivision application being made on the property. The initial survey identified that the boundaries were out of alignment. Consequently, paperwork was prepared and a formal application to Baw Baw Shire Council was made to rectify the boundary alignment.¹¹⁹

In evidence, Mr Woodman stated that the work was ultimately carried out over several years, at a cost of \$42,000.

Mr Woodman said Watsons was never paid for the work. A financial report seized by IBAC from Watsons suggests that the actual cost of staff time and resources spent by Watsons on Councillor Ablett's Curwen Road property totalled \$66,454.16 at 3 September 2019. The report states that these expenses consisted of \$21,840.00 for engineering services, \$7307.08 for planning services, and \$37,307.08 for surveying services. It also shows that these expenses had not been paid for by Councillor Ablett.

Councillor Ablett gave evidence that the realignment work was conducted in about 2016, and resulted in him having to purchase a section of land from his neighbour for \$5840.33 to rectify an error in the boundary line. However, Councillor Ablett was unable to pay this amount. Bank records show that the neighbour was paid by Watsons on 2 February 2017, with the notation '[Neighbour's name] COMPENSATN'. IBAC also identified that Watsons paid 16 invoices totalling \$14,471.16, issued by Law Firm A from September 2015 to October 2018, relating to Councillor Ablett's Curwen Road property alignment.

On 9 November 2018, in a lawfully intercepted telephone conversation, Mr Woodman and Councillor Ablett discussed the possibility that Councillor Ablett would be contacted by a journalist from *The Age* who was investigating Mr Woodman's influence at the City of Casey. They agreed that Councillor Ablett should state that the survey work was done pro bono. During examinations, Councillor Ablett was unable to explain why it would be necessary to lie to a journalist if his relationship with Mr Woodman was above board. Their conversation reveals that they recognised that payment for the work would be seen as improper.

119 Baw Baw Shire Council, 22 October 2014, meeting agenda.

On 23 May 2018, Councillor Ablett and Mr Woodman executed a contract of sale conveying to Mr Woodman a 20-acre section of Councillor Ablett's property in Curwen Road, Mountain View, for \$350,000. Law Firm A prepared the contract of sale. On 18 June 2018, Mr Woodman's company, Watsons, paid a different law firm \$5830 to cover Councillor Ablett's legal fees.

The structure of the contract, and the evidence of Mr Woodman and Councillor Ablett presented below, demonstrates that this was another transaction created to provide a pretext to justify the transfer of funds from Mr Woodman to Councillor Ablett. In addition, another bank account of Watsons was used to pay nine invoices issued by Law Firm A between February 2018 and November 2019, totalling \$12,982.56, for advice concerning Councillor Ablett's Curwen Road property.

When Mr Woodman and Councillor Ablett gave evidence in late 2019, Mr Woodman had not taken possession of the Curwen Road land. The contract allowed five years before settlement. It was conditional on Mr Woodman obtaining Casey Council permits to build, which, at the time Mr Woodman gave evidence, had not been sought. Mr Woodman had not been to the property. IBAC's investigation identified three related payments between May 2018 and August 2019 in Watsons' and Councillor Ablett's accounts.

During examination, Mr Woodman initially sought to justify the purchase as a means of enabling Councillor Ablett to offset the survey realignment debt that he had been unable to repay. Councillor Ablett made a similar assertion, but was unable to point to any term of the contract or describe any process by which that object was to be achieved. Ultimately, when referred to a lawfully intercepted telephone call between them on 22 November 2018, Mr Woodman made the significant admission that the 'sale' was a device to reward Councillor Ablett in anticipation of successful outcomes for the C219 rezoning.

Both denied that these monies also related to the resolution of the H3 intersection issue, although the intercepted conversation suggests otherwise. During the call, Mr Woodman lamented that he and Councillor Ablett were losing 'a shitload of money' because of the failure to get approvals for Amendment C219 and the H3 intersection. In evidence, Mr Woodman eventually conceded, 'it was a friendship agreement that I would share some of the profits that you have indicated to me before, was associated with 219 [sic]'.

3.6.2.6 2018 to 2019 – legal fees for family dispute

In-kind payments

Mr Woodman paid eight invoices issued by Law Firm A between February 2018 and February 2019, totalling \$53,681.81, in relation to a probate matter involving Councillor Ablett.

IBAC also established that throughout 2018, Mr Woodman funded a legal dispute for Councillor Ablett. The dispute related to the Ablett family farm at Drouin over which Councillor Ablett and his siblings were in dispute regarding distribution of the property between the heirs. Throughout 2018, Law Firm A acted for Councillor Ablett in this legal matter. IBAC also identified eight payments relating to invoices issued by Law Firm A between February 2018 and February 2019 in relation to this legal dispute, totalling \$53,681.81, which were paid using accounts of Watsons and Cordwood.

3.6.2.7 Total financial payments and other contributions from Mr Woodman to Councillor Ablett

IBAC's investigation identified that between 2010 and 2019, Councillor Ablett received payments and other benefits from Mr Woodman totalling more than \$550,000 which could be verified by IBAC. This figure excludes donations from Mr Woodman to Councillor Ablett's election campaigns, discussed in section 3.7.

Date	Description	Amount
2010	Payment that Councillor Ablett alleged he received from Mr Woodman in return for a one-third interest in the horse named Good Call	\$15,000.00
November 2013–February 2014	Cash payments and payment towards Councillor Ablett's credit card debt	\$25,000.00
2015–19	Payments for 'Management of the Family Equine Interests' and November 2017 equine veterinarian costs	\$208,353.50
2012–17	Expenses paid in relation to Curwen Road boundary realignment, including \$66,454.16 for in-kind engineering, planning and survey work undertaken by Mr Woodman's company	\$86,765.65
2018–19	Curwen Road 'purchase' (three \$50,000 instalments), and Councillor Ablett's legal fees associated with the sale and corporate advice concerning the property	\$168,812.56
2018	Legal fees paid to Law Firm A in relation to Councillor Ablett contesting a family member's will	\$53,681.81
Total		\$557,613.52

A small proportion of this total amount may reflect some tangible benefit to Mr Woodman other than, or in addition to, Councillor Ablett's commitment to promote Mr Woodman's business interests at the Casey Council. However, all payments and benefits Councillor Ablett received were tainted by the improper relationship between Mr Woodman and Councillor Ablett.

3.6.3 Councillor Aziz's financial dealings with Mr Woodman

Councillor Aziz's promotion of Mr Woodman's interests on the Casey Council

Councillor Aziz was first elected to the Casey Council in 2008. He was mayor for 12 months in 2011–12, and again for two years in 2015–17. He was deputy mayor for 12 months in 2012–13. He was also chair of the Council Planning Committee for two years in 2009–11.

Councillor Aziz was part of the core group of councillors, whom Mr Woodman and his associates cultivated over a period of years to promote their commercial interests.¹²⁰

Councillor Aziz was proactively involved in promoting Amendment C219 over five years, together with other projects favouring Mr Woodman and his associates' commercial interests, including the H3 intersection and the Pavilion Estate development. During this time, he put forward motions drafted by Mr Woodman and his associates, took instructions from them on arguments to put to the Casey Council, and sought to manipulate who held the casting vote on the Casey Council. He also attempted to influence other Casey councillors in the background, including a bloc of councillors elected in 2016, to whom he covertly channelled campaign funding from Mr Woodman, as described in section 3.7.

Unlike Councillor Ablett and Councillor A, Councillor Aziz never declared any conflict of interest in matters involving the commercial interests of Mr Woodman and his associates.

While some councillors received financial benefits opportunistically from individuals and entities with a financial interest in certain Casey Council decisions, other councillors, such as Councillor Ablett and Councillor Aziz, were more proactive in making financial arrangements to facilitate ongoing benefits. Councillor Aziz went one step further in seeking and procuring such benefits.

In evidence, Ms Wreford said, 'Mr Aziz had been incredibly demanding. I think I said to you before he wanted – he wanted money in whichever way he could get it', adding that Councillor Aziz indicated 'many times' that he wanted to work for Mr Woodman after he left the Casey Council. However, neither Mr Woodman nor Ms Wreford gave this suggestion serious consideration.

Like Councillor Ablett, Councillor Aziz established a series of complex financial arrangements with Mr Woodman and his associates which were designed to conceal payments in return for influence over Casey Council processes and decision-making. However, Councillor Aziz also sought to build his own political influence, which he leveraged to secure greater financial returns from Mr Woodman, and which he also offered to others in return for financial benefits.

This section of the report describes the relationship between Councillor Aziz and Mr Woodman, focusing on financial payments and other benefits that Councillor Aziz received from Mr Woodman (other than political donations, which are described in section 3.7). The financial benefits that Councillor Aziz sought and received from other individuals and entities in return for influencing Casey Council decisions are also described separately below.

3.6.3.1 The relationship between Mr Woodman and Councillor Aziz

The relationship between Mr Woodman and Councillor Aziz was transactional. In return for money and other financial benefits, Councillor Aziz provided influence over Casey Council processes and decisions.¹²¹ In evidence, Councillor Aziz conceded that he was perceived by fellow councillors as a kingmaker and able to control the Casey Council. However, when pressed on this point, Councillor Aziz would not be drawn, stating that he was 'only one of 11 votes'.

Over time, Councillor Aziz consolidated and expanded his influence. For example, as described in section 3.7, in 2016 Councillor Aziz extended his influence when he facilitated campaign funding for 11 candidates in the 2016 Casey Council elections, concealing the fact that Mr Woodman was the ultimate source of funds.¹²²

¹²⁰ For details of Councillor Aziz's involvement in planning matters promoting the interests of Mr Woodman and his associates, see sections 3.1 to 3.4.

¹²¹ For examples of how their relationship operated, see sections 3.1 to 3.4.

¹²² For details, see section 3.7.2.

The evidence shows that Councillor Aziz understood that his role on, and influence with, the Casey Council was valued by Mr Woodman. As shown below, Councillor Aziz used his valued position to attempt to exert pressure on Mr Woodman to secure a promised financial benefit.

Conditional support on the H3 intersection matter

Legally intercepted communications obtained by IBAC show that in late 2018, Councillor Aziz made his continued support on the H3 intersection matter conditional on Mr Woodman's ongoing financial support. As discussed below, this included the sale of his house in Barak Avenue to Mr Woodman (discussed below).

On 13 November 2018, lobbyist Ms Wreford messaged Councillor Aziz, stating that Mr Woodman wanted to delay the Barak Avenue purchase due to publication of an article in *The Age*. Councillor Aziz responded:

you have placed me in a corner where I have nothing to lose and I will be seeing a lawyer at 3pm today. I have had significant pressure to reverse the decision on Hall Road and that is what I will now do through a notice of motion on Tuesday 20 November.

As detailed in section 3.2.6.1, Councillor Aziz later continued:

I am so sick and tired of doing everyone's dirty work and getting treated like shit. I have deadlines to manage, and I have not let anyone down in managing their priorities, but when it comes to me, I can't even get a call returned. Sorry I won't play that way anymore.

In evidence, Ms Wreford agreed that the only interpretation open was that Councillor Aziz 'linked the payment of money to his vote on Hall Road'. Ms Wreford understood that this had typified the nature of the relationship between Mr Woodman and Councillor Aziz for some time.

In examinations, when Councillor Aziz was asked what the 'dirty work' was that he undertook, he offered this explanation:

The work I did for the mayoral election, which was a couple of weeks earlier; the fact that I had to find a lot of votes just to save my colleagues losing a quorum; and risking in your assessment not declaring a conflict of interest when it was Woodman-related matters; the fact that I was relied upon to lead many of the debates because I was the best performer in the chamber; the fact that I supported many propositions that they would put forward and then when I ask for a simple legal document that supports me in terms of an FOI [freedom of information] request ...

He asserted he was 'being relied upon more than any other councillor in the chamber to transact the difficult issues ... whether it be to do with Wreford and Woodman or any other issue'.

By 20 November 2018, Councillor Aziz was again communicating cooperatively with Ms Wreford, advising that an item relating to Hall Road (H3) was coming before the Casey Council that night and that it looked okay.

By early 2019, it appears Councillor Aziz believed he had 'taken over' the Casey Council. On 1 February 2019, in a covertly recorded meeting between Councillor Aziz and Ms Wreford, he contemplated seeking Mr Woodman's assistance to 'take over' another council, saying he would only need to get two candidates elected to secure a majority. Referring to a conversation between Councillor A and Mr Woodman concerning an upcoming meeting, Councillor Aziz said:

She's actually asking him a different question on my behalf relating to a completely different Council. Basically, [the other council], we want to take it over the same way we have taken over Casey. And there's another businessman we are working with closely to make that happen.

The support Councillor Aziz offered to Mr Woodman went beyond securing favourable votes at the Casey Council. At the 1 February 2019 meeting with Ms Wreford, Councillor Aziz offered to help Mr Woodman sue the City of Casey over allegations that Mr Woodman bullied staff. Councillor Aziz offered to seek out and provide a document that Mr Woodman had been unable to obtain. Ms Wreford told him he was not to do anything.

In evidence, Councillor Aziz confirmed that he was offering to do whatever he could to help Mr Woodman sue the City of Casey, including appearing as a witness for Mr Woodman if necessary. He confirmed that he offered to obtain an internal report on the meeting at which the bullying of two officers was alleged to have occurred. The internal document was not in the public domain, and was not available to Mr Woodman's lawyers, but Councillor Aziz was willing to agitate for its release.

In evidence, Ms Schutz claimed that she was not aware of the financial relationship between Mr Woodman and Councillor Aziz, but agreed that Councillor Aziz had an extraordinarily compliant attitude towards Mr Woodman's agenda and would do whatever Mr Woodman wanted. Ms Schutz further acknowledged that she passed on directions from Mr Woodman as part of a process in which Councillor Ablett and Councillor Aziz pursued Mr Woodman's interests at the Casey Council. She agreed that, in doing so, Councillor Aziz and Councillor Ablett did not act in a manner consistent with their obligations as councillors. Moreover, after stating that she knew Councillor Aziz and Councillor Ablett were seeking to persuade other councillors to support their position on H3 in the chamber, Ms Schutz observed in evidence, 'I think on reflection and [from] what I've read and seen I can see that it was a completely unsatisfactory situation, it was a corrupt situation'.

Ms Wreford was involved in the financial arrangements between Councillor Aziz and Mr Woodman. She gave evidence that Mr Woodman saw both Councillor Aziz and Councillor Ablett as being greedy. From mid-2018, Ms Wreford became disturbed about Councillor Aziz's greed in demanding money while trying to get favourable planning outcomes for Mr Woodman. In evidence, she agreed that Councillor Aziz saw Mr Woodman as a 'bottomless ATM', so long as he voted as instructed. Ms Wreford said that Councillor Aziz coined the description of Mr Woodman as 'the blood donor'. She confirmed that Councillor Aziz was prepared to do anything Mr Woodman wanted.

3.6.3.2 2017 – Cash in a suitcase

The suitcase transactions

On 12 May 2017, Councillor Aziz gave Mr Woodman a suitcase containing \$600,000 in cash, which Councillor Aziz had withdrawn from his bank on 10 May 2017. Mr Woodman deposited the money in a Watsons bank account.

Between 13 February 2018 and 10 May 2018, funds totalling \$690,063 were dispersed from that Watsons account on Councillor Aziz's instructions to entities or persons to whom Councillor Aziz had financial obligations, and to bank accounts of Councillor Aziz's mother and his fiancée, from which funds were then transferred to accounts held by him or withdrawn in cash. Specifically, IBAC identified the following 'suitcase' transactions from accounts of Watsons:

- \$30,000 to the Australian Taxation Office using a customer number for a family trust related to Councillor Aziz, on 13 February 2018, noting that on 8 February, before the transfer, Councillor Aziz advised Ms Wreford in a WhatsApp message that it 'can't be an email with Watson's in it!'
- \$60,000 to an account in the name of Councillor Aziz's mother on 21 March 2018

- \$27,000 to an account in the name of Councillor Aziz's fiancée on 21 March 2018
- \$100,000 to an account in the name of Councillor Aziz's mother on 23 March 2018
- \$77,000 to an account in the name of Councillor Aziz's fiancée on 4 April 2018
- \$1489.68 to an account in the name of Councillor Aziz's fiancée on 9 April 2018
- \$41,510.32 to the Aziz Family Trust BMW Lease Account on 9 April 2018
- \$353,063 to a law firm on 10 May 2018, as part of a settlement with Councillor Aziz's first spouse, as directed by Councillor Aziz. This transfer was the final and largest non-cash 'suitcase' transaction.

None of these payments from Mr Woodman were made directly to any bank account operated by Councillor Aziz (apart from the \$41,510.32 to the BMW Lease Account). IBAC found that this was done to conceal the source of the funds and their receipt, for the benefit of Councillor Aziz.

The loan agreement

In evidence, Mr Woodman stated that Councillor Aziz asked about the opportunity to lend money to Watsons' clients at a charity golf day in March 2017. Mr Woodman's lawyers, Law Firm A, prepared an agreement between Councillor Aziz, Mr Woodman and a company, Lockdee Pty Ltd, of which Mr Woodman was the sole director and shareholder. Ms Wreford had this agreement ready for Councillor Aziz's perusal on 8 May 2017. Lockdee Pty Ltd was first registered as a company on 9 May 2017.

The evidence of Mr Woodman, Councillor Aziz and Ms Wreford, together with documents IBAC recovered, indicate that the arrangement was negotiated and formalised in advance in the form of a 'Loan Agreement'. The evidence shows that the agreement was simply a device to give, if necessary, the appearance of legitimacy to the receipt of the \$600,000 and the subsequent non-cash transfers of funds to Councillor Aziz.

The initial executed 'Loan Agreement', dated 10 May 2017, provided for funds up to \$600,000 to be applied to costs associated with an agreed project, with an interest rate of 30 per cent over 12 months. Subsequently, a revised agreement was emailed to Councillor Aziz by Mr Woodman's personal assistant on 29 June and 30 June 2017. The revised agreement was still dated 10 May 2017, but recorded an investment of \$370,000 and an interest rate of 5 per cent.

Mr Woodman gave evidence that the revised contract was prepared some time after 10 May 2017 to meet the requirements of Councillor Aziz. This was when Mr Woodman was overseas in June. He was not sure whether both versions were executed at the same time on his return. He agreed in his evidence that the \$370,000 contract was a sham. Mr Woodman asserted that he didn't want to question Councillor Aziz's requirements, maybe because of his own 'naïveté'.

Councillor Aziz stated in evidence that the second or revised agreement between himself and Mr Woodman, providing for a loan of \$370,000 with interest at 5 per cent, was put forward by Councillor Aziz because it was 'the solution that was required to be reached at mediation', and was reflected in an undertaking by Councillor Aziz in December 2017 to pay approximately the amount stated in the revised agreement into his first spouse's solicitors' trust account, once the purported loan agreement matured.

In addition, monthly cash payments of \$15,000 to Councillor Aziz were made for 12 months commencing in April 2017, in accordance with the agreement between Mr Woodman and Councillor Aziz. Councillor Aziz gave evidence that the last cash payment arising from the 'suitcase' transactions was made in April 2018.

Mr Woodman and Councillor Aziz gave conflicting evidence on how the money in the suitcase was used and the amount repaid. Councillor Aziz's evidence also changed over the course of his examinations before IBAC, as described below.

In evidence, Mr Woodman did not dispute that he made payments to or on behalf of Councillor Aziz from the \$600,000 cash given to him by Councillor Aziz in a suitcase. To explain the amount paid back to Councillor Aziz that was in excess of the \$600,000, Mr Woodman asserted that an interest rate of more than 30 per cent would not have been unusual in the industry, even though the money was never invested and never left Watsons' bank account. Mr Woodman asserted that the money was kept in the bank in anticipation of a potential cashflow shortage by Councillor Aziz, arising from the possible need to repay a large tax liability.

In contrast, Councillor Aziz first asserted in evidence given in a private examination that he had given Mr Woodman only \$370,000, and that \$230,000 of the amount he had withdrawn was to repay a cash loan from Andrew Nehme in October 2016, a businessman whose relationship with Councillor Aziz is further described in section 3.6.4.1. That assertion was demonstrably false, as was Councillor Aziz's claim that he received a total return of \$387,000 from Mr Woodman, which reflected an agreed interest rate of 5 per cent and that, other than \$23,000 paid to the Australian Tax Office directly on his behalf (which was, in fact, \$30,000), all monies from Mr Woodman were paid into a solicitor's trust account.

In a private examination, Councillor Aziz conceded that he wanted to place the money from his first spouse beyond her reach following the breakup of his marriage. This suggestion aligns with Ms Wreford's evidence that, some time after the 'suitcase' transactions, she understood that 'John Woodman was minding [Councillor Aziz's money] for whatever reason', and that the two had characterised the arrangement as a loan agreement 'to protect each other'.

Councillor Aziz initially stated that having taken the money from the bank, rather than keeping it at home and being robbed, he would invest it with, or lend it to, Mr Woodman. The money was to be used for one of Mr Woodman's developments, with Councillor Aziz being part of a panel of investors financing some of Mr Woodman's projects. Councillor Aziz gave evidence that he originally discussed the investment with Ms Wreford in mid-to-late April 2017. He then met Mr Woodman separately on two occasions before the contract was produced.

On 3 October 2019, after Councillor Aziz was examined in private before IBAC, IBAC surveillance personnel observed Councillor Aziz meeting with Ms Wreford. In evidence to IBAC, Ms Wreford stated that Councillor Aziz wanted her to make sure that when Mr Woodman was examined by IBAC, Mr Woodman would be able to align his account with his. On 8 October 2019, a surveillance device captured Ms Wreford passing this and other information on to Mr Woodman.

When Councillor Aziz later gave evidence in a public examination, he admitted giving \$600,000 to Mr Woodman. Referring to the meeting with Ms Wreford on 3 October 2019, he said he just wanted her to be aware that there was an 'irreconcilable matter' relating to the loan. Councillor Aziz initially maintained in his public examination that his previous evidence, although incorrect, was not a lie, claiming, 'I simply presented what happened in my divorce settlement'. Councillor Aziz maintained that he did 'repay' Mr Nehme \$230,000, although that amount came from sources other than the \$600,000 withdrawal.

Mr Woodman gave evidence that, after receiving the \$600,000, he used Ms Wreford to transmit \$15,000 cash per month to Councillor Aziz. These payments were in addition to bank transfers to accounts that Councillor Aziz nominated. In evidence, Ms Wreford described the use of code words and pickups and drop-offs of cash. In lawfully intercepted communications, they referred to the money as 'the package', and 'the suitcase'. Mr Woodman gave evidence that it may have crossed his mind that Councillor Aziz was insisting on cash because of the matrimonial split.

Over the next 10 to 12 months, Councillor Aziz, Ms Wreford and Mr Woodman messaged regularly, arranging to move cash using Ms Wreford or Mr Woodman's driver to deliver it to Councillor Aziz. The deliveries were followed by cash deposits to Councillor Aziz's bank, usually of \$15,000 or less. The cash deposits were often broken up into multiple amounts of less than \$10,000, usually with multiple deposits being made on the one day.

On 15 March 2018, Councillor Aziz emailed Watsons two pages of calculations. One page, headed 'calculations', reflected an investment of \$370,000 at 5 per cent for 12 months maturing on 10 May 2018. It provided calculations for determining a return of principal and interest matching the amount paid to a law firm (\$353,063) representing his first spouse, in accordance with the matrimonial settlement on 10 May 2018. These calculations were also designed to conceal from the matrimonial proceedings that the amount Councillor Aziz 'invested' with Mr Woodman was \$600,000, not \$370,000.

The second page of calculations, headed 'forward', reflected Councillor Aziz's expectations that he would receive a total of \$1.14 million. This amount comprised the original 'investment' of \$600,000 and an additional 'allocation' of \$540,000. It provided for a capital sum of \$787,000 after deducting the payout of \$353,063 for the matrimonial settlement.

It anticipated that Councillor Aziz would receive various sums via different means (such as a deposit to a third-party bank account, and cash), ongoing \$15,000 monthly payments for a specified period, and that Watsons would retain and invest the \$600,000 during this time.

In evidence, Councillor Aziz maintained that the additional \$540,000 and 'interest' was not money he was expecting from Mr Woodman, but was 'possibly' money he was expecting to get from the sale of properties and other funds from the divorce settlement. Based on the evidence of Councillor Aziz's assets and financial arrangements at this time, IBAC does not accept the evidence that he was expecting \$540,000 from property sales and other funds. Councillor Aziz admitted in evidence that the funds never materialised.

3.6.3.3 2018 – the racehorse bloodstock business

The racehorse bloodstock business transactions

Between June and November 2018, a racehorse bloodstock business made a series of monthly payments to Councillor Aziz, totalling \$22,550. It appears that these payments were made pursuant to an arrangement agreed on or before May 2018, around the time the disbursement of funds to Councillor Aziz linked to the \$600,000 in the suitcase ended.

IBAC identified the following transfers from the racehorse bloodstock business to Councillor Aziz, totalling \$22,550:

- 5 June 2018: two transfers of \$2750 (total of \$5500)
- 3 July 2018: transfer of \$2750
- 6 August 2018: transfer of \$2750
- 10 September 2018: transfer of \$3850
- 2 October 2018: transfer of \$3850
- 2 November 2018: transfer of \$3850.

Within nine days of each transfer, Mr Woodman's company, Watsons, transferred the same amount to the racehorse bloodstock business. For each payment:

- Councillor Aziz submitted an invoice to the racehorse bloodstock business for 'provision of business advice' through his company, Global Business Advisory Pty Ltd, with the first invoice dated 1 May 2018
- the racehorse bloodstock business invoiced Watsons for 'horse purchase'.

The arrangements linked to the racehorse bloodstock business transactions primarily involved Councillor Aziz, Mr Woodman, Ms Wreford, and Ms Wreford's partner who worked as a business manager for the racehorse bloodstock business. Their evidence on this matter varied, and at points conflicted, as set out below.

In summary, Councillor Aziz claimed in his evidence that the payments were in return for agreed services he provided to the racehorse bloodstock business. That account was false. In contrast, Ms Wreford conceded that the process was set up to enable Mr Woodman to funnel money to Councillor Aziz. Ms Wreford's partner confirmed this characterisation of the arrangements, asserting that this was done in agreement with the owner of the racehorse bloodstock business. However, the owner of the racehorse bloodstock business asserted that he was unaware of payments made by the racehorse bloodstock business to Councillor Aziz. The period of the payments from the racehorse bloodstock business (from June to November 2018) coincides with Councillor Aziz promoting the interests of Mr Woodman and his associates in relation to the H3 intersection.

In private examination Councillor Aziz gave evidence that, following an introduction from Ms Wreford's partner, the racehorse bloodstock business employed him for five months as chairman of an 'equine investment fund'. He claimed that, in addition to seeking clients, he provided documentation on corporate governance.

Mr Woodman's evidence was similar to that of Councillor Aziz. He stated:

I understood that there was a contract in relation to Aziz and [the racehorse bloodstock business] about him introducing persons to [the owner of the racehorse bloodstock business] for the purposes of purchasing horses ... there was an arrangement where Aziz was being paid a retainer and that Watsons or myself were assisting [the owner of the racehorse bloodstock business] by meeting part of those payments, those retainers ...

When examined in public session, Councillor Aziz repeatedly maintained that he was not aware that Mr Woodman was making any payments to the racehorse bloodstock business mirroring those made to him by the racehorse bloodstock business. He was unable to explain how it came about that Mr Woodman was reimbursing the racehorse bloodstock business for the amounts it transferred to Councillor Aziz.

Councillor Aziz asserted that he had become involved in this arrangement when Ms Wreford's partner approached him. Contrary to Ms Wreford's evidence summarised below, he denied that the racehorse bloodstock business arrangement was made through Ms Wreford. When shown communications between him and Ms Wreford in which she advised him on the structure and timing of invoices, he still denied that she had any part in the arrangement. He claimed that he had, once or twice, simply followed up payments with her when he had been unable to contact Ms Wreford's partner.

The contractual arrangements

In mid-2018, Ms Wreford's partner and Councillor Aziz signed two documents, namely:

- an agreement dated 29 June 2018, effective 1 July 2018, appointing Councillor Aziz as 'executive chairman' of a company associated with the racehorse bloodstock business, to be remunerated 'as per our private agreement'
- a contract dated 1 July 2018, appointing Councillor Aziz as 'business development manager' of the racehorse bloodstock business, receiving \$5000 per month (plus GST) for a minimum of 12 months.

On 16 July 2018, Councillor Aziz and Ms Wreford's partner exchanged WhatsApp messages referring to the employment contract being ready to countersign. These messages suggest that the contract may have been backdated.

In a submission to IBAC, Mr Woodman stated that, to his knowledge, '[t]he suggestion by [Ms Wreford's partner] and Wreford that this was a sham was never conveyed to Woodman/Watson or Councillor Aziz'.

IBAC's investigation found that the ABN used in the agreement with the associated company was the ABN of the family trust of the owner of the racehorse bloodstock business, while the ABN used in the contract with the racehorse bloodstock business was the personal ABN of Ms Wreford's partner. In a submission to IBAC, Ms Wreford's partner stated that this was due to a clerical error.

During examination, Councillor Aziz claimed to have an advanced diploma in company directorships, but demonstrated that he had little knowledge of the corporate and legal structures of the company associated with the racehorse bloodstock business, which was not incorporated in the terms suggested in the agreement. Councillor Aziz was also unable to explain how Ms Wreford's partner had authority to execute the contracts.

Ms Wreford gave evidence that the racehorse bloodstock business arrangement was Councillor Aziz's idea, and that he would from time to time chase up the payments from Watsons through her. In private examination, Ms Wreford's partner confirmed that the arrangements were put in place after Ms Wreford told him that Councillor Aziz required a steady income stream, and that she and Mr Woodman had discussed using the racehorse bloodstock business as a conduit for payments to Councillor Aziz. According to Ms Wreford's partner, Ms Wreford instructed him on the amount and structure of the payments. In evidence, he described it as a ridiculous arrangement, stating, 'It was a sham absolutely ... 100 per cent'. In a submission to IBAC, the owner of the racehorse bloodstock business asserted that he had no knowledge of any deals or contracts with Councillor Aziz.

During examination, Ms Wreford's partner remembered preparing and executing only one contract. When referred to the documents, he described the contractual arrangements as a sham, implemented at Councillor Aziz's insistence, who had said he needed something to show a potential lender.

In response to being shown the WhatsApp messages of 16 July 2018, Ms Wreford's partner agreed that the contract may have been backdated. He acknowledged that on 5 June 2018 he exchanged messages with Mr Woodman's financial officer, referring to payments being processed 'as discussed with Mr Woodman'. However, he did not recall discussing the payment structure directly with Councillor Aziz or Mr Woodman. He explained that he accommodated Mr Woodman because he was potentially a significant client. He said the invoices to Mr Woodman for 'horse purchases' were also a sham.

Shortly after Councillor Aziz gave evidence to IBAC on 8 October 2019, an IBAC surveillance device captured Mr Woodman and Ms Wreford meeting to discuss the payments from the racehorse bloodstock business to Councillor Aziz. Ms Wreford noted she had been to the racehorse bloodstock business that morning to get Ms Wreford's partner to print out documentation about the transactions that 'match exactly'. They discussed possible explanations for the transactions. Ms Wreford stated, 'so you need to talk to Sam [Aziz] and show him these documents, saying this was the story and this is what happened'. Mr Woodman said he did not know what the 'horse purchase' invoices related to. Ms Wreford, appearing to reflect Councillor Aziz's concerns, stated, 'in the period of time that we don't want anything to be happening – apparently June to November'. As noted above, this period coincides with Councillor Aziz promoting Mr Woodman's position on the H3 intersection at the Casey Council.

3.6.3.4 2018 – Barak Avenue

The Barak Avenue proposal

In 2018, as the 'suitcase' transactions were coming to an end, Councillor Aziz sought to obtain approximately \$750,000 from Mr Woodman by selling him a property at Barak Avenue. Councillor Aziz owned the property with his first spouse. He wanted to buy out her interest following their marriage breakup.

On 10 August 2018, in a series of WhatsApp messages, Councillor Aziz outlined to Ms Wreford an understanding he had reached with Mr Woodman on the terms of the proposal:

He would buy 5 Barak Avenue at its current market value of \$750 K, pay the mortgage out at \$590 K and to give the difference to me. I would move in when the tenant moves out on 7 January 2019, and he would allow me to live rent-free, we would have an agreement for him to transfer the property back to me by August 2020 at a nominal fee. Is that correct?

In a message sent an hour later, Councillor Aziz proposed that Mr Woodman buy a 'Santa Monica' townhouse for \$695,000. Councillor Aziz was developing and selling the Santa Monica townhouses. He proposed that Mr Woodman would hand the townhouse back to Councillor Aziz, who would then refinance Barak Avenue, meeting payments using income obtained 'through the higher income contract that [Ms Wreford's partner] drafted', until Councillor Aziz got a job to secure his position. The 'higher income contract' probably referred to the agreement for payments from the racehorse bloodstock business described above.

In August and September 2018, Ms Wreford and Councillor Aziz exchanged messages regarding the mechanics of the Barak Avenue transaction. By 8 September 2018, following negotiations with Mr Woodman, Councillor Aziz was preparing a contract to sell the property to Cordwood, a company associated with Mr Woodman.

On 23 October 2018, in a lawfully intercepted conversation, Councillor Aziz told Ms Wreford that he had a contract of sale and Section 32 statement which he wanted signed by 'the other party', presumably a discreet reference to Mr Woodman's nominated purchaser, before providing it to his conveyancer. On 25 October, Councillor Aziz and Ms Wreford met at a café and were observed by IBAC surveillance personnel handing over documents.

On 28 October 2018, *The Age* published the first of two articles questioning the propriety of the association between Councillor Aziz and Mr Woodman.¹²³ On 13 November 2018, Ms Wreford messaged Councillor Aziz that Mr Woodman now wanted to do the settlement in January 2019, due to *The Age* article. On 14 November 2018, in response, Councillor Aziz threatened to reverse a decision on the H3 intersection. Ms Wreford responded, 'my instructions are; settlement can happen at the end of January (you might want to remind you [sic] lawyer that it was your ex-spouse who wouldn't sign the papers for 2 months!)'.

Ultimately, the proposed Barak Avenue sale was not completed. It appears that Councillor Aziz instead proposed an alternative financial arrangement with Mr Woodman: the Little River consultancy agreement, described below.

¹²³ Millar R, Schneiders B, Lucas C 2018, 'Casey council, where riches are made with the stroke of a pen', *The Age*.

In evidence, Mr Woodman agreed that Councillor Aziz had asked him to purchase Barak Avenue and allow him to live in it rent-free, but stated that he did not agree to the proposal. Ms Wreford gave evidence that from early 2018, around the time she was discussing Barak Avenue and other payments, Councillor Aziz seemed to be of the view that he was entitled to about \$600,000. She said that the final Little River consultancy agreement was a mechanism to achieve this.

Ms Wreford's account that from early 2018 Councillor Aziz expected a large gift from Mr Woodman finds support in a conversation between Councillor Aziz and Ms Wreford on 1 February 2019. During the meeting he pleaded with her not to share with the 'blood donor' that:

... basically, my entire life centres about [sic] the arrangement I had with him [Mr Woodman] about a year ago which is now influencing my health. Do you reckon there is any chance he could actually renege on it? ... I've given him all the support I can in Council ... And that's based on an understanding we had in his office ... I just want to make sure you know.

Despite his threat in November 2018 regarding the H3 intersection, in his evidence Councillor Aziz maintained that it was at his insistence that the Barak Avenue transaction did not go ahead. He also denied that his proposal – that the transfer back to him should take place at about the time he proposed to leave the Casey Council – was calculated to avoid adverse publicity while he was a councillor. He ventured, 'he [Mr Woodman] may have just wanted to help me out because of the state of distress that I was in'. Like many other aspects of his evidence, Councillor Aziz's account on this issue lacks credibility.

Despite Councillor Aziz's assertions, the evidence demonstrates he was seeking to sell the Barak Avenue property to Mr Woodman, live there rent-free, and have it returned to him for a nominal payment when he left the Casey Council. Ultimately, the 'Little River agreement' outlined below was devised as an alternative method to justify large payments from Mr Woodman to Councillor Aziz.

3.6.3.5 2018 to 2019 – the Little River consultancy agreement

The Little River transactions

Between November or December 2018 and October 2019, Councillor Aziz received monthly payments of approximately \$25,000. The monthly payments comprised of \$23,000 paid via electronic funds transfer to accounts that Councillor Aziz nominated and \$2000 in cash delivered by Ms Wreford. Investigations identified 12 transfers of \$23,000 each (a total of \$276,000) from a Watsons account between December 2018 and October 2019.

On 30 November 2018, in a lawfully intercepted conversation, Councillor Aziz arranged to pick up cash from Ms Wreford. On 3 December 2018, he deposited \$24,950 cash into his account. On the same day, there was also an electronic funds transfer of \$23,000 from a Watsons account to Councillor Aziz's account. The payments continued until October 2019, when Councillor Aziz went overseas after the IBAC investigation became public.

As outlined above, from early 2018 Councillor Aziz explored different ways to obtain additional funds from Mr Woodman, following the conclusion of the 'suitcase' transactions. Between June and November, Mr Woodman transferred money to Councillor Aziz through the racehorse bloodstock business, during which time Councillor Aziz was negotiating the Barak Avenue proposal. By November 2018, Mr Woodman had deferred this proposal. At this point, the evidence shows that Ms Wreford, acting on instructions from Mr Woodman, negotiated an alternative method to facilitate regular payments from Mr Woodman to Councillor Aziz: the Little River consultancy.

Between 12 October 2018 and 30 January 2019, in a series of intercepted conversations, Councillor Aziz and Ms Wreford discussed and refined an arrangement to supersede the racehorse bloodstock business arrangement. In evidence, Ms Wreford agreed that, on instruction from Mr Woodman, in October, November and December 2018, she had discussions with Councillor Aziz about how to make payments to achieve his purported understanding with Mr Woodman that he would be paid about \$600,000. She recalled that in December 2018, transfers of \$23,000 a month to Councillor Aziz commenced, plus \$2000 cash delivered by her. Based on the spread of payments and the evidence of Mr Woodman, it appears that the new arrangement effectively commenced from November 2018.

On 29 November 2018, in a conversation eleven days after the last racehorse bloodstock business payment, Councillor Aziz sought Ms Wreford's assistance to engage a mortgage broker to refinance Barak Avenue. When providing her with financial information, he told her that the broker did not need to know about the racehorse bloodstock business payments, and that 'this is going to be replaced by other things'.

In a further conversation on 30 November 2018, Councillor Aziz and Ms Wreford referred to 'the electronic stuff' commencing on 1 January 2019, which Ms Wreford did not wish to discuss on the telephone. Councillor Aziz asked Ms Wreford whether, in making the mortgage application, he should use 'the business development manager cover ... and you know who I'm referring to' to account for the January and December payments, or just the December payments.

On 30 January 2019, Councillor Aziz and Ms Wreford continued to speak in guarded language about the arrangement. During the intercepted conversations, they did not refer to a 'Little River agreement'. In the days before payments started, they discussed a 'cover', which was clearly not the Little River consultancy, indicating that the idea of the consultancy arose after payments began.

During his examination, Mr Woodman claimed to have first discussed the Little River consultancy with Councillor Aziz in January 2019, at a meeting with Councillor Aziz and Ms Wreford. He offered Councillor Aziz a deal of \$25,000 a month over two years, totalling \$600,000, as a consultant on 'Smart Cities' for a proposed project at Little River. He said Councillor Aziz had no qualifications in the area, but had attended conferences and purported to be undertaking a PhD in the field. According to Mr Woodman's evidence, Councillor Aziz's total contribution over time was to introduce Mr Woodman to academics and to provide a document about 'Smart Cities'. Councillor Aziz did not attend the site.

The evidence indicates that the precise nature of the 'consultancy' was probably not determined until February 2019. The arrangement and its justification were recorded in a written agreement, which was prepared in March 2019 and backdated, as set out below.

The Little River agreement

According to WhatsApp messages on 25 March 2019 between Ms Wreford and Mr Woodman's personal assistant, the Little River consultancy agreement was completed on 24 March 2019. Ms Wreford was to collect it the following day for delivery to Councillor Aziz. The agreement was dated 1 December 2018 and purported to have been executed by Councillor Aziz on 28 November 2018. It provided for the payment of \$25,000 a month, each month from 1 December 2018 to 1 December 2020 inclusive. The agreement provided that it could be terminated by mutual consent only.

A copy of the 'Little River agreement' was found when warrants were executed at each of the premises of Mr Woodman and Councillor Aziz. The Watsons copy was retrieved from a staff member who was seeking to remove it from the office. No electronic copies were recovered. The documents are identical. Although signed and dated 28 November 2018, lawfully intercepted telephone calls show that they contain a provision that was negotiated and included at Councillor Aziz's request in March 2019, months after the purported date of execution.

The evidence shows that the agreement was developed for the purpose of, if necessary, explaining payments to Councillor Aziz. Unlike the memorandum with Councillor Ablett discussed above, it did not require Councillor Aziz to declare a conflict of interest when proposals involving Mr Woodman's interests came before the Casey Council.

In examinations, Mr Woodman was played a recording of an intercepted conversation between himself and his personal assistant, on 6 March 2019, in which he states, 'I just don't want [the agreement with Councillor Aziz] emailed' and asks if it can be sent by courier instead. After listening to the recording, it was put to Mr Woodman by counsel assisting that he did not want the agreement to 'see the light of day', in response to which Mr Woodman agreed, 'that is the conclusion you'd draw, yes'.

In evidence, Councillor Aziz denied that he ever discussed with Mr Woodman the fact that no electronic copy would be kept. He also denied that the document was created in March 2019, shortly before Ms Wreford reported to Mr Woodman on 29 March that Councillor Aziz had just signed the contract. There was no intercepted discussion indicating the existence of a written document, or an electronic message to that effect, before March 2019.

In his evidence, Councillor Aziz conceded that 'whatever was discussed in March may have been backdated', but he could not recall. However, he was adamant that a contract existed in November and suggested that the original may have been replaced by an amended version.

Contrary to Councillor Aziz's denials, the evidence revealed a consistent intention by Councillor Aziz and Mr Woodman to conceal the payments. On some occasions, IBAC surveillance observed Ms Wreford obtaining cash from Mr Woodman and/or delivering it to Councillor Aziz. On one occasion, at a restaurant, Councillor Aziz was recorded by a surveillance device to say about the receipt of cash from Ms Wreford, 'How are you going to present it to me without it looking like drug deal? ... Let's just walk outside'.

Consistent with an intent to conceal, the payments were recorded in Watsons' accounts as transfers to, a friend of Councillor Aziz. However, on 1 February 2019, at a meeting between Councillor Aziz and Ms Wreford, they discussed the money being paid to a different account. Ms Wreford observed, 'providing it doesn't go direct to you, that could be – end up being a problem for him'.

On 5 February 2019, Councillor Aziz put to Ms Wreford what he described as an 'ingenious solution' in relation to 'the stuff that comes through every month'. From that point onwards, the payments would be paid directly to the loan account that was established at that time to enable Councillor Aziz to purchase his first spouse's interest in the Barak Avenue property. From 28 February 2019 until the last transfer on 31 October 2019, the payments of \$23,000 per month were made to the loan account.

In evidence, Councillor Aziz conceded that during the 12 months in which he received payments of approximately \$25,000 a month, he provided a 40-page document containing generic material relating to the 'Smart Cities' concept. Councillor Aziz was shown a provision in the contract providing for the conduct of research relating to the 'urbanisation of Little River as detailed in plan 37159CPD', yet Councillor Aziz conceded there was no plan, because only concepts were being discussed and it was 'way too early for that'.

During his examination, Councillor Aziz was also referred to information contained in submissions from Mr Woodman to a proposed Malaysian investor in March 2019. Councillor Aziz could not explain why, in the submissions, there was no provision for payment for the consulting work to be done by him. He claimed that, at the time he became involved, there was no agreement between Watsons and the primary investor, as matters were still under negotiation and extremely confidential.

Councillor Aziz could not explain why Mr Woodman would commit to pay him \$600,000 and commence monthly payments in relation to an investment proposal for which it was anticipated that Watsons would receive only approximately \$750,000. Nor could he explain why Watsons would commit to pay him \$600,000 in respect of a project that it had not secured and never did secure.

3.6.3.6 Total financial payments and other contributions from Mr Woodman to Councillor Aziz

Between 2017 and 2019, Councillor Aziz received payments from Mr Woodman totalling more than \$600,000, as well as repayment of the \$600,000 handed to Mr Woodman by Councillor Aziz. This figure excludes donations from Mr Woodman to Councillor Aziz's election campaign, discussed in section 3.7.

Date	Description	Amount
2017–18	Cash in a suitcase: 12 cash payments of \$15,000 under agreement	\$180,000
2018	Cash in a suitcase: transfer payments, less the repayment of the \$600,000 handed to Mr Woodman by Councillor Aziz	\$90,063
2018	Racehorse bloodstock business: transfer payments	\$22,550
2018	Little River consultancy: initial cash deposit to Councillor Aziz's account on 3 December 2018, as part of \$25,000 payment	\$24,950
2018–19	Little River consultancy: 12 transfers payment of \$23,000	\$276,000
2018–19	Little River consultancy: 12 cash payments of \$2000	\$24,000
Total		\$617,563

Councillor Aziz never declared a conflict of interest about these payments.

3.6.4 Councillor Aziz's financial dealings with other individuals and entities

In addition to the financial benefits that he received from Mr Woodman and his associates, Councillor Aziz also sought and received financial benefits from other individuals and entities who had commercial interests in the outcome of Casey Council decisions and activities. As explained below, Councillor Aziz's dealings with others included Mr Nehme, Mr Kostic, Lodex and IPsoft.

3.6.4.1 Mr Nehme, ARA and the CLC

Payments from Mr Nehme's company to an account in the name of Councillor Aziz's first spouse

Between September and November 2016, Mr Nehme transferred a total of \$251,000 from the account of the Nehme Group of Companies Pty Ltd (NGOC) to an account in the name of Councillor Aziz's first spouse, in a series of four payments in the form of a purported loan, comprising:

- 29 September 2016: \$21,000
- 27 October 2016: \$140,000
- 15 November 2016: \$75,000
- 25 November 2016: \$15,000.

IBAC found no evidence that the loan was repaid.

Mr Nehme worked in property investment and development. He controlled his own family companies, including NGOC. He was also a director of Action Realty Australia (ARA), an entity that is part of a broader group managing the extensive Australian commercial and property interests of parent companies located in the Gulf State of Kuwait. Mr Nehme received directors' fees and consulting fees to represent the interests of this group of companies. In 2005, ARA purchased the leasehold of the Casey Lifestyle Centre (CLC) from the Casey Council, and later purchased the freehold for \$20 million in 2016.

As explained below, the Casey Council approved the sale of the CLC and an adjoining property, Regency, to ARA, 23 days before the first payment from NGOC to an account in the name of Mr Aziz's first spouse on 29 September 2016. However, both Councillor Aziz and Mr Nehme claimed that the payments from NGOC to the account in the name of Mr Aziz's first spouse had nothing to do with Councillor Aziz's role in assisting Mr Nehme in the purchase of the CLC and Regency. They further claimed that the payments had nothing to do with the assistance Councillor Aziz provided in respect of commercial disputes between the Casey Council and ARA during the time that ARA had only a leasehold interest in CLC and Regency.

IBAC found that these payments were made to reward Councillor Aziz for services he had rendered to Mr Nehme and his principal.

In evidence, Mr Nehme said an acquaintance introduced him to Councillor Aziz around 2012. This acquaintance suggested they meet because Councillor Aziz was a Casey councillor and Mr Nehme represented ARA, which leased property from the Casey Council. Mr Nehme stated that they became good friends and their families dined together, even though it was primarily a business relationship.

In 2013, Mr Nehme was able to assist Councillor Aziz by interceding to help him and his first spouse with their business. Mr Nehme asserted that, throughout the course of their relationship, Councillor Aziz professed to be very alert to avoiding any conflict of interest. However, Mr Nehme was unable to articulate why it was that any need arose to be concerned over such matters.

3.6.4.1.1 2013 to 2016 – purchase of the CLC

Between 2013 and 2016, ARA sought to purchase the CLC from the Casey Council. During this period, Councillor Aziz actively promoted the sale, which was concluded in September 2016.

Purchase of the CLC

On 5 June 2013, Mr Nehme drafted a memorandum that recited that ARA had purchased a 30-year leasehold on the CLC in 2005, knowing there was a disputed liability to pay land tax of approximately \$200,000 per year on top of the rent determined under the lease. Per the terms of settlement between ARA and the Casey Council, a determining valuer had been appointed by both parties to determine the reviewed rent. The valuer's determination in November 2011 went against ARA, resulting in a liability of \$741,959. Mr Nehme expressed concern that ARA was in default under the lease and that the Casey Council could 'call up' (the lease) or demand immediate payment. ARA wanted to purchase the freehold.

In the memorandum, Mr Nehme described meeting Councillor Aziz four weeks earlier, when Councillor Aziz told him he had moved a motion supporting the sale of the CLC, and that he had required Casey Council officers to prepare a report on which the Casey Council could vote. Councillor Aziz had undertaken to pursue the sale 'in a timely manner' to get the matter finalised before a rent review due in August 2013.

In the memorandum, Mr Nehme concluded:

it has been a fortunate situation as I have been able to assist his spouse who requires support from a [company] ... I know their CFO [chief financial officer] and he has kindly assisted them in growing their business hence Mr Aziz feels compelled to respond with a favour to me so let's put him to the test.

On 16 December 2014, the Casey Council passed a motion moved by Councillor Aziz supporting the sale of the CLC and Regency. On 14 January 2015, Councillor Aziz emailed the Casey Council Director of Corporate Services, railing against a decision to fund a second consultant's report following a move by other councillors to rescind the motion of 16 December 2014. He threatened to move 'urgent business in camera' on 'alleged officer conduct'.

On 15 January 2015, Mr Nehme emailed Councillor Aziz complaining about being harassed for arrears of rent by Casey Council officers who, he alleged, were acting inappropriately. His lawyers were negotiating with the Casey Council after a letter of demand had been issued following the failure to pay arrears of rent arising from the land tax determination. An email dated 19 January 2015 from the Casey Council Director of Corporate Services to Councillor Aziz made it clear that Councillor Aziz had made detailed representations on Mr Nehme's behalf.

In mid-July 2016, ARA submitted a tender and a signed contract for the purchase of the CLC and Regency. On 19 July 2016, the Casey Council resolved in a closed session that ARA was the highest bidder and the preferred proponent. Following the meeting, the Casey Council publicly circulated the decision. The notice of intention to sell was advertised on 5 August 2016.

On 6 September 2016, Councillor Aziz chaired a special meeting of the Casey Council. As no objections had been received, the Casey Council approved the sale.

During examination, Councillor Aziz gave evidence that the issue of rental arrears was ‘an operational matter in which I could have no influence or involvement’. Councillor Aziz was reluctant to agree that he forcefully represented Mr Nehme’s views to Casey Council officers. He later stated, ‘All I did was act as a mediator or go-between, between him and the Council officers, to try and resolve those problems’.

In evidence, Mr Nehme said he was aware of the difficulties Councillor Aziz experienced in trying to convince the Casey Council to sell the land. He said, ‘From day one, Council never wanted to sell this asset, the freehold. It’s always been difficult’. He believed that there was a hidden agenda behind the Casey Council threatening to call in the bank guarantee, because the CLC and Regency land, having been developed by his group, ‘would be a great asset for the Council to get’.

During examination, Councillor Aziz asserted that he was not aware until some time after ‘the conclusion of the entire process’ that ARA had expressed an interest in purchasing the freehold. He stated, ‘I didn’t even know he was in the game to buy the Lifestyle Centre because the process was so secretive and kept away from councillors’. Mr Nehme, on the other hand, stated in evidence that it was something they would have discussed, particularly after ARA was publicly declared to be the preferred proponent.

3.6.4.1.2 2016 to 2017 – the ‘loan’ to Councillor Aziz and his Family Court proceedings

As described above in relation to the ‘suitcase’ transactions, when Councillor Aziz gave evidence in a private examination he asserted that, having withdrawn \$600,000 in cash from family accounts on 10 May 2017, he:

- applied \$230,000 of that amount to repay a cash loan from Mr Nehme that had been made in October 2016 when Councillor Aziz was deeply in debt
- gave \$370,000 to Mr Woodman.

Later, under public examination, Councillor Aziz admitted that the \$600,000 had been paid to Mr Woodman, and acknowledged that no part of those funds was used to repay the monies given to him by Mr Nehme. However, he subsequently claimed that in May 2017 he paid Mr Nehme \$230,000 in cash from funds he had put aside over a period of seven months.

This claim contradicted his earlier assertion in a private examination that in April 2017 his first spouse had cut off his credit card, and the only money to which he had access was proceeds from the sale of her business, and another \$15,000 or \$20,000 worth of savings, totalling \$600,000.

In public examination, before being questioned about how he accumulated \$230,000 in cash, Councillor Aziz maintained that, when it came time to pay back the alleged loan to Mr Nehme, interest was forgiven because he was ‘in dire financial straits ... in relative and absolute terms because I had mortgage commitments of \$18,000 a month that I needed to cover once the split had occurred. I had a damaged property that I needed to fix where a car had smashed into our property ... and obviously supporting my children’.

Based on the documentary evidence recording the ‘loan’ and its repayment, the circumstances surrounding their creation, and the oral evidence, IBAC is satisfied that the four payments totalling \$251,000 from NGOC to the account in the name of Mr Aziz’s first spouse did not relate to a loan. Rather, the money Councillor Aziz received was for services rendered to Mr Nehme.

Documentation of the 'loan'

A letter from Mr Nehme to Councillor Aziz, dated 1 October 2016, purported to record a commitment from Mr Nehme to lend Councillor Aziz \$230,000 in three tranches. Both Mr Nehme and Councillor Aziz signed the letter.

The payment dates in the letter were the same as the dates of transfers from NGOC to an account in the name of Mr Aziz's first spouse. Further, the amounts listed matched the amounts transferred. However, they did not include an initial payment of \$21,000 on 29 September 2016.

The letter provided that \$230,000, plus an additional \$10,000, was to be repaid no later than 14 May 2017.

Councillor Aziz and Mr Nehme gave evidence that the letter of 1 October 2016 truly reflected the loan arrangement. When Mr Nehme was asked why he did not use one of the professionals he regularly engaged to draw up these loan documents, he responded that he was obviously not a good businessman. Although he was aware that the money he allegedly lent to Councillor Aziz was to enable Councillor Aziz to pay off debt, he could not recall discussing with Councillor Aziz at that time Councillor Aziz's capacity to repay the loan. Mr Nehme stated it was 'an oversight' that the further amount of \$21,000, paid only two days earlier, had not been included in the letter.

The latest date for repayment of the loan was two days after Councillor Aziz's deposit of \$600,000 in cash to Mr Woodman on 12 May 2017, linked to the 'suitcase transactions' discussed above. In evidence, Councillor Aziz and Mr Nehme said they first discussed the loan arrangement between two and seven days before 1 October 2016. Councillor Aziz could not remember when the letter was prepared. He speculated that it may have been after the first payment had been made, but he did not think that it was created in 2017, around the time of his divorce settlement.

In his evidence, Mr Nehme claimed that he was 'pretty sure' that the document was not backdated. He admitted, however, that he was not aware in advance of the dates of payment, when money would arrive from Kuwait to facilitate the 'loan' or the amounts that would be paid, making it unlikely that he would be able to commit to making payments at particular dates in the future.

Contrary to Councillor Aziz and Mr Nehme's evidence, IBAC found that the letter of 1 October 2016 was backdated. Specifically, the evidence in IBAC's investigation is that this letter was prepared in late June or early July 2017, when Mr Woodman's personal assistant sent Councillor Aziz the revised loan agreement concerning the suitcase transactions discussed above. In evidence, Mr Woodman agreed that he received \$600,000 cash from Councillor Aziz around this time, and bank records show that between February and May 2018 Mr Woodman disbursed some \$690,000 in funds to Councillor Aziz's family members and entities, or to persons to whom Councillor Aziz had financial obligations. IBAC found that these transactions demonstrate that the revised loan agreement with Mr Woodman (sent in June 2017, but dated 10 May 2017) was a sham designed to support the assertion that Councillor Aziz had the capacity to repay Mr Nehme \$230,000 on 10 May 2017, in order to account for the \$600,000 that Councillor Aziz withdrew from the bank that day.

The veracity of Councillor Aziz and Mr Nehme's claim that the loan agreement was created on 1 October 2016 was also brought into question by an email Councillor Aziz sent to Mr Nehme on 25 October 2016. Separate to the 'loan' letter between Mr Nehme and Councillor Aziz dated 1 October 2016, Councillor Aziz emailed Mr Nehme an invoice for \$140,000 on 25 October 2016, purportedly on behalf of his first spouse, in relation to 'consulting fees'. In a submission to IBAC, Mr Nehme stated that this invoice 'was not requested or created by [him], nor does he know why it was sent to him'. Nevertheless, two days later, NGOC transferred \$140,000 to an account in the name of Mr Aziz's first spouse, as noted above.

In mid-2017, Councillor Aziz was preparing affidavits and other documents to support the submission of an income and asset position in his Family Court proceedings. They included affidavits by his mother and his fiancée asserting that they had each made loans to him totalling \$250,000 from their savings. In fact, it appears that these funds were part of the payments Watsons made under the umbrella of the 'suitcase' transactions. As explained above, Watsons transferred the money into the bank accounts of Councillor Aziz's mother and his fiancée, who shortly after transferred most of (\$7000 was withdrawn in cash) the money to Councillor Aziz's bank account between 21 March and 5 April 2018. Similarly, in evidence Mr Nehme agreed that Councillor Aziz prepared an affidavit setting out the details of debts that Councillor Aziz said he needed to pay, which Mr Nehme revised and signed.

On 21 July 2017, Mr Nehme sent a document to Councillor Aziz via email, backdated to 10 May 2017, purporting to be a contemporaneous acknowledgement of having received repayment of the \$230,000. In evidence, Mr Nehme stated that he could not recall if the document was created because Councillor Aziz required it for his Family Court proceedings, but acknowledged that this was possible. Mr Nehme also asserted that, at the time of repayment of the \$230,000, Councillor Aziz told him that it came from \$600,000 which he had withdrawn from the bank. However, as noted above, Councillor Aziz gave the entire \$600,000 he withdrew to Mr Woodman.

During examination, Mr Nehme rejected the assertion that his relationship with Councillor Aziz was such that Councillor Aziz felt able to ask him to confirm particulars in his affidavit that he knew to be false or did not know to be true. The documentary evidence strongly indicates that the payments from NGOC to an account in the name of Councillor Aziz's first spouse were not a loan, and that the alleged repayment of those sums did not occur. The funds came not from Mr Nehme, but from his principals, whose commercial interests Councillor Aziz had promoted. During the relevant period, Mr Nehme did not have sufficient funds to pay Councillor Aziz until funds arrived from Kuwait, the whole of which were paid on to Councillor Aziz on each occasion.

Over the course of giving evidence, Mr Nehme's explanation regarding the source of the funds varied. Initially, Mr Nehme claimed that the payments to Councillor Aziz came from directors' fees or consultancy fees paid to Mr Nehme. However, the amounts paid to Councillor Aziz did not correspond with the amounts Mr Nehme stated that he regularly received as directors' fees. Mr Nehme admitted that, before coming to give evidence, he was aware that the source of the payments to Councillor Aziz would be an issue before IBAC, but claimed he did not check his accounts or make any enquiries.

Around the time of the payments to an account in the name of Mr Aziz's first spouse, bank statements show transactions involving funds moving back and forth between NGOC and the bank account of the Kuwaiti-owned entity. These transactions were noted as 'loan'. The transfers to an account in the name of Mr Aziz's first spouse were noted as 'paymt'. In evidence, Mr Nehme indicated that he believed the payments to Councillor Aziz were recorded in the NGOC books of account as a loan. If so, it is unclear why, as he claimed, he put the \$230,000 cash, which Councillor Aziz allegedly repaid, in his safe, rather than banking it in the NGOC account from which it was supposedly borrowed. When asked in evidence what the funds were used for, Mr Nehme could not recall specific details, stating, 'from my memory it was used for a lot of things. I can't tell you exactly because it was used for a lot of everyday living spending. We went overseas'. When asked whether this included any traceable expenditure such as a large item, Mr Nehme stated he could not recall, but confirmed that he was 'very clear' that he did not pay any portion of the \$230,000 into a bank account.

3.6.4.1.3 2018 to 2019 – request for further funds

Between July 2017 and December 2018, Mr Nehme gave evidence that there was little communication between him and Councillor Aziz.

On 21 December 2018, Councillor Aziz called Mr Nehme seeking to borrow funds to enable him to buy out his first spouse's interest in the Barak Avenue property. Having initially offered to refer Councillor Aziz to a broker, Mr Nehme said, 'there is something else we can do, but we need to talk face-to-face, we have an issue out there with a potential purchaser ... We have got a sale going on at Casey and Regency'. Later in the conversation, Mr Nehme said, 'you know where I'm coming from, you can get a kick, a deposit on the house that could be something'. In response, Councillor Aziz indicated that they needed to catch up face to face.

At that stage, the potential purchaser had made a non-binding proposal to purchase the CLC and Regency, but was seeking an indication that the Casey Council was likely to look favourably on its redevelopment plans before proceeding further with the proposed purchase.

During examinations, Councillor Aziz claimed he was not sure what Mr Nehme had in mind when referring to a 'kick' and a 'deposit' and did not query Mr Nehme because 'it may be that I didn't want to know and I didn't want to take it any further'. He was unable to explain why he did not query Mr Nehme, but speculated that it may have been because it was close to Christmas and he was exhausted. He did not 'necessarily' understand Mr Nehme to be talking about a kickback. In evidence, Mr Nehme claimed that the reference to giving Councillor Aziz a 'kick' and a 'deposit' must have been a reference to him, Mr Nehme, seeking a commission. That explanation is inconsistent with what he actually said.

Councillor Aziz did indicate to Mr Nehme that Casey Council policy might accommodate what the proposed purchaser sought to do. As appears below, Councillor Aziz falsely asserted that he did not pursue Mr Nehme's request, and that Mr Nehme did not ask him to assist again.

In evidence, Councillor Aziz claimed that, even though Mr Nehme had previously provided him with funds, and he was now seeking a loan from or through Mr Nehme to buy his first spouse's interest in Barak Avenue, he did not see himself as having a conflict of interest if he was to support the outcome Mr Nehme wanted at the Casey Council, because there was no ongoing commercial arrangement between them. Further, he considered that advocating to Casey Council officers for a proposal that was justified did not create a conflict of interest, because everybody did it. In contrast, he said that advocating to fellow councillors had the potential to create a conflict of interest, because they have the power to ultimately decide matters.

Contrary to Councillor Aziz's claim that he did not pursue Mr Nehme's proposal regarding a potential purchaser, lawfully intercepted telephone calls on 9 January 2019 and Councillor Aziz's subsequent evidence show that he did. Approximately three weeks after his conversation with Mr Nehme, Councillor Aziz spoke to the Director of City Planning and Infrastructure Services. They discussed Mr Nehme's proposal. Councillor Aziz said that, if necessary, he would take the matter to the Casey Council to engage independent property consultants. He advocated in favour of the proposal on the basis that it was impossible to over-emphasise the need to create jobs.

Later that day, Councillor Aziz reported to Mr Nehme that he had arranged a meeting between Mr Nehme, the potential purchaser, and the Director of City Planning and Infrastructure Services. He told Mr Nehme that he intimated to the officer there was a review of positions in the planning department, and that he had taken advantage of this in order 'to get the right outcome', saying, 'Remember the resistance we had in terms of the sale of the Lifestyle Centre'. Councillor Aziz said he did not want to attend the meeting, but told Mr Nehme, 'I want to assure you that I'm in the background fighting'. Mr Nehme thought it was a sensible move, 'because then nobody can question the other'.

When referred to this conversation during an examination, Mr Nehme was unable to explain why Councillor Aziz was apparently trying to impress him with what, on its face, was private information about the Casey Council staffing. He said that the reason they discussed Councillor Aziz remaining in the background was 'if there was any conflict no one could point the finger. No different to going back to the sale of the [CLC]'. He was not able to explain what conflict he had in mind.

During examination, Councillor Aziz agreed that the conversation with the Director of City Planning and Infrastructure Services demonstrated that Councillor Aziz had acquired more detailed knowledge than was revealed to him in his original telephone call with Mr Nehme. He then agreed that he and Mr Nehme would have communicated in the interim. He acknowledged he supported Mr Nehme once again, even though he felt uncomfortable about Mr Nehme's initial approach. He denied that his enthusiastic intervention with the Director of City Planning and Infrastructure Services indicated he received a kickback.

IBAC is satisfied that Nehme's statement that 'then nobody can question the other' meant that Aziz staying in the background would help avoid questions about their relationship at the time of the CLC sale. During examination, Councillor Aziz explained that the expression related to the prospective purchaser, but IBAC found that this explanation is at odds with the context.

3.6.4.1.4 2019 – actions in response to search warrants

Throughout their evidence, Mr Nehme and Councillor Aziz gave contradictory explanations for their financial arrangements and the nature of their relationship. Despite their varied explanations on points in evidence, the evidence shows that they met up in person after a search warrant had been executed at Councillor Aziz's home and prior to their respective examinations by IBAC.

On 17 September 2019, IBAC executed a search warrant at Councillor Aziz's home. On 19 September 2019, IBAC executed a search warrant at Mr Nehme's home.

In evidence, Councillor Aziz agreed that, following the execution of the warrant at his home, having seen Mr Nehme's name on the warrant documents, Councillor Aziz went to Mr Nehme's home. However, both Councillor Aziz and Mr Nehme asserted that the visit took place *after* the search at Mr Nehme's home.

During examination, Councillor Aziz conceded that when he visited Mr Nehme's home, to the best of his recollection he and Mr Nehme discussed the 'loan'. He stated they may also have discussed the evidence Mr Nehme provided for his matrimonial dispute. In contrast, Mr Nehme claimed there had been no conversation about the 'loan', nor about why the warrants had been executed. He said that Councillor Aziz had simply come to apologise for the inconvenience Mr Nehme had been put through by the attendance of the IBAC officers.

3.6.4.2 Mr Kostic

Cash deposits

In late 2018 and early 2019, Councillor Aziz deposited a total of \$37,000 into his bank account, comprising:

- \$17,000 on 22 October 2018
- \$20,000 on 23 February 2019.

IBAC found that Mr Kostic was the source of these funds.

According to Councillor Aziz, Mr Tino Grossi introduced him to Mr Zlatimir Kostic at a function organised by Mr Grossi around Christmas 2017. Mr Grossi was a close friend and confidant of Councillor Aziz, and was CEO of Jim's Group at the time Councillor Aziz and his second spouse took on a franchise. Councillor Aziz said Mr Grossi introduced him to several people who wanted to discuss 'various matters' in the City of Casey, including Mr Kostic, whom he met on several occasions.

Two key matters of interest to Mr Kostic that involved the City of Casey concerned:

- the minimum lot sizes required in the Kostic Boulevard development in Narre Warren North, which fell within the area governed by the Cell N Development Plan
- a section 173 agreement¹²⁴ in relation to requiring that a historic cottage on the site should be preserved and a pedestrian bridge be constructed before final approval.

From late 2017 to late 2018, Councillor Aziz sought to promote Mr Kostic's commercial interests at the Casey Council in a number of ways. In relation to the lot sizes, this included Councillor Aziz introducing a notice of motion at an ordinary meeting of the Casey Council on 19 December 2017, which sought to reduce minimum lot sizes for future developments on land owned by Mr Kostic from 2000 m² to 1000 m², increasing potential profit margins.¹²⁵ On 8 November 2018, the Casey Council resolved to endorse the revised plan, which was then put on public exhibition.¹²⁶ The plan was ultimately adopted on 19 February 2019.¹²⁷

¹²⁴ An agreement made pursuant to section 173 of the *Planning and Environment Act 1987* (Vic). This section states that a responsible authority may enter into an agreement with an owner of land, in the area covered by a planning scheme for which it is a responsible authority.

¹²⁵ Casey Council, 19 December 2017, meeting agenda and minutes, Item 11, Notice of Motions Number 3200 of the meeting, 'Review of Cell N Development Plan in Narre Warren North'.

¹²⁶ Casey Council, 8 November 2018, meeting agenda and minutes, Item 6.6, 'To report on the review of the Cell N Development Plan and recommend that a revised version be placed on public exhibition'.

¹²⁷ Casey Council, 19 February 2019, meeting agenda and minutes, Item 7.7, 'Review of Cell N Development Plan, Narre Warren North'.

As the Casey Council moved closer to the resolution on the reduced lot sizes in late 2018, lawfully intercepted conversations between Mr Grossi and Councillor Aziz in October 2018 made reference to Mr Grossi negotiating with Mr Kostic for the provision of a 'present' to Councillor Aziz. In a lawfully intercepted call on 19 October 2018, Mr Grossi advised Councillor Aziz that if he wanted to come over that night, 'we can go and choose your partner's present ... otherwise you can come over tomorrow and we can go and have a look at half the present'. Two hours later, Councillor Aziz called Mr Grossi, stating that he was in Mr Grossi's driveway. On 22 October 2018, a \$17,000 cash deposit was made to Councillor Aziz's bank account.

During examination in December 2020, Councillor Aziz asserted that towards the end of 2018 Mr Grossi had loaned him approximately \$25,000 in cash, which was not recorded in any way and had not been paid back at the date of examination (December 2020). When asked about the way the two spoke in the October 2018 call, Councillor Aziz acknowledged that Mr Grossi often spoke in code, but asserted that the reference to 'half the present' was not about an improper payment from Mr Kostic, but rather the undocumented loan, which Mr Grossi may not have told his spouse about. Given the timing of the deposit and information obtained through the lawfully intercepted conversations, IBAC does not accept Councillor Aziz's account. Rather, the evidence demonstrates that Mr Grossi negotiated to obtain a payment from Mr Kostic, of which \$17,000 or more was paid to Councillor Aziz between 19 and 22 October 2018.

Regarding the section 173 agreement, negotiations focused on a requirement to preserve a historic cottage on the site and a requirement that a pedestrian bridge be constructed before final development approval. Mr Kostic was seeking to make a financial contribution instead of preserving the cottage and building the bridge.

In evidence, Councillor Aziz agreed that he presented Mr Kostic's views in discussions with Casey Council officers. This included meeting with Casey Council officers on 14 February 2019, when Councillor Aziz was shown a spreadsheet of the Casey Council's commercially sensitive calculations of the level of financial obligation the Casey Council was seeking from Mr Kostic as part of the section 173 agreement.

On 15 February 2019, Mr Kostic and his town planning consultant met with Casey Council officers. Later the same day, in a lawfully intercepted call, Councillor Aziz told Mr Grossi that Mr Kostic and his consultant were 'very well prepared for the negotiations' because of the 'intelligence' he had given them.

On 19 February 2019, Mr Grossi called Councillor Aziz, stating that there had been a disagreement between Mr Kostic and Casey Council officers regarding the pedestrian bridge. In response, Councillor Aziz stated that he would move an amendment at the Casey Council meeting that evening to specify that the Casey Council would accept a cash contribution, and indicated that he would make a call straight away. Shortly after, Councillor Aziz called Councillor Smith. During that call, Councillor Aziz informed Councillor Smith about a dispute between Casey Council officers and the developer, and stated that an amendment would be put forward at the Casey Council meeting that night. In response, Councillor Smith stated that he would be happy to accept the motion.

At the Casey Council's ordinary meeting that evening, the Council passed a resolution to adopt the amended Cell N Development Plan, and to endorse developer contributions to support community infrastructure by means of negotiated section 173 agreements on each property being developed.¹²⁸ Shortly after, Councillor Aziz sent separate text messages to Mr Grossi and Mr Kostic's town planning consultant, stating, 'Congratulations the Cell N review had no[w] passed and is officially law!'

On 20 February 2019, Councillor Aziz rang Mr Grossi to express concern that Mr Kostic 'may renege' on their agreement. In response, Mr Grossi indicated that Mr Kostic was visiting him that evening. Councillor Aziz then enquired, 'Okay. To, um, deliver the mail that we wanted him to deliver?'; to which Mr Grossi replied, 'Just to say thank you ... You know, just to, I mean how – how much more, polite, can you be than that?'. Councillor Aziz then enquired about 'the thank you card', and Mr Grossi stated, 'I think he's coming over, ah, also Friday. I, he wants to bring my spouse a bunch of flowers', then promised to call Councillor Aziz 'as soon as he leaves tonight, if he says thank you'.

¹²⁸ Casey Council, 19 February 2019, meeting agenda and minutes, Item 7.7, 'Review of Cell N Development Plan, Narre Warren North'.

Surveillance images show Mr Kostic visiting the Grossi residence on the evening of 20 February 2019. After Mr Kostic left, Mr Grossi advised Councillor Aziz by telephone that Mr Kostic was going to return with 'a nice bunch of flowers' on Friday night and that Councillor Aziz should visit at a specified time. Councillor Aziz commented that once that was out of the way, he would 'have a very happy weekend'. Surveillance images show Councillor Aziz visiting Mr Grossi's residence on Friday 22 February 2019. Financial investigations also established that on 22 February 2019 Mr Kostic withdrew \$30,000 in cash from one of his accounts.

On 23 February 2019, shortly after these conversations and meetings, \$20,000 was deposited in Councillor Aziz's account, as noted above.

In evidence, Councillor Aziz said he could not recall the source of funds, but asserted that it had nothing to do with Mr Kostic. IBAC has not obtained evidence from Mr Grossi or Mr Kostic regarding their explanation of the payments made to Councillor Aziz. However, IBAC is satisfied that the evidence shows that Mr Grossi again facilitated a payment, this time \$20,000, from Mr Kostic to Councillor Aziz.

3.6.4.3 Lodex

Investment in Lodex

On 10 and 11 May 2018, Councillor Aziz invested \$50,000 in financial instruments issued by an entity trading as Lodex.co (Lodex). Councillor Aziz used money that Watsons repaid from the \$600,000 'loan' to make the investment. The instruments had a face value of \$200,000 and were tradable from November 2019. Councillor Aziz received a 75 per cent discount on the purchase. In evidence, Councillor Aziz maintained that this discount was also available to others seeking to invest at that stage.

Lodex is a marketing platform facilitating the use of digital currency to pay for goods or services. Councillor Aziz had a contact at Lodex whom he knew through the Australian Institute of Company Directors.

In March 2018, Councillor Aziz introduced a Casey Council employee to representatives of Lodex so that they could pitch their product. Councillor Aziz saw the facilitation of digital payments to the Casey Council as part of a 'Smart Cities' strategy, which was an area of interest to him. On 16 March 2018, under his oversight of the Casey Council's 'Smart Cities' strategy, Councillor Aziz exchanged emails with a Casey Council officer. Councillor Aziz put forward talking points for a proposed Casey Council meeting seeking to have councillors endorse that the Casey Council investigate the use of cryptocurrencies.

In evidence, Councillor Aziz asserted that he could not remember the names of the people with whom he was dealing at Lodex, and initially claimed that Lodex had nothing to do with the Casey Council and had no business with it. Contrary to that initial account, he did go on to say he contacted a Casey Council officer to arrange for a Lodex representative to make a presentation to that officer.

In late May 2018, Councillor Aziz and Lodex discussed a proposal for Lodex to appoint Councillor Aziz as an advisor. Under the arrangement, Councillor Aziz would be paid 0.5 per cent of a proposed capital raising, plus 5 per cent of capital raised from individuals introduced by him. According to Councillor Aziz, that proposal did not proceed.

On 28 November 2018, the Lodex contact emailed Councillor Aziz thanking him for the recent discussion 'around you championing the City of Casey as the pilot government client of the BlockLoan Solution for a Digital Wallet and Credit Card'. He proposed that they meet to discuss 'the cost model for the city of Casey, and a revenue share model for yourself, with you'. The following day, in a lawfully intercepted telephone call, Councillor Aziz told the Lodex contact that he had deleted the email and asked that he send another email 'which is proper', noting 'that email you sent me would actually land me in jail'.

During examination, Councillor Aziz denied that these communications contemplated him receiving a kickback consisting of a percentage of whatever Council eventually paid. He maintained that conflict-of-interest provisions do not apply when a councillor is introducing proposals to Casey Council officers; they only apply to voting. As noted above, in his evidence Councillor Aziz maintained that the discount he received on financial instruments issued by Lodex was also available to others seeking to invest at that stage, and therefore this also was not a conflict of interest.

3.6.4.4 IPsoft

Payment from IPsoft

On 28 August 2019, Councillor Aziz invoiced IPsoft for \$30,800 through his company, Global Business Advisory Pty Ltd. IPsoft paid this amount on 11 September 2019. The invoice purported to be for services Councillor Aziz provided on a project at an educational institution.

IPsoft, now trading as Amelia, is a technology company that provides an artificial intelligence (AI) customer interface. It describes Amelia as a 'Digital Employee and Conversational AI solution'.

On 5 February 2018, Councillor Aziz presented to a Casey Council officer what he described as an exciting proposal from IPsoft, for the use of a robotic, AI interface between City of Casey Council and some of its customers. Councillor Aziz facilitated contact between Casey Council officers and IPsoft on several more occasions in the following months, with a view to having IPsoft's Amelia AI product adopted by the Casey Council.

On 3 November 2018, Councillor Aziz and a representative of IPsoft discussed a 'referral agreement', which would involve paying Councillor Aziz consultancy fees. Councillor Aziz wanted the agreement to be executed only after any Casey Council contract was awarded to IPsoft, because they did not know the amount of the fee. They agreed that Councillor Aziz would be appointed as a consultant on a project not yet identified, but not related to Casey. Councillor Aziz asked for 'nothing that mentions Casey, or Amelia, or a trial or anything. Just a generic consulting agreement'.

In February 2019, in a series of conversations, Councillor Aziz and a Casey Council officer, and later a representative of IPsoft, discussed proceeding with a pilot project between IPsoft and the Casey Council. Councillor Aziz discussed with the Casey Council officer that the project was to have milestones, which would not require a tender process if the milestones were charged for individually at amounts of less than \$150,000.

Between 6 and 10 May 2019, Councillor Aziz, together with two other Casey councillors and two Casey Council officers, participated in a 'Smart Cities Tour' to the United States, which included attending the IPsoft Digital Workforce Summit. Following the tour, a Casey Council officer prepared a report to the Casey Council for a meeting on 18 June 2019, noting that the Casey Council had 'partnered with ... IPsoft to conduct a proof-of-concept project for a cognitive virtual assistant across two customer service processes'. At the meeting, Councillor Aziz moved the motion endorsing the Casey Council officer's recommendation to progress these partnership opportunities.

Once the trial was underway, on 30 July 2019, IPsoft invoiced the Casey Council for \$42,708, which was processed on 13 September 2019. On 28 August 2019, Councillor Aziz invoiced IPsoft for \$30,800 through Global Business Advisory Pty Ltd, which was paid on 11 September 2019. As noted above, the invoice purported to be for services provided by Councillor Aziz, relating to a project at an educational institution.

Councillor Aziz gave evidence that the payment related to a trial at the educational institution that was discontinued once the IBAC investigation became public. The discussions between Councillor Aziz and the IPsoft representative in November 2018 make it likely that, like the Little River agreement, the consultancy work at the educational institution was to give an air of legitimacy to IPsoft's payments to Councillor Aziz for his assistance in IPsoft's dealings with the Casey Council, when in truth it was to reward Councillor Aziz for his support of the IPsoft proposal at the Casey Council.

In evidence, Councillor Aziz said he did not declare a conflict of interest regarding IPsoft. However, as early as November 2018, he said he discussed with the Council Governance Manager the possibility of taking on consultancy work with IPsoft. He did not tell her that he was in fact paid by IPsoft in September 2019. He claimed that it was his understanding that he did not need to declare a conflict of interest, because he was not the decision-maker and there were only 'pre-contractual discussions'.

3.6.4.5 Total financial payments and other contributions Councillor Aziz received from other individuals and entities

Between 2016 and 2019, Councillor Aziz received payments and other benefits from other individuals and entities totalling \$468,800. Councillor Aziz never declared a conflict of interest in relation to any of these payments.

Date	Description	Amount
2016	Payments linked to Mr Nehme's 'loan' arrangement	\$251,000
2018–19	Payments from Mr Kostic	\$37,000
2018	75 per cent discount on \$50,000 investment in Lodex	\$150,000
2019	IPsoft/educational institution consultancy payment	\$30,800
Total		\$468,800

3.6.5 Mr Woodman's financial arrangements with Councillor A and Councillor Smith

As described above, Mr Woodman's financial arrangements with councillors took various forms, ranging from direct payment to political donations, and differed in amount and duration. Although it appears that Councillor Ablett and Councillor Aziz were the primary beneficiaries of payments from Mr Woodman and his associates, Mr Woodman gave direct and indirect financial support to other councillors as well.

3.6.5.1 Councillor A

Councillor A's promotion of Mr Woodman's interests on the Casey Council

Councillor A was first elected to Council in 2008 and was mayor for 12-month periods in 2012–13 and 2018–19, and deputy mayor in 2013–14 and 2017–18.

Councillor A was one of a core group of three councillors that Mr Woodman and his associates cultivated (in different ways) to promote his and his associates' interests at the Casey Council, as outlined in sections 3.1 and 3.2. As discussed in section 3.1, Councillor A voted on an early resolution in favour of Amendment C219 in 2014. In later motions Councillor A absented themselves from voting some of the time before ultimately declaring a conflict of interest concerning Mr Woodman's interests in March 2015.

As outlined in sections 3.1 and 3.2, from 2015 onwards Councillor A regularly declared a conflict of interest, but in incomplete terms.¹²⁹ Councillor A continued to engage on the same matters outside Casey Council meetings. During examination on the H3 intersection matter, Councillor A conceded that they had a conflict of interest but continued to engage with other councillors regarding the matter, conduct that they were 'bitterly disappointed' in themselves for. Councillor A agreed that the way they declared their conflict of interest was less than frank, but said that it 'wasn't designed to be deceiving'.

¹²⁹ See Chapter 7, Council governance, section 7.3.4, concerning conflicts of interest.

The evidence before IBAC does not show that Councillor A received direct improper payments from Mr Woodman or associated entities. As described in section 3.7, Councillor A received financial support from Mr Woodman for their 2014 election campaign. While Councillor A also received financial support from Mr Woodman for their 2016 local government election campaign, they may not have been aware of the source of the funding at the time. Councillor A also benefited from Mr Woodman's financial support for a disability services organisation that provided services to their family member.

Mr Woodman initially stated in evidence that he met Councillor A on several occasions: once at their holiday house on Phillip Island, twice at charity functions, once at a fundraising event at a restaurant in Beaconsfield and at Casey football games. He further said that five to seven years earlier, he and Councillor A discussed the provision of pro bono assistance to Organisation A for planning work for accommodating people with intellectual disabilities.

In evidence, Councillor A said that they first met Mr Woodman at a Pink Ribbon fundraising event in about 2009. In their examination, Councillor A stated that Mr Woodman was invoiced for \$15,000 to \$20,000 around 2015, to fund an after-care program at Organisation A, which was attended by up to 20 people living with disabilities, including Councillor A's family member. In response to IBAC's draft report, Organisation A advised that the service received \$20,570 in donations from Mr Woodman in 2016 for an after-hours program that was attended by Councillor A's family member. Organisation A also stated that its CEO – not Councillor A – was responsible for issuing this invoice, adding that contributions such as those made by Mr Woodman were sought after the service failed to secure funding from the Department of Health and Human Services in 2016.

In addition to this direct financial support, Mr Woodman asked his associate, Ms Schutz, to give Organisation A pro bono planning assistance, to determine whether some of Organisation A's green-wedge land could be rezoned to enable the construction of accommodation. Ms Schutz became a member of a subcommittee of Organisation A pursuing that project.

In evidence, Ms Schutz estimated that the value of her services was approximately \$20,000. She stated that once it was clear to Organisation A that a rezoning could not be achieved, Wolfdene (of which Mr Woodman's son was a director) got involved. Wolfdene had wanted to take part in a not-for-profit housing project, so it set up the Wolfdene Foundation and partnered with Organisation A to complete the project, providing land and accommodation worth likely over \$1 million.

Councillor A stated that while they were aware of this project due to their involvement with Organisation A, they did not benefit from the support provided by Ms Schutz or Wolfdene, because the program in question was not of the kind that could have suited their family member.

3.6.5.2 Councillor Smith

Councillor Smith's promotion of Mr Woodman's interests on the Casey Council

Councillor Smith was first elected to the Casey Council in 1997 and continued to serve on the Council until its dissolution in 2020. Between 2008 and 2020, Councillor Smith was deputy mayor for four 12-month periods: in 2010–11, 2011–12, 2015–16 and 2017–18.

Councillor Smith was not part of the core group of councillors whom Mr Woodman supported in seeking to gain their influence on Casey Council decisions and processes. Some of the significant proposals Mr Woodman and his associates put forward were well supported on the Casey Council, even after some councillors absented themselves or declared conflicts of interest.¹³⁰ However, it appears that Councillor Smith's vote was crucial on at least two occasions, when there was an even split on important votes on the H3 intersection matter. On 4 September 2018 and 16 October 2018, Councillor Smith's casting vote as chair determined key resolutions.

¹³⁰ These matters included votes on Amendment C219 (see section 3.1), Brompton Lodge (see section 3.4) and Pavilion Estate (see section 3.3).

In his evidence, Councillor Smith asserted that he had met Mr Woodman only three times in 20 years, primarily at social occasions such as fundraising dinners and charity events. Councillor Smith benefited from political donations from Mr Woodman, as outlined in section 3.7. In addition to direct donations, the evidence indicates that Councillor Smith took credit for donations in support of causes that interested him, but which Woodman ultimately funded, including:

- airline tickets for a person who approached Councillor Smith in his capacity as councillor to attend a competition overseas
- a computer to assist an individual with their studies, which was paid for via Mr Woodman's associates the Halsalls.

Apart from donations, the IBAC investigation found that Councillor Smith received money from Mr Woodman via the Halsalls and the Halsalls' family business. These funds were used to cover personal and travel expenses of Councillor Smith for an annual music festival, which he attended several times to broadcast a community radio show. Between 11 December 2014 and 5 January 2017, Mr Woodman provided approximately \$20,000 to cover these and other expenses, which included travel and accommodation for Councillor Smith and Ms Halsall's spouse, and the promotion of young musicians at the festival.

During examination, Councillor Smith said he never had occasion to declare a conflict of interest in relation to a proposal Mr Woodman sponsored, or, to his recollection, any other development proposal. He claimed he was unaware of the developments in which Mr Woodman had an interest. He explained that his consistent support for motions advanced or supported by Councillor Aziz that favoured Mr Woodman's interests were on the basis that he relied on the expertise and judgement of Councillor Aziz on planning matters.

In his evidence, Councillor Smith further claimed that he became aware only during IBAC's investigation that Mr Woodman was the source of funding he received to attend an annual music festival. He reiterated that Ms Halsall's spouse never told him Mr Woodman was the source of the funds; instead, he stated that Ms Halsall's spouse told him the funds came from the radio station's sponsor, where he and Ms Halsall's spouse did a regular show.

IBAC does not accept Councillor Smith's evidence that he was entirely unaware of Mr Woodman's patronage, and of the projects in which Mr Woodman was interested. Councillor Smith had a close and trusting relationship with the Halsalls and was a Casey councillor from 1997 to 2020, during which time matters related to Mr Woodman's commercial interests came before the Casey Council on numerous occasions. Further, documentary evidence shows that Councillor Smith was aware of Mr Woodman's support for one of the constituent causes listed above, with an email chain showing that Councillor Smith received a request from the constituent, Ms Halsall's spouse was used as an intermediary and Mr Woodman subsequently confirmed that he would support the request.

3.7 Donations and lobbying

3.7.1 Overview of Mr Woodman's political influence through donations and lobbying

Throughout the investigation, IBAC observed that Mr Woodman used a range of strategies to exert political influence over decision-makers and other people in positions of influence. Those strategies included:

- making donations directly to individual candidates for the Casey Council, and covertly funding groups of candidates for the Casey Council
- making significant contributions to political parties and to the election campaigns of individual politicians
- purchasing high-level memberships of political party fundraising entities, which gave access to senior politicians
- creating close and dependent relationships with local politicians whom he supported financially
- using professional lobbyists to facilitate access to ministers, their staff, local MPs and departmental staff.

The provision of donations and other gifts or benefits can create a sense of obligation between the recipient and the donor. Despite this risk, at the time of Operation Sandon there was no legal impediment to developers or landowners making contributions to politicians who they perceived would support their commercial interests. Further, there was generally a lack of transparency in these interactions. Recordkeeping was inadequate and recipients often failed to declare the level and source of contributions. Mr Woodman's access to and cultivation of influence over key decision-makers was also facilitated by registered political lobbyists, in particular Ms Wreford at council level and Mr Staindl at state level.

3.7.2 Campaign donations to councillors

As outlined in section 3.6, from as early as 2010, Mr Woodman and his associates made significant payments and other forms of contribution to Councillor Ablett and Councillor Aziz, including the purchase of interests in racehorses, 'loan' arrangements, and fees in return for 'consultancy' services. Mr Woodman and his associates provided other forms of financial support to Councillor A and Councillor Smith, including pro bono assistance.

In addition to these contributions or support, Mr Woodman and related entities made political donations to a wide range of Casey councillors and candidates associated with both the Labor and Liberal parties, from as early as 2008. In some instances, Mr Woodman targeted individual councillors. For example, as outlined in section 3.4, a memorandum by Mr Woodman on 20 June 2008 noted that 'Watsons are assisting Janet's [Halsall's] re-election in the forthcoming election in November 2008'. The timing of this assistance coincided with Councillor Halsall's support at the Casey Council to include Brompton Lodge in Melbourne's UGB. Ms Halsall was the mayor of the City of Casey at the time. Mr Woodman also organised a fundraising event for Councillor Rowe's 2016 local government election campaign, though he knew that Councillor Rowe was already in favour of Amendment C219.

In other instances, Mr Woodman covertly targeted groups of candidates. This section of the report outlines Mr Woodman's funding to groups of candidates in the 2012 and 2016 election campaigns.

3.7.2.1 Casey Council 2012 election

Since at least 2008, the Halsalls had an association with Mr Woodman, when Ms Halsall was mayor and Mr Woodman financially supported her re-election. She had not declared this support in financial returns or when she voted at the Casey Council to support projects associated with Mr Woodman, including Brompton Lodge.

In her examination, when shown documentary evidence, Ms Halsall admitted she was aware that Mr Woodman funded candidates, including her spouse, in 2012, but asserted she could not recall details of these events, which had taken place almost 10 years prior.

On 1 March 2012, Ms Halsall emailed Mr Woodman, referring to a productive meeting earlier in the week between Mr Woodman, herself, Ms Halsall's spouse and Councillor Aziz, and thanking him for his sponsorship. A document dated 19 July 2012, found on Ms Halsall's computer and titled 'Group Campaign Timetable – Election 2012', listed tasks to be undertaken between May 2012 and the election on 27 October 2012. It included campaigning tasks and printing and distribution of brochures and other material. Despite the title of the document, Ms Halsall maintained during examination that she thought it was for only her spouse's campaign.

On 9 August 2012, the Halsalls emailed Mr Woodman seeking his advice about how funding for the campaign was to be arranged and offering to provide him 'again' with invoices, presumably from their family business. On 10 August 2012, Mr Woodman responded, advising Ms Halsall's spouse to send invoices via Watsons.

On 10 September 2012, the Halsalls' family business was sent an invoice for campaign artwork for a number of candidates, including Ms Halsall's spouse, Councillor Smith, Councillor Aziz and Councillor A. Those candidates did not declare these contributions. While documentary evidence indicates that Councillor Aziz was aware of the Halsalls' role in supporting councillors' election campaigns, it is not known whether the other councillors were similarly aware.

During examination, Ms Halsall conceded that it was possible Mr Woodman was paying these costs. She admitted the transactions could not have taken place other than on her instructions. However, she claimed that she could not remember what the instructions were, who they came from or what the reasoning was behind the arrangement. Nor could she explain why this arrangement appeared to be similar to that used to fund a group of candidates for the 2016 Casey Council election, as discussed below.

3.7.2.2 Casey Council 2016 election

In evidence to IBAC, registered lobbyist Ms Wreford confirmed that she was working for Mr Woodman at the time of the Casey Council elections in late 2016. According to Ms Wreford, Councillor Aziz approached her to ask for a meeting with Mr Woodman approximately six months before the elections. Ms Wreford attended a meeting with Mr Woodman and Councillor Aziz, where Councillor Aziz put forward a proposition that he would identify a group of 10 or so 'like-minded individuals' to run in different wards, and indicated that he was seeking Mr Woodman's financial support for his proposal.

Ms Wreford went on to state that the financial support discussed in that meeting was 'somewhere between \$50,000 and \$70,000', adding:

Mr Woodman agreed to fund that. But he was very explicit in saying that he didn't want to directly fund it because he didn't want to be linked to other councillors, firstly, and, secondly, he didn't – he didn't even want them to know where the funds were coming from.

According to Mr Woodman, he spent \$70,000 to \$75,000 financing these campaigns. However, records seized from Ms Wreford suggest that the total expenditure on the campaign was over \$98,000.

In evidence, Councillor Aziz maintained he was unaware that Mr Woodman had financially supported the campaigns of Councillor Aziz and others, and that he did not consult Mr Woodman about candidates.

IBAC's investigation found that those funds were used to finance the campaigns of 11 candidates, including Councillor Aziz, Councillor Ablett, Councillor A and Councillor Smith.¹³¹

None of the funded candidates declared the fact or the value of Mr Woodman's assistance. Most did not, at the time, know the source of the assistance, and did not seek to determine the source or declare that they had received support from an undisclosed source (despite being required to do so under the LGA 1989). By funding these candidates in this manner, Mr Woodman influenced the composition of the Casey Council and the way its members voted through the assistance of Councillor Aziz. It also helped avoid a situation where the candidates he financed would have declared a related conflict-of-interest, supporting him to appear to remain at arm's length from decisions that affected his and his associates' interests.

¹³¹ Councillor Rowe benefited from a separate fundraising event facilitated and attended by Mr Woodman, whose in-kind support was not declared in Councillor Rowe's election campaign donation returns for the 2016 Casey Council elections.

Together with Mr Woodman, Councillor Aziz and Ms Wreford were instrumental in devising and implementing the 2016 campaign funding strategy:

- Councillor Aziz liaised with candidates and arranged for Ms Halsall to act as campaign manager.
- Ms Wreford, together with her partner and the Halsalls, helped to process invoices to facilitate payment of the campaign expenses in a way that concealed the true source of the funding.
- The funds passed through the Halsalls' family business and the racehorse bloodstock business. Payments for goods and services provided to candidates were invoiced to and between those businesses. False accounting was used to disguise the transactions as relating to their business activities.

According to Ms Wreford's partner, Ms Wreford said Mr Woodman wanted to make campaign donations but did not want this information disclosed, which was why they were being channelled through the racehorse bloodstock business. In evidence, Ms Wreford's partner maintained that the owner of the racehorse bloodstock business was also party to the arrangement. The owner of the racehorse bloodstock business, however, told IBAC that no-one came to him for authorisation to use his business in this way.

During examinations, Ms Halsall sought to downplay her awareness of the purpose of the strategy, asserting that she was involved to assist a group of candidates with no particular party affiliations who were 'brought together on the basis that they would be good, sensible, hard-working and ethical councillors'.

Although she was aware through Councillor Aziz that Mr Woodman was providing support of about \$70,000, she said it did not cross her mind that the process was facilitating non-disclosure. She also asserted she had no contact with Mr Woodman and had nothing to do with the funding of candidates. However, when referred to invoices and emails during examination, she ultimately conceded that she must have known that invoices were being directed by her to a third-party, and that she had participated in a process that concealed who was actually paying, on the instructions of Councillor Aziz or Ms Wreford.

As well as helping to devise the strategy, Councillor Aziz was involved in facilitating the invoicing process and keeping the source of the funds confidential. In doing so, he helped Mr Woodman build a circle of influence by building his own network of councillors whom he could use as a voting bloc. For example, Councillor A and Councillor Smith, who both received campaign funding, gave evidence that when they separately asked Councillor Aziz about the source of the funds, he told them not to worry.

Ms Halsall gave evidence that she told Councillor A some time before the election that Mr Woodman was funding the campaign, but that no candidates ever asked who was funding the campaign, even though there were meetings of the sponsored group. She assumed they knew. Ms Wreford was also unaware of any candidate making an enquiry as to the source of the money.

Neither Councillor A nor Councillor Smith, nor any other candidate, disclosed receipt of the funds, despite such failure breaching the applicable guidelines. The evidence is that Councillor Aziz told funded candidates not to enquire about the source of the funds, at least before official declarations were required to be lodged. Those candidates were wilfully blind to the thousands of dollars spent on their behalf, which increased the leverage available to Councillor Aziz.

In evidence, Councillor Aziz sought to distance himself from Mr Woodman's involvement in the campaign, asserting that he had organised for Ms Halsall to manage the campaigns of himself and other candidates. He claimed that together, they coordinated a campaign strategy and prepared promotional material for which the candidates paid, at bulk rates, by running fundraising events. He stated that he did not know who provided funds to Ms Halsall and, when questioned, asked if IBAC was aware that he had told Ms Wreford to 'keep her nose out of the campaign'. The evidence of Mr Woodman, Ms Wreford and others does not support Councillor Aziz's claims.

Ms Schutz, Mr Kenessey and Mr Staindl also helped to identify 'friendly' candidates for the 2016 Casey Council election. During examinations, each contested the level of their involvement in assessing the extent to which candidates were 'willing to be briefed about C219', or their awareness of Mr Woodman's funding for the 2016 Casey Council campaign. However, the evidence shows that, together with Mr Woodman and Ms Wreford, they were all to some extent involved in identifying 'like-minded individuals'.

Mr Staindl claimed he had no knowledge of the extent of Mr Woodman's plan to covertly fund candidates. Mr Staindl gave evidence that he had 'limited involvement' in facilitating donations to sympathetic councillors but was unaware of how much Mr Woodman was donating to others. However, documentary evidence shows that prior to the 2016 Casey Council election he was sent a summary of candidates from Mr Woodman, with an instruction to follow up with several of the Labor-aligned candidates to determine their attitude towards Amendment C219. Mr Staindl gave evidence that he asked his executive assistant to speak to the local MPs' electorate offices to ask for advice on some of the candidates, and whether they would like a donation to their campaigns of up to \$2500 from Watsons. He said two or three of these candidates accepted the offer. A few days after receiving this summary from Mr Woodman, Mr Staindl sent an email to Ms Schutz with the subject line 'support details'. The email listed five candidates (some of whom were named on the summary referred to earlier) with their bank details and dollar amounts next to each name. This evidence indicates Mr Staindl was aware of Mr Woodman's strategy of financially supporting candidates and played a role in facilitating this connection.

Mr Woodman, Ms Schutz and Mr Staindl also considered the \$499 threshold at which donations needed to be reported, and whether donations could be split to avoid the reporting requirement. During examination, Mr Staindl noted that he advised it would be illegal to split contributions among entities to avoid the reporting threshold. They also considered the necessity for any person elected to declare a conflict of interest in respect of votes on matters relating to the donor. The role of lobbyists is considered in further detail below.

When the Casey Council reconvened after the 2016 election, seven of its 11 members had benefited from financial support from Mr Woodman, via the undeclared arrangement set up by Councillor Aziz. Those councillors included Councillor Aziz, Councillor Ablett, Councillor Smith, Councillor Rowe and Councillor A. Councillor Rowe received financial support from Mr Woodman via a separate event.¹³²

In the days following the election, in a series of messages, Mr Woodman and Ms Wreford analysed the emerging results to identify which elected candidates were 'in the team' or 'one of ours', with Ms Wreford estimating that 'Sam [Aziz] will have 5 or 6 on Council'. The strategy to covertly fund 'like-minded' candidates had succeeded. The result was that:

- candidates were elected who supported Amendment C219 (see section 3.1) or who were otherwise willing to follow Councillor Aziz's lead
- these councillors were vulnerable to Councillor Aziz and Mr Woodman's influence due to accepting funds that had not been declared
- Councillor Aziz was re-elected as mayor in October 2016 with the casting vote.

Mr Woodman stated to IBAC that 'Watsons' contribution [to candidates for the 2016 Casey Council elections] was to a pool of funds to be dispersed as per the direction of campaign managers'.

3.7.3 Contributions to the Labor Party and Liberal Party

IBAC found that between September 2010 and June 2019, more than 180 transactions, totalling \$969,968, were paid from accounts and entities associated with Mr Woodman to the two major political parties. These included at least:

- 84 transactions totalling \$439,268 to the Australian Labor Party (Labor Party) or for the benefit of Victorian Labor Party candidates
- 97 transactions totalling \$530,700 to the Liberal Party of Australia (Liberal Party) or for the benefit of Victorian Liberal Party candidates.

These transactions occurred through donations, membership fees and tickets to attend fundraising events, but did not include contributions in kind, as these did not involve a transaction to an account.¹³³

¹³² Councillor Rowe benefited from a separate fundraising event facilitated and attended by Mr Woodman, whose in-kind support was not declared in Councillor Rowe's election campaign donation returns for the 2016 Council elections.

¹³³ In the absence of declaration requirements and associated definitions during this time period, it is not possible to specify the proportion that comprised donations, membership fees or ticket purchases with certainty.

As shown in Figure 4, Mr Woodman's patronage increased dramatically around the time of the state elections in 2014 and 2018.¹³⁴ His patronage also shifted in focus from the Liberal Party to favour the Labor Party around 2014, at a time when the Labor Party took government in Victoria and key decisions were being made about Amendment C219 and Brompton Lodge.¹³⁵

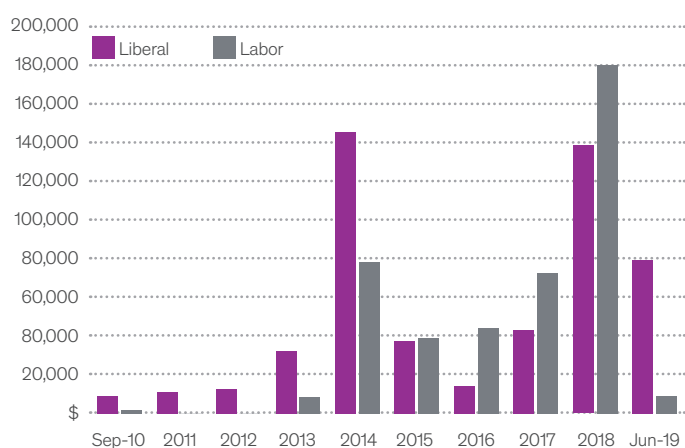


Figure 4: Donations from Woodman-related entities by calendar year, broken down by party

Those donations were made from a range of accounts held in the names of Mr Woodman, Mr Woodman's son and Woodman-related entities Alwood Drafting, BWTW Developments Pty Ltd, BWTW Equities Pty Ltd, BWTW Ringwood Pty Ltd, Cordwood Pty Ltd, Elysian Group Pty Ltd, Mandoow Developments Pty Ltd, SBPM Consolidated Holdings Pty Ltd, Swan Bay Project Management Pty Ltd, Urban Development Investments Australia Pty Ltd, Watsons Pty Ltd, Wolfdene Café Pty Ltd, Wolfdene Management Pty Ltd and Woodman Equities Pty Ltd.

These donations were often facilitated by Progressive Business and Enterprise Victoria, which were organisations responsible for fundraising for the Victorian branches of the Labor Party and the Liberal Party. IBAC obtained evidence that these entities had direct communication with Mr Woodman, where they discussed donations he could possibly make to the parties and functions he could buy tickets to where state politicians would be present.

3.7.4 Contributions to local candidates' state election campaigns

Mr Woodman contributed directly and indirectly to several local candidates' state election campaigns through a combination of direct donations and other contributions, such as hosting fundraising events and covering campaign costs. Not all the candidates he funded were elected. For example, Mr Woodman contributed to Councillor Ablett's, Councillor Serey's and Councillor A's unsuccessful 2014 state election campaigns and Councillor Serey's unsuccessful 2018 state election campaign. When state candidates Mr Woodman funded were elected, he sought to use them to influence state politicians, political staff and ministers.

The following tables list the contributions from Mr Woodman and related entities to local candidates around the time of the 2014 and 2018 state elections.¹³⁶

¹³⁴ This figure only shows transactions that IBAC's investigation was able to confirm as going from a Woodman-related entity to accounts linked to parties and their related entities.

¹³⁵ For example, the Casey Council lodged a request to authorise the preparation of the amendment with the Minister for Planning in September 2015, and the Brompton Lodge amendment C90 was exhibited in November 2015.

¹³⁶ These tables include only contributions that the IBAC investigation linked to Mr Woodman and related entities. It is not necessarily an exhaustive list.

3.7.4.1 2014 Victorian state election

Candidate, seat	Casey councillor	Party	Contribution
Geoff Ablett, Cranbourne	Yes	Liberal Party	\$40,000
Councillor A, Narre Warren North	Yes	Liberal Party	\$25,000 ¹³⁷
Jude Perera, Cranbourne (incumbent member who was re-elected)	No	Labor Party	\$15,000
Lorraine Wreford, Mordialloc (incumbent member)	No	Liberal Party	\$15,000
Judith Graley, Narre Warren South (incumbent member)	No	Labor Party	\$12,500
Susan Serey, Narre Warren South	Yes	Liberal Party	\$6000
Total			\$113,500

3.7.4.2 2018 Victorian state election

Candidate, seat	Casey councillor	Party	Contribution
Susan Serey, Narre Warren South	Yes	Liberal Party	\$26,335
Pauline Richards, Cranbourne (replacing incumbent member Jude Perera)	No	Labor Party	\$20,000
Labor candidates for Ferntree Gully and Ringwood, at the suggestion of Pauline Richards	N/A	Labor Party	\$10,000
Total			\$56,335

The \$26,335 contribution to Ms Serey in 2018 includes \$16,335 paid by Mr Woodman on Ms Serey's behalf for a pamphlet mailout.

3.7.4.3 Fundraising for local candidates

In addition to direct contributions, Mr Woodman sought political influence by hosting and attending fundraising events for local state election candidates. For example, in evidence, Councillor A stated that much of the \$25,000 contribution that Mr Woodman made to their 2014 state election campaign included proceeds of an event that he had held for them on 1 May 2014. The Victorian Ombudsman's investigation in 2015 found that Mr Woodman pledged to make this contribution in February 2014, around the time Councillor A, Councillor Aziz and Councillor Ablett were instrumental in bringing the Amendment C219 matter before the Casey Council.

By raising funds for their party, candidates were able to finance their campaigns and improve their standing in the party. Candidates would contact Mr Woodman seeking his assistance. Typically, Mr Woodman hosted functions for 20 to 30 people at a conference venue, at a cost to him of about \$3000 per event. However, the types of fundraising events he supported were diverse, ranging from events with contributions of a few hundred dollars, to others for which Mr Woodman paid \$10,000 for a table or \$1000 per head.

The fundraising events provided an opportunity for developers with interests in Casey Council matters to interact with local candidates. In evidence, Mr Kenessey, an employee of and later consultant to Leighton Properties, observed that the planning system requires building relationships with politicians in order to be heard. He claimed the Leighton Properties Code of Conduct prevented him from making political contributions. However, on more than 10 occasions, he attended fundraising events that Mr Woodman organised.

¹³⁷ Note that a portion of this amount comprised proceeds of a fundraiser for Councillor A.

These included fundraising events for Councillor Ablett, Councillor A and Ms Richards, and a function in April 2014 for Ms Graley, Mr Perera and another Labor MP.

Another function in 2014 raised \$10,000 each for Councillor Serey and a federal MP. At the time of the 2014 function, Leighton Properties had engaged Mr Woodman as a consultant to promote its interests in relation to Amendment C219.

Lobbyist Mr Staindl assisted in arranging and conducting these functions. Mr Staindl also ran his own functions, some of which Mr Woodman attended. For example, on 24 September 2014, Mr Woodman and his staff attended an event at a conference venue organised by Mr Staindl, which was attended by the Opposition Leader and Deputy Opposition Leader.

In October and November 2018 *The Age* published two articles suggesting that Mr Woodman was buying political influence.¹³⁸ The first article referred to the \$1000-per-head function at a conference venue that Mr Woodman hosted for Ms Graley, Mr Perera and another Labor MP on 4 April 2014. At this point, Mr Woodman's practice of making political donations and fundraising became counterproductive.

In evidence, Mr Staindl said that, following publication of the article, he and Mr Woodman discussed how Mr Perera had 'spilled the beans' and how Mr Staindl had misled the journalist by suggesting that it was he, not Mr Woodman, who had hosted the event. When Ms Graley gave evidence, she maintained that she believed it was Mr Staindl's event and that she was unaware of Mr Woodman's contribution.

In contrast, Mr Perera gave evidence that he was aware that the function was organised by Mr Woodman and that, at the end of the night, Mr Woodman gave each of the three candidates an envelope containing a cheque for \$10,000. Following the adverse publicity, politicians avoided any overt association with Mr Woodman, and he was not welcome at political functions, including Progressive Business events. Instead, he was represented by Mr Staindl and Ms Schutz.

3.7.5 Party fundraising entities

Mr Woodman's method of investing across the political spectrum was also reflected in his support for fundraising entities associated with the two major parties. Of the \$969,968 in contributions he made between September 2010 and June 2019, IBAC identified that Mr Woodman and related entities donated at least:

- \$266,995 to Enterprise Victoria, the fundraising entity for the Liberal Party of Australia's Victorian Division
- \$210,290 to Progressive Business, the fundraising entity for the Labor Party.

Both Enterprise Victoria and Progressive Business (known as Energise Victoria since 2021) had a tiered membership model which gave access to politicians through regular events.¹³⁹ Membership of Progressive Business was pitched as an investment, offering 'opportunities to contribute to the government's policy agenda'. Members were allocated tickets to functions but had to purchase these in addition to paying membership fees.

At the time of the conduct under investigation, Enterprise Victoria offered memberships ranging from \$2500 a year for individuals up to \$60,000 a year for corporations, with the level based on the range of events and entitlements to which the donor subscribed. Higher levels provided greater opportunities for contact with shadow ministers. For example, Mr Woodman paid \$70,000 for a 'leadership package' with Enterprise Victoria for the period between March and October 2019.

Enterprise Victoria held 40 to 50 events per year. Between 5 and 10 entities subscribed to membership at the highest level. As of October 2020, there were about 140 members. There were no written policies governing the conduct of Enterprise Victoria in regard to membership or fundraising.

Progressive Business offered memberships ranging from \$375 a year for individuals to \$3500 a year for basic corporate memberships at the time of the conduct under investigation. High-level memberships cost much more. For example, Mr Woodman (through Watsons) had been a member since 2015, and paid \$50,000 for a 'platinum package' in 2018–19. The membership base ranged between 250 and 300 consistent members in the period

¹³⁸ See section 3.1.6.

¹³⁹ Progressive Business (known as Energise Victoria since 2021) has three levels of membership: individual, small business and corporate, which entitles members to purchase tickets to events at membership prices. Enterprise Victoria also has different levels of membership, which determine how many events members can attend over a 12-month period.

before the change to donation laws.

The ways in which Progressive Business and Enterprise Victoria operated during this period were similar. In evidence, the Executive Director of Enterprise Victoria from 2010 to 2020 explained that its events were designed primarily to allow engagement with politicians. Ministers or shadow ministers would usually attend with an advisor or chief of staff. Numbers would be limited. Sometimes, attendees were invited to submit topics for discussion in advance, particularly at boardroom events. There were no stipulations about what a member could raise. If attendees raised specific projects, it was up to the minister to determine whether to respond. There was no restriction on matters that could be raised with a minister or shadow minister for planning.

In evidence, the Executive Director of Progressive Business between 2015 and 2019 stated that its functions were run anything from weekly to monthly, partly dependent on the phase of the electoral cycle. The range of events offered included boardroom lunches, forums, cocktail events and formal events, such as the Premier and Cabinet dinner and the state budget breakfast. Boardroom lunches of 12 to 25 members started at \$1200 per ticket, ranging up to \$5000 if the Premier or Treasurer were involved. Ministers would attend with a chief of staff or advisor.

The Executive Director described forums as ‘ministerial speed dating’, where members were given 15 minutes with a minister and ministerial advisor. There were no written protocols, but it was understood there could be no discussion of matters that were the subject of a live tender or that raised a probity issue. Normally, a brief would be submitted in the lead-up to a boardroom lunch or forum, summarising the matter or matters proposed for discussion. The Minister for Planning would not engage in one-on-one meetings and would not discuss specific projects. They were always accompanied by a probity auditor, who was a person independent of government and party.

The level and nature of access to politicians was greater for those who contributed more money. Those who purchased higher levels of membership could nominate ministers or other senior functionaries they wished to have seated at their table at larger functions and could influence seating arrangements. For example, on 7 February 2018, Mr Staindl advised the Executive Director of Progressive Business that Watsons required a table at the Premier and Cabinet dinner, but probably did not require a minister, and that Ms Schutz was to be seated at the head table.

In November 2018, new donation laws came into force in Victoria which imposed an aggregated cap of \$4000 from a single donor to ‘the same registered political party, candidate at an election, group, elected member, nominated entity, associated entity or third-party campaigner within the election period’.¹⁴⁰ Before the 2018 reform of the *Electoral Act 2002* (Vic), Progressive Business provided funds directly to the Victorian branch of the Labor Party, while Enterprise Victoria deposited funds into a Liberal Party state campaign account. After the donation cap came into force, Progressive Business applied funds raised to the federal branch of the party. Enterprise Victoria now similarly directs funds by default to the federal campaign fund (unless otherwise specified by the donor), where they are subject to Australian Electoral Commission disclosure requirements.

The link between the level of financial contribution and the influence expected in return is evident in a lawfully intercepted telephone conversation between Enterprise Victoria’s Executive Director and Mr Woodman in February 2019. In the conversation, the Executive Director was seeking to finalise a large financial commitment from Mr Woodman. They offered him personal meetings with the Liberal Party leader and state president as an incentive. In response, Mr Woodman noted his interest.

¹⁴⁰ *Electoral Act 2002* (Vic), s 217E.

Enterprise Victoria's Executive Director assured Mr Woodman that the amended donation laws had a 'loophole', whereby donations could be made to a federal account subject to the federal disclosure limit, which was \$14,300 – higher than the Victorian limit, but could be diverted to Enterprise Victoria. During examination, the Executive Director asserted that the meetings they had offered did not take place.

Both Enterprise Victoria and Progressive Business facilitated splitting membership payments across entities. For example, in August 2018, Mr Woodman paid Progressive Business the final instalment of his \$50,000 platinum-level membership. He arranged with the Progressive Business Executive Director to split the \$50,000 between five companies in order to keep below the threshold at which his contributions would have to be declared. This arrangement coincided with the 2018 reforms that would shortly introduce new donation limits. Similarly, in 2018–19, Mr Woodman contributed \$70,000 for membership of Enterprise Victoria, splitting payments into \$10,000 lots paid by separate entities. According to Enterprise Victoria's Executive Director, the splitting procedure was not uncommon among members.

As noted above, Mr Woodman maintained a low profile following adverse publicity in 2018, but Ms Schutz and Mr Staindl continued to attend and advocate on his behalf at Progressive Business functions. Mr Woodman paid for Ms Schutz's membership. In evidence, Ms Schutz described attending boardroom lunches and forums involving the Premier and senior ministers including the Treasurer, the Minister for Transport Infrastructure, the Minister for Suburban Development and the Minister for Roads.

In 2014, when the Liberal Party was in government, Ms Schutz briefed the Minister for Planning at a boardroom lunch. Ms Schutz also gave evidence that members could follow up with ministerial staff after these functions, who would assist with the issue raised. On at least one occasion, a staff member referred her to departmental staff with the apparent approval of the Minister for Planning.

In evidence, the executive directors of Progressive Business and Enterprise Victoria both said that, following introduction of the new donation laws, ministers showed less interest in attending events, and membership of their organisations gradually declined.

In April 2021, the president of Progressive Business stated in an article in *The Age*, 'We haven't been operating since the donation laws, effectively ... [Progressive Business is] basically a shell. It doesn't do much at all'.¹⁴¹ On 14 April 2021, individuals associated with Progressive Business registered a new incorporated association called Energise Victoria, with the following purpose:

*To provide an engaging environment for current and emerging leaders from the corporate sector, social sectors, and the community, where the fostering of socially progressive ideas deliver, [sic] positive, impactful and substantive outcomes, including economic development, for Victorians.*¹⁴²

At the time of writing, Enterprise Victoria continued to operate. Its website states that it 'provides the opportunity for senior Liberals to consult regularly with business leaders, as well as practical support for the election of Liberal governments at Federal and State levels'.¹⁴³

141 Millar R, Sneiders B 2021, 'Labor fundraising arm to be reborn under new name amid IBAC scrutiny', *The Age*.

142 Consumer Affairs Victoria, Register of incorporated associations, extract for 'Energise Victoria Inc', consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/search-for-an-incorporated-association?id=1c25445e-cb9c-eb11-b1ac-00224816ada7.

143 Enterprise Victoria, webpage, www.enterprisevictoria.com.au.

3.7.6 The role of political lobbyists

For many years, Mr Woodman used people he referred to as ‘political facilitators’ to assist him in achieving political influence and support for his projects. In the case of Amendment C219, Mr Woodman himself worked essentially as a lobbyist, with the assistance of registered lobbyists as well. Lobbyists also helped Mr Woodman to exert influence over other projects in the City of Casey, including Brompton Lodge, Pavilion Estate and the H3 intersection.¹⁴⁴

Lobbyists: Ms Wreford, Mr Staindl and Mr Leigh

Ms Wreford was a Casey councillor from 2003 to 2010, holding the office of mayor from December 2009 to November 2010. Between 2010 and 2014, she was the Liberal Party member for the state seat of Mordialloc in the Victorian Legislative Assembly. On losing her seat in 2014, she became a registered lobbyist.

Mr Staindl is a life member of the Labor Party. He was a Labor Party staffer during the 1980s and 1990s, and from time to time sat on party policy committees. In the early 2000s, Mr Staindl joined the governing committee of Progressive Business, and was its president between 2008 and 2010. Mr Staindl was an endorsed Labor Party candidate at state level on several occasions.

Mr Leigh represented Malvern in the Victorian Legislative Assembly from 1982 to 1990, and Mordialloc from 1992 to 2000. After that, he worked as a lobbyist, setting up a firm called All Weather Solutions, which he operated in partnership with Mr Staindl between 2006 and 2012.

Mr Woodman engaged Ms Wreford as a lobbyist, who in this capacity liaised primarily with Casey councillors. As noted above, Mr Woodman donated to Ms Wreford’s state election campaign in 2014. She was unsuccessful in seeking re-election, following which Mr Woodman employed her as a lobbyist.

Mr Woodman engaged Mr Staindl and Mr Leigh to interact with state politicians representing the Labor Party and Liberal Party respectively. Both had worked with Mr Woodman since approximately 2008, initially working in tandem on the Brompton Lodge application.¹⁴⁵ Mr Woodman later engaged them to assist with Amendment C219. Mr Leigh ultimately played a limited role in relation to Amendment C219 and had not been in contact with Mr Woodman since 2014.

Mr Staindl’s role was to assist Mr Woodman, primarily at the Victorian Government level, to devise and implement strategies to gain access to politicians and influence planning outcomes. For example, Mr Staindl facilitated Mr Woodman’s involvement with Progressive Business. In evidence, the former Executive Director of Progressive Business explained that lobbyists including Mr Staindl, with whom they were in contact sometimes weekly, would use Progressive Business to connect their clients with ministers. As noted above, Mr Staindl was president of Progressive Business from 2008 to 2010. He also held his own membership.

For most of the period in which Mr Woodman and his associates sought to influence decisions at the Casey Council, the Minister for Planning avoided receiving representations, other than official submissions from developers or their representatives. Consequently, it was not possible for Mr Staindl, Mr Woodman or their associates to engage directly with the Minister. Instead, they attempted to influence decisions through the Casey Council, SCWRAG, local members, senior politicians and the Minister for Planning’s advisors.¹⁴⁶

At the council level, Mr Staindl’s role in helping Mr Woodman influence decision-making was not significant. When engaged to promote Mr Woodman’s projects, Mr Staindl routinely provided profiles of, and ‘due diligence’ on, local councillors. However, for the Casey Council, Mr Woodman did not need to rely on Mr Staindl for this information, due to his established connections with current and former councillors. As described above, Mr Staindl was involved in Mr Woodman’s strategy to covertly fund a group of candidates for the 2016 Casey Council election.

¹⁴⁴ For details of Ms Wreford’s, Mr Staindl’s and Mr Leigh’s involvement in various projects, see sections 3.1 to 3.6.

¹⁴⁵ For details of their role in relation to Brompton Lodge, see section 3.4.

¹⁴⁶ For details of these activities, see sections 3.1 to 3.4.

During his examination, Mr Staindl claimed that from at least 2008, when Ms Halsall was mayor, whatever Mr Woodman wanted, the Casey Council would do. In evidence, he commented that 'he [Mr Woodman] did have a knack for organising the numbers', and noted that Mr Woodman had had a remarkable run of success in having proposals approved. However, Mr Staindl claimed that he was not aware of any impropriety by Mr Woodman.

In evidence, Mr Staindl stated that he was initially engaged to represent Mr Woodman's interests on Amendment C219 in return for a success fee of \$250,000. However, he believed that the Lobbyist Code of Conduct (see below), which was introduced shortly after the agreement began, had prohibited the receipt of all success fees as of 1 January 2014. This was not in fact the case. In any event, Mr Staindl told IBAC that shortly after the Lobbyist Code of Conduct was introduced, he was instead placed on a retainer of \$3000 a month, plus an hourly rate for work done.

3.7.6.1 Victorian Government Professional Lobbyist Code of Conduct

In late 2013, the Victorian Government introduced the Victorian Government Professional Lobbyist Code of Conduct. It commenced only three months before the campaign by Mr Woodman and his associates to promote Amendment C219 in early 2014.

Victorian Government Professional Lobbyist Code of Conduct

This code of conduct applies to communications between professional lobbyists (and other defined persons) and senior politicians, their staff and public servants, which are made in an effort to influence government decision-making.¹⁴⁷ It does not apply to communications with local MPs or their staff. It commenced on 1 November 2013.

The code's preamble states, 'Free and open access to the institutions of government is a vital element of our democracy'.¹⁴⁸ It recognises that 'Lobbyists ... can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with relevant Government Representatives'.¹⁴⁹ In doing so, it requires lobbyists to 'act ethically, transparently, according to the highest standards of professional conduct and in accordance with probity requirements',¹⁵⁰ and 'in accordance with public expectations of transparency, integrity and honesty'.¹⁵¹

Lobbyists are to 'not engage in any conduct that is corrupt, dishonest or illegal',¹⁵² and are to 'use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided'.¹⁵³ They are to 'not make misleading, extravagant claims' to their clients about the nature of the extent of their access.¹⁵⁴ Lobbyists are required to 'keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party'.¹⁵⁵ Although the code of conduct prohibits the receipt of 'success fees', it defines success fees as those 'contingent on the tendering or awarding of a public project'.¹⁵⁶

¹⁴⁷ *Victorian Government Professional Lobbyist Code of Conduct*, cl 2.1, 3.3.

¹⁴⁸ *Ibid.*, cl 1.1.

¹⁴⁹ *Ibid.*, cl 1.2.

¹⁵⁰ *Ibid.*, cl 1.3.

¹⁵¹ *Ibid.*, cl 1.4.

¹⁵² *Ibid.*, cl 8.1(a).

¹⁵³ *Ibid.*, cl 8.1(b).

¹⁵⁴ *Ibid.*, cl 8.1(c).

¹⁵⁵ *Ibid.*, cl 8.1(d).

¹⁵⁶ *Ibid.*, cl 3.6.

3.7.6.2 Lobbyists' role in fundraising and donations

During examination, Mr Staindl agreed that he played a significant role in arranging Mr Woodman's large contributions to the Labor Party and its candidates while Amendment C219 was before the Casey Council and being considered by the Minister for Planning. Although Mr Staindl did not believe that the purpose of these contributions was to elicit a commitment in return, or to at least create a sense of obligation, he did concede that Mr Woodman's motive was 'not altruistic'.

Mr Staindl conceded that fundraising events were used to build political support, but he did not agree that political contributions would lead to greater access to politicians through a lobbyist. Mr Staindl said he advised Mr Woodman on how to obtain maximum benefit from fundraising events and political contributions. Mr Staindl asserted that Mr Woodman was paying for 'an opportunity to persuade'. In evidence, Mr Staindl ultimately expressed regret that he did not adequately consider the way Mr Woodman exercised his influence.

Contrary to Mr Staindl's evidence, it is clear that Mr Woodman made payments to councillors, politicians and political parties (with Mr Staindl's assistance), in order to create a sense of obligation and, in some instances, seeking a specific commitment of support.

In evidence, Mr Leigh asserted that it would be wrong for a lobbyist to offer a donation in return for a commitment from a politician, and then to pay the contribution. Mr Leigh observed that this would make the candidate ' beholden ' to the lobbyist.

As noted above, Mr Staindl arranged many fundraising events that Mr Woodman hosted or attended. He also arranged direct contributions from Mr Woodman to candidates' campaigns. Further, Mr Staindl negotiated fee levels and membership levels with Progressive Business. During examination, he said that even though he was a respected Labor Party figure seeking funds to support the Labor Party and its candidates, he was not 'engaging in an activity or involvement on behalf of a political party', in breach of the Lobbyist Code of Conduct.

He claimed not to be in breach because he was not acting as a party functionary, but was acting privately, because of a commitment to a political cause. Further, in the case of Progressive Business, he said he was not dealing with a 'political organisation'. Contrary to Mr Staindl's explanations, there appears to have been no separation between his activities as Mr Woodman's lobbyist and his activities seeking funds for a political party and its candidates. Rather, the financial support he arranged was essential to his lobbying strategy.

3.7.6.3 Influencing senior state politicians

As described in section 3.1, from February 2014 onwards, Mr Woodman and his associates sought to influence state and Casey Council decision-making in favour of Amendment C219. In anticipation of a possible Labor Party victory in the November 2014 state election, Mr Woodman and his associates sought to meet, and build relationships with, senior state Labor Party members. In evidence, Mr Staindl acknowledged that he had arranged for Mr Woodman to engage with key members of the shadow Cabinet and the Leader of the Opposition. He characterised this approach as 'fairly standard'.

Mr Woodman arranged and attended fundraising events and other functions that provided access to senior shadow ministers. In November 2014, the Labor Party won government in Victoria. Following the election, Mr Woodman hoped to influence the new Minister for Planning.

Over the following years, Mr Woodman also maintained contact with other senior ministers, in particular the Treasurer, Minister for Roads and Minister for Transport Infrastructure, through Progressive Business and other channels. Through Mr Staindl and Progressive Business, Mr Woodman obtained access to the Premier, Deputy Premier, Treasurer, Attorney-General, Minister for Roads and Minister for Education. Each held portfolios relevant to planning decisions. In evidence, Mr Staindl explained that contact with ministers other than the Minister for Planning was necessary, because large developments often involved more than one government department.

In 2016, Mr Woodman, Ms Schutz and Mr Staindl approached the Premier, Daniel Andrews, at a number of functions and briefed him on Mr Woodman's wish to expedite implementation of the Metropolitan Planning Authority's recommendation on one of his other projects. On 13 September 2017, Mr Woodman, Ms Schutz, Mr Staindl and Mr Woodman's son attended a lunch at a restaurant in Melbourne with the Premier. The lunch arose from a winning bid of more than \$10,000 at a political fundraising event. In evidence, Mr Staindl explained that a precondition of the lunch was an embargo on discussion of specific planning issues. He instead characterised it as a relationship-building exercise.

Mr Woodman's strategy of developing relationships with and briefing senior state politicians, while seeking to create a sense of obligation through significant donations and fundraising, was ultimately unsuccessful in influencing the Minister for Planning to approve Amendment C219. As outlined in section 3.1, in late 2018 the Minister deferred a decision on the amendment, pending a departmental review of industrial land in Melbourne. In April 2020, the Minister for Planning ultimately rejected the amendment.

However, between the deferral and rejection of the amendment, it appears Mr Woodman acted on a belief that he, with the assistance of Mr Staindl, had sufficient influence to, if necessary, prompt intervention by the Minister for Planning's senior ministerial colleagues. On 18 October 2018, in a lawfully intercepted conversation with Mr Staindl, Mr Woodman said, 'between you and me, I know I said that I wouldn't go to the boss, but if we get pushback on this I'm going to go to the top'.

In his evidence to IBAC, the Premier acknowledged that over time he had been to many fundraising functions, such as Progressive Business 'Premier and Cabinet' dinners and a lunch at a restaurant with Mr Woodman and his associates as mentioned above. However, during examination the Premier stated that he had no recollection of Mr Woodman or his associates raising planning matters with him.

In a lawfully intercepted conversation between Mr Staindl and Mr Woodman on 4 March 2019, Mr Staindl described a conversation he had with the Premier at a function on 28 February 2019. He said the Premier praised Mr Woodman's contribution to the Labor Party and lamented the fact that Mr Woodman was being pursued with allegations of corruption by a journalist who was an 'arsehole'. Mr Staindl said the Premier asked him to apologise to Mr Woodman for the Minister for Planning's deferral of their decision on Amendment C219 because of those allegations. The allegations referred to were those made in *The Age* in late 2018.¹⁵⁷ Mr Staindl told Mr Woodman he had given the Premier Mr Woodman's telephone number, as the Premier said he would like to call Mr Woodman.

When he was initially examined by IBAC, Mr Staindl testified that his report to Mr Woodman of his conversation with the Premier was accurate. In a subsequent examination by IBAC, he was again asked about this conversation. He qualified his evidence, stating that he could not recall the conversation 'with any absolute certainty' and that in recounting it to Mr Woodman he may have 'extrapolated or embellished' it, but that 'the general tenor is probably accurate'.

Under examination, it was suggested to Mr Staindl by counsel assisting IBAC that the Premier's response was apparently engendered by a sense of obligation arising from Mr Woodman's contributions to the Labor Party and Mr Woodman's personal interactions with the Premier. Mr Staindl said, 'in this particular case, with Mr Woodman, the donations he made certainly assisted him in gaining access entrées to ministers and MPs and that has probably come to benefit him, yes'. He stated that this strategy was quite common across politics.

In his examination, the Premier accepted that he had known Mr Staindl for 20 years and knew him to be a lobbyist, and someone who was a longstanding, committed supporter of the Labor Party and a supporter of him. He did not dispute that he may have had some conversation with Mr Staindl at the function on 28 February 2019, but stated that he could not recall if he did, or even whether, Mr Staindl was at that event.

¹⁵⁷ For details of the newspaper articles, see section 3.1.

The Premier said that he knew Mr Woodman and was aware he had made substantial donations to the party. He accepted it was possible that he had acknowledged Mr Woodman's donations to the Labor Party when speaking with Mr Staindl. The Premier accepted that he would not have had an interest in alienating Mr Woodman as a donor to the Labor Party and was aware that Mr Woodman had absented himself from fundraising functions of the Labor Party's 'Progressive Business'.

The Premier stated that he could not recollect the content of the conversation with Mr Staindl, nor having a conversation with him on that particular occasion at all, but said there were some things that Mr Staindl had recounted to Mr Woodman that did not 'ring true' or 'sit well' with him. He stated that it was not his practice to speak about journalists in the terms alleged. He stated that he would not have had any involvement with the Minister for Planning in relation to the rezoning decision, and would not have suggested to Mr Staindl that he was in any way involved. He said he had little knowledge of the planning issue, but he may have known that a decision on the rezoning may have been deferred. The matter had a strong presence in the media at the time. The Premier considered it highly unlikely that he would have wanted to have Mr Staindl convey an apology for the decision being deferred.

The Premier accepted that Mr Staindl may have given him Mr Woodman's telephone number, but he said it was highly unlikely that, if he had sought Mr Woodman's phone number, he would have been doing so for the purposes of talking about a planning application.

Mr Staindl, as Mr Woodman's lobbyist, had an obvious interest when speaking to Mr Woodman to exaggerate the Premier's response in order to impress his client. Mr Staindl's admission that there was some embellishment in his account to Mr Woodman is consistent with such an interest. But Mr Staindl has been a lifelong staunch supporter and fundraiser for the Labor Party, and the Premier accepted that one could approach Mr Staindl as someone who would be unlikely to attribute to him observations which might thereafter be in any way harmful to him or to the party.

IBAC found that the 'general tenor' of the conversation was as Mr Staindl described. It does appear that the Premier made some reference to *The Age* article and the fact that any decision on C219 had been deferred and invited Mr Staindl to convey to Mr Woodman his regret that this occurred.

Mr Woodman's and his associates' engagements with senior members of the Victorian Government provide another illustration of the opportunities for privileged access that they were able to gain in relation to planning matters. Their attempts to influence senior state politicians further demonstrate the importance of political donations and the significant role of lobbyists in helping to open doors to decision-makers.

3.7.6.4 Influencing state politicians

As discussed above and in sections 3.1 and 3.2, Mr Woodman targeted local state candidates, providing financial support to them across the political spectrum. In return, he sought their support to advocate for his projects with senior politicians and their staff. Mr Staindl played a significant part in assisting Mr Woodman and Ms Schutz to influence local politicians, particularly in relation to Amendment C219 and the H3 intersection. For example, Mr Staindl worked closely with Mr Woodman to cultivate local candidate Ms Richards, whose support for Amendment C219 they sought while making a significant donation, as described above.

Mr Staindl also regularly liaised with and briefed local members Ms Graley and Mr Perera, and Mr Perera's electorate officer. They each sought to influence the Minister for Planning, for example, by passing on petitions and SCWRAG submissions, while providing information about what was occurring in the Minister for Planning's office. There was no formal obligation for them to do so.

During examination, Mr Staindl denied that the degree of his engagement with local politicians was inappropriate. He maintained that the politicians and Mr Woodman were justifiably jointly pursuing a common interest, even though Mr Woodman's interest was financial advantage and the politicians' interest was to provide what the community wanted. Mr Staindl saw as appropriate Ms Graley's advocacy and her willingness to negotiate (for example, by adding the offer of the construction of a school to Mr Woodman's proposal). He thought she was entitled to do what she could to have the PPV recommendation in favour of Amendment C219 implemented.

Mr Staindl also maintained that donating to campaigns of local politicians was an appropriate way to build the relationship between Mr Woodman and those MPs, providing an opportunity to give and receive detailed information. He conceded that he agreed to one request from Mr Woodman that he should not have countenanced, which was a request on 9 October 2018 to put pressure on Ms Richards to intervene on Mr Woodman's behalf in a dispute involving Melbourne Water, by offering further political contributions.

As described in section 3.5, Mr Woodman, Ms Schutz and their associates were instrumental in establishing SCWRAG. It was part of their overall strategy to promote commercial interests by influencing key decision-makers, while appearing to be at arm's length. In the case of SCWRAG, the commercial interests were presented behind the facade of SCWRAG as the community voice.

Mr Staindl was not directly involved in setting up SCWRAG. However, from time to time, he passed on submissions from SCWRAG – either directly or through local politicians – to the Minister for Planning's office. In evidence, Mr Staindl confirmed he also gave the first community petition in support of Amendment C219 to Mr Perera in April 2015, which Mr Perera tabled in the Victorian Parliament on 7 May 2015.¹⁵⁸ However, Mr Staindl did not advise the Minister for Planning or their office of Ms Schutz's involvement in the petition, nor that SCWRAG had been set up by Mr Woodman. He admitted that 'you could certainly make the case that this was misleading'.

During examination, Mr Staindl initially maintained he knew no more than that Mr Woodman was probably supporting SCWRAG, and that Ms Schutz was providing some technical support for SCWRAG submissions and had a close working relationship with Mr Walker. He claimed not to know how the SCWRAG website had been set up. However, Mr Staindl's recollection changed when shown emails primarily from Ms Schutz, into which he was copied, describing how she and Mr Woodman were setting up SCWRAG. Mr Staindl maintained he was not aware of anything in the Lobbyist Code of Conduct that required him to disclose these matters. However, he commented that he should have scrutinised what was going on more closely.

¹⁵⁸ Hansard, Legislative Assembly, 7 May 2015, p 1369 (701 signatures), www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Thursday_7_May_2015_from_Book_6.pdf. A second petition was tabled by Mr Perera MP on 11 October 2016, which was coordinated by Ms Schutz. Hansard, Legislative Assembly, 11 October 2016, p 3668 (777 signatures), www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2016/Assembly_Daily_Extract_Tuesday_11_October_2016_from_Book_13.pdf.

3.7.6.5 Influencing ministerial staff

The Lobbyist Code of Conduct acknowledges that part of a lobbyist's role is to liaise between clients and ministerial and departmental staff. It is evident that Mr Woodman sought to use access to ministerial staff through Mr Staindl, Ms Graley, Mr Perera and his electorate officer as a channel to influence the Minister for Planning's decision on Amendment C219. Mr Staindl's role in facilitating access to ministerial staff is evident in emails on 5 and 6 March 2015 between Mr Woodman's son and Mr Staindl. They referred to the Minister for Planning's chief of staff, whom they were soon to meet, noting information suggesting that the chief of staff was not personally committed to green-wedge zones.

Mr Staindl reported that he and the chief of staff had discussed protocols to apply to meetings, including 'back-channel communication', because of expected media scrutiny of the relationship between the government and developers, and arranged for a senior public servant to be present. These claims were categorically denied by the Minister for Planning's chief of staff.

Following this interaction, Mr Staindl's role in liaising with the chief of staff continued in meetings and discussions with the chief of staff across a wide range of matters, including Amendment C219. In evidence, Mr Staindl said the purpose was to keep the chief of staff abreast of what was going on. The Minister for Planning's office also helped to locate and follow-up on correspondence between the Minister and the Casey Council on proposed conditions of approval, and provide information on the attitudes of the Municipal Planning Authority and DELWP staff.

Mr Staindl's continuing role is evident in a lawfully intercepted conversation between him and Mr Woodman on 18 October 2018. They discussed an avenue into the Minister for Planning's office. Mr Staindl suggested Mr Woodman get SCWRAG to draft a letter, and Mr Staindl would see if they could get back a 'form of words' from the Minister for Planning or DELWP before the election. In evidence, Mr Staindl and the chief of staff asserted that this did not mean asking the chief of staff to help create a submission in a form that was most acceptable to the Minister.

IBAC did not find that there was improper conduct in the way the Minister for Planning's office interacted with those representing Mr Woodman or promoting the approval of Amendment C219. However, there were insufficient protocols governing these interactions and ensuring that a record was kept sufficient to allow adequate scrutiny.

During the course of Operation Sardon, an overwhelming body of evidence emerged that it was the view of individuals who engaged in lobbying, such as Mr Staindl, Ms Schutz, Mr Kenessey and Mr Leigh, and their clients, that access to ministers and their staff was a significant way in which to promote their clients' interests. Major reform is required in this area of activity.

Summary

Operation Sandon focused on four key planning decisions concerning the Casey Council: two about planning scheme amendments and two about planning permits. IBAC did not assess the merits of these decisions. Rather, it examined the decision-making processes. In particular, how transparent and accountable planning decision-making processes are, how they could be manipulated, and how planning policy settings can enable or encourage corrupt behaviour.

IBAC found few controls on and little guidance for the discretion used when deciding whether to amend a planning scheme. The proponents of Amendment C219 were able to progress the matter at both the local and state levels despite the lack of strategic justification for changes to the Cranbourne West PSP, which the Casey Council and state government planning officials had previously highlighted. Operation Sandon suggested that significant weaknesses also exist in the process for amending planning permits, with conflicted councillors easily able to manipulate the process for personal gain.

The reforms proposed in this chapter address these corruption risks and promote greater accountability. For planning scheme amendments, IBAC's recommendations include:

- strengthening guidance for and controls over the use of discretion by decision-makers
- promoting transparency in decision-making by requiring reasons and including donation and lobbying disclosure requirements in the application process
- safeguarding the PPV panel process against manipulation via a presumption in favour of existing state policy settings and requiring submitters to declare details of their financial backing.

While IBAC received evidence from a variety of experts during public hearings, resolving the complex matrix of planning issues identified in this report will require further specialist expertise beyond that of IBAC. Accordingly, IBAC proposes that an Implementation Inter-departmental Taskforce (the Taskforce), including subject-matter experts, be established to consider how best to implement IBAC's recommendations in a manner that minimises corruption risks without creating unintended consequences – see Recommendation 1 below. The Taskforce should be tasked to consider a range of recommendations, including options to reduce the corruption risks associated with rezoning windfall gains, and establishing qualified, transparent and independent planning panels to deal with complex or contentious decisions to approve or amend planning permits.

Recommendation 1

IBAC recommends that the Premier establishes an Implementation Inter-departmental Taskforce (the Taskforce) that is:

- (a) chaired by the Department of Premier and Cabinet and comprises senior representatives of other relevant departments and agencies including, but not limited to, the:
 - Department of Transport and Planning
 - Department of Government Services
 - Victorian Public Sector Commission
 - Local Government Inspectorate
 - Victorian Electoral Commission.
- (b) responsible for:
 - coordinating implementation of IBAC's recommendations, where immediate action can be taken
 - progressing consideration of longer-term reforms proposed in the special report that require expert analysis and stakeholder consultation
 - making sure that the proposed reforms meet the principles and outcomes set out in IBAC's report, and that these reforms are implemented for each of the strategic issues
 - reporting quarterly to IBAC, detailing the progress of action taken in response to IBAC's recommendations
 - reporting publicly within 18 months on action taken in response to IBAC's recommendations, noting that IBAC may further publicly report on the adequacy or otherwise of those proposals.

In undertaking this work, the Taskforce should consult IBAC officers on the development of an implementation plan and the drafting of legislative amendments.

4.1 Introduction

IBAC's investigation focused on four planning decisions involving Mr Woodman and his associates. Those decisions concerned land in four greenfield PSPs: Cranbourne West, Brompton Lodge, Cranbourne East and Casey Fields South Residential.¹⁵⁹ Specifically, IBAC investigated the decision-making processes for:

- an amendment to the Cranbourne West PSP, known as Amendment C219, which sought to change the permissible land use of part of Cranbourne West from industrial to residential
- the area known as Brompton Lodge and its inclusion within Melbourne's UGB to allow more intensive development of that land
- amendments to planning permits for Lochaven Estate and Alarah and Elysian estates about two developers' responsibilities to construct the H3 intersection
- amendments to the Pavilion Estate planning permit that reduced road widths and removed open-space requirements.

The first two matters listed above – Amendment C219 and including Brompton Lodge within Melbourne's UGB – involved decisions on the permissible use of land and on zoning by decision-makers at both the local and state levels of government.

The other two matters – statutory planning decisions¹⁶⁰ involving planning permit amendments – concerned decisions at the local government level only.

As stated above, IBAC's investigation was concerned with the decision-making process only, and not with the merits of the decisions. IBAC particularly focused on the risk of corruption and other forms of inappropriate influence within these processes, including how planning policy settings can (deliberately or inadvertently) incentivise corruption and how improper influence can be exerted on decision-makers.

¹⁵⁹ See Figure 2 in Chapter 2.

¹⁶⁰ Statutory planning is the assessment of planning permit applications for new development proposals and changes to land use activities under the Planning Act. This generally involves applying planning scheme provisions to assess what permission should be given. In Operation Sandon, the issues concerning statutory planning included the H3 intersection and Pavilion Estate as they both related to planning permit amendments.

4.2 Legislation and policy governing planning

4.2.1 The Victorian Planning Act and Planning Provisions

Land use and planning in Victoria are primarily governed by the *Planning and Environment Act 1987* (Vic) (the Planning Act), although numerous other Acts may affect particular planning matters.¹⁶¹

The Planning Act does not directly regulate land use and planning. Instead, it sets out the objectives of the Victorian planning system,¹⁶² and provides for the making and amending of planning schemes. The development of planning schemes is informed by the Victoria Planning Provisions which provide a template from which all planning schemes must be derived.¹⁶³

4.2.2 Local planning schemes

Broadly speaking, planning schemes designate the kinds of use that may be allowed or prohibited on particular plots of land, typically within a local government area. Planning schemes include:

- **Policy settings** that set out the objectives to be achieved through planning decision-making and apply to all land in the planning scheme unless otherwise specified.¹⁶⁴
- **Operational provisions including decision rules** that provide for the actual regulation of land use and development, mainly achieved by setting spatial controls within each scheme – zones and overlays – that apply to land covered by that scheme.¹⁶⁵

4.2.2.1 Precinct Structure Plans

The Victorian Planning Authority's (VPA) *Precinct Structure Planning Guidelines: New Communities in Victoria* states that a PSP is a:

*high-level strategic plan that sets out the preferred spatial location of key land uses and infrastructure to guide decisions on staging of development, subdivision permits, building permits and infrastructure delivery. PSPs are deliberately flexible – they cannot anticipate and control every challenge that may be encountered at detailed design and delivery phases. As a tool to guide subdivision and delivery of essential infrastructure, they provide certainty of intended outcomes and the flexibility for detailed design to respond to site-specific requirements and solutions, and innovations.*¹⁶⁶

To develop and subdivide land in the Urban Growth Zone (UGZ) – further explained in section 4.2.3.1 – a PSP must be incorporated into the relevant planning scheme.¹⁶⁷ An incorporated PSP serves to address matters within the scope of the planning system and ensure consistency with the relevant regulatory environment.¹⁶⁸ Any amendment to a PSP, from changing one provision through to a major review, requires an amendment to the relevant planning scheme. The amendment may also seek a rezoning to reflect the revised PSP.

The VPA prepares and delivers most PSPs in the outer Melbourne growth corridors, working closely with councils, government departments and communities to focus on land use and infrastructure planning for strategically important precincts.¹⁶⁹

¹⁶¹ For example, permissions may be required under the *Subdivision Act 1988* (Vic), the *Environment Protection Act 2017* (Vic), or the *Water Act 1989* (Vic).

¹⁶² Planning Act s 4.

¹⁶³ Planning Act pts 1–2.

¹⁶⁴ DTP 2022, *A practitioner's guide to Victorian planning schemes*, Version 1.5, p 14.

¹⁶⁵ Ibid., pp 15–19.

¹⁶⁶ VPA 2021, *Precinct Structure Planning Guidelines: New Communities in Victoria*, p 2.

¹⁶⁷ Ibid., p 2.

¹⁶⁸ Ibid., p 2.

¹⁶⁹ VPA 2023, 'About', web page, vpa.vic.gov.au/about/.

4.2.2.2 Planning scheme amendment process

A planning authority is a body or person authorised under the Planning Act to prepare a planning scheme or planning scheme amendment. This is usually the council but can be the Minister for Planning or another public authority, as specified in the Planning Act.¹⁷⁰ While a planning authority can *initiate* an amendment to its own planning scheme, the Minister for Planning must ultimately authorise a planning authority to prepare an amendment,¹⁷¹ and the Minister's final approval is required. Where a council is the planning authority, each step in the amendment process requires a resolution of the council or a decision made by a committee or council officer under delegation. Decisions to adopt or abandon an amendment can only be made by a council resolution.¹⁷² Once approved, the notice of an approved amendment is published in the *Victorian Government Gazette*, and it takes effect on gazettal or other specified date.¹⁷³

Part 3 of the Planning Act governs the planning scheme amendment process. Key steps undertaken by the relevant planning authority include:

- **Obtaining authorisation** from the Minister for Planning (where required)¹⁷⁴ to prepare the amendment under section 8A of the Planning Act (noting that the Planning Act specifies that the council can proceed to prepare the amendment without having its authorisation request decided if the Minister does not make a decision within 10 business days).¹⁷⁵
- **Preparing the amendment** if authorisation is obtained (subject to any conditions). It must have regard to the matters specified in the Planning Act, particularly 'any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme',¹⁷⁶ as well as the social, economic and environmental effects of any proposed amendment.¹⁷⁷
- **Publicly exhibiting the amendment** in response to which members of the public may make submissions, unless the Minister for Planning grants the planning authority an exemption.¹⁷⁸
- **Deciding how to respond to submissions** about the amendment:¹⁷⁹ whether to make the changes requested in the submission, abandon the amendment (or part of it) or refer the submission to a planning panel established through PPV.¹⁸⁰ The role of the panel is to hear submissions on the amendment and report to the planning authority.
- **Determining whether to adopt** the amendment, with or without changes, or abandon the amendment, taking into consideration:
 - any submissions made on the proposed amendment during the exhibition period
 - recommendations resulting from a panel process.¹⁸¹
- **Submitting the amendment to the Minister for Planning** who must then decide whether to approve the amendment under section 35 of the Planning Act.

¹⁷⁰ Rowley, S 2017, *The Victorian Planning System*, p 17.

¹⁷¹ Noting that the Minister's authorisation can occur automatically – see Step 1 below.

¹⁷² *Planning Act*, s 188(2)(a) states the powers of a planning authority under ss 28, 29 and 191 cannot be delegated.

¹⁷³ *Ibid.* s 36.

¹⁷⁴ The *Planning Act* s 8 specifies that the Minister is also a planning authority in their own right. The Minister is not required to obtain authorisation to prepare an amendment.

¹⁷⁵ *Planning Act* s 8A(7).

¹⁷⁶ *Ibid.* s 12(2)(ab).

¹⁷⁷ *Ibid.* ss 12(2)(b) and 12(2)(c).

¹⁷⁸ *Ibid.* s 19.

¹⁷⁹ *Ibid.* ss 22 and 23.

¹⁸⁰ *Ibid.* pt 8.

¹⁸¹ *Ibid.* s 29.

4.2.2.3 Planning permits and amendments

Part 4 of the Planning Act governs permits, including permit amendments. The Department of Transport and Planning (DTP) defines a planning permit as:

*a legal document that allows a certain use or development to proceed on a specified parcel of land. The benefit of the permit generally attaches to the land for which it has been granted although a permit is sometimes made specific to a nominated owner or operator. A permit is always subject to a time limit and will expire under specified circumstances. The responsible authority will impose conditions when granting a permit and endorsed plans will also usually form part of the permit. The proposal must satisfy all the conditions on a planning permit.*¹⁸²

The guide notes that a planning permit is not always required and that planning schemes allow some changes in land use without the need for a permit, provided conditions are met.

Building permits are a separate process to planning permits, but a building permit must be consistent with any planning permit requirements, including conditions and endorsed plans.¹⁸³

Planning schemes identify when a planning permit is required and whether third parties (such as nearby residents) can object to a permit application or seek a review of a decision. Common permit triggers are the nature of use (for example, residential uses in non-residential zones) or the intensity of a proposed development (buildings exceeding a particular height). However, the range of triggers extends well beyond those issues (for example, if a developer wishes to provide less car parking than the scheme contemplates or if a developer proposes to remove native vegetation).

Where a permit is required, the applicant must apply to the relevant 'responsible authority' for that permit. The 'responsible authority' for a permit application is usually the relevant council.¹⁸⁴ As the responsible authority, a council administers the planning scheme for its municipality and grants individual applications for planning permits and planning permit amendments based on whether they will result in an 'acceptable outcome' under the statutory planning regime.

A council may delegate any of its powers, discretions or functions under the Planning Act to a committee of the authority, an officer of the authority, or the VPA.¹⁸⁵ Delegation to council officers to decide planning matters is essential to enable councils to deal with the volume of planning permit applications received and to respond to those applications in a manner that upholds the municipal planning scheme and meets the statutory timeframes set under the Planning Act.

The Planning Act sets out the authority and process for considering a permit amendment.¹⁸⁶ That process cross-references the usual permit application process and directs that it be applied 'with any necessary changes' to the application to amend the permit 'as if ... the application was an application for a permit, so that only the relevant aspects of the proposal need to be considered'.¹⁸⁷

¹⁸² DELWP 2022, *Using Victoria's Planning System*, Chapter 3: Planning Permits, p 1.

¹⁸³ Ibid.

¹⁸⁴ The Minister for Planning is also a responsible authority for certain specified areas or types of development listed in the schedule to clause 72.01 of any planning scheme.

¹⁸⁵ Planning Act, s 188(1).

¹⁸⁶ Ibid. ss 72 and 73.

¹⁸⁷ Rowley, S 2017, *The Victorian Planning System*, p 152.

Once the applicant makes a permit application to the responsible authority, the responsible authority:

- may seek further information from the permit applicant
- may direct the permit applicant to give public notice of the application to parties who may be affected, or may give notice itself (unless the planning scheme exempts the application from the notice requirements)
- refers the application to any referral authorities specified in the planning scheme
- must consider any objections lodged in relation to the application
- makes a decision on the application, taking into account the matters in the Planning Act and the planning scheme that it is required to consider
- may grant a permit (if there were no objectors), issue a Notice of Decision to grant a permit (if there were objectors) or issue a Notice of Refusal.¹⁸⁸

4.2.3 State policies

4.2.3.1 Plan Melbourne and the Urban Growth Boundary

The UGB is a designated area designed to manage the outward expansion of Melbourne in a coordinated manner.¹⁸⁹

The UGB was first defined in Melbourne 2030, a metropolitan planning strategy released in 2002. The current UGB was reaffirmed as the outer limit for growth in Plan Melbourne 2017–2050.¹⁹⁰

Under Plan Melbourne, the City of Casey is a local government area that is ‘partially’ within the UGB.¹⁹¹ As a designated growth area within the UGB, City of Casey development is further governed by the UGZ, a statutory zone that applies to land identified for future urban development within the UGB. The application of the UGZ does not, by itself, allow urban use and development to proceed. A PSP must be prepared and incorporated into the council’s planning scheme before this can occur.¹⁹²

4.2.3.2 Growth Corridor Plans

The City of Casey is situated within the South East Growth Corridor.

Melbourne has four metropolitan growth corridors. Each growth corridor is subject to growth corridor plans, which were developed to guide the delivery of key housing, employment and transport infrastructure in Melbourne’s new suburbs. At the time of publication in 2012, the growth corridor plans forecast that, together, the four growth corridors would ‘accommodate close to half of Melbourne’s new housing and much of the city’s future supply of industrial land over the next thirty to forty years’.¹⁹³ As shown in Figure 5, PSPs must be informed by the relevant growth corridor plan, which is in turn informed by Plan Melbourne.

The 2012 South East Growth Corridor Plan earmarked the area subject to Amendment C219 for future use as industrial land.¹⁹⁴

¹⁸⁸ DELWP 2022, *Using Victoria’s Planning System*, Chapter 3: Planning Permits, pp 1–2.

¹⁸⁹ VPA 2023, ‘Key facts on Melbourne’s Urban Growth Boundary’, Melbourne, vpa.vic.gov.au/metropolitan/more-information/urban-growth-boundary-key-facts/.

¹⁹⁰ Victorian Government 2017, *Plan Melbourne 2017–2050*, Policy 2.1.1, p 47.

¹⁹¹ Ibid. While some councils are wholly within the UGB, the City of Casey is one of 18 councils that are only partially within the UGB, hence the need to lobby for the inclusion of Brompton Lodge within the UGB. See ‘Greater Melbourne and Urban Zones’ map, sro.vic.gov.au/greater-melbourne-map-and-urban-zones.

¹⁹² DTP 2015, *Planning Practice Note 47: Urban Growth Zone*, p 2.

¹⁹³ Growth Areas Authority 2012, *Growth Corridor Plans – Managing Melbourne’s Growth*, p 5.

¹⁹⁴ Ibid., pp 78–79.

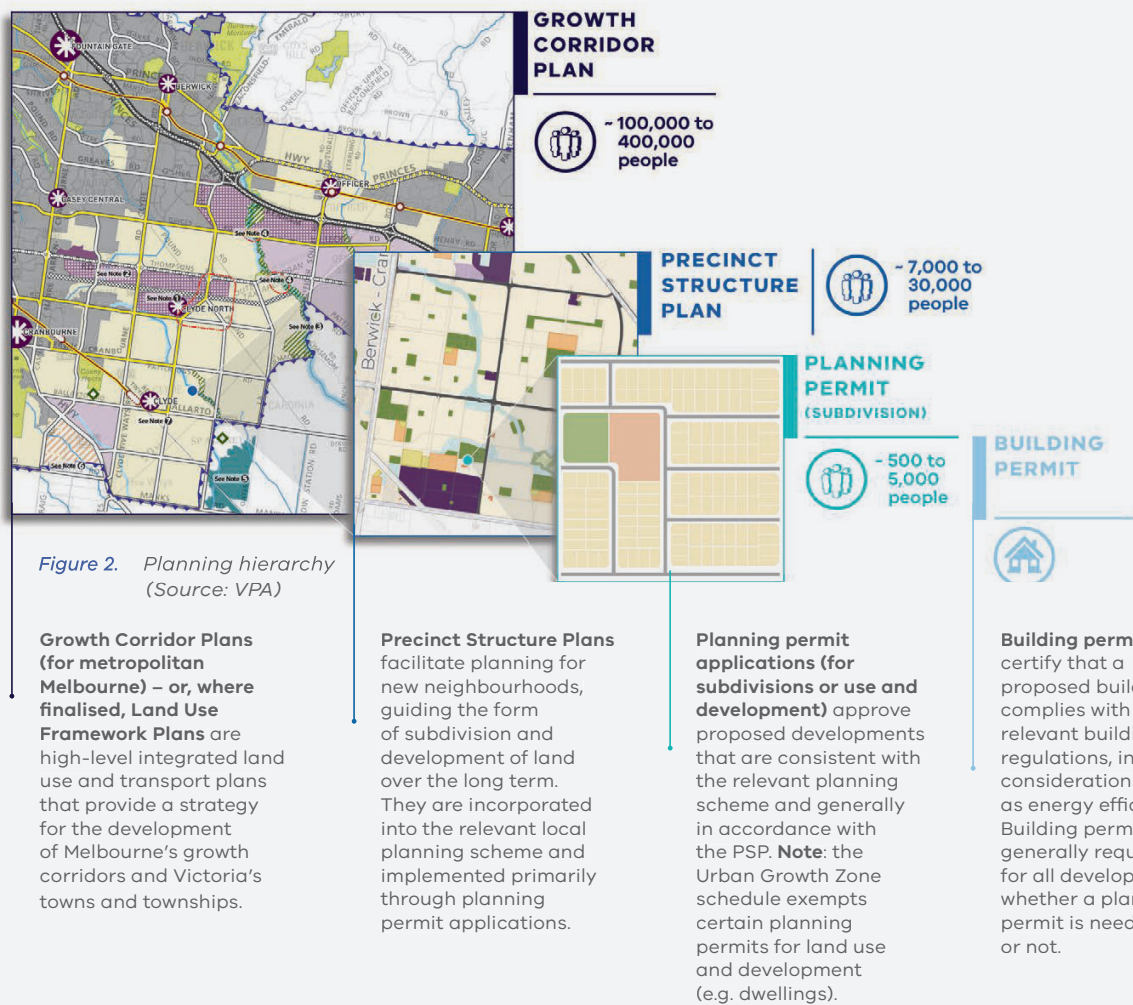


Figure 5: Planning hierarchy¹⁹⁵

4.2.3.3 Melbourne Industrial and Commercial Land Use Plan

Further to Plan Melbourne, the Melbourne Industrial and Commercial Land Use Plan provides an overview of current and future needs for industrial and commercial land across metropolitan Melbourne, and guides future planning, including the development of PSPs by the VPA.¹⁹⁶

The final plan, published in 2020, notes that the Cranbourne West industrial precinct is identified in the South East Growth Corridor Plan as a future industrial area. However:

A current proposal seeks to rezone a significant amount of the existing industrial land in this precinct to allow for residential development. This would reduce the stock of industrial land available in Casey by over 20 per cent.¹⁹⁷

¹⁹⁵ VPA 2021, Precinct Structure Planning Guidelines: New Communities in Victoria, p 8.
¹⁹⁶ DELWP 2020, Melbourne Industrial and Commercial Land Use Plan, p iii.
¹⁹⁷ DELWP 2020, Melbourne Industrial and Commercial Land Use Plan, p 86.

4.2.4 Local Government Act 1989 and 2020

At the time of the conduct under investigation in Operation Sandon, the LGA 1989 included ‘undertaking strategic and land-use planning for the municipal district’ as one of the functions of a council.¹⁹⁸

Strategic land use and planning are no longer explicitly included as council functions in the *Local Government Act 2020* (LGA 2020), but, as noted earlier, only planning authorities – the majority of which are local councils – can initiate an amendment to their own planning schemes, and decisions to adopt or abandon an amendment cannot be delegated.¹⁹⁹ Once a council adopts an amendment, it must then be submitted to the Minister for Planning for approval.

4.2.5 City of Casey policies

4.2.5.1 Policies and protocols for councillors in administering planning

The City of Casey’s 2017 *Protocols for Councillors in Administering Planning Applications* state that, when councillors receive requests for meetings from parties to planning applications, they should:

- consider whether there is merit in meeting with a party over and above considering the written submissions
- refer meeting requests to the councillor support officer for coordination and for meetings to be held in the presence of a senior member of the Casey Council’s Statutory Planning and Building Services Department
- not compromise themselves by having meetings with parties without Casey Council officers or the other parties being present
- avoid expressing a view that demonstrates a bias or preconceived view.²⁰⁰

The City of Casey’s 2016 councillor briefing, *A Guide to Town Planning Applications*, makes clear that councillors are obliged to ‘make fair (unbiased) and merit-based decisions’ on planning matters.²⁰¹

The guide outlines the roles and responsibilities of the state, Casey councillors and Casey Council planning officers for planning applications, noting that, at the time, approximately 90 per cent of planning applications at the City of Casey were decided by Casey Council officers under delegation.²⁰² However, the councillor briefing to the guide states:

*Applications are submitted to a Planning Committee if they have received 5 or more objections, are called in by a Councillor or are a non-delegated refusal. Additionally, applications will be referred to Council if there are policy issues or they are contentious within the community.*²⁰³

New guidelines were released and published on the Casey Council’s website in 2020: *Protocols for Councillors – Land Use Planning*. The guidelines provide stronger direction on how to handle meeting requests from people with applications before the Casey Council (see 6.3.1.3 for further information) and greater detail on councillors’ roles and responsibilities as a planning authority, including decision-making.²⁰⁴ The newly released *City of Casey Councillor Code of Conduct*, endorsed in March 2023, reiterates many of these obligations.²⁰⁵

198 LGA 1989, s 3E(1)(d).

199 *Planning Act*, s 188(2)(a) states the powers of a planning authority under ss 28, 29 and 191 cannot be delegated.

200 City of Casey 2017, *Protocols for Councillors in Administering Planning Applications*, s 3.

201 City of Casey 2016, *Councillor Briefing, A Guide to Town Planning Applications*, ‘Key messages’, point ‘h’.

202 Ibid., s 2.4 ‘Decision Making’, Officer Delegation.

203 Ibid., s 2.4 ‘Decision Making’, Planning Committee.

204 City of Casey 2020, *Protocols for Councillors – Land Use Planning*.

205 City of Casey 2023, *Councillor Code of Conduct*.

4.3 Issues identified in Operation Sandon

Operation Sandon highlighted the following integrity issues associated with planning regulation in Victoria:

- a lack of mechanisms to ‘capture’ windfall gains (explained in section 4.3.1), which can heighten the risk of corrupt conduct in rezoning or changing permissible land use
- inadequate controls over decision-makers’ use of discretion in the planning scheme amendment process
- a lack of transparency in planning scheme amendment decisions
- potential for manipulation of the PPV panel process
- councillor conflicts of interest and excessive discretion in the permit approval and amendment processes.

These issues are discussed below.

4.3.1 Planning and the incentive to engage in corrupt conduct due to windfall gains

Planning decisions have the potential to make millionaires. This creates a strong incentive for developers to seek decisions that favour their interests or engage in corrupt conduct to realise large gains. Broadly speaking, the planning system can deliver profits in two ways:

- rezoning land or changing the permissible land use to allow more intensive or profitable uses
- granting a permit to use or develop land where a permit is required under the planning scheme.

Although there is some scope to increase profits through planning permit changes – particularly through cost-shifting or removing permit conditions that require the developer to provide land for public purposes (usually at no cost to the public) – rezoning or land-use changes are potentially more lucrative.

In Operation Sandon, two matters highlighted the substantial windfall gains that can be made:

- The proposal to amend the Cranbourne West PSP (which became known as Amendment C219) to change the permissible use of the land from mixed-use commercial to pure residential²⁰⁶ was estimated by Casey Council officers to increase the value of the land by up to \$35 million (or \$175,000 per hectare).²⁰⁷
- The inclusion of Brompton Lodge in the UGB in 2012 and subsequent application of a PSP contributed to an increase in the monetary value of the land,²⁰⁸ which was purchased for approximately \$400,000 over a 12-year period from 1966 to 1978 and sold for \$55 million in 2018.²⁰⁹
- Knowing that large profits can be made from a decision on the zoning or permissible use of a parcel of land (without actually improving the land in any way) provides a considerable incentive for owners and developers to lobby government decision-makers to make a decision favourable to their interests. Indeed, the fact that Leighton Properties or Mr Kenessey considered it reasonable to offer Mr Woodman a ‘success fee’ of \$2 million on approval of Amendment C219 shows how valuable the developers considered this matter.

206 Amendment C219 did not technically propose a rezoning of land, because the land would be zoned ‘Urban Growth Zone’ both before and after the amendment. In practical terms, however, because the effect of the amendment would have been to permit residential development on land where such development would previously have been prohibited, the amendment can be described as a functional rezoning.

207 Casey Council, 1 April 2014, meeting agenda, Item 2, p 3. Casey Council officers’ report evaluating Amendment C219 states ‘It is noted that the uplift of value in the land by rezoning to residential could amount to approximately \$35M whilst increasing unfunded developer contribution liabilities by something in the order of \$7.8m which will fall to Council’.

208 Victorian Government 2012, *Victoria Government Gazette*, Notice of Approval of Amendment C170, No. G 37, 13; and Victorian Government 2016, *Victoria Government Gazette*, Notice of Approval of Amendment C190, No. G 50.

209 In a submission to IBAC, the landowners noted that the profits they made from the sale of Brompton Lodge are not dissimilar to those made by many other landowners who purchased land several decades ago and enjoyed the good fortune of that land being rezoned as a result of urban sprawl, adding that the land in question was used for farming purposes and as a family home for decades before being sold. IBAC does not suggest that the landowners acted improperly in seeking rezoning. However, this matter highlights the corruption risks associated with such lucrative windfall gains.

Concerning the magnitude of profits to be made from a rezoning decision, a 2018 research report by the Reserve Bank of Australia stated, ‘anecdotal evidence suggests that zoning can have a huge effect on land values. For example, a 363 ha site in Wyndham Vale (40 km west of Melbourne) increased in value from \$120m to \$400m following a rezoning from rural to residential’.²¹⁰

The Reserve Bank’s report stated that this was not uncommon.²¹¹ For instance, a 2005 paper noted, ‘Soon after the [Melbourne] UGB was introduced, land brought inside it, say, around Whittlesea, was selling at some \$600,000 per ha where previously, before the boundary de facto rezoned it as housing, it cost \$150,000–200,000 per ha’.²¹² Similarly, a 2011 study observed that the value of agricultural land brought into the UGB was estimated to increase from less than \$35,000 per hectare to more than \$300,000 per hectare.²¹³

Large gains are not limited to land-use changes in urban fringe areas. Changes to the zoning of land in the inner suburbs of Melbourne can also lead to significant increases in value:

- A September 2013 report in the *Sydney Morning Herald* noted that the average land values in the Montague Precinct of Fishermans Bend increased from \$2500 to \$4000 per square metre following its rezoning from industrial use to Capital City Zone (which allows high-density residential development).²¹⁴
- In February 2021, Dr Marcus Spiller noted that the residual land value of Precinct 15 (a 67-hectare site adjacent to the West Gate Freeway in Altona North in Hobsons Bay) rose from \$210 million to \$600 million (an increase of \$390 million, or approximately \$5.8 million per hectare), following its rezoning from industrial use to Comprehensive Development Zone (which enables a site-specific or precinct-specific set of planning controls).²¹⁵

To this end, ‘value-capture’ mechanisms – which help governments to recover some of the increased value of land resulting from favourable government decisions – are desirable to reduce the windfall gains from property development and to minimise the associated corruption risks. As Dr Spiller argues:

*Charging a fee for access to additional development rights granted through the planning process would dampen tendencies towards corruption in the administration of the system and mitigate wasteful rent seeking behaviour right along the chain of property transactions culminating in rezoning and the like. It would also generate substantial revenue for the provision of much needed infrastructure to support growth and consolidation of our cities.*²¹⁶

Value-capture is not a new concept. The Australian Capital Territory (ACT) has applied a betterment tax since the 1970s. Under this scheme, a fee is payable to the ACT Government when land use is varied to capture a proportion of the increased value. Known as the Lease Variation Charge, the fee is generally calculated as 75 per cent of the gain in land value, unless otherwise specified in codified schedules for changes in land use for designated areas.²¹⁷

In his submission to IBAC, economist Dr Cameron Murray noted:

The reason this decreases the incentive for corruption is because it greatly reduces the payoff from it. Even if the planning system is manipulated in favour of a landowner, their payoff is only marginally increased.

²¹⁰ Kendall R and Tulip P 2018, *The effect of zoning on housing prices*, RBA Research Discussion Paper 2018–03, p 1, with reference to Schlesinger L and Tan S-L 2017, *Australian Financial Review online*, ‘China’s Country Garden Pays \$400m for Future Melbourne Suburb’. A report in the *Australian Property Journal online* similarly noted that the land had been bought in 2004 for \$14.5 million and that its book value had increased from \$45.4 million to \$120 million in 2016 when the Black Forest Road North Precinct Structure Plan was approved, which had the effect of permitting residential development. The site was then on-sold to a developer in 2017 for \$400 million. See: *Australian Property Journal* 2018, Country Garden to develop 4500-lot estate in Melbourne, www.australianpropertyjournal.com.au/2018/05/30/country-garden-to-develop-4500-lot-estate-in-melbourne/.

²¹¹ Kendall R and Tulip P 2018, *The effect of zoning on housing prices*, RBA Research Discussion Paper 2018–03, pp 1 and 24.

²¹² Ibid., p 24, with reference to Moran A 2005, ‘Prices and Planning: The State of the Housing Industry’, Institute of Public Affairs Review, 57(3), pp 24–27.

²¹³ Ibid., p 24, with reference to Kulish M, Richards A, Gillitzer C 2011, ‘Urban Structure and Housing Prices: Some Evidence from Australian Cities’, RBA Research Discussion Paper No. 2011–03, p 30.

²¹⁴ Simon Johanson, 2013, ‘The Bend’s land values soar’, *The Sydney Morning Herald*.

²¹⁵ Spiller M, 2021, ‘An economic fix for planning scandals’, *SGS Economics and Planning*, with reference to an analysis by Ernst & Young.

²¹⁶ Ibid.

²¹⁷ *Planning and Development Act 2007* (ACT), s 277 and *Planning and Development Regulation 2008* (ACT), cl 179.

The Grattan Institute has also argued that a betterment tax can help to moderate corruption risks associated with rezoning, stating:

*State treasurers should follow another ACT lead and introduce explicit 'betterment taxes' to capture some of the windfall gains from rezoning of land. Government permission to build higher-density housing, or convert farmland into greenfield housing land, generates large unearned windfall gains for landowners. Taxing these windfall gains would be a particularly efficient form of taxation, would reduce the opportunities for corruption in the planning system, and would enable state treasurers to reduce other more economically harmful and regressive taxes.*²¹⁸

The Victorian Government has acknowledged the importance of recovering some of the increase in monetary value of land resulting from rezoning and the construction of major infrastructure.²¹⁹ *Victoria's value creation and capture framework* (2017) states:

*Victoria's planning system already includes a number of value capture mechanisms. Past and current infrastructure projects have incorporated mechanisms like property development rights and infrastructure contributions, which effectively captured a portion of the benefits from direct beneficiaries. The Growth Areas Infrastructure Contribution [is] an example of one of the existing mechanisms currently used by the Victorian Government to capture a portion of the benefits from suburban development in Melbourne's growth areas to offset a portion of the costs of providing essential infrastructure.*²²⁰

The Growth Areas Infrastructure Contribution (GAIC) was introduced in 2010 to help fund the cost of infrastructure in Melbourne's growth areas, specifically land zoned for urban development that was brought into the UGB in 2005, 2006, 2010 or 2012.²²¹ Developers of land in GAIC-eligible areas must make a one-off contribution the first time one of four 'trigger' events occurs: a transfer of title, an application for a building permit, subdivision of land or acquisition of land valued at more than \$1 million.²²² In theory, a charge like the GAIC could help reduce the incentive for corrupt activity associated with windfall gains. However, its effectiveness is limited because:

- it applies to only a small number of local government areas on Melbourne's fringe²²³
- a wide range of exemptions and pathways exist for developers to progress projects without triggering a GAIC liability²²⁴
- the contribution is calculated as a flat rate per hectare, which is not proportionate to the increased value in the land.²²⁵

In May 2021, the Victorian Government announced a new windfall gains tax (WGT) of up to 50 per cent applied to planning decisions to rezone land from 1 July 2022.²²⁶ The commencement date was postponed to 1 July 2023.²²⁷

In his Second Reading Speech for the associated Bill, the Treasurer stated:

Taxing windfall gains allows a share of the private economic benefits from rezoning to be captured as a revenue stream, in an efficient and equitable way, so that the benefits of such a windfall can be returned to the community through greater Government investments in services and infrastructure.

218 Daley J, Coates B, Chen T 2018, Abolish stamp duty. The ACT shows the rest of us how to tax property, Grattan Institute.

219 Victorian Government 2017, *Victoria's value creation and capture framework: maximising social, economic and environmental value from infrastructure investment*. Also see Transport for London 2017, *Land value capture: final report*.

220 Victorian Government 2017, *Victoria's value creation and capture framework*, p 14.

221 *Planning Act*, Part 9B and DTP, Growth Areas Infrastructure Contribution (GAIC), planning.vic.gov.au/legislation-regulations-and-fees/planning-legislation/growth-areas-infrastructure-contribution.

222 Victorian Auditor-General's Office 2020, *Managing development contributions*, p 16.

223 GAIC is only payable in Melbourne's growth areas of Cardinia, Casey, Hume, Melton, Mitchell, Whittlesea and Wyndham. See planning.vic.gov.au/policy-and-strategy/growth-areas-infrastructure-contribution-fund.

224 State Revenue Office (SRO), Growth Areas Infrastructure Contribution, sro.vic.gov.au/growth-areas-infrastructure-contribution.

225 Two different rates are applied depending on the land type. For 2022–23, the adjusted GAIC amounts were \$103,260 per hectare for land type A (with reference to s. 201RC(2), PEA) and \$122,660 per hectare for land types B-1, B-2 and C (with reference to ss 201RC(3)–(5), PEA). See planning.vic.gov.au/legislation-regulations-and-fees/planning-legislation/growth-areas-infrastructure-contribution.

226 Treasurer 2021, The Hon Tim Pallas, 'Contributing a Fair Share For a Stronger Victoria', www.premier.vic.gov.au/contributing-fair-share-stronger-victoria.

227 State Revenue Office, Windfall Gains Tax, www.sro.vic.gov.au/windfall-gains-tax.

The WGT will be paid by landowners and will apply to most rezonings across Victoria that have a value uplift above \$100,000. Several rezonings will be excluded from the WGT including rezonings to or from the Urban Growth Zone which are in relation to Growth Areas Infrastructure Contribution (GAIC) land, recognising the GAIC's similar purpose to the WGT...

The WGT will only apply to value uplifts in excess of \$100,000. For taxable value uplifts of more than \$100,000 but less than \$500,000, the WGT payable will be 62.5 per cent of the uplift in excess of \$100,000, allowing the effective tax rate to phase in up to \$500,000. For uplifts of \$500,000 or more, a flat rate of 50 per cent of the taxable value uplift is payable.²²⁸

The structure of the proposed WGT suggests that it would not have applied to Amendment C219,²²⁹ because that amendment involved a change in permissible land use as opposed to a rezoning.²³⁰

In IBAC's view, for a WGT to effectively deter corrupt conduct, a proportion of the uplift must be captured *wherever* a change in the permissible use of land results in a substantial windfall gain. The tax must also capture a substantial proportion of the uplift where a rezoning occurs to reduce the incentive for corrupt conduct. Consistent with the principles set out in *Victoria's value creation and capture framework*, the proposed tax must also:

- be transparent and easily understood
- not create unintended consequences or lead to alternative unwanted behaviours
- be evidence-based, by making sure that benefits are quantified and attributable to government action.²³¹

Beyond taxation, the two other main methods of capturing value are direct development and hybrid models.

The direct development approach involves situations where a government acquires land in the affected area and develops it (or sells it to developers following uplift), thus directly capturing any increase in value through subsequent sale prices. An example is the Hong Kong Mass Transit Railway, where a majority-owned Hong Kong government corporation, the MTR Corporation, purchases from the government, through its 'Rail plus Property' development program, the right to develop land around planned rail projects, based on the land's market value pre-railway. It then auctions those rights to developers at post-railway prices, thereby capturing the uplift.²³² As noted in a 2009 study:

For the 1980–2005 period, it is estimated that Hong Kong SAR has received nearly \$140 billion [in Hong Kong dollars circa 2009] in net financial returns ... Thus the government of Hong Kong has enjoyed tremendous financial returns and seeded the construction of a world-class railway network without having to advance any cash to [MTR Corporation].²³³

Hybrid models involve a mix of approaches. For instance, Transport for London considered a development rights auction, in which landowners could choose either to pool their development rights, which would then be auctioned by the government to developers in return for a share of proceeds, or to develop the land themselves subject to significant charges.²³⁴

Regardless of the value-capture method used, any reduction in the profits resulting from rezoning and changes in the permissible use of land is likely to reduce the incentives to act corruptly to obtain those profits.

228 Treasurer, The Hon T Pallas, 13 October 2021, Second Reading Speech, Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021, Legislative Assembly, Hansard, p 3193.

229 Department of Treasury and Finance, 'Windfall Gains Tax, Fact Sheet', reiterates rezonings to and from the UGZ within the GAIC area are exempt from the Windfall Gains Tax.

230 That is, the land remained at all times within the UGZ.

231 Victorian Government 2017, *Victoria's value creation and capture framework*, p 19.

232 Cervero R and Murakami J 2009, 'Rail and Property Development in Hong Kong: Experiences and Extensions', *Urban Studies*, vol. 46, issue 10, pp 2019–2043.

233 Ibid. The authors note that the \$140 billion figure is based on the difference between earned income (\$171.8 billion from land premiums, market capitalisation, shareholder cash dividends and initial public offer proceeds) and the value of injected equity capital (\$32.2 billion).

234 Transport for London 2017, *Land Value Capture – Final Report*. See also Transport for London 2018, *Development Rights Auction Model*, which ultimately appeared to reject such an approach.

Proposed reforms

The policy levers involved in setting planning regulation and taxation are complex. Subject-matter expertise is essential to develop a value-capture mechanism that effectively addresses minimises the risk of corruption without inviting other unintended consequences for urban development, economic growth and the like.

From a corruption prevention perspective, it is evident that the incentive to influence decisions in planning matters can be tempered by reducing the large gains that can be made from a favourable outcome. However, the details of such a scheme require careful consideration.

Further to the Victorian Government's introduction of a WGT, IBAC recommends that consideration be given to developing an equivalent mechanism to capture a proportion of the uplift *wherever* a change in the permissible use of land results in a substantial windfall gain in order to reduce the incentive to improperly influence decision-makers.

Recommendation 2

IBAC recommends that the Premier ensures that the Taskforce considers and recommends measures to address the corruption risks associated with windfall gains from changes in permissible land use, drawing on any lessons learnt in the development and implementation of the *Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021* (Vic).

4.3.2 Discretion in the planning scheme amendment process

The Victorian planning system – like many other planning systems – is characterised by a high degree of discretion, in that decisions cannot be reliably predicted based on objective factors alone. This is particularly so for planning scheme amendments, where key decisions are subject to few express constraints, there is an absence of clear guidance on how decisions should be made, reasons for decisions are not generally required, and there is little opportunity for third-party oversight.

Consistent with the views of planning experts and other integrity agencies,²³⁵ IBAC accepts that a significant degree of discretion is a necessary and even desirable part of any planning system. It recognises the broad range of circumstances in which the planning system operates, and the practical impossibility of addressing each situation individually.

Nonetheless, when an official decision-maker has the authority to use their judgment to choose from a range of acceptable alternatives, there is a heightened risk of improper influence. As the NSW Independent Commission Against Corruption (ICAC) observed in a 2010 report:

*It requires no great leap of faith to suggest that anyone who has discretion to grant development approval, to rezone or to depart from stated requirements – whether they are elected officials or professional officers, and regardless of their level or political persuasion – is at risk of corrupt approaches. The greater the departure from the previous norm, the greater the corruption risk.*²³⁶

It follows that:

*The key issue is the adequacy of the safeguards when discretions are exercised by elected or unelected officials at any level of government. Such safeguards are a normal part of the fabric of Australian law and public administration and should not be seen as a negative commentary on the integrity of anyone.*²³⁷

²³⁵ See, for example, NSW Independent Commission Against Corruption (NSW ICAC) 2012, *Anti-Corruption Safeguards and the NSW Planning System*, p 9.

²³⁶ NSW ICAC 2010, *The Exercise of Discretion under Part 3A of the Environment Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Development)* 2005, p 6.

²³⁷ Ibid.

The Planning Act currently lacks adequate safeguards against corrupt conduct associated with these discretionary elements in the planning scheme amendment process, because:

- ministerial authorisation is not an effective gateway mechanism to prevent amendments that lack strategic justification from progressing
- there is a lack of guidance and parameters to limit the number of possible decisions that could be considered 'correct' at the adoption and approval stages of the planning scheme amendment process.

These two issues are considered in turn below.

4.3.3 Effectiveness of requirement to demonstrate strategic justification to obtain authorisation

In Victoria, the process for amending a planning scheme is contained in Part 3 of the Planning Act and involves six steps (outlined above in section 4.2.2.2).

In theory, this process subjects a proposed amendment to numerous checks and balances. However, in practice, Operation Sandon highlighted many deficiencies, particularly a lack of clear criteria for each stage of decision-making. This absence of comprehensive criteria makes it harder to identify aberrant decision-making. There is also a lack of clear and meaningful guidance on how to evaluate the merits of proposed planning scheme amendments, which can increase the risk of improper influences in the decision-making process.

In Operation Sandon, ministerial authorisation did not prevent an amendment proposal from progressing²³⁸ despite advice from DELWP (now DTP) that it was *not* strategically justified and was unlikely to be approved if it did proceed beyond authorisation. As a result, the Casey Council ultimately obtained authorisation from the Minister for Planning to prepare the amendment subject to conditions including that further strategic work be undertaken with consideration to re-designate 'only the southern portion of the subject land from employment to residential'.²³⁹

To inform the Minister's decision to authorise a planning scheme amendment, a proposal is accompanied by an explanatory report prepared by the relevant council (as the planning authority) which should explain why an amendment is sought, what it intends to achieve and the effects of the amendment.²⁴⁰ However, in his submission to IBAC, Dr Stephen Rowley, Adjunct Senior Lecturer in the Department of Architecture at Monash University, noted:

There is, theoretically, a long list of justification [sic] that needs to be provided in the explanatory report for a scheme amendment. However, amendments do not need to undertake a Regulatory Impact Statement (RIS) process. While I think it would be impractical to apply the RIS process to planning scheme amendments, I also think that the prevailing culture of strategic justification of amendments has become quite slapdash. Strategic justification is often dealt with in a series of largely boilerplate statements, and there is frequently little attempt to quantify environmental, social and economic impacts in any rigorous way.

The explanatory report that accompanied Amendment C219 did *not* acknowledge that the proposed conversion of industrial land to conventional residential land had previously been described by Casey Council planning officers as unjustified.²⁴¹

The DELWP briefs provided to the Minister for Planning on the authorisation request for Amendment C219 did, however, point out that the proposed amendment was not strategically justified. One brief warned that the proposed amendment was inconsistent with state policy, while another noted that the Metropolitan Planning Authority (now the VPA) had previously advised the Casey Council that it could not support a change to residential use due to the need for employment land in the south-east corridor. Despite this advice, the Minister for Planning chose to authorise the Casey Council to start the amendment process in December 2015, albeit with conditions as noted above.

²³⁸ In response, the Minister for Planning indicated that: they were under no obligation to follow the advice of planning officers under the *Planning Act*; their decisions to progress the proposed amendment were conditional on further strategic work being performed; and there is no evidence they were ever satisfied the proposal was strategically justified to a sufficient extent or that they intended to approve Amendment C219 despite its lack of strategic justification.

²³⁹ PPV 2018, *Report on Casey Planning Scheme Amendment C219*, p 4. The Minister for Planning issued authorisation for the amendment subject to conditions on 29 December 2015.

²⁴⁰ Planning Act, s 12(1)(e).

²⁴¹ City of Casey, *Planning scheme Amendment C219 – Explanatory report*, and Casey Council, 1 April 2014, meeting agenda, Item 2, which states, 'The land at Cranbourne West has long been identified for employment uses and was subject to a robust planning process just five years ago ... Officers do not consider that the circumstances have changed substantially to warrant a straight flip to residential and consider that no case has been put by the proponents to justify such a major shift in Council policy'.

The case of Amendment C219, where ministerial authorisation was given for an amendment to be prepared despite planning officers in the Casey Council, DELWP and the Metropolitan Planning Authority advising that it lacked strategic justification, suggests that strategic justification can be given little, if any, consideration when a planning scheme amendment is initiated. Indeed, authorisation can be triggered without consideration of any kind if the Minister for Planning does not make a decision within 10 business days.²⁴²

Such unfettered discretion at the early stages of the planning scheme amendment process can provide an opening for motivated parties to seek to influence decision-makers later in the process, by allowing them to assert that an amendment that lacks strategic justification has ‘passed’ the first hurdle of authorisation.

Further, the events in Operation Sandon suggest the need for a presumption against authorisation (or approval) where an amendment proposes to alter a planning scheme provision that has been in place for less than a certain length of time. For example, as the state parties emphasised to the PPV panel for Amendment C219, the purpose of a PSP is to guide development over the medium to long term. The Cranbourne West PSP had been in place for only four years when the amendment was requested by Leighton Properties and the other landowner in February 2014.²⁴³

A presumption against alteration would encourage consistent decision-making over the relevant period and reduce the incentive to make changes based on financial considerations, while still permitting changes where properly justified. Ensuring consistent decision-making reduces the scope for corrupt decision-making because it makes aberrant decisions easier to identify.

The ability to readily vary standards has been recognised as a corruption risk in New South Wales,²⁴⁴ which has adopted a presumption against amending any control that is five or fewer years old.²⁴⁵ This presumption has a sound basis, as planning instruments are generally expected to have a useful life of more than five years: authorities do not zone an area as residential (given infrastructure needs and development timetables) unless they expect it to be used for residential purposes for some time to come. This is perhaps even more pronounced with instruments like PSPs, which are designed to plan long-term land use.

It may also be appropriate for the Planning Act to formally require decision-makers (planning authorities in preparing amendments, and the Minister for Planning in granting authorisation) to consult with those state bodies responsible for long-term planning in the relevant area (including the VPA, the DTP and transport bodies) at the outset of a proposed planning scheme amendment, and for the decision-maker to consider that feedback when making the relevant decision. This would be particularly significant at the authorisation stage, where there is an opportunity to avoid the costs of allowing amendments without merit to proceed through a public hearing process. Again, this sound requirement applies in New South Wales, where the Minister for Planning must consult with the Greater Sydney Commission during the ‘gateway review’ of certain planning scheme amendments.²⁴⁶

²⁴² *Planning Act*, s 8A(7).

²⁴³ The Cranbourne West Precinct Structure Plan (PSP) was approved by the Minister for Planning in February 2010, through Amendment C102 to the Casey Planning Scheme.

²⁴⁴ In NSW ICAC 2010, *The Exercise of Discretion under Part 3A of the Environment Planning and Assessment Act 1979* and the State Environmental Planning Policy (Major Development) 2005, and elsewhere.

²⁴⁵ *Ibid.*, stating that, ‘A proposal that seeks to amend controls that are less than five years old will only be considered where it clearly meets the Strategic Merit Test’.

²⁴⁶ *Environmental Planning and Assessment Act 1979* (NSW), s 3.34(3A).

Another option suggested to IBAC is to require decisions involving the rezoning of state or regionally significant commercial or industrial land to residential land (above a certain threshold) to be considered under the state significant pathway, which would be determined by the Minister for Planning. However, it is not clear how this would make sure that strategic justification is properly considered, as the requirement to demonstrate strategic justification was not enforced by the Minister for Planning when authorising Amendment C219. Indeed, other examples in the last 15 years demonstrate that strategic justification could not support particular ministerial authorisations.²⁴⁷ The events in Operation Sandon suggest the need for a more confined and considered 'gateway' approach to planning scheme amendments, in which a matter cannot progress to the next stage if strategic justification cannot be demonstrated.

Proposed reforms

Proposed planning scheme amendments represent a change in law. Amendments should be properly scrutinised before being prepared and should not, therefore, progress by default.²⁴⁸ It appears that section 8A(7) of the Planning Act was introduced to address bottlenecks in the authorisation process by allowing a council to prepare an amendment without having its authorisation request decided if the Minister for Planning does not authorise the amendment within 10 days. However, as stated above, progression in the absence of an authorisation decision is inconsistent with the principle of a merits-based consideration of a planning scheme amendment. If applied without qualification, section 8A(7) can undermine the authorisation process, which should filter out at this preliminary stage any changes that are not strategically justified.

IBAC recommends that section 8A(7) of the Planning Act be revised to acknowledge the need for both timely authorisations *and* proper consideration of strategic justification. This would help safeguard the integrity of the planning scheme amendment process. Options include specifying criteria to identify matters suitable for automatic authorisation or delegation to the department to facilitate more timely, considered authorisation.

Because authorisation lends a degree of validation to a proposed amendment, the strategic justification of the proposal should be considered more carefully at this early stage. If a proposal cannot be justified, it should not proceed at all. For this reason, IBAC's view is that a planning authority should be required to satisfy the Minister for Planning of specified criteria – such as demonstrating a *preliminary* strategic justification – when seeking authorisation to prepare a proposed amendment.

Recognising that PSPs set the long-term strategic vision for an area, IBAC also recommends a presumption against amendment for an appropriate period (as determined by subject-matter experts), and notes that key state bodies responsible for long-term planning should be consulted at an early stage. In this way, where an amendment is inconsistent with a relevant state policy, the onus will be on the planning authority to justify the change.

However, recognising that planning is complex, further work will be needed to determine the criteria that must be considered and the time during which a presumption against amendment should apply.

Recommendation 3

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) so that authorisation of a planning scheme amendment operates as a transparent and accountable gateway process by:

- (a) amending section 8A(7) to facilitate proper consideration of the strategic justification and timely authorisation of planning scheme amendments
- (b) setting clear criteria that the Minister for Planning must consider in exercising their discretion to authorise progression of an amendment, including satisfaction of strategic justification
- (c) specifying a presumption against amendment for an appropriate period, noting that the reasons for any exemptions should be clear and details made publicly available.

²⁴⁷ See for example *East Melbourne Group Inc v Minister for Planning* (2008) VSCA 217 and Victorian Ombudsman 2014, *Investigation into advice provided to the office of the Minister for Planning by the Department of Planning and Community Development in relation to land development at Phillip Island*, p 3.

²⁴⁸ To the extent there may be amendments that need to be approved promptly or are likely to be uncontroversial, that situation is adequately dealt with by s 20 of the Planning Act, which enables the Minister to exempt planning scheme amendments from notice and exhibition requirements of Part 3 of the Planning Act, enabling them to be approved in a very short space of time, and s 20A, which provides that certain classes of amendment prescribed by regulation are exempt from the notice and exhibition requirements of Part 3 of the Planning Act.

4.3.4 Broad scope of plausibly ‘correct’ decisions

As with authorisation, the Planning Act provides very few explicit criteria for decision-making in the latter stages of the planning scheme amendment process. For instance, in Operation Sandon, although the Minister for Planning provided some reasons for their decision to reject Amendment C219 – in the form of a media release²⁴⁹ – the Minister was not required to satisfy any specific criteria.

In particular, while the Planning Act sets out a number of broad criteria that a planning authority must consider in *preparing* a planning scheme amendment, including ‘any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme’ (as noted above in section 4.2.2.2, step 2),²⁵⁰ the planning authority and Minister for Planning are not obliged to consider whether the proposed amendment is strategically justified at the adoption and approval stages of the amendment process (steps 5 and 6 respectively).²⁵¹ The one exception concerns matters that have been the subject of a planning panel – in which case the planning authority is obliged to consider the panel’s report.²⁵²

In the 2020 case *Mackenzie v Head, Transport for Victoria*, the Supreme Court of Victoria confirmed that, although the question of strategic justification must be ‘considered at the earliest stage in the amendment process’, there are currently no matters that a planning authority or the Minister for Planning must consider in deciding whether to adopt or approve a planning scheme amendment,²⁵³ leaving it open to different decision-makers to apply different criteria in deciding whether to approve an amendment. This suggests that the powers to adopt and approve an amendment are not restricted by any meaningful criteria that must be met before the power can be exercised.²⁵⁴

As with authorisation, IBAC recommends that the planning authority be required to satisfy objective criteria before it adopts a proposed amendment. Similarly, at the final stage in the process, the Minister for Planning should be satisfied of certain conditions before approving an amendment.

It is common for statutory powers to be subject to certain conditions. For example, section 20(4) of the Planning Act permits the Minister for Planning to exempt a planning scheme amendment from the need to give notice of an amendment they have prepared, ‘if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate’.

Imposing conditions on the exercise of a statutory power can help to reduce corruption risk by confining the criteria against which a decision-maker can decide a matter (as opposed to allowing the decision-maker to define their own criteria at the time of the decision). This can also help third parties to evaluate whether a decision falls within the range of lawful or reasonable decisions and, if not, can provide a basis for challenging the decision (by either a judicial or merits review). This can assist in detecting and deterring corrupt decision-making.

249 Minister for Planning 2020, ‘Protecting land for jobs and business in Cranbourne’, media release.

250 *Planning Act*, s 12(2). In addition, s 22 requires a planning authority to ‘consider all submissions’, but this consideration is not expressly directed to any particular decision-making process.

251 *Planning Act*, s 29(1) states that ‘After complying with Divisions 1 and 2 in respect of an amendment or any part of it, the planning authority may adopt the amendment or that part with or without changes’ (however, no strategic considerations are mentioned in Divisions 1 or 2). Section 35(1) provides the Minister with authority to ‘approve an amendment or a part of an amendment ... with or without changes; and subject to any conditions the Minister wishes to impose; or refuse to approve the amendment or part of the amendment’.

252 *Planning Act*, s. 27. Albeit if there is significant delay in the production of the panel’s report, the planning authority may apply to the Minister for permission to make a decision on adoption without considering the report: s. 27(3).

253 *Mackenzie v Head, Transport for Victoria* (2020) VSC 328 at 191.

254 One of the few requirements in place at present specifies that the Minister for Planning must not approve certain types of amendments without the consent of certain other ministers. *Planning Act*, s 35(4).

Further, guidance documents should expand on and identify any other relevant matters to be considered in decision-making. This would impose structure and facilitate oversight by providing criteria against which the merits (or legality) of a decision can be meaningfully evaluated and, if necessary, challenged. As the NSW ICAC has observed, in terms of preventing corruption:

[T]he Commission has typically found that the most effective means of reducing the corruption risks associated with discretion is to construct safeguards through sets of criteria that are robust and objective.²⁵⁵

DTP's Planning Practice Note 46: *Strategic assessment guidelines for preparing and evaluating planning scheme amendments* is intended to establish 'a consistent framework for preparing and evaluating a proposed planning scheme amendment and its outcomes'.²⁵⁶ Although this acknowledges the need for a consistent evaluation framework in the Victorian planning system, many of the criteria expressed in the note are very broad and require subjective judgments to be made. The guidance should be more prescriptive.

The Victorian planning system – particularly at the strategic level – is intended to be policy-driven,²⁵⁷ with decisions furthering the policy goals set out in the planning policy framework. However, tensions often arise between competing policy objectives, and decision-makers are left to form their own judgments about which policy objectives should be favoured for each decision.

Amendment C219 illustrates this point. Its purported justification was that converting 133 hectares of employment land into residential land would enable the delivery of additional housing. With no guidance from the Planning Act or the Casey Planning Scheme on which use should be given priority when the decision was made, it could not be said that the Casey Council's apparent preference for housing over employment land was definitively 'wrong' or even suspect.

In addition, although Casey Council officers, the Metropolitan Planning Authority and DELWP found that the proposed conversion of employment land to 'totally residential' was not strategically justified,²⁵⁸ the PPV panel found that this proposed amendment was justified.²⁵⁹

The scope for disagreement on the same facts poses a problem for oversight; it is harder to identify self-interested or corrupt decision-making if such decisions can be easily said to satisfy plausible planning motives and cannot readily be discerned from good-faith decision-making.

In its 2008 report on corruption in planning decision-making at Wollongong City Council, the NSW ICAC made a similar point. After observing that the New South Wales planning system (like the Victorian planning system) 'is characterised by two somewhat contradictory features: regulatory complexity and wide discretion',²⁶⁰ the NSW ICAC stated:

These features mean that it is possible for two well qualified town planners, both acting in good faith, to disagree about the merits of a particular [development application]. It follows that if one of these planners is acting in bad faith, the resulting disagreement is unremarkable and would not necessarily be seen as an indicator of improper conduct.²⁶¹

Although that observation was made about individual development approvals, it could also apply to planning scheme amendments.

The Victoria Planning Provisions recognise the reality of policy tensions but do not provide any meaningful guidance on how they should be resolved in any given case. These provisions require that planning authorities 'endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations'.²⁶²

²⁵⁵ NSW ICAC 2012, *Anti-Corruption Safeguards and the NSW Planning System*, p 9. See also NSW ICAC 2010, The exercise of discretion under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) and the *State Environmental Planning Policy (Major Development) 2005*, where several of the Commission's recommendations are to the effect that criteria should be developed or formalised to guide the exercise of discretionary powers relating to major projects.

²⁵⁶ DELWP 2017, Planning Practice Note 46: *Strategic assessment guidelines for preparing and evaluating planning scheme amendments*, p 1.

²⁵⁷ See generally, PPV, *Report of the Advisory Committee on the Victoria Planning Provisions* [1997] PPV 121, s 2.4.

²⁵⁸ Casey Council, 21 October 2014, meeting agenda.

²⁵⁹ PPV 2018, *Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*.

²⁶⁰ NSW ICAC 2008, *Report on an investigation into corruption allegations affecting Wollongong City Council – Part 3*, p 121.

²⁶¹ Ibid.

²⁶² Victorian Planning Provisions, cl 71.02–3.

This statement provides no guidance on how policies are to be integrated or conflicting objectives balanced (except for specific situations involving bushfire-affected areas); the terms ‘net community benefit’ and ‘sustainable development’ are not defined.

In theory, this issue should be resolved by drafting policy objectives with sufficient clarity to allow a decision-maker to identify – at least in broad terms – which policies should prevail in which situations. However, it appears that planning policy is not drafted with such clarity. As Dr Rowley noted in his submission to IBAC:

When permission is required, the scheme guidance is very often not clear enough, leaving the scope of plausibly ‘correct’ decisions too wide.

...

There is, however, an enormous volume of applications where the use of discretion is inevitable, since it will never be possible to fully codify black-letter law rules about them. For these the issue is not so much that there is too much discretion, but that the discretion ends up being exercised in a situation where the guidance is not clear enough.

A 2017 report by the Victorian Auditor-General’s Office raised similar concerns. After noting the lack of any clear high-level vision in the state-level policy framework,²⁶³ the Auditor-General identified several weaknesses in the policy frameworks for Victorian planning schemes:

- vague policy objectives that often fail to provide meaningful guidance
- examples of out-of-date policy objectives, strategies and policy guidelines
- examples of lack of alignment between state and local policy objectives
- gaps in alignment between overarching strategic plans and state and local policies
- examples of poor alignment between policy objectives and planning controls
- failure to provide direction and guidance on critical planning issues.²⁶⁴

On the task of balancing competing objectives and strategies, the Auditor-General noted:

The SPPF [State Planning Policy Framework] does not provide adequate guidance on how to prioritise competing policy objectives and strategies to ensure consistent decision-making processes. This issue was first identified in the 2007 ministerial review Making Local Policy Stronger.

A number of the users of the planning system interviewed for this audit reflected that individual policy objectives and strategies in the SPPF can be used to either support or object to a planning proposal.

An example of a vague policy objective under the structure planning objective is to facilitate the orderly development of urban areas. Without guidance, local councils and the community are likely to have differing interpretations of what orderly development means.

Stakeholders we interviewed also said there are competing strategies under the same policy objective – one that supports the proposal and one that doesn’t.²⁶⁵

Changes made to the planning policy framework in July 2018 sought, among other things, to consolidate the state, regional and local policy frameworks into a single planning policy framework grouped by theme.²⁶⁶ However, these changes do not appear to provide any clearer guidance on the proper approach to decision-making.

In this context, a plausible reading of the PPV panel report on Amendment C219 is simply that the panel took a different approach to evaluating the adequacy of industrial land supply in the South East Growth Corridor from that advanced by DELWP. The panel chose to give greater weight to the evidence it received from the proponents than to strategic analysis embodied in state policies that had been prepared some years before. Nothing in the Planning Act or Casey Planning Scheme shows the panel’s approach to be wrong in law or misleading based on the facts before them.

²⁶³ Victorian Auditor-General’s Office 2017, *Managing Victoria’s planning system for land use and development*, p 27.

²⁶⁴ *Ibid.*, p 28.

²⁶⁵ *Ibid.*, p 29.

²⁶⁶ See generally DELWP 2018, *Planning Advisory Note 72*, with reference to Amendment VC148.

An example of more effective guidance in the Victoria Planning Provisions is clause 11.02–1S, on residential land supply. Although this clause has the objective of supplying sufficient land for various uses, including residential and industrial uses, it includes the following strategy specifically relating to the supply of residential land:

Plan to accommodate projected population growth over at least a 15-year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis.

This policy:

- sets a clear metric for evaluating compliance with the objective; namely, whether there is sufficient land to accommodate population growth for at least 15 years
- states that clear guidance should be provided on where growth is to occur
- explains that the adequacy of supply should be evaluated on a municipal basis, preventing arguments that it should be evaluated on another basis.

By contrast, no specific strategy exists for industrial land supply. Instead, there is only a generic strategy of making ‘sufficient’ land available to meet forecast demand. There is no definition of ‘sufficient’.

Guidance on how to assess industrial land supply would have provided a common framework to evaluate the impact of Amendment C219 on the supply of industrial land in the South East Growth Corridor, rather than leaving the matter to be debated by the parties to the process.

In the long run, it would be desirable to review all policy provisions so that, as far as possible, they support a consistent and transparent decision-making process. Policy provisions should not specify particular case outcomes – the most suitable outcome in any case will necessarily reflect its individual context. But it should be possible for broader questions, such as how to assess industrial land supply, to be answered consistently across the state.

It would also be appropriate to examine the role of strategic plans in the Victorian planning framework and their role in planning decision-making. As noted, following the publication of the PPV panel report supporting Amendment C219, it is apparent that the state parties (including DELWP and the VPA) considered it sufficient that their opposing position – that the land be retained for industrial use – was more closely aligned with relevant strategic planning documents, such as the South East Growth Corridor Plan.²⁶⁷ Reliance on that strategic justification proved insufficient to persuade the PPV panel.

Again, however, nothing in the Casey Planning Scheme suggests that such an approach is necessarily the correct one. Although the South East Growth Corridor Plan is identified as a reference document at several points in the Casey Planning Scheme, there is no express statement that proposed planning scheme amendments *must* be consistent with it. In fact, Planning Practice Note 13: *Incorporated and background documents* suggests that the weight given to a document that is not part of the planning scheme will depend on several factors.²⁶⁸

In this context, it was open to the PPV panel to prefer the expert evidence before it over the material contained in the Growth Corridor Plan. Similarly, at the approval stage, it was open to the Minister for Planning to treat the Melbourne Industrial and Commercial Land Use Plan as determinative, despite the planning scheme not referring to it.²⁶⁹

²⁶⁷ The PPV report indicates the VPA and the Department of Economic Development, Jobs, Transport and Resources, which had responsibility for regional development at the time, both opposed the amendment on the grounds that it was not strategically justified. See PPV 2018, *Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*, pp 7–8.

²⁶⁸ DTP 2020, *Planning Practice Note 13 – Incorporated and Background Documents*, p 3. Early versions have been to the same effect as this version.

²⁶⁹ DELWP 2020, *Melbourne Industrial and Commercial Land Use Plan*, p 94.

Proposed reforms

When deciding whether to adopt or approve an amendment to a planning scheme, the planning authority should evaluate the amendment for consistency with any broader-scale plans (such as any applicable PSP, growth corridor plan or regional growth plan).²⁷⁰

Where an amendment is inconsistent with a relevant and current plan, the planning authority should have a clear statutory onus to justify the change. This would be consistent with the strategic merit test applied in 'gateway' reviews for proposed planning scheme amendments in New South Wales, where proposed amendments are evaluated against relevant broader-scale plans.²⁷¹ From a corruption risk perspective, a requirement for consistency with broader plans would constrain the discretion of planning authorities to make self-interested or corruptly motivated changes to their planning scheme.

However, recognising that planning is complex, further work will be needed to define appropriate criteria and more detailed guidance, in consultation with stakeholders and subject-matter experts.

Recommendation 4

IBAC recommends that the Premier ensures that the Taskforce considers and recommends amendments to the *Planning and Environment Act 1987* (Vic) to ensure that the number of possible outcomes that could be considered 'correct' decisions in response to a given proposal at the adoption and approval stages of a planning scheme amendment is narrowed by specifying criteria that must be addressed to the satisfaction of:

- (a) the planning authority to adopt an amendment
- (b) the Minister for Planning to approve an amendment.

Recommendation 5

IBAC recommends that the Department of Transport and Planning reviews and clarifies guidance to help prioritise competing policy criteria when assessing the merits of a planning scheme amendment, including, but not limited to:

- (a) the factors that should be considered in assessing strategic justification
- (b) the hierarchy of broader-scale plans.

4.3.5 Lack of transparency in the planning scheme amendment process

The unrestricted discretion in planning scheme amendment decisions is exacerbated by the decision-maker not being obliged to give reasons for their decision at most stages of the process. In addition, although councillors are required to declare benefits such as gifts, political donations and primary interest returns, these mechanisms were ineffective in identifying or preventing the improper influences that undermined the planning scheme amendment process for Amendment C219.

4.3.5.1 Lack of reasons for decisions

Amendment C219 clearly highlighted the need for transparency in strategic decision-making processes. Agenda papers from the Casey Council meeting of 21 October 2014 show that Casey Council officers considered that converting employment land in the Cranbourne West PSP to conventional residential land was not adequately justified, and therefore should not be supported.²⁷² Despite this advice, Council resolved to seek an amendment to the PSP 'by the inclusion of the Leightons' land [and another parcel] as being totally residential'.²⁷³ Although the proposal was a significant change and directly contrary to its officers' advice, the Casey Council was not required to give reasons for including the additional land, and did not record any.

²⁷⁰ IBAC is aware that 12(2)(ab) of the Planning Act requires a planning authority, in preparing an amendment, to have regard to 'any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme'. There are two significant limitations on this approach: first, it applies only to documents that form part of the scheme and so would exclude, for example, the Growth Corridor Plan and the Melbourne Industrial and Commercial Land Use Plan; second, the obligation is merely to have regard to those plans, rather than to give them any particular weight: see generally *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24.

²⁷¹ NSW Department of Planning and Environment 2016, *Planning circular – independent reviews of plan making decisions*, p 2, identifies the first limb of the strategic merit test as being whether the proposed amendment is 'consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor or precinct plans applying to the site, including any draft regional, district or corridor or precinct plans released for public comment'.

²⁷² Casey Council, 21 October 2014, meeting agenda, p 2. The agenda identifies one of the 'key outcomes' of Amendment C219 as prepared by officers as being '[e]nsuring no conversion of employment land to conventional residential land' as '[i]t [was] considered that there is not adequate justification to do so'.

²⁷³ *Ibid.*, p 5.

Similarly, at the state level, in December 2015 a series of DELWP briefs were provided to the Minister for Planning about the authorisation request for Amendment C219.²⁷⁴ Those briefs essentially recommended that the Minister not authorise the amendment because it was contrary to the Metropolitan Planning Strategy and not strategically justified. One brief stated that, even if authorised, the amendment was unlikely to be approved in the long run due to the conflict with state policy, while another, prepared around the same time, noted the Metropolitan Planning Authority had 'detailed that they have previously advised Council that the change to residential is not supported due to the need for employment land in the south-east corridor and within the City of Casey' consistent with the South East Growth Corridor Plan and Cranbourne West PSP, which were prepared following 'extensive consultation ... with state agencies, Council and the community'. Despite this recommendation, the Minister for Planning, without detailing their reasons, chose to conditionally authorise the Casey Council to start the amendment process.

In their evidence to IBAC, the Minister for Planning acknowledged that DELWP's brief recommended that they refuse the authorisation request because it was not strategically justified and was contrary to the Metropolitan Planning Strategy, the South East Growth Corridor Plan, and state and local planning policy. The Minister said:

I was not persuaded that the authorisation should be given to prepare an amendment that would rezone the entirety of the land for residential development. However, nor was I convinced that an outright refusal of the request was warranted at this stage. I wanted to see whether a compromise could be facilitated between the competing views regarding the land, but I was also committed to avoid[ing] any undermining of the strategic goals of the CWSPSP [Cranbourne West PSP]. It was therefore clear in my mind that there would be no rezoning of any of the land unless the Council could convince me of its strategic justification and cohesion with the various other strategies and plans that were already in place. I also made it clear to the Council that my authorisation to prepare the amendment should not be taken as an indication that it would ultimately be supported.

Whether or not these reasons provide a sound justification for the course adopted, the reasons were not set out in the brief approved by the Minister for Planning in 2015, and accordingly were beyond evaluation.

The final step for any planning scheme amendment is the Minister for Planning's approval decision under section 35 of the Planning Act. Consistent with the earlier advice from DELWP, the Minister declined to approve Amendment C219. However, by this time, the Minister had received an assessment report from PPV, which found that the amendment was strategically justified and compatible with strategic directions for retaining industrial land in the South East Growth Corridor.²⁷⁵

The Minister for Planning eventually gave some reasons for their decision not to approve the amendment – but only in a media release – with reference to the Melbourne Industrial and Commercial Land Use Plan, which forecast a shortage of industrial land supply in relevant parts of Melbourne over the decade ahead.²⁷⁶

In their evidence to IBAC, the Minister elaborated on these reasons, stating:

When considering the amendment, one of the things that stood out to me about [sic] was that it would result in a substantial reduction in the amount of land within the CWSPSP [Cranbourne West PSP] that was reserved for employment purposes. As one of the key strategic priorities of the CWSPSP was the provision of land for employment purposes, the proposed reduction troubled me and was key to my deliberations.

I concluded that Amendment C219 should not be approved in its current form. I was not satisfied that the Council had done sufficient strategic work or met the conditions I had attached to my authorisation to prepare the amendment. I was also unsatisfied that Amendment C219 provided a sufficiently balanced solution to the question of the appropriate use for the land.

²⁷⁴ Planning Act, s 8A provides that any planning scheme amendment proposed by a council must obtain ministerial authorisation.

²⁷⁵ PPV 2018, Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP.

²⁷⁶ Minister for Planning 2020, 'Protecting land for jobs and business in Cranbourne', media release.

Decision-makers should be required to document reasons for their statutory decisions, including decisions to authorise, adopt and approve planning scheme amendments. This is particularly important where the decision-maker has decided *not* to pursue the recommended option – noting that the rationale *for* the recommended option is set out in the briefing itself.

The provision of reasons is recognised as best practice in administrative decision-making. As summarised by the Western Australian Ombudsman, giving reasons promotes transparency, accountability and quality.²⁷⁷

Transparency	<p>A person affected by a decision is better able to see:</p> <ul style="list-style-type: none"> • the facts and reasoning that were the basis for the decision • that the decision was not made arbitrarily or based on speculation, suspicion or irrelevant information • to what extent any arguments put forward have been understood and accepted, or formed a basis for the decision • whether they have been dealt with fairly • the matters the person will need to address if they decide to request a review of the decision or to lodge an appeal on the decision.
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Accountability	<p>When required to give reasons, decision-makers have a greater incentive to base their decisions on acknowledged facts:</p> <ul style="list-style-type: none"> • Supervisors and managers are better able to see if legal requirements and agency or government policies and standard practices have been complied with. • People or bodies with an external review role are in a better position to assess the decision; for example, whether it was reached lawfully, and based on relevant considerations and the merits of the case.
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Quality

- When required to give reasons, decision-makers have a greater incentive to carefully identify and assess relevant issues and to justify recommendations and decisions.
- Other decision-makers can apply decisions to future cases using the reasons as guidance when assessing or determining similar issues.

Conversely, not requiring reasons can heighten the risk of corruption, by providing cover for decisions not made on justifiable grounds. The NSW ICAC has stated:

A lack of transparency in the planning system fuels adverse perceptions. Notwithstanding the absence of corruption, failure to explain processes and provide reasons for decisions can create perceptions of corruption.

*A lack of transparency can also conceal actual corrupt conduct. In the Commission's experience, failure to provide transparency in any process is conducive to corruption as it creates a low threat of detection. The corruption risk is exacerbated when secrecy surrounding process is allied with secrecy surrounding the basis on which a decision has been made.*²⁷⁸

Of course, an obligation to give reasons is not a panacea that will prevent improper conduct, particularly where more than one conclusion is reasonably open. A decision-maker may be able to give a plausible justification for a corrupt decision. However, an obligation to give reasons would decrease the risk of this occurring, as it would require the decision-maker to articulate a position knowing that it could be evaluated against relevant statutory criteria and potentially be challenged in the subsequent panel process or by way of judicial review.

In the case of Amendment C219, no publicly available records explain why the Casey Council decided to make the land wholly residential, rather than mixed-use as recommended by Casey Council officers at its October 2014 meeting. The advice from Casey Council officers made it clear that there was no strategic justification to convert employment land to residential land.²⁷⁹

²⁷⁷ Ombudsman Western Australia 2019 (revised), *Guidelines: Giving reasons for decisions*.

²⁷⁸ NSW ICAC 2012, *Anti-Corruption Safeguards and the NSW Planning System*, p 15.

²⁷⁹ Casey Council, 21 October 2014, meeting agenda and minutes, s 8, Item 1. Planning for Casey's Community.

The evidence before IBAC is that at least some Casey councillors likely supported the amendment because it favoured Mr Woodman's interests.

The amendment furthered not only Mr Woodman's interests, but also those of numerous Casey councillors who had improper relationships with Mr Woodman that conflicted with their duties as councillors. Had the councillors been obliged to provide reasons to support the decision, those councillors who were not conflicted may not have been persuaded of the merit of the proposal. The reasons may have also attracted scrutiny or challenge, particularly given that the Casey Council's decision was at odds with its officers' report.

Requiring reasons for decisions need not impose a significant administrative burden. The Planning Act should allow decision-makers to adopt or endorse the findings or recommendations of their planning officers or the panel if the decision-maker agrees with those reasons. Where a decision is at odds with the advice of planning officers or the independent panel, it is reasonable to require decision-makers to document their reasons for that decision,²⁸⁰ particularly given the potentially significant consequences of planning decisions.²⁸¹

Proposed reforms

Requiring reasons for decisions is good administrative practice. In making Recommendation 6, IBAC suggests that:

- where the decision-maker (the Minister for Planning or a council, depending on the decision being made) agrees with the council officers' or independent panel's report, the decision-maker could adopt the report as the reasons for their decision
- where the decision-maker adopts a different position from that recommended by a council officer or independent panel, the decision-maker's reasons for deviating from the recommendations should be documented in council meeting minutes or in the Minister's response to a departmental brief.

Recommendation 6

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) to require the decision-maker to record the reasons for decisions at relevant points in the planning scheme amendment process.

4.3.5.2 Lack of transparency about vested interests

IBAC found that Mr Woodman donated to political parties and individuals across the political spectrum and at all levels of government. He was not required to disclose those donations or other benefits to councillors when making planning applications to the Casey Council or in his representations to a PPV panel.²⁸²

Disclosure of donations and lobbying is essential in planning matters. Although the LGA 2020 already requires councillors to declare gifts, political donations, primary interests and conflicts about particular matters, these requirements should be strengthened for planning matters by requiring that an applicant, when seeking a particular council decision, fully discloses any gifts, political donations, primary interests or any other arrangements with councillors that would give rise to a councillor having a conflict of interest. Any disclosures by an applicant or the councillor should be included in an officers' report to the council. Such disclosures should also be included in a brief to the Minister for Planning, or in a submission to a PPV panel.

²⁸⁰ IBAC notes that the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (VCAT Act), Sch 1, cl 53, specifically provides that decision-makers under a planning enactment, which includes the Planning Act (defined in Sch 1, cl 2 to the VCAT Act), are not obliged to give reasons for their decisions. Despite this provision, common practice is to provide reasons for decisions.

²⁸¹ Exemptions may be required for some matters where there are privacy, security or social reasons for not publicly disclosing such information (such as for the development of crisis accommodation, correctional facilities and chemical storage facilities), but the reasons should still be recorded in an auditable manner.

²⁸² See section 3.7 for an overview of Mr Woodman's donations.

Even if donation laws are reformed to require real-time donation reports,²⁸³ this specific disclosure is necessary for decision-makers to be aware of relevant donations and other financial arrangements that may have a bearing on the matter *before* they make their decision. It would also encourage councillors to make a full declaration on such matters, knowing that the applicant must also do so. This approach is already partly in place in New South Wales, where a political donations disclosure must be made in applications or public submissions to the Minister or a council.²⁸⁴ That disclosure must include reportable political donations made, starting two years before the planning application or submission is made and ending when the application is determined. The applicant or person making a submission (for example, a third-party objector or supporter) must also disclose donations that:

- **the applicant** knows, or ought reasonably to know, were made by any persons with a financial interest in the planning application, or
- **a person making a submission** in relation to an application knows, or ought reasonably to know, were made by an associate.

The maximum penalty for failing to disclose is currently 400 penalty units (\$44,000) or two years' imprisonment, or both.²⁸⁵

Proposed reforms

Transparency and accountability in the planning decision-making process should be strengthened by requiring details of donations and other benefits and conflicts of interest to be recorded and declared in planning applications and submissions. This would make all decision-makers aware of the details of donations and other benefits at the time of making their decision. It would also prevent them from later denying knowledge of declared donations or other benefits.

Recommendation 7

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) and/or amends ministerial guidance to require every applicant and person making submissions to a council, the Minister for Planning or Planning Panels Victoria to disclose reportable donations and other financial arrangements that parties have made or have with relevant decision-makers in relation to that planning matter (with reference to the New South Wales provisions).

4.3.6 Manipulation of the PPV panel process

Planning scheme amendments are typically subject to a process of notice, exhibition and assessment, in response to which members of the public can make submissions.²⁸⁶ The Minister for Planning may appoint a PPV panel under Part 8 of the Planning Act at the request of a planning authority (usually the local council) to consider submissions on planning scheme amendments, among other matters.

The role of panels in the Victorian planning system is to facilitate public participation in the planning and environmental decision-making process and provide a way to independently assess planning proposals.²⁸⁷ Panels are bound by the rules of natural justice and have statutory obligations to give various parties a reasonable opportunity to be heard. To fulfil these obligations, panels conduct public hearings.²⁸⁸

²⁸³ See section 5.3.3.2.

²⁸⁴ *Environmental Planning Assessment Act 1979* (NSW), s 10.4 which states: 'The object of this section is to require the disclosure of relevant political donations or gifts when planning applications are made to minimise any perception of undue influence by: (a) requiring public disclosure of the political donations or gifts at the time planning applications (or public submissions relating to them) are made, and (b) providing the opportunity for appropriate decisions to be made about the persons who will determine or advise on the determination of the planning applications'.

²⁸⁵ *Electoral Funding Act 2018* (NSW), s 146.

²⁸⁶ See section 4.2.2.2.

²⁸⁷ Rowley S 2017, *The Victorian Planning System*, p 177, comments that the role of planning panels is described 'in quite loose terms' noting that the panel is to 'consider all submissions referred to it', give relevant parties a reasonable opportunity to be heard and 'report its findings to the planning authority', with reference to ss 24, 25 and 25A of the *Planning Act*.

²⁸⁸ Refer to the *Planning Act* s 161 for more detail.

IBAC considers that the PPV panel process strengthens the integrity of the planning process because it provides an opportunity for public scrutiny.

At present, PPV has eight senior panel members (including the Chief Panel Member and Deputy Chief Panel Member), and a pool of around 65 sessional members. All members are appointed by the Minister for Planning. Senior panel members are appointed for five-year terms and sessional members for three years.

Where an amendment is referred to an independent panel, the panel's role is to:

- give submitters the opportunity to be heard in an independent forum
- give independent advice to the planning authority and the Minister about the amendment and the submissions referred to it.

The panel provides a report to the planning authority with recommendations on the amendment. The planning authority must then make this report public when deciding to adopt or abandon the amendment.

In Operation Sandon, IBAC identified two problems that emerged from the PPV panel findings and recommendations:

- insufficient weight given to existing state policy in assessing the strategic justification of Amendment C219
- the manipulation of the panel by Mr Woodman and his associates, particularly using the Save Cranbourne West Residents Action Group (SCWRAG) to give the impression of broad community support for the proposal.

These problems are discussed below.

4.3.6.1 Insufficient weight given to existing state policy

In its 2018 report on Amendment C219, the PPV panel acknowledged that:

- The VPA opposed the amendment, noting that it was not strategically justified and was inconsistent with both Plan Melbourne and the objectives of the Growth Corridor Plan.
- The Department of Economic Development, Jobs, Transport and Resources opposed the amendment, as it was inconsistent with the Casey Council's strategic direction, the Growth Corridor Plan and Plan Melbourne, adding that 'retention of the employment precinct is the best outcome for the municipality and the region'.
- The neighbouring Cardinia Shire Council opposed the amendment, stating that it was not strategically justified and was inconsistent with Plan Melbourne, the South East Growth Corridor Plan and the local planning policy framework.
- The neighbouring Frankston City Council opposed the amendment, noting that it 'increased pressure to rezone and develop land in the green wedge to compensate for the insufficient commercial zoned land'.²⁸⁹

Opposition from the Department of Education and Training, Victorian Young Planners and the Planning Institute of Australia was also noted in the report.²⁹⁰ Despite these objections, which referred repeatedly to existing state plans and strategies, the panel concluded:

*The Panel has been provided with a substantial amount of submission [sic] and evidence supporting the contention that there is sufficient supply of employment land in the South East region for the medium to long term. The submissions not supporting this position were not supported by any evidence. The Panel attaches considerable weight to this. The Panel was surprised that the Victorian Government submission did not attempt to provide a more substantive case, and no expert witnesses were called.*²⁹¹

²⁸⁹ PPV 2018, *Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*, pp 7–8.

²⁹⁰ Ibid., pp 7–8.

²⁹¹ Ibid., p 21.

The decision of the state's representatives not to offer substantive evidence apparently proved crucial to the panel's finding. But it is not clear why the state should be required to call expert or other witnesses to restate a position clearly expressed in recent existing plans and strategies that were based on extensive consultation and research.

There should be a clear statutory onus on a planning authority to justify a change where an amendment is inconsistent with a current scheme or plan. From a corruption risk perspective, this would further limit the opportunities for planning authorities to make self-interested or improperly motivated changes to planning schemes.

Proposed reforms

PPV plays an important role in providing independent advice to decision-makers. Specifying a presumption in favour of the existing planning scheme and state policy settings is consistent with the requirement for any changes to be strategically justified and would strengthen the PPV review process.

Recommendation 8

IBAC recommends that the Minister for Planning issues Ministerial Directions for Planning Panels Victoria panels to specify that there is a presumption in favour of the existing planning scheme and state policy settings.

4.3.6.2 Risk of manipulation through 'astroturfing'

A 2018 NSW ICAC report defined 'astroturfing' as 'a fake grassroots campaign'. The report also noted that 'if an organisation with commercial or policy interests can generate the appearance of genuine community support for (or opposition to) an issue, its chances of success are improved'.²⁹²

In Operation Sandon, astroturfing took the form of SCWRAG, which supported Amendment C219 (as well as other proposals favourable to Mr Woodman and his associates, such as requiring Dacland to build the H3 intersection).²⁹³ IBAC agrees that the rezoning proposal had local support. However, the evidence shows that certain landowners and developers established, directed and funded SCWRAG to support their private commercial interests. This includes conceiving the idea to harness community support through a residents action group, registering the domain name for the group, suggesting the idea to local residents and financially supporting the group.²⁹⁴

Mr Walker asserted that when Ms Schutz first recommended that SCWRAG have legal representation at the PPV hearing, he refused and said that *he* would speak on behalf of the group, but Ms Schutz insisted. Further, Mr Walker noted that he met the lawyer only very briefly before the PPV hearing and was 'appalled' that the lawyer referred to SCWRAG as 'the voice of the people' and the amendment as 'an example of participatory democracy at work', because SCWRAG respected the views of some other community members who wanted to retain the industrial zoning of the land. These comments suggest that SCWRAG did not agree with the lawyer's characterisation of the group's views to the panel.

Although Ms Schutz acknowledged that she introduced legal counsel to SCWRAG, she asserted that her role was minimal, involving only a site visit with the lawyer and providing the lawyer with a briefing note.

²⁹² NSW ICAC 2018, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, p 42.

²⁹³ A similar issue was identified in relation to another Watsons Pty Ltd (Watsons) development. That development also involved a PSP amendment and a community group administered by Ms Schutz and another Watsons employee.

²⁹⁴ See sections 3.1 and 3.5 concerning Amendment C219 and SCWRAG for further detail.

IBAC recognises that this corruption risk is difficult to address without discouraging genuine community involvement in debates about planning matters. IBAC heard from several witnesses about the important role community consultation plays in the planning process and the need to maintain it. As expert witness Dr Rowley observed in a submission to IBAC:

I understand that there is a risk community consultation processes may be manipulated through the use of contrived community groups – the practice sometimes referred to as ‘astro-turfing’ ... However I think it is important to acknowledge that generally the community consultation process operates to increase integrity in the process. Community consultation increases the clarity of decision-making and scrutiny upon decision-makers.

Because fake grassroots campaigns can undermine democratic decision-making,²⁹⁵ particularly where decision-makers have broad discretionary authority – as they do for planning scheme amendments – IBAC considers that transparency is essential to reduce the risk of astroturfing. Mandatory disclosure of funding sources when making a submission to a council, the Minister for Planning or a PPV panel, coupled with the mandatory disclosure requirements discussed above,²⁹⁶ would make the third-party review process more rigorous. Requiring additional information, such as the length of time the group has been incorporated (if incorporated), may also help to identify fake grassroots groups.

Disclosure should be required under new legislative provisions in the Planning Act, or as a statutory declaration – which could expose a declarant to penalties for perjury if shown to be false. While this may not stop the use of fake grassroots groups attempting to distort planning outcomes, it has the potential to deter improper use of community groups and identify instances of astroturfing.

Proposed reforms

Aspects of the planning scheme amendment process, including the PPV panel process and a council’s decision to seek an amendment, are open to manipulation by submitters acting in concert to give the impression that an amendment has broad support. Although it may not be possible to eliminate this type of activity, measures can be put in place to discourage such arrangements and identify attempts to improperly influence a panel – and thereby provide some assurance that genuine community concerns are being heard as part of the decision-making process.

However, IBAC proposes that this recommendation be referred to the Taskforce for further consideration. The Taskforce should ensure that individuals and groups to whom this reform should apply are appropriately identified and defined, and that in addressing the risk of manipulation, reforms concerning information collected as part of the planning approval process are implemented in accordance with the requirements of the *Privacy and Data Protection Act 2014* (Vic).

Recommendation 9

IBAC recommends that the Premier ensures that the Taskforce considers and recommends amendments to the *Planning and Environment Act 1987* (Vic) to deter submitters from attempting to improperly influence a council, the Minister for Planning or Planning Panels Victoria in their role in the planning scheme amendment process, including, but not limited to, specifying relevant offences together with appropriate penalties.

²⁹⁵ NSW ICAC 2018, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, p 42.

²⁹⁶ See section 4.3.5, Lack of transparency in the planning scheme amendment process.

4.3.7 Conflicted councillors and discretion in the permit approval process

There are also opportunities for corrupt conduct at the statutory planning level, with individual permit applications and amendments. This risk was observed in Operation Sandon in the amendment of the permits requiring construction of the H3 intersection and open spaces around Pavilion Estate.

A practitioner's guide to Victorian planning schemes notes that '[e]ach year the planning system processes around 55,000 planning permit applications, which represents around \$30 billion of future investment in Victoria'.²⁹⁷ Although financial gains from decisions involving planning permits are likely to be smaller than gains arising from rezoning decisions and other planning scheme amendments, this suggests that there are still significant financial gains to be made from statutory planning decisions.

As noted earlier, *Victoria's value creation and capture framework* recognises the importance of recovering some uplift in land value resulting from permits and the provision of major infrastructure.²⁹⁸ Victoria's existing value-capture mechanisms at the statutory planning level capture some of the uplift in land value associated with more intensive development by requiring works, services and financial or land contributions for developing the broader area. These include:

- mandatory public open space contributions²⁹⁹
- a requirement that permits granted under the UGZ must be 'generally in accordance with' a PSP³⁰⁰
- mandatory permit conditions under PSPs, particularly for the provision of in-kind infrastructure such as local roads and embellishment of parks³⁰¹
- mandatory permit conditions for the implementation of development and infrastructure contribution plans.³⁰²

Importantly, when approving and amending permit conditions, decision-makers must be aware of the corruption risks that can arise from developers' pursuit of profits – risks that have been well recognised for decades. As urban planner and academic Dr Leonie Sandercock noted in the 1970s:

*The ideology of the developer is one of straight-forward profit-maximising, and where the constraints applied by planning authorities increase his [sic] costs without offering a complementary increase in selling price, he will try to avoid them. He can do this either operating only when they do not apply, by resorting to the statutory procedures open to him to appeal against them, by taking some form of political action, or acting in some less socially acceptable way. This does not make developers peculiar in a capitalist society.*³⁰³

In Operation Sandon, Mr Woodman and his associates were able to avoid significant costs (and, by extension, increase likely profits) by amending permits to remove conditions. Mr Woodman himself estimated he had 'made' \$1.75 million by avoiding the primary responsibility for constructing the H3 intersection which was required to service the Elysian Estate development managed by Wolfdene and owned by the Elysian Group (in which Mr Woodman's son was a major stakeholder).

Similarly, the amendments to the Pavilion Estate permit allowed the removal of active open space, reduced the road-reserve widths, and sought to make the Casey Council pay the cost of constructing Morison Road. The effect of these amendments was to increase the amount of land that could be developed or sold and, by extension, increase the potential profits for the landowner and developer. In both instances, these profits came not from any value added by them, but rather by transferring to others (be it other developers or the Casey Council) the costs of providing infrastructure mandated under the applicable statutory planning instruments.

297 DTP 2020, *A practitioner's guide to Victorian planning schemes*, p 5.

298 Victorian Government 2017, *Victoria's value creation and capture framework*.

299 Casey Planning Scheme, cl 53.01 (in common with other planning schemes) requires a person who proposes to subdivide land to provide the council with a percentage of their land (or cash in lieu) as specified in any schedule or, in default of that, the *Subdivision Act 1988* (Vic).

300 Casey Planning Scheme, cl 37.07–9–37.09–11 require the use, development and subdivision of land to which a PSP applies to be 'generally in accordance with' the applicable PSP.

301 A PSP is implemented via an approved amendment to the planning scheme. Section 62(1)(a) of the *Planning Act* requires a responsible authority to include any condition required by a planning scheme on a relevant permit.

302 See *Planning Act* ss 46GV(7) and 46N(1), which require that a responsible authority include permit conditions necessary to implement infrastructure contribution plans and development contribution plans on relevant permits.

303 Dodson J, Coiacetto E and Ellway C 2006, *Corruption in the Australian land development process: identifying a research agenda*, Griffith University, quoting Sandercock L 1977, *Cities for Sale: Property, politics and urban planning in Australia*, Melbourne University Press, p 155.

Although the opportunities for a responsible authority to exercise discretion are more confined,³⁰⁴ Operation Sandon demonstrates the importance of independence and transparency when exercising discretionary decision-making authority in statutory planning matters.

The issue of discretion is compounded at the local government level because it is relatively common for decision-makers to have greater contact with planning permit applicants, heightening the risk of conflicts of interest. In circumstances where a conflicted decision-maker is determined to make a particular decision – including for improper purposes – this discretion in the statutory planning regime presents a significant corruption risk.

This was illustrated by the Casey Council's decision to approve a request to remove open-space requirements from the planning permit for Pavilion Estate, ignoring advice from the Casey Council's planning officers that the request should be rejected. Specifically, the Casey Council officers' report set out reasons why the existing requirements were appropriate (including consistency with the PSP and the fact that the arguments for removing the open-space requirements had been raised and rejected during the recent permit application process).³⁰⁵ The report also quoted legal advice that the existing permit conditions would likely be upheld if appealed to VCAT. Despite this, on 3 April 2018, the Casey Council voted unanimously to allow the amendment. There was no debate, and no reasons were recorded to indicate why the Casey Council was weakening the permit requirements it had set only months earlier.³⁰⁶

Leaving aside the question of whether such a decision could be justified on the merits of the request, it was not subject to any merit or judicial review. Indeed, in the absence of IBAC's investigation, it may well have passed entirely unnoticed outside the Casey Council until someone questioned why the infrastructure specified in the relevant PSPs was not being delivered.³⁰⁷ Had this decision been made by a panel of independent planning experts that was obliged to give public reasons for its decisions, the process would have been more robust and less vulnerable to influence from vested interests.

In the H3 matter, Councillor Aziz's motion to unilaterally require that Dacland construct the intersection immediately – without giving Dacland an opportunity to respond to the proposal – was rescinded for lack of procedural fairness.³⁰⁸ Councillor Aziz immediately introduced a new alternative motion which required, in part:

*That officers refer to Council any request in respect of the Lochaven Estate or the Alarah Estate which would have the effect of deferring the construction of Intersection H3, including any request for rescheduling stages of development or for deferral or bonding of the works.*³⁰⁹

As a result, when Dacland formally requested that the stages of its development be re-sequenced, thereby deferring its responsibility to build the H3 intersection, the matter was referred to the Casey Council for a decision. While previous requests of a similar nature concerning the development being managed by Wolfdene had been considered and approved by Casey Council officers on delegation,³¹⁰ Dacland's request was rejected by the Casey Council, despite advice from the Casey Council planning officers that the request was acceptable and should be supported for multiple reasons, including the release of land to progress work on a state school.³¹¹

304 See *Planning Act*, s. 52 (relating to notice) and Part 4, Division 2 (relating to review rights). For instance, the scope for discretion is constrained by the range of existing planning controls which apply to the subject land; the Planning Act and planning scheme identify with greater clarity the matters that must be considered in making a decision; the planning scheme identifies a test of 'acceptable outcomes' to be applied in determining whether to grant a permit, and; the Planning Act provides opportunities for third-party involvement and, significantly, merit review of council decisions.

305 Casey Council, 3 April 2018, meeting agenda and minutes, Item 6.1. The Casey Council officers' report states that the amendment application was lodged by Ms Schutz on behalf of the developer, Wolfdene, on 20 December 2017, one month after the permit was issued on 22 November 2017, and that the changes requested in the amendment were repeatedly denied during the original application process.

306 Casey Council, 3 April 2018, meeting agenda, Item 6.1, officer's report, attachment A, p 4.

307 Pavilion Estate is primarily in Casey Fields South Residential PSP, but the northern end is covered by Cranbourne East PSP.

308 The motion moved by Councillor Aziz at the meeting on 4 September 2018 in relation to the H3 intersection was rescinded at the next Casey Council meeting on 18 September 2018. See Casey Council, 18 September 2018, meeting agenda and minutes, Item 11.

309 Casey Council, 18 September 2018, meeting minutes.

310 Casey Council, 16 October 2018, meeting agenda, Item 6.1.

311 Casey Council, 16 October 2018, meeting agenda, Item 6.1, council officers' report, which recommended that the Casey Council support the Dacland request.

Leaving aside the legality or merit of these decisions, these two matters point to a broader issue concerning the tension in the dual role that councillors perform as both representatives of their local community and theoretically neutral decision-makers on planning matters. This tension can give rise to a heightened risk of conflicting interests for councillors to make decisions on specific permit applications that are politically favourable, as opposed to deciding planning applications on their merits, in accordance with relevant planning scheme requirements. As Dr Murray noted in his submission to IBAC:

Councillors should not intervene in day-to-day enforcement decisions of by-laws. Nor do State MPs intervene in the day-to-day application of state criminal laws. Yet in applying planning laws, local councillors can, and do, often intervene in their day-to-day application. Why is the system this way?

Delegation arrangements are applied inconsistently across councils, as are the use of call-in powers (under which councillors can redirect a planning matter that has been delegated to council officers for determination back to the council for decision), which can make it difficult for the community to easily identify matters that may have been called in inappropriately.³¹² For instance, IBAC understands that while some councils delegate most if not all matters to planning officers for decision, other councils rarely exercise delegations for permit applications or when seeking authorisation to start the planning scheme amendment process.

The permit amendments for the H3 intersection and Pavilion Estate both concerned matters that are generally determined by Casey Council planning officers; however, in both instances, the Casey councillors moved the matter to the Casey Council to achieve an outcome contrary to that recommended by its Council officers.

4.3.7.1 Benefits of independent decision-making panels

The tension between a councillor's role as elected community representative and role as merits-based decision-maker on planning matters is a significant corruption risk. The likelihood and impact of this risk – demonstrated in Operation Sandon in councillor conflicts and costs to the community – suggest that this tension cannot be adequately resolved by a rigorous conflict-of-interest disclosure regime. Nor can it be resolved by transferring responsibility from elected councillors to a minister. Indeed, a number of high-profile decisions by various ministers for planning raise concerns about improper influence, or at least raise questions about the underlying motivations for decisions at the state level. One example was the decision of the Minister for Planning in 2004 to exempt Amendment C101 to the Melbourne Planning Scheme from notice and exhibition for a reason that a majority of the Court of Appeal found to be 'wholly implausible'.³¹³ A second example was a decision in 2011 to approve Amendment C125 to the Bass Coast Planning Scheme, which sought to rezone land at Ventnor on Phillip Island. This decision was never brought into effect.³¹⁴

³¹² Better Regulation Victoria 2019, *Planning and Building Process Review, Discussion Paper*, p 80 notes that while some councils embed the role of councillors in setting strategic planning policy and delegate most planning permit decisions to senior staff, others define the circumstances in which councillors make the decisions.

³¹³ *East Melbourne Group Inc v Minister for Planning* (2008) VSCA 217.

³¹⁴ Victorian Ombudsman 2014, *Investigation into advice provided to the office of the Minister for Planning by the Department of Planning and Community Development in relation to land development at Phillip Island*, p 3.

Independent decision-making planning panels can play an important role in promoting transparency, ensuring rigorous merit-based decision-making, and reducing the risk of politicisation in statutory planning. In particular, having expert members publish decisions and consider applications according to clear referral criteria (as opposed to elected councillors calling in matters) is more efficient (fewer matters contested) and helps prevent corruption (greater accountability and controls to avoid improper influence).³¹⁵

As Professor Roberta Ryan noted in her submission to IBAC:

Since introduction of the panels [in NSW], DAs [development approvals] are being determined on a merit or technical basis by experts and local (meaning councillor) politics has been removed from the process. The use of the expert or merit-based model of decision-making provides a more consistent framework for decision-making and certainty that expert judgment of merit and impacts against established rules (determined by elected councillors who are accountable through elections to constituents) will be determinative of the decisions, rather than for any other reason such as personal financial or political gain.

In March 2021, the Australian Productivity Commission proposed that the role of independent panels in the planning application process be reviewed to expand their functions and improve their operation, suggesting that states should ‘adopt an appropriate mix of statutory decision-making by panels, elected councillors, professional council officers and State Government entities based on the value and complexity of proposals’.³¹⁶ Although the Productivity Commission did not propose the total removal of councillors from planning, the report acknowledged that a 2019 review of planning found that ‘NSW has made positive traction in removing politicians from the planning process at a local scale, through the introduction of planning panels’.³¹⁷

New South Wales, South Australia and Western Australia have all made their panels determinative, rather than merely advisory, for statutory planning decisions.

The experience of New South Wales is particularly relevant. The NSW ICAC’s 2008 report on Operation Atlas in 2008 – which investigated the conduct of planners and councillors at Wollongong City Council – observed that although Wollongong City Council had recently appointed an independent hearing and advisory panel, that body merely advised on development applications, whereas joint regional planning panels had the authority to determine certain classes of development.³¹⁸ Accordingly, ‘the Commission has no confidence that the Wollongong City Council and some of its senior staff would have routinely accepted recommendations made by an [independent hearing and advisory panel] that were adverse to developer interests’.³¹⁹

In 2017, the NSW Government passed the *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017* (NSW), which made decision-making panels mandatory for councils in the Greater Sydney and Wollongong areas. The Second Reading Speech for the Bill expressly positioned this shift as an anti-corruption measure.³²⁰

Under such a model, planning officers should continue to assess planning applications and prepare reports on them. Applications that meet specified criteria (see section 4.3.7.3.2) are then scrutinised and determined by an independent panel rather than by the council. Non-contentious planning applications (expected to constitute the bulk of applications) would continue to be determined by council planning officers under delegation.

The use of independent planning panels removes decision-making authority from elected officials, who are more susceptible to improper influence arising from their dual roles as community representative (with an interest in being re-elected and soliciting donations) and statutory decision-maker (with an obligation to make planning decisions based on the merits). The corruption risk that applies to a councillor may also apply to a minister (see section 4.3.7.3.6).

³¹⁵ See, generally, Kaldas N, APM 2018, *Review of governance in the NSW planning system*, pp 28–31.

³¹⁶ Australian Government, Productivity Commission 2021, *Plan to identify planning and zoning reforms*, Recommendation 7, p 31. In relation to the role of councillors, the report asserts: ‘There are also differing views around the extent that elected officials should cede control of the development assessment process, given their responsibility for ensuring developments are consistent with community expectations and broader policy objectives’. The role of councillors in the planning process is addressed in the next section.

³¹⁷ *Ibid.*, p 25.

³¹⁸ NSW ICAC 2008, *Report on an investigation into corruption allegations affecting Wollongong City Council – Part Three*, p 125.

³¹⁹ *Ibid.*

³²⁰ NSW Government 2017, Second Reading Speech, *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017*, Hansard, p 1.

Having considered the experience of other states, IBAC recommends that all councils in Victoria be required to use independent panels, instead of elected councillors, to exercise the power to *determine* specified statutory planning decisions (such as whether a permit should be issued or amended). Under this model, planning officers would continue to assess and determine the majority of non-contentious planning applications, with applications that meet certain criteria referred to independent panels for assessment and determination. The Taskforce should determine the criteria for referral to an independent panel.

4.3.7.2 Removing decision-making power from councils is not anti-democratic

IBAC recognises that removing the power to determine individual applications from councils may be viewed as anti-democratic.

However, decisions of VCAT and the Supreme Court have made clear that public opinion plays a limited role in planning decisions. In *Minawood Pty Ltd v Bayside City Council*,³²¹ VCAT observed:

*Consideration of a planning application under the Planning and Environment Act 1987 should not be a political exercise or popularity contest. Making a decision about a planning application is an administrative power that must be exercised in accordance with the law. There is an overriding obligation to examine and weigh all the relevant considerations and to ignore irrelevant ones. It is improper and a legal error to have regard to an irrelevant consideration, just as it is to ignore a relevant one ... Clearly, public opinion cannot dictate a decision because popular views may be contrary to factors that the decision-maker must properly consider.*³²²

The Planning Act makes clear that the planning permit process is an *administrative* process of evaluating a proposal against the relevant criteria to see whether it produces an 'acceptable outcome', noting that this is not the same as an 'ideal' outcome.³²³

Characterising this process as administrative (as opposed to democratic) is consistent with the majority of planning permit applications already being determined by council officers under delegation.³²⁴ In 2018/19, 46,807 planning permit decisions were made by responsible authorities across Victoria (79 of the 80 responsible authorities are councils). Of these decisions, 45,337 (97 per cent) were made by officers under delegation from the responsible authority.³²⁵

Indeed, under the Planning Act, councils can also delegate their statutory decision-making authority to a committee.³²⁶ The Victorian Ombudsman has identified a number of councils that have appointed planning committees, with no councillor membership. The Surf Coast Shire Council Planning Committee comprised five full-time members of the community selected for experience and expertise in fields relevant to planning and geographic representation, and it determined permit applications where officers recommended refusal or where objections were lodged.³²⁷ At Glen Eira City Council, the Delegated Planning Committee consisted of staff only and determined matters where objections were lodged.³²⁸

In fact, moving decision-making functions to a more independent body may ease the pressure on councillors to make statutory planning decisions in line with community expectations, and give councils more time to focus on their role as planning authority for the municipality.³²⁹ This is consistent with the experience of New South Wales councillors.³³⁰ Moreover, including a community member on the panel would make sure that community voices are not only heard in submissions but also form part of the decision-making process.

321 *Minawood Pty Ltd v Bayside City Council* (2009) VCAT 440. In that matter the council argued that the fact that a proposal to demolish a long-established hotel had attracted 4300 objections was, in and of itself, evidence that the demolition of the hotel would have a significant social effect that was required to be considered under the *Planning Act*, s 60(1)(f).

322 *Minawood Pty Ltd v Bayside City Council* (2009) VCAT 440 at 28–29.

323 *Tulcan v Knox CC* (2004) VSC 375, at 13(d).

324 *Planning Act*, s 188(1).

325 DTP also notes that the service performance of councils in processing and determination of planning permit decisions is measured and reported publicly under the regulatory requirements of the Local Government Performance Reporting Framework. Performance data. This information is published on the 'Know Your Council' website and in the Planning Permit Activity Reporting System.

326 *Planning Act*, s 188(1).

327 Victorian Ombudsman 2016, *Investigation into the transparency of local government decision-making*, p 121.

328 *Ibid.*

329 *Planning Act*, s 188(2)(a) states the powers of a planning authority under ss 28, 29 and 191 cannot be delegated.

330 Stone Y 2018, *Council Decision-Making and Independent Panels*, The University of Sydney, Table 25, p 65.

4.3.7.3 Safeguards to minimise corruption risks in panels

So that the adoption of a panel model does not simply shift the risk of corruption from one decision-maker to another, the experience of other jurisdictions must be considered.³³¹

4.3.7.3.1 Panel composition

Although there are differences, the NSW, SA and WA models all provide for a majority of expert members (with expertise in areas such as planning, architecture, economics, law, engineering and public administration) and an element of local representation, to strike a balance between technical expertise and democratic representation.³³² The experience of these jurisdictions should be considered in determining the composition of independent panels in Victoria, including:

- prohibiting elected officials and property developers from serving as panel members, or limiting the number of elected officials who can serve on a panel, to reduce the risk of conflicts of interest³³³
- centralised appointment of expert panel members by the Minister for Planning, so that all members are properly qualified and to reduce the likelihood of local interests and politics influencing local decision-making³³⁴
- fixed-term appointments to limit the opportunity for members to become the target of improper influence³³⁵

- regularly rotating panel members, so that the composition of a panel cannot be predicted, reducing the opportunity to influence a decision-maker, noting that to provide a deep pool of expertise, it may be necessary to appoint joint or regional panels³³⁶
- applying a rigorous probity regime to vet panel members before they are appointed³³⁷
- requiring panel members to comply with a code of conduct that sets out declaration requirements for conflicts of interest and protocols for interacting with councillors and staff, and obliges members to adhere to high standards of ethical behaviour or else face specified penalties or sanctions.³³⁸

4.3.7.3.2 Referral criteria

A key corruption risk in the council planning process concerns the call-in powers (whereby a council can decide that it rather than council planning officers should be the decision-maker for a particular matter), and a wide degree of variation in delegations between councils (which makes it difficult for the public to know when it may be inappropriate for the council to become involved in determining a particular matter).³³⁹

³³¹ NSW ICAC 2021, *Investigation into the Conduct of Councillors of the Former Canterbury City Council and Others* (Operation Dasha) highlighted that even where independent panels are in place, developers will seek ways (such as splitting applications) in an attempt to avoid having a matter determined by a panel.

³³² In NSW, there are four members on a local planning panel including three expert members appointed by the Minister and a representative of the local community who is not a councillor or mayor. In WA, there are five members on a development assessment panel including three expert members appointed by the Minister and two local members who are both councillors. In SA there are five members on a council assessment panel, of which one can be a councillor. All panel members are appointed by the council but must have state accreditation unless they are a former councillor with relevant local government experience.

³³³ Councillors and property developers are not eligible to sit on a local planning panel in NSW. Members of State Parliament are not eligible to sit on a council assessment panel in SA.

³³⁴ Panel members are appointed by the Minister in NSW and WA. Panel members can be appointed by the Minister in SA but are generally appointed by the local council panel.

³³⁵ WA provides for three-year terms for expert development assessment panel members which can be renewed. NSW provides for three-year terms for all local planning panel members which can be renewed once (a maximum of six years).

³³⁶ In NSW rotation of expert panel members with alternates is mandated, however the frequency is managed by the chair, while the community representative that is part of the panel's quorum is chosen by the chair. See planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels/Frequently-asked-questions. Consultations suggest that this may not occur in practice due to a lack of expert panel members to rotate. All chairs and members are required to periodically rotate with alternate members. The chair is to determine the frequency of rotation. SA and WA have also moved to reduce the number of panels in their states recognising the difficulty in finding suitable panel members. WA now provides a pool from which experts can be drawn.

³³⁷ NSW Government 2018, *Minimising and monitoring risk in the IHAP framework*, p 18.

³³⁸ See NSW Government 2020, *Local Planning Panels Code of Conduct*; WA Government 2017, *Development Assessment Panel*, and SA Accredited Professionals Scheme Code of Conduct, which allied professionals (panel members) must comply with. That code warns that failure to act in accordance with the public interest carries a maximum penalty of \$50,000 (with reference to the *Planning, Development and Infrastructure Act 2016* (SA), s 91).

³³⁹ Better Regulation Victoria 2019, *Planning and building approvals process review*, p 80, notes that while some councils embed the role of councillors in setting strategic planning policy and delegate most planning permit decisions to senior staff, others define the circumstances in which councillors make the decisions. However, Planning Permit Activity Reporting System data for 2016/17 and 2017/18 indicated that, overall, 97 per cent of decisions were determined by a delegate while 3 per cent were decided by council.

To ensure that panels are used in a consistent and accountable manner, it is essential to specify criteria to identify those applications that require panel consideration. In New South Wales this is achieved via ministerial directions. The current directions provide that a proposal should be referred to a panel if it involves a conflict of interest, attracts a certain number of objections, involves a significant departure from prescribed development standards or is defined as a 'sensitive development'.³⁴⁰ In Western Australia, regulations made by the Governor specify that any project exceeding \$20 million in the City of Perth or \$10 million elsewhere in the state must be referred to a panel.³⁴¹ However, the regulations also allow a proponent to refer to the development assessment panel any development assessment that is below the threshold value but has a value of at least \$2 million.³⁴²

The criteria for determining which applications should be determined by a panel must be clear and transparent, to reduce the risk of corrupt decision-makers keeping decisions 'in house' by setting or varying criteria to avoid referrals.³⁴³

4.3.7.3.3 *Decision-making and reporting process*

Mandating how a panel makes and reports its decisions can greatly improve the transparency and accountability of the panel's decisions. In Victoria, the Planning Act sets out the matters that a responsible authority must consider before deciding on an application.³⁴⁴ The advantage of using independent panels over councils in this regard is the level of expertise that can be applied to the matters for decision. In comparison to a council, a panel can focus on the criteria and process for deciding on statutory planning applications, which can be quite complex. In New South Wales, the Planning Act not only specifies matters that the panel must consider when determining a development application, but also stipulates that a local planning panel must give written reasons for its decisions and make them publicly available on a website.³⁴⁵

A transparent system of planning decision-making also requires compulsory disclosure of conflicts of interest, any meetings between applicants and assessors, any efforts made to lobby them by any persons – including councillors and applicants, and any instructions received by assessors from other bodies (for example, directions from elected officials or their staff).³⁴⁶

Requiring panels to conduct hearings about applications and for those hearings to be public (as occurs with PPV panels) would promote participation and independent scrutiny of decision-making, particularly where hearings are conducted on notice and all documents are made available on websites. The importance of holding public meetings during reasonable hours was highlighted in the Ombudsman's 2016 report on transparency in local government.³⁴⁷

4.3.7.3.4 *Panel coverage*

Rates of development vary considerably between local government areas. For instance, DELWP advised IBAC that in 2020 Mornington City Council received 2361 planning permit applications, while West Wimmera received only 33. The City of Casey dealt with 1138 that year (the 13th-highest of Victoria's 79 municipalities).

Given the issues observed in Operation Sardon about permit amendments to minimise the developer's contributions to infrastructure and public open spaces in areas of high growth, IBAC sees substantial merit in independent decision-making being used by all councils in metropolitan Melbourne.

That is not to suggest that regional Victoria is immune to the risk of corruption. The three states that currently use planning panels – New South Wales, South Australia and Western Australia – have each defined coverage differently.

340 NSW Government 2020, *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents*. Further details on the content of each category are provided in the direction.

341 Planning and Development (Development Assessment Panels) Regulations 2011 (WA), reg 5, and *Planning and Development Act 2005* (WA), s 171A.

342 Planning and Development (Development Assessment Panels) Regulations 2011 (WA), reg 6.

343 NSW ICAC 2008, *Report on an investigation into corruption allegations affecting Wollongong City Council – Part Three*, p 128: 'Remembering that a number of council officers were able to corruptly prevent DAs (development applications) from being scrutinised by the council, it is important to ensure that significant planning decisions are not improperly withheld from the IHAP. For this reason, a council should articulate clear criteria for determining which matters are referred to the IHAP'.

344 *Planning Act*, s 60.

345 *Environmental Planning and Assessment Act 1979* (NSW), s 2.20(2).

346 NSW Government 2018, *Minimising and monitoring risk in the IHAP framework*, p 37.

347 Victorian Ombudsman 2016, *Investigation into the transparency of local government decision-making*, p 122, see comment on *Glen Eira Development Panel*.

In New South Wales, local planning panels are mandatory only for councils in the Greater Sydney Region and the City of Wollongong. However, the Minister for Planning can require the appointment of a local planning panel in any other council.³⁴⁸ The focus on Sydney and its surrounds appears to be the express positioning of local planning panels as anti-corruption mechanisms in areas of highest risk. The Second Reading Speech for the 2017 Bill stated that, of ICAC's approximately 20 investigations into corrupt decision-making in planning, 'a vast majority' involved councils in the Greater Sydney Region.³⁴⁹ It may also reflect concerns about the resourcing consequences of requiring smaller regional councils to appoint panels, although these could potentially be dealt with by pooling resources and appointing a regional panel.³⁵⁰

In South Australia, assessment panels are mandatory for all councils, but separate panels are not required for each council: two or more councils can opt for a regional assessment panel.³⁵¹ If a council fails to do so, the Minister for Planning can appoint a panel.³⁵² This broader coverage suggests that SA panels are designed to improve decision-making more generally rather than to solve specific corruption issues in relation to planning.

Western Australia has adopted an increasingly regional approach. In April 2020, the Minister for Transport and Planning announced amendments to the Planning and Development (Development Assessment Panels) Regulations 2011 that reduced the number of panels in the state from nine to five (City of Perth, Metro Inner-North, Metro Inner-South, Metro Outer and Regional), and stated a further intent to reduce the number of panels to three.³⁵³ All councils are covered by the five development assessment panels, which are 'intended to enhance planning expertise in decision-making by improving the balance between technical advice and local knowledge'.³⁵⁴

Each system has its own pros and cons, prompting reviews in each jurisdiction to identify options for improvement. In developing a panel approach in Victoria, careful consideration should be given to the lessons learnt in these states. However, the broadening of panel coverage over time in all three states suggests that the value of panels in determining statutory planning matters is widely accepted.

Subject to expert advice on the staff and resource implications, consideration should be given to using panels in metropolitan and regional areas (in particular major regional cities such as Geelong, Ballarat and Bendigo, and areas of relatively high land value, such as the Surf Coast and Bellarine Peninsula). Indeed, IBAC notes that in New South Wales the Planning Institute of Australia has recommended extending the use of determining panels to regional centres, as well as Greater Sydney and Wollongong.³⁵⁵

4.3.7.3.5 Complaints, oversight and sanctions

Any move to independent planning panels needs to be underpinned by an effective oversight and complaints mechanism. The mechanics of this would need to be carefully considered to avoid any conflict or confusion with the VCAT process. A 2018 review of local planning panels in New South Wales noted the importance of having a clear, publicly accessible complaint-handling process.³⁵⁶ Sanctions can also deter decision-makers from succumbing to improper influences. For instance, in South Australia, failure of an accredited professional (including panel members) to act in accordance with the public interest carries a maximum penalty of \$50,000.³⁵⁷

348 *Environmental Planning and Assessment Act 1976* (NSW), s 2.1. Prior to 2017, panels were permitted, but not required: *Environmental Planning and Assessment Act 1976* (NSW) (EPA Act 1976), s 231. In addition to the amendments making panels mandatory, a separate amending Act renumbered the provisions of the EPA Act 1976.

349 NSW Government 2017, Second Reading Speech, Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017, Hansard, p 1.

350 NSW ICAC 2007 *Corruption Risks in NSW Development Approval Processes*, p 45.

351 Government of South Australia 2018, *Assessment pathways: How will they work? Technical discussion paper*, p 17. Regional assessment panels consist of two or more councils, of which there are currently five (ranging in coverage from two to 10 member councils) in SA. See Plan SA 2020, 'Minister constitutes five new Regional Assessment Panels', www.plan.sa.gov.au/news/article/2020/minister_constitutes_five_new_regional_assessment_panels. Regional panels are appointed by the Minister. Regardless of how many councils are involved, membership of the panel can only include up to one council member.

352 South Australian Government 2018, *Assessment pathways: How will they work? Technical discussion paper*, p 19.

353 The Hon Rita Saffioti, Minister for Planning, April 2020, 'Planning reform delivers robust Development Assessment Panels', media release, mediastatements.wa.gov.au/Pages/McGowan/2020/04/Planning-reform-delivers-robust-Development-Assessment-Panels.aspx.

354 WA Department of Planning, Lands and Heritage, wa.gov.au/organisation/departments-of-planning-lands-and-heritage/development-assessment-panels.

355 Kaldas N 2018, *Review of Governance in the NSW Planning System* (2018), APM, p 32.

356 NSW Government 2018, *Minimising and monitoring risk in the IHAP framework*, pp 11 and 13.

357 SA Accredited Professionals Scheme Code of Conduct, with reference to *Planning, Development and Infrastructure Act 2016* (SA), s 91.

4.3.7.3.6 Consistent statutory decision-making at state level

Recognising that decisions made by a responsible authority carry a corruption risk that can be best addressed by using arm's-length decision-making, IBAC recommends that careful consideration should also be given to using independent panels to determine matters where the Minister for Planning – in the role of responsible authority – is currently the decision-maker.

While Operation Sandon has necessarily focused on the role of councils as the responsible authority, the use of decision-making panels represents best practice and could also be applied to the Minister for Planning when exercising their functions as a responsible authority.³⁵⁸ This is particularly important for preventing corruption, given that many of the permit applications for which the Minister is the responsible authority under the Melbourne and Port Phillip planning schemes are likely to be of especially high value, and may well involve political donors as interested parties.

Although the Planning Act currently provides a mechanism for the Minister for Planning to establish a planning application committee which can carry out any function delegated to it by the Minister or a responsible authority (such as a council), IBAC is not aware of any instances where such a committee has been established.³⁵⁹ In this context, having an independent panel exercise the decision-making function may help rebut inevitable allegations of political interference, and give the public and participants additional confidence that any decisions are made on the merits of the particular matter.

In their evidence to IBAC, the Minister for Planning expressed support for consistent statutory decision-making at the state level, noting that draft reforms being considered include:

The creation or refinement of powers that facilitate ... establishing priority development committees under the Act to undertake integrated consultation, provide advice and make delegated decisions on behalf of a minister or local government.

4.3.7.3.7 Proposed reforms

Operation Sandon has highlighted the need for planning panels that are independent and more transparent in their statutory decision-making. Further consultation will be required to determine the coverage of panels, and whether single-council, joint or regional panels would best reduce the risk of improper influence on decision-makers and improve transparency and accountability in statutory planning decisions at the local government level. However, the experiences of other states suggest that, at a minimum, independent statutory planning panels should:

- have determinative, not advisory, authority
- exclude or limit the power and involvement of councillors on panels
- publicly specify clear criteria so that applications with a higher risk of corruption are referred to an independent panel for determination in a consistent manner across the state
- give written reasons for their decisions and publish them within a certain time
- mandate disclosure of conflicts of interest, meetings between applicants and assessors, approaches from lobbyists (including councillors, property developers and real estate agents) and instructions from other bodies
- conduct hearings in public wherever possible
- be used by councils where there is a high level of development activity or high land values, which suggests that panels should be used by all councils in metropolitan Melbourne
- be subject to appropriate oversight and sanctions, through an effective complaint-handling process and evaluation framework.

IBAC understands that the Victorian Government is currently considering the issue of local government planning powers as part of a broader housing agenda. IBAC recommends that the proposed Taskforce work with the departments progressing these measures to ensure that planning reform in Victoria incorporates IBAC's recommendations that address corruption risks in local government planning decision-making.

³⁵⁸ Standing Advisory Committees (and ad hoc advisory committees) can be appointed under the *Planning Act*, Part 7 (s 151 in particular), however, their role is to only to advise the Minister in relation to matters referred to them.

³⁵⁹ *Planning Act*, Part 4AA provides for the establishment of planning application committees that can carry out functions delegated to them by the Minister.

While Operation Sandon did not investigate any permits issued by the Minister for Planning, it would be appropriate for the Taskforce to consider the value and appropriateness of appointing an independent panel to determine matters – instead of the Minister exercising functions as a responsible authority – consistent with the local government approach for statutory decisions.

Recommendation 10

IBAC recommends that the Premier ensures that the Taskforce engages subject-matter experts and consults stakeholders to develop a model structure for independent determinative planning panels for statutory planning matters that addresses the integrity risks identified in Operation Sandon, having regard to:

- (a) the skills mix and method of appointing panel members and the efficacy of rotating panel members
- (b) the scope of panel coverage, being whether all councils should be required to use an independent planning panel, including the option of shared or regional panels in areas where councils handle fewer planning permits
- (c) the referral criteria that should apply statewide to make clear which matters should be determined by planning panels rather than by council planning officers
- (d) decision-making process and reporting requirements to ensure transparency and accountability of panel decisions
- (e) arrangements to handle complaints about planning panels and review their performance to ensure continuous improvement.

Recommendation 11

IBAC recommends that the Minister for Planning develops and introduces to Parliament amendments to the *Planning and Environment Act 1987* (Vic) to:

- (a) remove statutory planning responsibilities from councillors
- (b) introduce determinative planning panels for statutory planning matters, where a local council is currently the responsible authority.

This is to give effect to the model developed by the Taskforce in response to Recommendation 10.

Recommendation 12

IBAC recommends that the Premier ensures that the Taskforce engages subject matter experts and consults with key stakeholders to assess the operation of Part 4AA of the *Planning and Environment Act 1987* (Vic) and recommends whether further amendments are required to give full effect to independent panels as the decision-makers for all statutory planning matters, including those where the Minister for Planning is the responsible authority.

Summary

Operation Sandon provided clear evidence of individuals making political contributions with the expectation that this would give them access to decision-makers and make it more likely that decisions would be made in their favour. Specifically, the investigation showed how far some individuals with significant private interests, such as Mr Woodman, will go to exert influence through financial support for candidates across the political spectrum and at different levels of government.

Political donations must be made more transparent and accountable, so that government decisions are made in the public interest and are seen to be free from improper influence. The conduct observed in Operation Sandon illustrates the need for reforms to:

- prevent developers and other high-risk groups from using donations to gain privileged access to decision-makers
- make it harder for donors and candidates to conceal donations
- improve the monitoring and reporting of donations
- reduce the pressure on parties and candidates to solicit donations.

5.1 Introduction

In Operation Sandon, IBAC exposed Mr Woodman's use of political donations to gain access and garner support for his business interests. IBAC found that Mr Woodman invested in candidates across the political spectrum and at all levels of government in ways that were subject to minimal public scrutiny. He raised his profile among elected decision-makers (or potential decision-makers), some of whom courted him for financial support. It was common for Mr Woodman to make donations without at the time seeking anything specific in return. Mr Woodman viewed his donations as a worthwhile investment to achieve – if he needed it, at some future point – privileged access to elected decision-makers and favourable consideration of his interests.

In October 2022, IBAC tabled in the Victorian Parliament a special report on the corruption risks associated with donations and lobbying.³⁶⁰ This special report included two detailed recommendations to improve the transparency and accountability of political donations in Victoria. In response to the report, the Victorian Government released a media statement undertaking to incorporate these recommendations into the terms of reference for the independent expert panel review of the operation of 2018 electoral reforms, which is required to report by 25 November 2023.³⁶¹

This chapter discusses how in Operation Sandon, the current regulation of political donations was exploited for individual gain, reinforcing the need for the donations reform recommended in the Donations & Lobbying special report.

5.2 Legislation governing donations

The *Electoral Act 2002* (Vic) (Electoral Act) governs state electoral expenditure and political donations in Victoria. At the time of the conduct investigated in Operation Sandon, the Electoral Act did not place any caps on donations, or impose thresholds for disclosure.³⁶² The only restriction on political donations was that donations exceeding \$50,000 could not be received from a relevant licence holder under the *Casino Control Act 1991* (Vic) or the *Gambling Regulation Act 2003* (Vic).³⁶³ Reforms to introduce limits on donations and disclosure requirements for candidates in Victorian parliamentary elections were introduced on 25 November 2018.

The Victorian Electoral Commission is responsible for compliance and enforcement of the donation provisions in the Electoral Act,³⁶⁴ and has been developing its enforcement arm since the November 2018 reforms.³⁶⁵ In consultations with IBAC, the Victorian Electoral Commission said that its enforcement capacity was primarily reactive, with limited scope to proactively identify deliberate non-compliance with the funding and disclosure laws. As a result, only the most egregious schemes were likely to be prosecuted.

³⁶⁰ IBAC 2022, Special report on corruption risks associated with donations and lobbying, IBAC, www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-donations-and-lobbying.

³⁶¹ Premier of Victoria 2022, 'Action and funding to deliver integrity reforms', media release, www.premier.vic.gov.au/action-and-funding-deliver-integrity-reforms.

³⁶² At the time, Victoria's electoral donation regime deferred to the Commonwealth regime under which Victorian branches of the federally registered parties were subject to the Commonwealth disclosure threshold. In the period 1 July 2018 to 30 June 2019, the Commonwealth disclosure threshold was \$13,800.

³⁶³ *Electoral Act*, ss 206 and 216.

³⁶⁴ *Electoral Act*, Division 4A.

³⁶⁵ The reforms provided the Victorian Electoral Commission with additional powers to monitor compliance with the scheme and the authority to appoint compliance officers with powers to gather information to investigate possible contraventions of the Act: *Electoral Act*, s 222A.

At the time of the conduct investigated in Operation Sandon, the LGA 1989 regulated donations at the local government level.³⁶⁶ These provisions have largely been replicated in the LGA 2020.³⁶⁷ Both versions of the LGA focus on candidates' disclosure obligations, with no limits on donations or campaign expenditure.

Both versions of the LGA require all candidates in a local government election, whether eventually elected or not, to submit an election campaign 'donation return' to the CEO of the relevant council within 40 days of the election.³⁶⁸ The donation return must include any 'gift' equal to or exceeding the \$500 gift disclosure threshold,³⁶⁹ received during the donation period by the candidate, or on behalf of the candidate, to be used in connection with their election campaign.³⁷⁰ Candidates are not required to declare gifts made in a private capacity, provided the candidate has not used the gift solely or substantially for electoral purposes.³⁷¹ Both versions of the LGA define a gift to include providing a service or making a payment or contribution at a fundraising function.³⁷² When assessing whether the disclosure threshold has been reached, all gifts received by or on behalf of a candidate from the same person during the donation period are treated as one donation.³⁷³

It is unlawful for a councillor, candidate or person acting on their behalf to receive anonymous gifts that equal or exceed the disclosure threshold during the donation period.³⁷⁴ Failure to submit a return or knowingly submitting a return that is false or misleading is an offence.³⁷⁵ IBAC understands that the Local Government Inspectorate (LGI) currently has the resources to audit only a small sample of campaign donation returns for each election.

5.3 Issues identified in Operation Sandon

Operation Sandon highlighted four broad issues with individuals using political donations to gain influence:

- developers 'investing' across the political spectrum to influence decision-making
- donors and candidates concealing donations
- poor compliance with donation regulations, and a lack of timely public reporting on donations
- parties and candidates soliciting donations from developers.

These issues are discussed below.

5.3.1 Developers 'investing' across the political spectrum to influence decision-making

Operation Sandon exposed developers making donations to influence decision-making by local and state elected officials. Mr Woodman and his associates invested extensively across the political spectrum and at all levels of government, in a way that suggests Mr Woodman expected returns on his investments, including gaining access to decision-makers to further his interests.

IBAC found that between September 2010 and June 2019 Mr Woodman or his entities made more than 180 transactions totalling \$969,968 to the two major parties: \$530,700 to the Liberal Party and \$439,268 to the Labor Party. These contributions include donations, membership fees and tickets to attend fundraising events, but not in-kind contributions (for example, providing goods or services), as these did not involve a transaction to an account.

As discussed in section 3.7, and shown in Figure 4, Mr Woodman's patronage increased dramatically around the time of the state elections and shifted in focus from the Liberal Party to favour the Labor Party around 2015 – when the Labor Party had been elected and key decisions were being made about Amendment C219 and Brompton Lodge.³⁷⁶

³⁶⁶ LGA 1989, Part 3, Division 9.

³⁶⁷ LGA 2020, Part 8, Division 10.

³⁶⁸ LGA 1989, s 62(1) and (8) and LGA 2020, s 306(1) and (8).

³⁶⁹ LGA 1989, s 3, and LGA 2020, s 3. Defined as \$500 or a higher amount or value prescribed by the regulations.

³⁷⁰ LGA 1989, ss 62(2) and (6), and LGA 2020, s 306(2) and s 3(1). Donation period is defined as the period starting 30 days after the previous election and ending 30 days after the election for which a donation return is being completed.

³⁷¹ LGA 1989, s 62(3) and LGA 2020, s 306(3).

³⁷² LGA 1989, s 3 and LGA 2020, s 3.

³⁷³ LGA 1989, s 62(5) and LGA 2020, s 306(5).

³⁷⁴ LGA 1989, s 62B and LGA 2020, s 309.

³⁷⁵ LGA 1989, s 62(7) and LGA 2020, s 306(6). Penalty: up to 60 penalty units.

³⁷⁶ For example, the Casey Council lodged a request to authorise the preparation of the Amendment with the Minister for Planning in September 2015 and the Brompton Lodge amendment C90 was exhibited in November 2015.

The timing of Mr Woodman's financial support to the two major parties in Victoria suggests that he was motivated by a desire to obtain access to and favour with those in power, rather than wanting to support particular party policies.

Mr Woodman's support also extended to candidates of different political persuasions at the local government level, at a time when he had (or would soon have) matters to be determined by the Casey Council. Again, the evidence reveals that he was motivated by the pursuit of favourable planning decisions.

Mr Woodman estimated that he spent \$70,000 to \$75,000 financing campaigns for the 2016 local government election. However, records obtained from registered lobbyist Ms Wreford indicate that Mr Woodman spent more than \$98,000 to support 11 Casey Council candidates in their election campaigns.

The 2016 Casey Council candidates who received financial benefits from Mr Woodman were not necessarily politically aligned. During examination, Councillor Smith was shown an invoice for campaign pamphlets, paid by the racehorse bloodstock business using money provided by Mr Woodman. That invoice listed Councillor Smith and other candidates whose printing costs had been met by Mr Woodman. Councillor Smith's evidence was that he had no political allegiance with the other candidates on that list. Likewise, one of the unsuccessful Labor Party-aligned candidates backed by Mr Woodman described attending a meeting that was also attended by Councillor A and Councillor Ablett, who Mr Woodman knew were aligned with the Liberal Party, as well as Councillor Smith, who he knew was aligned with the Labor Party.

IBAC's investigation showed that Mr Woodman saw a clear link between his investments in candidates and the promotion of his development interests, telling registered lobbyist Mr Staindl in the lead-up to the November 2014 state election that meetings needed to be organised with the Premier and Mr Perera about fundraising and in order to bring their attention to the proposed rezoning in Cranbourne West.³⁷⁷ In the months that followed, Mr Woodman contributed \$15,000 to Mr Perera's election campaign for the state seat of Cranbourne.

Similarly, in the lead-up to the 2018 state election, Mr Woodman told Mr Staindl in an email:

... the internal word coming out of the Government Departments is that [the C219] amendment will not get approved ... let's organise a fund raiser for Pauline [Richards] the new Cranbourne candidate ASAP. Let's do the fundraiser under your banner so my name is not dragged into it, we will raise \$20,000 with a boardroom lunch ...

Although the fundraising function in question did not eventuate, Mr Woodman ultimately contributed \$20,000 to Ms Richards' 2018 campaign. A further \$10,000, originally intended for Ms Richards' 2018 campaign, was donated by Mr Woodman to Labor's candidates in the seats of Ferntree Gully and Ringwood.

At the local government level, around the time that Mr Woodman invested at least \$70,000 to support a group of candidates selected by Councillor Aziz to stand for election to the Casey Council in 2016, Mr Woodman had several significant matters before the Casey Council for consideration, including the Amendment C219 process, which effectively started in December 2015 when the Minister for Planning conditionally authorised the Casey Council to initiate the process. In February 2016 the formal Amendment C219 proposal went before the Casey Council, and in June 2016 the Casey Council resolved that the amendment should comprise 66 per cent residential zoning. Given the Minister for Planning's conditions, there was no certainty that the amendment would be approved, suggesting that the Casey Council may have needed to advocate for ministerial approval and make representations to the planning panel, as occurred in October–November 2017.

5.3.2 Donors and candidates concealing donations

In Operation Sandon, IBAC observed that Mr Woodman gave financial support to candidates at all levels of government in ways that sought to increase his influence on those with the potential to influence decisions, while minimising public scrutiny of his donor activity. This involved avoiding direct payments to candidates and using intermediaries to make donations and other types of contributions.

³⁷⁷ See section 6.1 for full details of this exchange between Mr Woodman and Mr Staindl.

5.3.2.1 Splitting payments using different entities

IBAC found that Mr Woodman sought to mask the extent of his donations by making payments via different entities under his control. This gave the appearance of those donations coming from a range of sources.

As discussed in section 3.7, IBAC identified more than 180 transactions, made between September 2010 and June 2019, to the Labor Party and Liberal Party from at least 15 different accounts held in the name of Mr Woodman or entities controlled by him. These transactions totalled \$969,968.

During examination, Mr Woodman's son was asked about two of these companies – Swan Bay Project Management Pty Ltd and Mandoow Developments Pty Ltd – which he described as 'dormant' and a 'passive entity' respectively, confirming that the two companies did not have any operating turnover or conduct any business. Mr Woodman's son was unable to say how these non-operational companies were able to make payments totalling \$20,000 to Progressive Business and \$40,000 to Enterprise Victoria – fundraising entities for the Labor Party and Liberal Party in Victoria respectively – in the 12 months from April 2018.

Mr Woodman's payments to these entities were often split into smaller amounts from different accounts or companies that he controlled.

At the time of the conduct investigated in Operation Sardon, no donation caps or declaration requirements were in place at the state level. However, declaration requirements applied at the federal level. From 1 July 2017, the threshold to declare donations at the federal level was \$13,500, increasing to \$13,800 between 1 July 2018 and 30 June 2019.

For Mr Woodman's 2019 'leadership package' with Enterprise Victoria, a \$70,000 contribution was paid in seven \$10,000 instalments via a number of companies, with the details of this arrangement provided to Enterprise Victoria. Similarly, Mr Woodman split the payment for his 2018/19 'platinum package' membership with Progressive Business into five \$10,000 payments from five companies.

In examinations, the Executive Director of Progressive Business at that time stated that, although they were not sure Mr Woodman did this every year, 'once [Mr Woodman] became a package holder that was a consistent payment method'.

When asked about Mr Woodman's practice of splitting invoices, the then-Executive Director of Enterprise Victoria initially denied that this was done to avoid the federal donation threshold. However, they later confirmed that 'if somebody decided to split the lump sum into different entities, they wouldn't be disclosed [because] if \$50,000 was split across five invoices, each individual invoice would be less than the [federal] disclosure amount'.

Donations made by Mr Woodman to federal candidates also highlight how he sought to circumvent those controls. A donation made to a federal MP's 2019 election campaign provided a clear example of Mr Woodman's efforts to avoid declaration requirements. As shown in Figure 6, four invoices for \$5000 were issued by the federal MP's campaign office – totalling \$5000 for 'Cordwood Pty Ltd' and \$15,000 for 'New Watsons Survey & Engineering Trust'. On receiving those invoices, Mr Woodman's personal assistant contacted the federal MP's campaign office to suggest that the invoices be reissued, in order to split Mr Woodman's \$20,000 contribution equally between the two companies 'to ensure that both entities remain below the disclosure thresholds'.

From: [REDACTED]@watsons.net.au>

Sent: Tuesday, 2 April 2019 10:54 PM

To: [REDACTED]

Subject: RE: Donation

Hi [REDACTED]

Our accounts team have advised the below in relation to your invoices supplied to date:

Please note that it appears that the following entities have been invoiced:		
Cordwood Pty Ltd	(invoice 1261)	total:
\$5,000.00 (1 x \$5k)		
New Watsons Survey & Engineering Trust	(invoices 1253, 1255 & 1260)	total:
\$15,000.00 (3 x \$5k)		

Unfortunately due to the Watsons total donation amount being over the threshold of \$13,800.00, The [REDACTED] Party will need to disclose/report the source of the funds.

May I suggest having 2 invoices of \$5k issued to 'Cordwood Pty Ltd' and 2 invoices of \$5k issued to 'New Watsons Survey & Engineering Trust' to ensure that both entities remain below the disclosure thresholds.

Would this be possible please [REDACTED]?

Kind regards,

[REDACTED]
Personal Assistant to
John Woodman-Managing Director

Figure 6: Extract from email to a federal Member of Parliament sent by Mr Woodman's personal assistant on 2 April 2019

This demonstrates how individuals seeking to make contributions that exceed the declaration thresholds might split payments to avoid regulatory requirements and public scrutiny.

5.3.2.2 Providing in-kind support

Mr Woodman's support for candidates was not always provided as cash donations. IBAC identified circumstances where goods and services were provided instead of financial contributions to maintain the donor's anonymity and avoid public scrutiny.

As noted in section 3.7, Operation Sandon found that Mr Woodman gave Councillor Aziz and Ms Wreford at least \$70,000 'to distribute to whoever they felt appropriate' among candidates contesting the 2016 Casey Council elections.

In examinations, Ms Wreford asserted that Mr Woodman was 'very explicit in saying that he didn't want to directly fund it because he didn't want to be linked to other councillors, firstly, and, secondly, he didn't ... even want them to know where the funds were coming from'. Instead, Mr Woodman preferred to allow Councillor Aziz to take credit for providing those funds to develop relationships with candidates who – as elected Casey councillors – would be more amenable to Councillor Aziz's guidance on matters of interest to Mr Woodman.

For the 2016 election, the funds that Mr Woodman provided were used to pay for campaign material supporting 11 candidates selected by Councillor Aziz. Under this arrangement, Ms Janet Halsall sourced the resources required (such as printing and delivery) and passed invoices to Ms Wreford, or otherwise invoiced the racehorse bloodstock business. Ms Wreford's partner then paid the invoices received by his employer, the racehorse bloodstock business, and was subsequently reimbursed in cash by Ms Wreford.

Documents seized under warrant from Ms Wreford's residence included a budget for the 2016 election detailing the original, revised and actual expenditure on the group of candidates. That document shows that expenditure on goods and services for the group included (but was not limited to):

- \$2280 for 'Portrait photography 9 candidates'
- \$1720 for 'Portrait photography 14 supporting candidates'
- \$15,379 for 'Design & printing of A3 brochures for 11 candidates'
- \$17,884 for 'Direct Mail: Design & printing & delivery to non residents'
- \$13,515 for 'How to vote cards printed'

At the time of the conduct investigated in Operation Sandon, the LGA 1989 required candidates to declare any gifts equal to or exceeding \$500 received during the donation period for use in connection with their local government election campaign.³⁷⁸ Guidance in the regulations provided that for gifts provided as goods or services (that is, in-kind support), an election campaign donation return must include a description of the gift and the estimated market value of the gift.³⁷⁹

Despite these requirements, none of the candidates who benefited from the provision of these goods and services declared these in-kind contributions. Donors were not required to declare donations made at the local government level at the time of the conduct.³⁸⁰ The same lack of requirements continue to apply under the current LGA 2020.³⁸¹

At the state level, where no declaration obligations existed before November 2018, Mr Woodman's in-kind contributions included paying \$15,000 in credit card debt for Councillor Ablett on 17 February 2014, to assist his campaign for the state seat of Cranbourne. Half of this amount was paid by cash deposit without providing the depositor's details, and half was paid by BPAY using a Watsons account – the latter part of which is annotated on a bank statement with a handwritten note stating, 'Geoff Ablett political donation', as shown in Figure 7. In examinations, both Mr Ablett and Mr Woodman conceded that Mr Ablett had sought help to pay a credit card debt that affected his ability to stand as the Liberal candidate for Cranbourne. When pressed on his reasons for making those payments, Mr Woodman stated, 'this was a donation, a correction to his credit card account'.

³⁷⁸ LGA 1989, ss 62(2) and (6). Donation period is defined as the period starting 30 days after the previous election and ending 30 days after the election for which a donation return is being completed. LGA 1989, s 3 defined as \$500 or a higher amount or value prescribed by the regulations.

³⁷⁹ LGA 1989, s 62(2) and Local Government (Electoral) Regulations 2016, reg 118(e)(iv).

³⁸⁰ LGA 1989, s 62.

³⁸¹ LGA 2020, ss 3(1) and 306, together with Local Government (Electoral) Regulations 2020, reg 46(e)(iv).

Outlet Details		Account Details	
Morningside		WATSON'S PTY LTD BUSINESS CHEQUE ACC	
Lending Investment & Insurance Enquiries			
Transaction Details		Debits	Credits
Date	Particulars		Balance
15 Feb 2014	Brought forward		Dr
17 Feb 2014	Udia 106381 Urban De V		
	Cash and/or Cheques Deposit		
	Inv 36612		
	037819		
	Internet Bpay		
	4564699008516196		
	Internet Transfer		
	ANZ Cards		
	GEOFF ABLETT POLITICAL DONATION	7,500.00	
	Hp PPSSF140200065		

Figure 7: Extract from annotated Watsons bank statement for February 2014

Similarly, when Councillor Susan Serey approached Mr Kenessey to ask Mr Woodman to pay for the mailout of 9000 pamphlets for her 2018 state election campaign, Mr Woodman used his company account to pay \$16,335 in postage for the mailout of 16,500 pamphlets.

5.3.2.3 Donations made to political parties with requests to direct to specific candidates

Mr Woodman's efforts to provide financial support that maximised his influence on the Liberal Party without publicly linking him to candidates were documented in the Victorian Ombudsman's 2015 report into allegations of improper conduct by Casey councillors concerning political donations.³⁸²

The Ombudsman identified donations totalling \$76,575 from Watsons to the campaigns of Councillor Ablett and Councillor A. This included a donation of \$65,000 to the Victorian Division of the Liberal Party which was transferred internally at Watsons' request that '\$40,000 [go] to the Cranbourne campaign and the balance \$25,000 to Narre Warren North'.³⁸³ The Ombudsman recommended that the government consider whether details of all donations to a candidate or political party should be published within 30 days of the relevant election.³⁸⁴

Watsons submitted a 'Donor to Political Party Disclosure Return' for 2014/15 which indicated that \$65,000 was donated to the 'Liberal Party of Australia, Lib Vic' in July 2014 and \$15,000 in October 2014, to comply with Australian Electoral Commission's disclosure requirements at the federal level. From the recipient's end, the Liberal Party of Australia's (Victorian Division) 2014/15 Political Party Disclosure Return reflected this as \$80,000 received from 'Watsons Pty Ltd'.

In examinations, Mr Woodman stated that the \$65,000 donation was made at the request of Councillor Ablett and Councillor A. Councillor A agreed that their campaign received \$25,000 following conversations with Mr Woodman about their decision to stand for the state seat of Narre Warren North. Councillor Ablett accepted that \$40,000 was provided to his campaign for Cranbourne, but asserted that a lot of those funds were taken by another Liberal candidate. Once received by the Liberal Party, funds moved to certain candidates without any transparency.

IBAC has observed a similar issue in another investigation where a witness noted that their 2018 state campaign account received \$10,000 from another candidate and commented that it was not uncommon for their party to move funds from a safe seat to a more marginal seat where there was a greater need for funding. IBAC's analysis confirmed that no publicly available records showed this transaction.

³⁸² Victorian Ombudsman 2015, *Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations*.

³⁸³ Ibid., p 24.

³⁸⁴ Ibid., p 15.

5.3.2.4 Using third-party campaigners at the local government level

One way in which Mr Woodman created distance between himself and the local government candidates he supported was by using third parties. Councillor Aziz came up with the idea, and was assisted by Ms Wreford and Ms Halsall, to effectively operate a scheme to financially support a range of Casey Council candidates identified either as compliant or as having views that aligned with Mr Woodman's interests.

As noted in section 3.7, IBAC found that, approximately six months before the 2016 local government elections, Councillor Aziz requested a meeting with Mr Woodman, via Ms Wreford, during which Councillor Aziz proposed putting together a group of 'like-minded individuals' to run for the Casey Council, identified by Councillor Aziz and funded by Mr Woodman.

The sense of obligation this arrangement created between the selected candidates and Councillor Aziz, as the conduit for those funds, allowed Mr Woodman to install candidates likely to vote with Councillor Aziz in favour of Mr Woodman's interests, without having to disclose who Mr Woodman was or what he wanted.

Third-party campaigners were not regulated under the LGA 1989, and continue to be unregulated under the LGA 2020. However, the Organisation for Economic Co-operation and Development has recommended that where spending on election campaigning by third parties can be perceived as reasonably intended to influence community members to vote for or against a political party or particular candidates, there should be an appropriate level of transparency around that activity.³⁸⁵

At the state level, since November 2018 the Electoral Act has governed third-party campaigners,³⁸⁶ the definition of which effectively captures anyone (other than a registered political party, an electoral candidate or group of candidates, an elected member, an associated entity or a nominated entity of a registered political party) who receives funds or pays political expenses exceeding \$4000 in a 12-month period. If these provisions had been in place for the 2016 local government election, this definition would have captured Ms Wreford and Ms Halsall, and their activities, but it would not have captured the conduct of Councillor Aziz, who was a candidate for the election.³⁸⁷

5.3.2.5 Financial support not currently defined as political donations

The LGA 2020 requires that an election campaign donation return be submitted for gifts received during the donation period by the candidate or on behalf of the candidate, 'to be used in connection with their election campaign'.³⁸⁸ This means a connection with the candidate's election campaign is required to trigger the obligation to disclose a donation. However, IBAC identified numerous payments by Mr Woodman in support of Councillor Smith's interests, which raised his public profile by anonymously helping him to attend events for a community radio program and enabling him to support community members to travel overseas and study. The worthiness of these activities is not at issue. The concern lies with Councillor Smith receiving financial support to provide those benefits in a way that was not transparent.

In addition, IBAC identified numerous chains of transactions from Watsons to the Halsalls' family business and other Halsall accounts, each of which was soon followed by a comparable transaction to Councillor Smith. None of these transactions involved a direct payment from Mr Woodman and Councillor Smith. In this way Councillor Smith received approximately \$20,000 between December 2014 and January 2017, \$19,999 of which was attributable to Watsons. The table in Figure 8 shows the five main chains of transactions from Watsons to Councillor Smith via the Halsalls' family business (owned by Ms Janet Halsall's son) or the Halsalls.

³⁸⁵ OECD 2016, *Financing Democracy: Funding of political parties and election campaigns and the risk of policy capture*, p 3.

³⁸⁶ *Electoral Act*, s 206(1).

³⁸⁷ *Electoral Act*, definition of 'third-party campaigner', together with 'political expenditure' and 'election campaigning period'. Note that the expenditure threshold for third-party campaigners only applies to expenses incurred during the election campaigning period (which runs from 1 October in the year of a general election to 6pm on the day of the election) as opposed to the four-year state election period, 'unless the material refers to a candidate or a registered political party, and how a person should vote at an election'.

³⁸⁸ *LGA 1989*, ss 62(2) and (6) and *LGA 2020*, ss 306(2) and 3(1). Donation period is defined as the period starting 30 days after the previous election and ending 30 days after the election for which a donation return is being completed.

	Date	Transaction from	Amount	Transaction to
1	11 December 2014	Watsons	\$4999	Halsalls' family business
	12 December 2014	Halsalls' family business	\$5000	Councillor Smith
2	14 October 2015	Watsons	\$4300	Halsalls' family business
	16 October 2015	Halsalls' family business	\$4300	Janet Halsall and her spouse
	17 October 2015	Janet Halsall and her spouse	\$1	Councillor Smith
	17 October 2015	Janet Halsall and her spouse	\$4299	Councillor Smith
3	24 November 2015	Watsons	\$3200	Halsalls' family business
	26 November 2015	Janet Halsall and her spouse	\$3200	Councillor Smith
4	11 November 2016	Watsons	\$4000	Janet Halsall's son
	15 November 2016	Janet Halsall's son	\$4000	Councillor Smith
5	5 January 2017	Watsons	\$3500	Janet Halsall's son
	6 January 2017	Janet Halsall's son 'Pls give to Wayne'	\$3500	Janet Halsall and her spouse
	7 January 2017	Janet Halsall and her spouse	\$3500	Councillor Smith

Figure 8: Summary of payments from Watsons to the Halsalls' family business and other Halsall accounts, and payments from Halsall accounts to Councillor Wayne Smith

During examination, Councillor Smith stated that these funds came from Ms Halsall's spouse to pay for expenses relating to his and Councillor Smith's attendance at an annual music festival, which Councillor Smith attended over a number of years to broadcast a community radio arts show. When pressed about the source of those funds, Councillor Smith said he only learnt they originated from Mr Woodman during IBAC's investigation. He asserted that Ms Halsall never told him this, and that her spouse had simply stated that the funds came from the radio station's sponsor. Councillor Smith was required to declare these contributions as 'gifts' under the LGA 1989,³⁸⁹ but did not do so.³⁹⁰ As discussed in section 3.6.5.2, IBAC does not accept Councillor Smith's assertions that he was unaware of Mr Woodman's patronage.

Evidence obtained by IBAC shows how Ms Halsall's spouse and Councillor Smith discussed the progress of planning matters in which Mr Woodman had a financial interest, including the application to amend the Pavilion Estate permit, which was considered at the Casey Council's 20 March and 4 April 2018 meetings:³⁹¹

- On 15 March 2018, Ms Halsall's spouse sent an SMS message to Mr Woodman that stated, *'Hi John, I caught up with Wayne [Councillor Smith] and he is completely on board. He will follow Sam's [Councillor Aziz's] lead, [another councillor] usually follows what Wayne does and [a third councillor] follows Sam so I think you have the numbers.'*
- On 19 March 2018, Mr Woodman forwarded an email (prepared by Ms Schutz) to Ms Halsall's spouse, stating, *'[...] just a further briefing note for Wayne highlighting again the fact that council officers have made major mistakes on two adjacent projects to Pavilion and expecting us to fix, thanks'*. In response, Ms Halsall's spouse replied, *'Thanks John, I'll talk to Wayne tonight'*.

³⁸⁹ LGA 1989, s 81(7)(e) as part of an ordinary return; LGA 2020, s 138. Also see City of Casey 2015, Gifts, Benefits and Hospitality Policy for Councillors.

³⁹⁰ Councillor Smith did not declare these benefits that he received either as an election campaign donation or as a gift. City of Casey, Gift Register, 2008–2019.

³⁹¹ The vote on the Pavilion Estate permit amendment was deferred at the 20 March 2018 meeting and carried en bloc at the 4 April 2018 meeting.

- On 21 March 2018, Ms Halsall's spouse sent an SMS message to Mr Woodman, stating, *'Hi John[,] Wayne said it was deferred last night ... I'll call bit later if you like and give you more details.'*

Mr Woodman's remote patronage extended to support for other causes of interest to Councillor Smith, including airline tickets for a person who approached Councillor Smith (in his capacity as councillor) to attend a competition overseas, and a computer to assist an individual with their studies. Payment of these expenses was facilitated by the Halsalls.

Mr Woodman's motives in channelling funding to Councillor Smith via the Halsalls were clear. Councillor Smith's evidence was that he generally followed Councillor Aziz's advice on how to vote on planning matters. It is most unlikely that Mr Woodman would have extended financial support to Councillor Smith over several years, even indirectly, without expecting to obtain the benefit of Councillor Smith's vote when the need arose. Moreover, as one of the deputy mayors in 2016 and 2018, Councillor Smith often chaired Casey Council meetings (giving him the deciding vote if the vote was tied) when the mayor and other deputy mayor were both conflicted and recused themselves.³⁹²

These gifts did not constitute election campaign donations because they were not used 'solely or substantially for a purpose related to the election'.³⁹³ However, Councillor Smith benefited from the increased community profile the donations provided, which improved his chances of re-election as a councillor.

5.3.3 Compliance and timely public reporting

Although caps and declaration requirements will strengthen the regulation of donations, they must be combined with timely public reporting and effective enforcement mechanisms to ensure compliance.

5.3.3.1 Over-reliance on candidate declarations at the local government level

At the time of the conduct under investigation in Operation Sandon, the LGA 1989 specified that all local government candidates must submit an election campaign donation return to the CEO of the council within 40 days of an election, regardless of whether they received any donations,³⁹⁴ and declare any gifts equal to or above the \$500 gift disclosure threshold received during the donation period for use in connection with their local government election campaign.³⁹⁵

The LGA 1989 also made it unlawful for a councillor, candidate or person acting on behalf of a councillor or candidate to receive anonymous gifts that equal or exceed the disclosure threshold, obliging candidates to ascertain the value and origin of services provided in kind that are valued at \$500 or more.³⁹⁶

Although local government candidates were required to disclose details of election campaign donations received (including in-kind donations), *donors* were not required to declare donations made at the local government level, and still are not.³⁹⁷ The onus is entirely on the candidate. IBAC's investigation shows that this is inadequate.

In the 2016 election campaigns for the Casey Council, IBAC identified at least:

- \$6816 in donations from Mr Woodman (and his associated entities) to Councillor A's campaign. Councillor A submitted a declaration stating that they did not receive any disclosable gifts in that donation period.
- \$6743 in donations from Mr Woodman (and his associated entities) to Councillor Smith's campaign. Councillor Smith submitted a declaration stating that he did not receive any disclosable gifts in that donation period.
- \$5618 in donations from Mr Woodman (and his associated entities) to Councillor Ablett's campaign. Councillor Ablett declared only three donations, totalling \$1488, for that donation period, none of which was attributed to Mr Woodman.

³⁹² In relation to the four development matters investigated in Operation Sandon, Councillor Smith, as deputy mayor, was the chair in relation to: a 19 July 2016 vote on the C219 Amendment; two 3 April 2018 votes on the Pavilion Estate permit amendment and Brompton Lodge, and three votes concerning the H3 intersection on 4 September, 18 September and 16 October 2018.

³⁹³ LGA 1989, s 62(3) and LGA 2020, s 306(3).

³⁹⁴ LGA 1989, s 62(1) and LGA 2020, s 306(1).

³⁹⁵ LGA 1989, ss 62(2) and (6) and LGA 2020, ss 306(2) and 3(1). Donation period is defined as the period starting 30 days after the previous election and ending 30 days after the election for which a donation return is being completed. LGA 1989, s 3 and LGA 2020, s 3 define the gift disclosure threshold as \$500 or a higher amount or value prescribed by the regulations.

³⁹⁶ LGA 1989, s 62B and LGA 2020, s 309.

³⁹⁷ LGA 1989, s 62 and LGA 2020, s 306.

- \$4645 in donations from Mr Woodman (and his associated entities) to Councillor Aziz's campaign. Councillor Aziz declared only two donations, totalling \$26,490, for that donation period, neither of which was attributed to Mr Woodman.
- \$2876 and \$2013 in donations from Mr Woodman to two other councillors, neither of whom declared or attributed the donations to Mr Woodman.

No discrepancies were identified with the Casey candidates' declarations for the 2016 election, and no candidates were charged or issued with a warning.

During IBAC's investigation, elected Casey councillors were presented with material concerning payments Mr Woodman made in relation to their election campaigns for the 2016 local government election. In response, Councillor Aziz denied any knowledge of Mr Woodman providing financial support for his 2016 election campaign, while other councillors variously revealed that they made little, if any, effort to find out what money had been spent on their campaigns after being told by Councillor Aziz that they need not worry about it. For instance:

- Councillor A confirmed that they did not make any concerted attempts at the time to find out how much was donated towards their campaign or the identity of the donor, adding that when they did make enquiries with Councillor Aziz, 'I was told I didn't have to worry about it'. Councillor A also stated they only found out that Mr Woodman had provided funding from Councillor Aziz after the election.
- Councillor Smith initially stated that, at the time, he understood Councillor Aziz was personally covering the costs, stating, 'when I asked Sam that one time about it, it was made clear you know, I'm covering that – end of discussion'. Councillor Smith did not explain why he failed to declare the in-kind donations he thought Councillor Aziz was providing to support his campaign.

The requirement to submit an election campaign donation return applies to all candidates – not just those who are eventually elected.³⁹⁸ However, IBAC interviewed four of the unsuccessful candidates who were funded by Mr Woodman for the 2016 election and found that none submitted a return. As with Councillor A and Councillor Smith, three of those candidates said to IBAC that they were told by Councillor Aziz or his associates not to worry about where the funds were coming from.

5.3.3.2 Limitations of the current reporting and monitoring process

In Operation Sandon, the requirement that candidates lodge their returns with the CEO of the council did not result in declarations that were accurate, complete and timely. During examination, when asked about a declaration lodged by Councillor A, the former CEO of the Casey Council, Mr Mike Tyler, observed, 'I don't think it was my responsibility to decide – to ask about how much is your donation and have you declared that somewhere else. That's, that would've been [their] responsibility'.

Mr Tyler made clear that as a CEO, his role in election donation returns was administrative:

Commissioner: *This comes back to what you saw as your function? So you regarded yourself as – excuse the colloquial, just a letterbox?*

Mr Tyler: *In, in respect of that yes.*

Commissioner: *Were you familiar with the requirements of the LGA [1989] in terms of disclosure of donations to electoral campaigns?*

Mr Tyler: *I was aware that there were requirements for declarations to be made, yes.*

Although council CEOs are required to give the Minister for Local Government a list of names of the people who submitted returns within 14 days of the closure date for election donation returns,³⁹⁹ there is no obligation to check the accuracy of those returns or to pursue candidates who fail to submit a return.

³⁹⁸ LGA 1989, s 62(8) and LGA 2020, s 306(8).

³⁹⁹ LGA 1989, s 62A(1) and LGA 2020, s 307(1).

At the local government level, the issues observed in Operation Sandon show that donation caps are required and that timely public reporting must be supplemented with declarations. This becomes particularly important where a donor has an application before the council that has not yet been determined.

5.3.4 Parties and candidates soliciting donations

In Operation Sandon, candidates and political parties actively sought donations from Mr Woodman. This appears to have encouraged Mr Woodman to donate more over time, in the expectation that it would bolster his profile and influence with both parties.

Operation Sandon observed that Mr Woodman contributed to both major political parties through associated entities and other fundraising activities. These donations were not transparent. Candidates also felt pressured by the party they were aligned with to raise funds for their campaigns, which sometimes caused them to seek out donors for financial support.

5.3.4.1 Use of associated entities to court donations and other contributions

Political parties have established associated entities that are used in part to seek donations to finance election campaigns.

Mr Woodman paid considerable amounts for membership and tickets to networking and fundraising events run by both Progressive Business (Labor) and Enterprise Victoria (Liberal).⁴⁰⁰ In examinations, the then-executive directors of both organisations described the functions of associated entities as involving fundraising and networking or engagement. People would ‘invest’ in memberships or tickets in exchange for opportunities to attend events with state and federal ministers and MPs. Progressive Business’s Executive Director stated that one of the organisation’s primary functions was to raise ‘philanthropic funds for operational expenses of the State Victorian branch and the campaign’. Similarly, Enterprise Victoria’s Executive Director gave evidence that it was the events and fundraising body for the Victorian Division of the Liberal Party, saying, ‘it exists to raise funds to fund campaigns’.

These two entities had between 150 and 300 members each, and ran events each year, ranging from small-scale boardroom functions and business forums (of up to 25 attendees) to large-scale events such as ‘gala dinners’ and ‘cocktail events’ (for 400 to 600 attendees).⁴⁰¹

At Progressive Business, membership alone did not provide access to events, with members required to buy either individual tickets or packages to attend particular functions.⁴⁰² Such packages also provided other ‘documented benefits’, including preferential seating where possible. In examinations, the Executive Director of Progressive Business stated that, although it did not regularly do so, it could put together particular packages ‘to meet a client’s needs’.

One such tailored package was arranged for Mr Woodman. In January 2016, the Executive Director of Progressive Business put together a proposal for ‘Watsons/Schutz Consulting Pty Ltd’ that described Progressive Business, Watsons and Schutz Consulting ‘forming an important partnership’. That proposal noted that Watsons and Schutz Consulting were frequent contributors to Progressive Business, having ‘invested’ \$14,602 in event attendance in the six months from 1 July 2015, and offered attendance at a package of events for the remainder of the financial year, worth \$23,200, for the discounted price of \$10,500.

Reflecting on this proposal during examination, the Executive Director of Progressive Business was asked if it would be unfair to say that the proposal was akin to inviting an individual or entity to consider an investment (namely, the payment of a certain amount of money) in return for some form of benefit. They stated, ‘I think that’s fair. I would have used those words “investment”, absolutely’. Moreover, in examinations, Ms Schutz confirmed that Watsons received a favourable return on this investment, noting, ‘We got preferential treatment in terms of meetings ... I thought it was because Watsons was a platinum member of Progressive Business’. The fact that the Premier, in his evidence, agreed that his awareness of Ms Schutz was entirely a result of these functions,⁴⁰³ supports the proposition that these events serve to raise the profile of attendees with senior MPs.

400 See section 3.7.5, Party fundraising entities, for further details of Mr Woodman’s membership payments.

401 Large-scale events for Progressive Business included the Premier and Cabinet dinner and state budget breakfast.

402 Individual tickets ranged from \$400 for a member to attend the state budget breakfast, to \$1000 for a member to attend the Premier and Cabinet dinner, to \$5000 for a member to attend a boardroom lunch with a senior minister.

403 See section 3.7.6, The role of political lobbyists, for more detail.

At Enterprise Victoria, membership options ranged from \$2500 for an individual to \$60,000 for a leadership package (the highest level of corporate membership), which gave members entry to a range of events over a 12-month period, depending on their level of membership. In examinations, Enterprise Victoria's Executive Director said that the leadership package had no more than 10 members at any one time.

Mr Woodman held one of the leadership packages. In examinations, Enterprise Victoria's Executive Director said that Ms Wreford contacted them in early 2019 to advise that Mr Woodman wanted to donate to the organisation. As a result, Mr Woodman ultimately contributed \$70,000 in 2019, which was \$10,000 more than the \$60,000 fee for the 'leadership package'. In a lawfully intercepted telephone call between the Executive Director and Mr Woodman on 26 February 2019, the Executive Director demonstrated the benefits of holding a leadership package, asking Mr Woodman:

Would there be any value in me organising a meeting with you and [the Liberal Opposition leader] and [the Liberal Party state president] in their new positions as State President and Opposition Leader? Would that be of value to you in the next few weeks or are you all right?

Later in the conversation, when the Executive Director sought to discuss the renewal of Mr Woodman's membership, Mr Woodman said:

Well – a lot depends – I've got a few things I need to talk to [the Liberal Opposition leader] about and I need their support – at a state level and depending on how those conversations go – you know, yeah – I'm always happy to contribute ...

This conversation reveals not only Enterprise Victoria's desire to ensure that highly ranked members received a return on their 'investment', but also a willingness to support Mr Woodman's desire to engage with senior Liberal Party representatives. The issue of privileged access to senior elected officials via events, including those organised by Progressive Business and Enterprise Victoria, is discussed in Chapter 6.

In examinations, both organisations' executive directors asserted that membership fees of their organisations were not technically donations. However, both conceded that in practice their entities raised funds that were donated to the Victorian branches of the Labor Party and the Liberal Party.

The Progressive Business Executive Director said they told members that the organisation's donor activity was ancillary, occurring only if and when there were surplus funds, but they acknowledged that the way in which some members engaged with Progressive Business suggested that their membership meant 'something else to them, [more] like a donation'. The Executive Director said that the management committee of Progressive Business led the process for determining the amount and timing of donations it made to the Labor Party, and it was 'planned for a year in advance around September of the year prior', adding:

if it wasn't an election year, I was donating anywhere from \$150,000 to \$200,000 per quarter. But up [until] before the election there was – could have been – the last five weeks of when I was able to, I was donating \$100,000 a week for five weeks.

At Enterprise Victoria, the Executive Director said that between 2012 and November 2018, all contributions were paid into a 'general campaign fund' held by the Victorian Division of the Liberal Party, which the state director allocated to campaign activities at their discretion. However, after the Electoral Act donation reforms, Enterprise Victoria adopted a default position of directing all contributions to the federal campaign fund, circumventing the state regulations. The Executive Director said that if a person indicated that they wanted their membership to go to the state campaign, those monies would be paid into the federal fund, then the finance director would reallocate up to \$1000 per annum to the state fund, in accordance with the donation cap.

5.3.4.2 Fundraising events

During examination, Mr Woodman agreed that, in addition to making contributions to associated entities, parties and candidates, he also bought tickets to fundraising events and ran fundraising events for candidates. In this way, Mr Woodman helped to raise funds for a number of state election candidates across the political spectrum. For instance, in addition to making monetary donations to their campaign, Mr Woodman also supported Councillor A by buying tickets to at least three fundraising events.

Mr Woodman said that the fundraising events he held were at a conference venue, generally involved 20 to 30 people and cost him on average \$3000 per event. Fundraising events run by Mr Woodman included a function at a conference venue for Mr Perera, Ms Judith Graley and another Labor MP in November 2014. After details of Mr Woodman's donor activity were published in *The Age*,⁴⁰⁴ Mr Woodman and Mr Staindl joked, in lawfully intercepted communications, that the November 2014 function was just one of many fundraising events. The following exchange encapsulates Mr Woodman's motivations and efforts to conceal his donations:

- Mr Woodman: *Oh was it? I can't remember, geez we've run so many of these things.*
- Mr Staindl: *Yeah I know, I felt like saying (inaudible) 'Fuck. You've only found out about one?'*
- Mr Woodman: *Ha-ha, yeah, what about the other 20? I got to tell you so that you can ...*
- Mr Staindl: *Hang on mate, just let me finish this, the reason I spoke to him was because [a Labor MP] had told him it wasn't a Watsons function, it was a Staindl function and I'm happy to wear that. I said to um, [a journalist], that I ran it and I invited my client [of] which Watsons were one, and a range of other business contacts, so make sure we hold to that line because that particular function was just a Watsons function.*
- Mr Woodman: *Yeah, yeah, no, I'm glad that you did that. Um, I got to tell you just so you can rest easy, I submit to [a law firm], my list of who I ...*

- Mr Staindl: *donations*
- Mr Woodman: *... donate to and they and ... my Chief Financial Officer for the group go through it and um ...*
- Mr Staindl: *Good*
- Mr Woodman: *... so they vet, they vet which ones are going to be you know ...*
- Mr Staindl: *declared*
- Mr Woodman: *... whatever, whatever. So it's not just me deciding, it's quite sophisticated the way we do it, so um, yeah I mean, um ...*
- Mr Staindl: *Look, it's still going to be a negative, because [the journalist] is out to get you and he hates lobbyists like me and the imputation he is trying to create is that by me organising a function where you're invited and it's on behalf of, the function is to raise funds for the South East MPs, that is giving you undue access and influence to them.*
- Mr Woodman: *Yeah, which is exactly right.*

At the time of the conduct under investigation, no declaration requirements existed at the state level.

The issue concerning fundraising events and declarations is also illustrated by an example involving Mr Woodman's investment in local government. For the 2016 Casey Council elections, Mr Woodman helped to facilitate a fundraising event for Councillor Gary Rowe at a conference venue, which raised around \$10,000. In examinations, Councillor Rowe said that he organised and invited people to the fundraising event, which people paid about \$450 to attend, and while Mr Woodman made arrangements and attended, he did not make a separate donation. Although each ticket cost less than the \$500 gift threshold in the LGA 1989, in examinations Councillor Rowe conceded that a person could buy more than one ticket, which would trigger the requirement for him to declare an election campaign donation,⁴⁰⁵ but said he did not know who bought multiple tickets or how many they may have bought.

⁴⁰⁴ Millar, R, Schneiders, B 2018, 'Labor MPs in Leighton rezoning row', *The Age*.

⁴⁰⁵ Gifts valued at \$500 or more must be disclosed in an election campaign return: LGA 1989, s 62(1) and Local Government (Electoral) Regulations 2016, Part 8; and LGA 2020, s 306(1) and Election donations and Local Government (Electoral) Regulations 2020, Part 4, Division 5.

Councillor Rowe's 2016 election campaign donation return did not reflect the \$10,000 raised at this event. However, it did include a notation that he 'sought advice on the issue of fundraising functions' from the LGI on 22 November 2016 and was told, 'As each person paid less than \$500 to attend, the total raised is not relevant and does not need to be disclosed. Therefore, expenditure of those funds is also not relevant'. This demonstrates a need for a clearer definition of fundraising, and guidance on how to treat funds paid and raised at such events, so that fundraisers do not circumvent donation limits and declaration requirements.

5.3.4.3 Pressure to fundraise with no limits set on expenditure

In Operation Sandon, IBAC received evidence that there is significant party pressure on politicians to raise funds, causing them to seek out donors.

The pressure experienced by candidates to raise funds was discussed by Ms Wreford, who talked about her experience as a backbencher in the Liberal Party:

So when you are a member of parliament you are expected by your party to raise funds for the next election, and the expectation on myself as a backbencher was that I was to raise around \$140,000 over a four-year period.

Similarly, when asked if there were fundraising targets that candidates were expected to reach, Ms Graley stated that, as a Labor Party backbencher:

There is a ballpark figure every election around about [\$]30,000 or [\$]40,000 ... And also in some cases being a marginal seat the ALP office would say, 'We will give you a package of [\$]30,000 or [\$]40,000; whatever the figure may be, and they will ask us to fund half of it or something like that. So we have to locally raise that amount of money.

This pressure to raise funds has been partly alleviated by the increased public funding for elections that accompanied the 2018 donation reforms, 'to reduce the reliance on private donations', with the Attorney-General adding that 'this recognises that the proposed caps on political donations will reduce how much money candidates can raise'.⁴⁰⁶

During examination, Ms Graley commented on the role that lobbyists played in connecting candidates with donors for fundraising events:

One of the easiest ways to get people to sit around in a fundraiser lunch was to contact one of your lobby firms ... that have brought clients to discuss issues with you and asked them if they would like to bring a client to the table. That's what's happened. I think most people would be doing that.

This was confirmed by Mr Woodman, who noted that Mr Staindl, a registered lobbyist, 'assisted in the arranging of fundraising functions and would be the go-between ourselves and the politicians to invite them'. Mr Staindl conceded that 'a number of lobbyists certainly would assist in organising fundraising functions for MPs because that – you're probably correct, that was the culture of the time'.

Setting spending limits for parties or candidates during electoral campaigns can help reduce the overall cost of elections and reduce the pressure on political parties and candidates to bolster their financial resources. In turn, this would diminish the incentives for improper influence and the risk of corruption.⁴⁰⁷

⁴⁰⁶ Attorney-General, The Hon M Pakula, 10 May 2018, Second Reading Speech, Electoral Legislation Amendment Bill 2018, Legislative Assembly, Hansard, p 1348.

⁴⁰⁷ OECD 2016, Financing Democracy: Funding of political parties and election campaigns and the risk of policy capture, p 55.

5.4 Proposed policy reform

Operation Sandon showed how Mr Woodman – a well-resourced property developer – was able to ‘invest’ across political parties and levels of government through donations, in-kind support, memberships of the major parties’ associated entities, and attendance at fundraising functions and other events. This investment gave the perception, at a minimum, that his interests would be promoted, potentially at the expense of the public interest.

The property development industry has been identified as one of the largest contributors of political donations at the federal level. An analysis of donations disclosed to the Australian Electoral Commission, conducted by the Centre for Public Integrity, suggested that in the two decades from 1999 to 2019, the property and construction industry contributed around \$54 million in *disclosed* donations.⁴⁰⁸

Similarly, the Grattan Institute reported in 2018 that in Queensland the property and construction industry invested more heavily in donations than in commercial lobbying contacts or meetings with senior ministers.⁴⁰⁹ The report also compared donations by industry, noting that, of the \$5.5 million of donations considered in the Queensland analysis, more than a quarter came from the property and construction industry, followed by the mining and energy industry and the transport industry, each of which accounted for one-tenth.⁴¹⁰

IBAC received expert evidence from Dr Yee-Fui Ng, Senior Lecturer in the Faculty of Law at Monash University, on the factors that motivate people to donate:

Part of it might be ideology, so they might want to support a certain political party. Beyond that there might be an idea that they could gain preferential access or influence by making large sums of donations – and that’s what we see, that some people donate to both sides of politics, which suggests that it’s not really about ideology, it’s about trying to back the winning horse, and if you back the winning horse you might get more access and influence, particularly if the sum of the donation is very large.

The volume and broad application of Mr Woodman’s donations probably reflect the contributions made by the property and construction industry more generally, in pursuit of access and influence.

Other jurisdictions have reduced this risk by banning donations from ‘prohibited donors’, including developers. The *Electoral Funding Act 2018* (NSW) and *Electoral Act 1992* (Qld) both make it unlawful for:

- a prohibited donor to make a political donation
- a person to make a political donation on behalf of a prohibited donor
- a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor
- a prohibited donor to solicit a person to make a political donation
- a person to solicit, on behalf of a prohibited donor, another person to make a political donation.⁴¹¹

⁴⁰⁸ The Centre for Public Integrity 2018, *Case Study: The property and construction industry*, p 1.

⁴⁰⁹ Grattan Institute 2018, *Who’s in the room? Access and influence in Australian politics*, p 19.

⁴¹⁰ *Ibid.*, p 19. Data relates to donations as at April 2018, prior to the introduction of legislation to ban donations from property developers in Queensland.

⁴¹¹ *Electoral Funding Act 2018* (NSW), s 52 (which governs state and local government donations), and *Electoral Act 1992* (Qld), s 275. Note that the same wording is reflected in *Local Government Electoral Act 2011* (Qld), s 113B.

In 2017, the Queensland Crime and Corruption Commission (CCC) reported on Operation Belcarra, its investigation into the conduct of candidates for numerous councils, which found widespread non-compliance with legislative obligations regarding donations at the local government level. The CCC concluded that transparency measures alone were insufficient to manage the risks of corruption associated with donations from property developers, particularly given the ‘inevitably close connections between property development interests and local government decision-making’. The CCC recommended that candidates, groups of candidates, third parties, political parties, associated entities and councillors be prohibited from receiving gifts from property developers,⁴¹² adding:

*There is a real risk of corruption when donations are made with the expectation that the recipient will, in return, make decisions that deliver material benefits to the donor. This risk is heightened when donors have business interests that are affected by government decisions. At the local government level, this risk is particularly associated with property developers. Decisions about zoning, development applications and the like significantly and directly influence the success and profitability of such businesses, and planning and development is one of the few policy areas within the domain of local government.*⁴¹³

Although the implied freedom of political communication limits the extent to which political donations can be banned,⁴¹⁴ the High Court in *McCloy v New South Wales* confirmed that capping or banning donations from developers could be justified if appropriate and adapted to the legitimate purpose of preventing corruption and improper influence.⁴¹⁵ The Court noted that ‘it is not the subjective intention of the donor so much as the objective tendency of large payments of money to corrupt both government and the electoral system which is the justification for the restriction’.⁴¹⁶

A prohibition on donations from developers would have a legitimate purpose in Victoria, although the general cap of \$4000 over a four-year state election period means that no individual donor can exercise greater influence than others by making exceptional political donations.⁴¹⁷

The Taskforce should consider banning donations from property developers at the state and local government levels, as New South Wales and Queensland have done.⁴¹⁸ If it recommends a ban, the Taskforce should identify other high-risk industries that may warrant prohibition, noting that any decision to ban donations from a particular industry must be proportional to avoid breaching the implied freedom of political communication.⁴¹⁹

In a 2021 review of Australian political finance laws, Dr Ng observed that, to prevent corruption and improper influence, low general caps on donations may be more effective than sector-specific bans.⁴²⁰ Arguably, banning donations from developers (and other groups) may be counterproductive, as it could push contributions underground and complicate the donations regime by making it necessary to define and police who is a developer. Another option is a low, well-defined and enforced general cap together with rigorous donation and expenditure declaration requirements.

⁴¹² Qld CCC 2017, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, pp 76 and 78, Recommendation 20.

⁴¹³ *Ibid.*, p 76. Operation Belcarra investigated allegations that candidates for the 2016 local government elections failed to properly declare donations they had received, misled voters by publicly denying they had received funding from certain sources and received donations from property developers with business interests subject to council consideration.

⁴¹⁴ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 confirmed that making a donation is an element of a person's implied constitutional right to expression of political thought. *McCloy v New South Wales* (2015) 257 CLR 178; 89 ALJR 857 confirmed that while capping donations and banning donations from developers burdens the implied freedom of political communication, that burden is legitimate and proportional in that it is appropriate and adapted to the legitimate purpose of preventing corruption and improper influence.

⁴¹⁵ *McCloy v New South Wales* (2015) 257 CLR 178; 89 ALJR 857.

⁴¹⁶ *Ibid.*

⁴¹⁷ *Electoral Act*, ss 206(1) and 217D. Note that the \$4000 cap is indexed annually. See vec.vic.gov.au/candidates-and-parties/political-donations/indexation. In the 2019/20 financial year the cap was \$4080 and in the 2020/21 financial year the cap was \$4160. Also see Twomey, A 2015, ‘*McCloy v New South Wales: Developer Donations and Banning the Buying of Influence*’, *Sydney Law Review*, vol. 37, 275, p 280.

⁴¹⁸ *Electoral Funding Act 2018* (NSW), s 52, *Electoral Act 1992* (Qld), s 275 and *Local Government Electoral Act 2011* (Qld), s 113B. See discussion below for further detail.

⁴¹⁹ *Unions NSW v New South Wales* (2019) HCA 1 at 45 per Kiefel C, Bell, Keane J.

⁴²⁰ Ng Y-F 2021, *Regulating Money in Democracy: Australian Political Finance Laws Across The Federation*, p 110.

Recommendation 13

IBAC recommends that the Premier ensures that the Taskforce considers and recommends whether the regulatory regime governing donations in Victoria would be strengthened by identifying and prohibiting high-risk groups (including, but not limited to, property developers) from making political donations to political entities and state and local government candidates.

The lack of transparency around Mr Woodman's investment at the state and local levels of government limited the information available to the Victorian community about his contributions, or whether improper influence was being exercised in the many developments in which he was involved. A regulatory regime is needed at state and local government levels that prevents privileged access and its attendant risk of improper influence.

IBAC's Donations & Lobbying special report examined the corruption vulnerabilities in Victoria's regulation of political donations. The report included two recommendations for legislative reform to improve transparency and accountability at both state and local levels of government.

The conduct exposed in Operation Sandon provides further evidence of the need for reform, especially to:

- strengthen existing state declaration processes to make it harder for donors and candidates to conceal donations by splitting them into smaller amounts, giving in-kind support, moving funds within parties or using third-party campaigners
- align local government donation cap and disclosure requirements with amended state provisions where possible
- work towards 'real-time' public reporting of donations at the state and local levels of government, because giving voters access to this information before elections reduces the risk of donations enabling improper access and influence
- improve monitoring of donations by requiring dedicated campaign accounts at the state and local levels, improved reporting of candidates' expenditure and publication of information about fundraising events
- create more effective mechanisms for enforcing donation regulations
- limit campaign expenditure to reduce the pressure on candidates to raise funds.

These recommendations from the Donations & Lobbying special report must be implemented to address the vulnerabilities of the political donations regime observed in Operation Sandon. The Taskforce should advise the independent expert panel review of the 2018 electoral reforms so that its report also deals with the corruption risks specific to Operation Sandon.

Recommendation 14

IBAC recommends that the Premier ensures that the Taskforce advises the independent panel review of the 2018 electoral reforms to ensure its report appropriately addresses the corruption risks of political donations highlighted in Operation Sandon.

Summary

Operation Sandon highlighted how lobbying can provide privileged access to decision-makers in an environment of minimal oversight and regulation. It showed how an individual such as Mr Woodman could use registered lobbyists and engage in unregulated lobbying to seek to further his interests, without sufficient transparency or accountability.

The investigation exposed vulnerabilities in Victoria's current system of lobbying regulation: the scope of lobbying regulation is unduly restricted and narrow, and current controls and enforcement mechanisms are weak.

Operation Sandon also showed how lobbyists may target ministers, MPs, councillors, ministerial advisors and electorate officers, and how these risks are exacerbated by the limited transparency and oversight arrangements governing their positions.

Previous IBAC investigations and special reports noted many of these risks and recommended reforms to manage them. Operation Sandon provides further evidence for these reforms. Specifically, it demonstrates the need to:

- strengthen the monitoring and enforcement of lobbying regulation in Victoria
- broaden the scope of lobbying regulation to focus on the activity being undertaken and capture all contact designed to influence government and parliamentary functions
- ensure transparent dealings between lobbyists and public officials – including ministerial advisors and electorate officers – through better record-keeping
- strengthen the accountability of, and oversight over, ministerial advisors and electorate officers.

6.1 Introduction

Lobbying plays a legitimate role in the democratic process, helping to communicate the views of individuals and different parts of the community to decision-makers. Such access, however, carries the risk that the decision-making process may become distorted or corrupted. Privileged access increases this risk.

Mr Woodman used both formal and informal lobbying to seek to influence planning decisions and to progress his interests at the local and state government levels. Victoria's current regulatory framework lacks sufficient safeguards against such conduct. Though better regulation of lobbying activity cannot entirely eliminate these lobbying risks, it can significantly reduce them. However, Victoria's very limited regulation of lobbying falls short of the legislative regimes in New South Wales and Queensland. Both those states have committed to further reforms.⁴²¹

While Operation Sandon did not reveal misconduct or corruption by any ministerial advisor or electorate officer, it did identify how lobbyists perceived these officials to hold positions of potential influence and therefore targeted them as part of their efforts to progress Amendment C219. The risk that this might result in improper influence was magnified by the relative ease with which Mr Woodman and his associates were able to interact with these officials without any transparency, and the limited arrangements in place to ensure they are appropriately accountable and supervised.

These observations accord with other IBAC investigations, most notably Operations Watts and Daintree, regarding the increasing corruption risks associated with the rise in the number and influence of political staff.⁴²²

⁴²¹ NSW ICAC 2021, *Investigation into the regulation of lobbying, access and influence in NSW* (Operation Eclipse) recommended substantial reforms to lobbying regulation in NSW. Coaldrake, P 2022, *Review of culture and accountability in the Queensland public sector*, called for further reform to lobbying regulation in Queensland.

⁴²² IBAC 2023, Operation Daintree Special Report, www.ibac.vic.gov.au/node/891; IBAC 2022, Operation Watts Special Report, www.ibac.vic.gov.au/node/326.

The Donations & Lobbying special report, which IBAC tabled in the Victorian Parliament in October 2022, included two comprehensive recommendations to strengthen Victoria's lobbying regulation.⁴²³ The reforms aimed to codify and increase the scope of lobbying requirements and restrictions, ensure lobbying transparency, and improve enforcement. In response to the report, the Victorian Government released a statement supporting the recommendations in principle and committing to their implementation in this term of government.⁴²⁴

IBAC's recommendations in the Donations & Lobbying special report, as well as those made in relation to lobbying risks in Operations Clara, Watts and Daintree, must be implemented to counter the risks highlighted in Operation Sandon, thus preventing lobbying from being used for corrupt or improper purposes.

6.2 Legislation and policy governing lobbying

The Lobbyist Code of Conduct, issued by the Premier and in place since November 2013, is designed to ensure that lobbying occurs 'in accordance with public expectations of transparency, integrity and honesty'.⁴²⁵ Any lobbyist who wishes to lobby a government representative must be registered and agree to comply with the code.

The Lobbyist Code of Conduct:

- defines 'lobbying activity', 'lobbyists', 'government affairs directors', and 'government representatives' (these definitions are discussed below)
- mandates a register of lobbyists, stipulates the details to be maintained on the register, and obliges government representatives to make sure that they are not lobbied by unregistered lobbyists
- requires a registered lobbyist to submit an annual statutory declaration on certain integrity matters (for example, conviction or imprisonment)
- provides a 'cooling-off' period that prohibits certain former government representatives from lobbying on any matter they have officially dealt with during the last 12 months (18 months for former ministers)

- sets out the principles that lobbyists and government affairs directors must observe when engaging with government representatives
- prohibits registered lobbyists from receiving success fees that are contingent on the tendering or awarding of a public project on or after 1 January 2014.⁴²⁶

While policy responsibility for the code rests with the Department of Premier and Cabinet, pursuant to the *Public Administration Act 2004* (Vic) (Public Administration Act), the Victorian Public Sector Commission is responsible for maintaining the lobbyist register required under the code.⁴²⁷

However, the Victorian Public Sector Commission has no powers to require information to be provided about lobbying activity or code compliance, or to investigate alleged breaches. Although it can request information if it suspects unregistered lobbying, it has no mechanism to compel compliance – other than refusing registration. IBAC is not aware of any applications for registration being declined, nor of lobbyists being deregistered for contravening the code.

6.3 Issues identified in Operation Sandon

Operation Sandon exposed three broad deficiencies in the current regulation of lobbying in Victoria:

- The scope of existing lobbying regulation is too narrow.
- Inadequate regulation of interactions between lobbyists and government representatives allows lobbyists to gain privileged and non-transparent access to decision-makers and those with influence.
- The existing controls on success fees, lobbyist involvement in political activities and cooling-off periods are not effective.

⁴²³ IBAC 2022, Special report on corruption risks associated with donations and lobbying, www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-donations-and-lobbying.

⁴²⁴ Premier of Victoria 2022, Action and funding to deliver integrity reforms, www.premier.vic.gov.au/action-and-funding-deliver-integrity-reforms

⁴²⁵ Victorian Public Sector Commission 2023, Victorian Government Professional Lobbyist Code of Conduct, s 1.4, www.lobbyists.vic.gov.au/code-of-conduct.

⁴²⁶ Ibid.

⁴²⁷ Public Administration Act, s 66.

6.3.1 Narrow scope of lobbying regulation

In Operation Sandon, IBAC observed that lobbying was conducted by people who did not identify themselves as being in the business of lobbying or who failed to register as lobbyists and, therefore, were not subject to regulation. At times, these individuals, including MPs and a planning consultant employed by Mr Woodman, asserted that they were advocates for their community or clients, or that any lobbying activity was incidental to their professions.

This section shows how the current scope of lobbying regulation failed to capture and manage these activities.

6.3.1.1 Narrow definitions of lobbying

Operation Sandon exposed lobbying that was undertaken to seek to influence government decision-making, but that did not fall within the scope of the Lobbyist Code of Conduct.

The conduct of Ms Schutz was a prime example. Ms Schutz ran Schutz Consulting, a planning consultancy business that worked almost exclusively for Mr Woodman and his companies.⁴²⁸ Although not registered as a lobbyist, Ms Schutz engaged in lobbying. This included attending events at which MPs and ministers were present, where she attempted to push Mr Woodman's planning matters. For example, on 17 October 2018 IBAC legally intercepted a telephone call between Mr Woodman and Ms Schutz in which Ms Schutz recounted her attempt to raise the Cranbourne West matter with the Minister for Planning at a planning round-table.

Ms Schutz was also involved in establishing SCWRAG. She gave evidence that Mr Woodman asked her to engage the Walkers to 'lobby council and state government and to gain community support to lobby around Hall Road'.

Ms Schutz also made frequent contact with the office of Mr Perera, the Member for Cranbourne, between 2002 and 2018, on behalf of SCWRAG, to lobby for Amendment C219. Due to the MP's health problems at the time, much of this lobbying activity involved direct communication with his electorate officer. For example, in an email to Mr Woodman and Mr Kenessey, Ms Schutz recounted a telephone conversation she had had with the electorate officer that day, saying, '[they] said that [they have] briefed [consultants] using our figures and that shows there is 65 years of industrial land supply in Casey'.

Ms Schutz's claimed 'advocacy' for Mr Woodman's interests was lobbying, and indeed fell within the definition of lobbying activity in the Lobbyist Code of Conduct (namely, any contact with a government representative in an effort to influence government decision-making). However, the code leaves it open for interpretation as to whether Ms Schutz was a 'lobbyist' as defined in the code, because it excludes from its definition of lobbyist:

*members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision by them of their professional or other services.*⁴²⁹

But the code also states that:

*... if a significant or regular part of the services offered by any person employed or engaged by a firm of lawyers, doctors or accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm offering those services must register and identify the clients for whom they carry out lobbying activities.*⁴³⁰

IBAC considers that Ms Schutz's representations to government on behalf of Mr Woodman were *not* incidental to her business activities. They were a significant and regular part of the services she offered and therefore she should have registered as a lobbyist.

⁴²⁸ In fact, Ms Schutz gave evidence that over time, she worked almost exclusively for Mr Woodman.

⁴²⁹ Victorian Public Sector Commission 2023, Victorian Government Professional Lobbyist Code of Conduct, s 3.4(f).

⁴³⁰ Ibid.

The Lobbyist Code of Conduct needs greater clarity on what constitutes lobbying. In evidence to IBAC, some witnesses stated that they were advocating rather than seeking to influence decision-making. For example, Councillor Ablett described his actions in seeking to progress Mr Woodman's matters before Council as 'advocacy', while Ms Schutz also suggested that her actions in seeking to further Mr Woodman's interests with Councillor Aziz were advocacy, asking, 'am I influencing Councillor Aziz or am I just advocating ...'.

Currently, only the public officer who is meeting with the service provider is required to determine whether the activity is 'lobbying', leaving room for differing views while hindering accountability. Instead, to properly account for the risks revealed by Operation Sandon, lobbying activity should be defined so as to clearly capture *any* lobbying activity, regardless of whether it is a regular part or incidental to the person's profession or business. The onus must also be placed on the person lobbying to record and make known to the person being lobbied whose interests the lobbyist represents.⁴³¹

Further, although the code's definition of lobbying refers to several forms of government decision-making, such as making legislation or awarding contracts, it does not specifically include planning decisions or development approvals. The definition also excludes certain activities, including petitions or communications of a grassroots campaign nature that attempt to influence a government policy or decision. Operation Sandon makes it apparent that these exclusions are not appropriate.

6.3.1.2 Lobbying by MPs

Lawfully intercepted conversations showed how Mr Woodman and Mr Kenessey sought out MPs who would lobby the Minister for Planning on Amendment C219 on their behalf:

Mr Kenessey: *Is there any other – is there any other way we could get to [the Minister for Planning] do you reckon? Like, if we put in a fresh face just if there is some other bloody – someone other than Phil [Staindl] or do we know anyone who's close to [them] that we could use? Or is that – just – just leave it as is for now till we get more info?*

Mr Woodman: *Um, is there any new – did you say is there anyone new?*

...

Mr Kenessey: *– you know – you know how Phil's close to a lot of the polities – do we know anyone who is really close to [the Minister for Planning] that we're not using that we could use?*

Mr Woodman: *Yeah, yeah, I know exactly someone – Pauline Richards.*

At the time of the conversation, Ms Richards was the Member for Cranbourne.

IBAC heard evidence of MPs lobbying ministers on Mr Woodman's planning developments. It must be recognised that there is an important distinction between an MP lobbying on behalf of an interested party, and an MP advocating for the interests of their local community.

⁴³¹ See section 6.3.2.3, Poor transparency around access to elected officials.

An example is the conduct of the member for Narre Warren South, Ms Graley, in relation to Amendment C219. Ms Graley, who received financial support for her campaign from Mr Woodman, was approached to lobby the Minister for Planning on Amendment C219. Her evidence was that she did not approach the Minister or their office, but did have an informal hallway discussion with an advisor to the Minister. However, an email sent by Mr Staindl to Mr Woodman on 20 June 2018 said, referring to Ms Graley:

Our good friend in the south east contacted me a short time ago and I will be circumspect in writing with this advice. She spoke to the Minister about the matter, which in turn directed her to [one of their advisors on the matter] for more detailed discussion.

According to Mr Staindl, the purpose of Ms Graley's communication with the Minister for Planning was to reinforce the importance of the success of Amendment C219, and to contextualise it as a make-or-break election issue.

The MPs who advocated on behalf of Mr Woodman stated that they did not believe they were engaging in lobbying activity. Rather, they contended that they were representing their communities. The Lobbyist Code of Conduct does not address lobbying activity that occurs *between* government representatives – that is, the lobbying of a minister conducted by an MP.⁴³²

As discussed in more detail below, during his tenure as Member for Cranbourne, Mr Perera was the focus of lobbying on Amendment C219 and, in turn, he effectively lobbied the Minister for Planning and the Victorian Parliament (including via letter and petition) on the matter. When advocating in support of the rezoning, Mr Perera did not disclose that he was the recipient of financial contributions from Mr Woodman or that he had been lobbied by Mr Staindl and others.

In his evidence, Mr Perera said, *'[As MPs] we are only sort of lobbying, we are writing to the Minister, lobbying the Minister. That's all'*. Mr Perera agreed that *'[his] office became a form of lobbying to the Minister'* in relation to Amendment C219. However, he also said he believed he was acting in the best interests of his constituents.

In evidence to IBAC, the Minister for Planning stated:

Question time is the most significant part of the Parliamentary day, and it is the best opportunity for the opposition to test executive government in front of the media and the backbench. It is a combative environment.

However, away from the cut and thrust of question time, most MPs are pretty reasonable. As I move about the Parliament building, I often encounter other MPs or their staff, and when I do, it is not uncommon for them to raise planning matters with me. If time permits, I have the conversation and, if appropriate, follow up with one of my advisors regarding the issue. If I don't have time, I explain that and make other arrangements to talk with them or arrange for an advisor to contact them. I don't play politics with these queries, and try to be clear in my communication with other MPs, regardless of their party allegiance.

There is no formal record of these conversations. This is because they are, by their nature, informal, and in my view, it is important that MPs be able to make enquiries and representations of this type. Of course, in many instances, the informal conversation will be followed by correspondence or lead to other more formal representations regarding which a record would be made.

In Operation Sandon, those MPs who approached the Minister for Planning or their chief of staff regarding the Cranbourne West rezoning in a way that supported Mr Woodman's interests had previously received donations from Mr Woodman. The Minister for Planning would not have been aware that the MPs lobbying him had received a benefit from a person whose interests they were representing, because MPs are required to declare a conflict of interest only when they are involved in making a decision – not when they seek to influence the decision of a minister.⁴³³

⁴³² The investigation did not explore whether the MPs who approached the Minister for Planning, regarding Mr Woodman's interests, considered themselves as lobbyists or considered this communication as lobbying activity.

⁴³³ *Members of Parliament (Standards) Act 1978* (Vic), s 7(2).

An important part of MPs' duties includes advocating on behalf of their constituents. As such, the extent to which communications between government representatives should be subject to lobbying regulation requires careful examination. As part of their overarching responsibility to carefully interpret and balance the views of all stakeholder representations that they receive, ministers are equally responsible for carefully examining representations from MPs.

Regardless, Operation Sandon demonstrates how lobbyists and other parties can target MPs to promote their interests in the hope of influencing government decision-making. Stronger regulation is needed to prevent MPs' advocacy from being co-opted and misused by those with money or power. This is particularly important when an MP has received a benefit, such as a donation, from the interested party.

6.3.1.3 Lobbying at the local government level

Operation Sandon revealed lobbying at the local government level. This activity was not subject to sufficient regulation to counter the associated risks. The Lobbyist Code of Conduct applies to the state government only, and there are no lobbying controls in the LGA 2020.

Ms Schutz gave evidence that part of her role in working for Mr Woodman involved lobbying on his behalf, although she was not a registered lobbyist. For example, when asked about her 'coaching' of Councillor Aziz on how to debate in the Casey Council meetings for Mr Woodman's interests in the Hall Road matter, Ms Schutz stated, 'I'm lobbying, I'm advocating arguments', and 'I was lobbying arguments as a planner that supported my client's position'.

Geoff Leigh, a registered lobbyist who worked for Mr Woodman, agreed during examination that part of his role was to meet with bureaucrats at both state and local government levels. He told IBAC that he 'would certainly argue the case to [councillors] in memos or whatever'. Mr Leigh gave evidence that when Ms Wreford was a councillor at the City of Casey he dealt with her on the Brompton Lodge matter, and later with Councillor A on the same matter.

Mr Woodman also gave evidence that he engaged in 'persuading' stakeholders, including the core group of Casey councillors, to support planning matters including Amendment C219. This evidence aligns with emails that

IBAC found which show that in February 2014, Mr Woodman communicated with Councillor Aziz, Councillor Ablett and Councillor A, providing a brief that outlined the arguments in support of the Cranbourne West rezoning.

Some Casey councillors also lobbied one another, including when they were technically complying with the LGA 1989 by declaring a conflict of interest and not voting on relevant matters. For example, Councillor Ablett declared a conflict of interest and did not vote on Mr Woodman's matters after January 2015. However, he lobbied other Casey councillors to vote in support of Mr Woodman's projects.

At the time of Operation Sandon, the City of Casey had guidelines for councillors about meeting with parties who had applications before the Casey Council. The *Protocols for Councillors in Administering Planning Applications* advised councillors not to risk compromise by appearing to be an advocate for or against a proposal, or by having meetings with parties to an application without Casey Council officers or the other parties being present.⁴³⁴ The onus appeared to be on councillors to ensure this occurred. In Operation Sandon, IBAC identified that this was not observed consistently:

- Although Councillor Aziz claimed that 'a councillor would always meet with someone like [Mr Woodman] with a Council officer present', Mr Woodman admitted in his examination that this did not always happen.
- Ms Schutz told IBAC, 'Sometimes there were meetings where councillors were in attendance when Council officers were there. But when Mr Woodman had asked me to go and brief a councillor, the councillor – there might be Lorraine [Wreford] there, but, no, there was no Council officer there'.

New guidelines have since been issued and published on the Casey Council's website which provide stronger direction on how to handle meeting requests from people with applications before the Casey Council.⁴³⁵ Requests for meetings must be referred to the Casey Council Support Officer for coordination, and these meetings will be held in the 'presence of a senior member of the Planning and Building Department or Growth and Investment Department and the Director City Planning and Infrastructure'. When communication does occur without Casey Council officers present, records of the discussions must be given to the Casey Council Support Officer to be placed on file.

⁴³⁴ City of Casey 2017, *Protocols for Councillors in Administering Planning Applications*.

⁴³⁵ City of Casey 2020, *Protocols for Councillors – Land Use Planning*.

Although these new guidelines are a step in the right direction, risks arising from unregulated lobbying apply to all councils across Victoria, not just to the Casey Council. Further reform is needed to address these challenges across local government, including by bringing it in line with state-level regulation and by placing obligations on both councillors and lobbyists to manage such risks.

6.3.2 Lobbying enables privileged and non-transparent access to decision-makers and persons with influence

Mr Woodman was a successful businessperson, with the political connections and financial resources to seek to further his property and development projects with councillors and state government representatives. His ability to gain access to decision-makers and those who could potentially influence decision-makers, including through registered lobbyists, networking forums and fundraising events, meant that his interests were represented with little or no transparency.

Mr Woodman worked with lobbyists who had links to both major political parties. Ms Schutz observed in her public examination:

[Mr Woodman] always had a bet each way. If there was confidence that a particular party would be remaining in government, then the donations he was going to be providing would go to the party who, you know, would be the decision-maker.

These lobbying efforts gave Mr Woodman privileged access to decision-makers – that is, access that is not broadly available to others in the community – and an unfair advantage in promoting his interests over others in the community.

Mr Woodman's access and influence were exacerbated by a lack of transparency and regulation governing interactions between lobbyists and government representatives. Reform is needed to manage this risk and protect the fairness of Victoria's democratic decision-making processes.

6.3.2.1 Access through lobbyists and associated connections

Mr Woodman used registered lobbyists to obtain privileged access to decision-makers who had the potential to further his interests in the proposed Cranbourne West rezoning (Amendment C219).

As a registered lobbyist, Mr Staindl provided privileged access to elected officials who could exert influence or who had a role in making decisions on Amendment C219. Mr Woodman relied extensively on Mr Staindl to speak to MPs, ministers and political staff, including the Minister for Planning's chief of staff.

IBAC lawfully intercepted several conversations in which Mr Woodman and Mr Staindl spoke about meetings and conversations with MPs or ministers, during which the proposed rezoning was discussed. In October 2018, Mr Woodman told Mr Staindl that he wished to meet with Ms Richards, the Labor candidate for the state seat of Cranbourne, to discuss supporting her election campaign *and* the Cranbourne West rezoning. This meeting went ahead with Mr Staindl present. Although the outcome of this meeting has been disputed by the attendees, Mr Woodman was able to discuss his interests with Ms Richards in the context of offering support for her campaign. In an intercepted conversation between Mr Woodman and Mr Kenessey on 23 October 2018, Mr Woodman reported to Mr Kenessey that Ms Richards was 'totally on board', and that he was confident that she would deliver for them.

In another lawfully intercepted conversation, Mr Staindl and Mr Woodman discussed a letter ostensibly drafted by SCWRAG to the Minister for Planning. In reality, Ms Schutz had drafted the letter, which was intended to advocate for the rezoning amendment. Mr Staindl suggested to Mr Woodman that he pass the draft letter on to the Minister for Planning's chief of staff, 'to see if we can't get a form of words back from the Minister or departmental person before the election'. The implication was that Mr Staindl would seek discreet assistance from the chief of staff in phrasing the letter so that it would be as palatable as possible to the Minister for Planning. Although the chief of staff disputed receiving the letter, IBAC found communications that indicated they directed Mr Staindl to follow up with a senior planning advisor in the Minister for Planning's office. Mr Staindl used his relationship with Ms Graley, MP for Narre Warren South, who was on good terms with that advisor, to pursue the matter.⁴³⁶

6.3.2.2 Access through networking forums, fundraising events and other functions

Registered lobbyists engaged by Mr Woodman gave evidence that much of the contact with elected officials occurred at events organised by forums established to facilitate interactions between business representatives and senior representatives of the respective major parties. These forums raise funds through memberships and pay-to-attend events, during which participants can speak with ministers and MPs.

In Operation Sandon, lobbyists liaised with these organisations and suggested that their client be offered membership in exchange for a donation or contribution. For example, the then Executive Director of Enterprise Victoria told IBAC that Mr Woodman's membership of that organisation came about through contact made by Ms Wreford. Similarly, Mr Staindl, a long-time member of the Labor Party and Progressive Business, was involved in arranging Mr Woodman's payment for a 'platinum' membership of Progressive Business.

Progressive Business members were entitled to attend events to hear ministers speak about policy issues and to raise issues with ministers.⁴³⁷ Platinum was the highest level of Progressive Business membership and entitled Mr Woodman to attend a larger number of events than others. Ms Schutz told IBAC that she understood that, as a platinum member, Mr Woodman was entitled to be seated with the Premier or Treasurer. For example, at a Progressive Business forum in late 2018, Ms Schutz and Mr Woodman's son lobbied the Treasurer on Donnybrook Road, a venture for which Wolfdene was the development manager.

Mr Staindl's connections with the Labor Party and Progressive Business enabled him to introduce Mr Woodman to key decision-makers. In lawfully intercepted communications between Mr Staindl, Mr Woodman and Mr Woodman's son, Mr Staindl said, *'Please let ... me know if there is a particular minister you'd like to speak to and we'll endeavour to facilitate the meeting'*.

In his examination, Mr Woodman's son acknowledged that Mr Staindl's connections with Progressive Business were crucial to progressing the Donnybrook Road matter. He agreed that the \$50,000 Progressive Business membership fee (paid by his father) enabled him to attend functions where key decision-makers, including ministers and their staff, were present.

Ms Schutz told IBAC that she attended a Progressive Business forum at which the Minister for Planning was present. She told IBAC she asked the Minister for Planning 'theoretically' if they would approve a planning scheme amendment that had been adopted by the Casey Council and approved by the independent planning panel. This was likely an attempt to exert influence regarding Amendment C219, which was then before the Minister for Planning.

⁴³⁶ Mr Staindl refers to Ms Graley as his 'good friend' in his public examination.

⁴³⁷ Mr Staindl told IBAC that, 'As part of John Woodman's membership entitlement ... I would attend with him because he was allowed ... two or three nominees to attend particular events'.

In their evidence to IBAC, the Minister for Planning asserted that they were aware of the risks involved in attending fundraising events, and put measures in place to address this risk, stating, *'I generally have it arranged that no developers or their associates are seated at my table'*. Regarding Progressive Business events, the Minister for Planning said that it was not appropriate to have departmental staff present, as such involvement would involve the public service in fundraising for the Labor Party. They stated:

At the start of any PB [Progressive Business] session, the host would introduce [the] probity [officer], and she would outline the 'rules of engagement' for the event. [The probity officer] always emphasised that there was to be no discussion of specific planning matters and any discussion should focus on broader government activity and policy. [The probity officer] further indicated that she would take notes of the conversation and retain them as a record of the event. Overwhelmingly, participants complied with the spirit and rules of engagement ...

As well as the probity officer, at PB events I would ensure that I was never seated at the same table as lobbyists or developers. I would always try and arrive last minute and leave early to minimise any opportunity for informal approaches to me. I would also have my advisors seated at the table with me and this enabled me to deflect any approaches or conversations with which I was uncomfortable.

IBAC understands that the use of a probity officer was introduced by the Minister for Planning to minimise risks to the integrity of the planning decision-making process and avoid the perception of improper influence.

Operation Sandon showed that Mr Woodman had repeated access to the most senior members of the Victorian Government. For example:

- On 13 September 2017, a private lunch was held at a restaurant in Melbourne, attended by the Premier, Mr Woodman, Mr Woodman's son, Ms Schutz, Mr Staindl, an MP and an advisor to the Premier. The lunch was 'purchased' by Mr Woodman at a fundraising event and was organised through Mr Staindl's office. It is unclear what was discussed at this lunch.
- In June 2015, Mr Staindl organised a 'Watsons table' at a function convened by MPs of Greek heritage, a fundraising event at which the Premier was present.
- In September 2015, Mr Staindl noted that he had 'discussions with various people in the Premier's office and elsewhere about [another planning] matter'. This involved Mr Staindl speaking 'with the advisor to – who had responsibility for planning matters in the Premier's office because I knew that we were going to an event ... where the Premier would be at and it was possible that Mr Woodman would reference [the planning matter] with that to the Premier... [I] gave them a quick summation of what the issue was'.

The risks arising from privileged access via networking and fundraising events are recognised in several Victorian policies:

- Introduced in 2011, the Fundraising Code of Conduct applied to ministers, parliamentary secretaries and Coalition Government MPs. It stated that materials inviting attendance at fundraising events must not 'represent the function or event in a way which claims privileged access to decision-makers or ministers'.⁴³⁸ However, the Department of Premier and Cabinet advises that the Fundraising Code of Conduct has not been in force since 2014.
- The Code of Conduct for Ministers and Parliamentary Secretaries states that ministers and parliamentary secretaries should be familiar with the requirements of the Fundraising Code of Conduct, and comply with it.⁴³⁹

⁴³⁸ Victorian Government, Fundraising Code of Conduct for Ministers, Parliamentary Secretaries and Coalition Government Members of Parliament, (undated), para 4.9.
⁴³⁹ Code of Conduct for Ministers and Parliamentary Secretaries, undated, vic.gov.au/code-conduct-ministers-and-parliamentary-secretaries.

During Operation Sandon, IBAC found invitations to events that effectively invited individuals to pay for access to senior elected officials. One was a lunch to support three Labor Party candidates, including Ms Richards, in the 2018 state election campaigns. That invitation stated that the Minister for Health would attend the lunch, which cost \$1000 per person. Although the invitation did not suggest that the lunch would provide an opportunity to raise matters with the Minister for Health, it is reasonable to conclude that paying \$1000 would deliver some benefit to the attendee, either through direct access to the Minister for Health or by building influence more generally by donating money.

In October 2017, an events administrator from Progressive Business emailed Mr Staindl about upcoming events involving the Premier and several ministers. One of the functions was described as 'Business Roundtables – Jobs for Victoria', and provided the opportunity to meet with three of four nominated ministers for \$2500. The email stated:

Allocate your time according to your strategic objectives, select three roundtables you would like to engage where you can discuss your agenda item among a group of like-minded business leaders, government and their advisors.

6.3.2.3 Poor transparency around access to elected officials

Mr Woodman's access to elected officials, often facilitated by lobbyists, occurred largely in private. As discussed above, it occurred at functions and events that were not subject to public scrutiny or reporting. It also happened through private emails, telephone calls and meetings.

During his examination, Mr Staindl agreed that much of his work in arranging opportunities for Mr Woodman to speak to elected officials directly, or to pass on messages on his behalf, occurred behind closed doors, where 'there's no formal transparency process'.

One example related to the lobbying of Mr Perera, the Member for Cranbourne between 2002 and 2018, and his office. Mr Perera acknowledged in his evidence that between May 2013 and May 2015 Mr Woodman contributed more than \$20,000 to his Cranbourne State Electorate Campaign Committee electoral account and provided in-kind support, although Mr Perera contended that this did not generate any sense of obligation. As outlined below, that assertion was contradicted by the lengths to which Mr Perera went to further Mr Woodman's requests and objectives.

Mr Staindl's notes recorded regular meetings at Mr Perera's office in 2015, although Mr Perera said he could not recall these occurring.⁴⁴⁰ In April 2015, Mr Staindl gave Mr Perera a map of the proposed Cranbourne West rezoning and undertook to give him background notes on the rezoning the following day.

Mr Perera submitted petitions to the Victorian Parliament from SCWRAG in support of Amendment C219 in 2015 and 2016, both of which were largely organised by Ms Schutz.⁴⁴¹ On 28 May 2015, Mr Perera also wrote to the Minister for Planning, claiming to have met many residents who strongly supported the rezoning. In that letter, Mr Perera referred to the petition and information arising from a doorknocking campaign, and recited facts claimed to be sourced from residents relating to attitudes to industrial land supply, job creation and population. IBAC analysis shows that the facts were sourced from a briefing note previously provided by Schutz to Mr Perera's office, with almost the entirety of the letter lifted verbatim from the note.

There was no disclosure of or transparency around the dealings of Mr Perera and his office with Mr Staindl, who was a registered lobbyist, or the lobbying by Mr Woodman, Ms Schutz and others. As noted above, Mr Perera, as an MP, was not covered by the Lobbyist Code of Conduct.⁴⁴²

Under the current Victorian lobbying regulation, Mr Staindl had no obligation to report any of his lobbying on behalf of Mr Woodman, nor did those he lobbied have any obligation to disclose such meetings. By registering as a lobbyist, Mr Staindl had satisfied his obligation under the Lobbyist Code of Conduct.

⁴⁴⁰ It is possible that, because of Mr Perera's health issues, much of the contact between his office and Ms Schutz and Mr Staindl occurred via his electorate officer.

⁴⁴¹ Member for Cranbourne, 7 May 2015, Petitions, Legislative Assembly, Hansard, p 1369 (701 signatures), and Member for Cranbourne, 11 October 2016, Petitions, Legislative Assembly, Hansard, p 3668 (777 signatures).

⁴⁴² See section 6.3.1.2, Lobbying by MPs

As a result of Mr Staindl's longstanding role in Progressive Business in raising funds for the Labor Party, he was able to secure a very high level of privileged access to senior decision-makers at the state government level. As discussed in section 3.7.6.2, this included meetings with the Treasurer and Premier.

Operation Sandon also uncovered examples of Mr Woodman and his associates viewing informal lobbying of decision-makers as a means of furthering their business interests. This lobbying took place in private meetings and discussions, coming to light only through the exercise of IBAC's covert powers:

- In a legally intercepted call on 17 October 2017, following the Minister for Planning's deferral of a decision on Amendment C219, Mr Woodman discussed next steps with Mr Kenessey, telling him he would be having breakfast the following week with Ms Richards, the candidate for the state seat of Cranbourne. The two men then discussed whether this meeting would help resolve the issue.
- In October 2018, a call was lawfully intercepted between Mr Woodman and Mr Kenessey, in which they discussed the H3 intersection. Mr Kenessey asked a question about Ms Richards, and Mr Woodman replied that because he was donating \$20,000 towards her election campaign, she would listen to him.

This informal lobbying was subject to no oversight or scrutiny.

Arguably, the presence of relevant public officers, whether planning departmental or Casey Council officers, in meetings between elected officials and Mr Woodman or his lobbyist would have provided some degree of control over the content of any communication. However, the actions of Mr Woodman and his lobbyist were generally designed to avoid this. For example:

- As highlighted above, in March 2015 Mr Staindl emailed Mr Woodman's son regarding a conversation with the Minister for Planning's chief of staff and the arrangements that had been made to pursue 'back-channel communication', rather than continue to meet in the presence of the Deputy Secretary of the planning department.

- Mr Woodman sent emails to the private email addresses of Councillor Aziz and Councillor A, with a briefing note on Cranbourne West in February 2014. During examinations when Counsel Assisting IBAC asked, *'Did you do that so what you were doing would not be discovered?'* Mr Woodman answered, *'One would assume so, sir'.*

Mr Woodman's formal and informal lobbying were part of an attempt to exert improper influence over decision-makers. But it would be a grave error to think that Mr Woodman and his lobbyists' efforts were unique to planning issues in the City of Casey. This type of conduct poses very real risks for the integrity of public administration across Victoria. Privileged access to elected officials in forums that were private and lacked transparency demonstrated how an individual with sufficient resources and connections can shape – or attempt to shape – government decisions. Such access undermines the public's confidence that their interests are being fully considered.

6.3.2.4 Ministerial advisors – poor transparency and accountability

Operation Sandon demonstrated how lobbyists can target ministerial advisors, perceiving them to hold positions of influence or authority. The corruption risks posed by this behaviour were heightened by advisors' limited accountability and transparency.

Since the early 1970s,⁴⁴³ political staff, particularly ministerial advisors, have become increasingly influential in Australian governments as their numbers increased and their roles supporting ministers expanded.⁴⁴⁴ Confirmed by evidence heard during operations Sandon and Daintree, research in 2017 found that the chiefs of staff of some senior ministers are now more powerful than junior ministers and MPs, and that some advisors have significant discretion to speak on their minister's behalf.⁴⁴⁵

As Operation Sandon showed, however, while the governmental landscape has continued to evolve, safeguards against improper influence and potential corruption have not kept pace.

⁴⁴³ Ministerial advisors were first introduced in Australia by the Whitlam Labor government.

⁴⁴⁴ Finlay, L 2016, 'The McMullan Principle: Ministerial advisors and parliamentary committees', *University of Tasmania Law Review*, vol. 69, 35(1).

⁴⁴⁵ Ng, Y-F 2017, 'Between Law and Convention: Ministerial Advisors in the Australian System of Responsible Government', *Papers on Parliament*, vol. 68, pp 115–129.

As discussed in Chapter 3, Mr Staindl met with the Minister for Planning's chief of staff to provide updates on planning matters, including Amendment C219. While the chief of staff gave evidence that they personally did not influence the Minister for Planning's decision-making, the actions of Mr Woodman and Mr Staindl suggest an expectation that it was otherwise. For example, Mr Staindl met with the chief of staff to provide updates on planning matters, respond to possible queries on those matters, and draw their attention to other issues.

The chief of staff's evidence was that they believed Mr Staindl's primary purpose in contacting them was so that he would be able to tell Mr Woodman that he had spoken to the Minister for Planning's chief of staff, and thereby demonstrate his value as a lobbyist. Although the chief of staff believed that they did not consciously give Mr Staindl any indication that they could influence the Minister for Planning's decisions, they accepted that there was a perception that, as chief of staff, they could influence the outcome of a decision. They said this may have been due, in part, to their knowledge of the Minister for Planning's views on planning applications and developments.

In 2010, the NSW ICAC observed that lobbyists approach those they believe are most likely to help achieve their desired outcome, particularly chiefs of staff, who may be advising their minister on the issue relevant to them.⁴⁴⁶ Although IBAC did not find that the chief of staff or any another ministerial advisor unduly influenced or directed public servants on Amendment C219, it is clear that lobbyists targeted a ministerial advisor, and that the advisor recognised that one purpose of those communications was to seek to influence the decision.

In modern government, ministerial advisors have similar access to networks, government strategy and confidential information to that of ministers and parliamentary secretaries. Although this makes them an obvious target for lobbying activity, the current regulatory regime fails to recognise and manage this risk. Mr Staindl's conduct points to a need for greater transparency and ground rules governing interactions between advisors and lobbyists.

Ministerial advisors are included in the definition of 'government representative' in the Lobbyist Code of Conduct. As a result, they are prohibited from knowingly or intentionally being a party to lobbying by an unregistered lobbyist.⁴⁴⁷ However, neither advisors nor lobbyists are required to record, declare or publicly report their related contacts.⁴⁴⁸ Further, documents made or received by a minister's office are not defined as public records under the *Public Records Act 1973* (Vic).⁴⁴⁹

In Operation Sardon, the chief of staff said that although they had daily dealings with lobbyists, there were no records of these meetings unless they were in a diary or text message, or if the initial communication was in writing. This account is consistent with IBAC's observation, over a number of investigations, that no records are permanently retained by ministerial staff.

Although the chief of staff agreed that interactions with lobbyists lacked transparency, and that greater transparency could help ensure that lobbyists do not have privileged access, they contended that it would be difficult to achieve a balance between responding to every single person who engages in a lobbying activity, and making sure that nobody is given privileged access.

The risks associated with lobbyists targeting and interacting with ministerial staff in non-transparent ways are exacerbated by the limited accountability of ministerial advisors. In their evidence, the chief of staff asserted that advisors are accountable because they are answerable to their ministers. However, consistent with similar observations made in other jurisdictions, the evidence gathered in Operation Sardon and other IBAC operations indicates that ministers exercise limited oversight over their staff.⁴⁵⁰

446 NSW ICAC 2010, Investigation into corruption risks involved in lobbying (Operation Halifax), p 24.

447 Victorian Public Sector Commission 2023, Victorian Government Professional Lobbyist Code of Conduct, s 4.1.

448 In the Victorian Government Professional Lobbyist Code of Conduct, ss 2.1 and 3, 'Ministerial staff member' is defined as a person employed under s 98 of the Public Administration Act; a person seconded to a ministerial office; or a person otherwise placed, contracted or engaged in a ministerial office.

449 *Public Records Act 1973* (Vic), s 2.

450 See, for example, Coaldrake, P 2022, Let the Sunshine in: Review of culture and accountability in the Queensland public sector – final report; Ng, Y-F 2017, Between Law and Convention: Ministerial Advisers in the Australian System of Responsible Government; and Commonwealth of Australia 2019, Independent Review of the Australian Public Service: Our Public Service, Our Future, Department of the Prime Minister and Cabinet.

As highlighted by the Operation Daintree special report, accountability mechanisms for ministerial staff in Victoria are weaker than those for other classes of public officers, and than those in place in other jurisdictions.⁴⁵¹ While advisor conduct is regulated under the Ministerial Staff Code of Conduct – updated and made public in 2022⁴⁵² – this code is not required under legislation, nor is it independently enforced.

IBAC heard from the Minister for Planning's chief of staff that they were not particularly familiar with the code's provisions. They thought that they had placed it in a desk drawer when starting their role but never had occasion to look at it. As observed in other IBAC investigations, this limited understanding appears to be consistent with that held by advisors in other ministerial offices as well, suggesting a gap in their ethics education program.

Balanced reform is therefore required that recognises the demands on ministerial officers and the need for greater transparency and safeguards around interactions between ministerial staff and lobbyists.

6.3.2.5 Electorate officers – poor transparency and accountability around electorate officers

Operation Sandon showed how, similar to ministerial advisors, electorate officers can be targeted by lobbyists, and that these risks are heightened by the lack of robust transparency and accountability mechanisms in place.

As the Member for Cranbourne, Mr Perera employed an electorate officer whose duties included managing the day-to-day operations of the electorate office, assisting constituents and representing or accompanying the MP at community meetings and events. As discussed in Chapter 3, although there is no evidence that the electorate officer behaved improperly, Mr Woodman, Mr Schutz and Mr Staindl viewed the electorate officer as a person who could be useful in helping them progress their interests on Amendment C219, including by raising matters with the Minister for Planning. There were numerous interactions between them to this end.

The role that the electorate officer played during Mr Perera's absences may have contributed to this view. When Mr Perera was absent, the electorate officer was referred to as the 'de facto' Member for Cranbourne by Mr Staindl in correspondence with Mr Woodman. In evidence to IBAC, the electorate officer said they did not view themselves as a 'de facto' MP, but conceded that, in practice, they effectively stepped in and performed Mr Perera's role in his absence. During examination, the electorate officer said that Mr Perera instructed them to attend to constituent issues and run the office as normal when Mr Perera was on sick leave. The electorate officer told IBAC that there were significant periods when Mr Perera left them to respond to issues within the electorate, including using Mr Perera's email account to communicate on his behalf. The electorate officer had broad discretion to deal with constituent issues, including making decisions without consulting Mr Perera on occasion.

Mr Perera told IBAC that he gave his electorate officer a 'free hand' on the basis that he was kept informed, but admitted he was not always able to supervise them. The electorate officer said that they did not seek any guidance from the Department of Parliamentary Services or other electorate officers on how to handle the situation and could not recall any guidance being offered to them.

The electorate officer said no other MP stepped in to assume Mr Perera's constituent responsibilities. Mr Perera gave evidence that he was not aware of any protocols applicable to electorate offices where an elected member was absent for a prolonged period, and he believed each electorate office worked differently. IBAC understands the major parties sometimes make informal arrangements for an MP in a nearby electorate to monitor an absent MP's electorate. While it is not certain whether any such arrangements were instigated for Mr Perera's absences, the evidence suggests that they were not.

The electorate officer also gave evidence that they were aware Mr Staindl was a lobbyist and that Mr Woodman was his client.

451 IBAC 2023, Operation Daintree: Special report, IBAC, www.ibac.vic.gov.au/node/891.

452 Victorian Government 2022, Ministerial Staff Code of Conduct, www.premier.vic.gov.au/policy.

The electorate officer stated that, in dealing with Ms Schutz, they were giving effect to Mr Perera's support for the rezoning, which was motivated by what was understood to be a residents campaign (now known to have been largely orchestrated by Ms Schutz). The electorate officer also said that their involvement in the Cranbourne West rezoning proposal included attending a meeting with the Minister for Planning in May 2015, to discuss the logistics of a visit to the site by the Minister in order to advance the rezoning proposal. The electorate officer said that they called Ms Schutz after the meeting to debrief. The electorate officer gave evidence that Mr Perera's 'office' decided that the Minister for Planning should visit the site, although Mr Perera was on sick leave at the time. The Minister for Planning denied that such a meeting occurred. Other witnesses also gave evidence that such a meeting was unlikely to have occurred.

However, IBAC found that there was contact between the electorate officer and the office of the Minister for Planning, because the Minister met with a delegation from the Casey Council in June 2015 and visited the Cranbourne West PSP site the following month.⁴⁵³

The electorate officer's other dealings with Ms Schutz and Mr Staindl included the following:

- In 2015, Mr Staindl advised Mr Woodman that he had asked Mr Perera's electorate officer to raise the Botanic Ridge PSP with the Minister for Planning, and said that he had sent the electorate officer a briefing on this matter which had been prepared by Ms Schutz.
- In 2015 and 2016, Mr Perera tabled petitions from SCWRAG on Amendment C219. The electorate officer told IBAC that they had communicated with Ms Schutz about the petitions to make sure that they were formatted correctly for tabling.
- In July 2017, the electorate officer and Ms Schutz exchanged a series of emails, with the electorate officer informing Ms Schutz that Mr Perera's office would be writing again to the Minister for Planning on Amendment C219. Ms Schutz responded there was merit in also sending the submission to the Casey Council so that it could be treated as a formal submission and be considered by PPV. Ms Schutz gave the electorate officer a page of arguments in favour of the rezoning.

- In October 2018, in a legally intercepted call, Ms Schutz told Mr Woodman that the electorate officer had called her and advised that the Minister for Planning had deferred the decision on rezoning the land, despite the electorate officer having received assurances that the southern portion of the land would be rezoned. Ms Schutz also said that the electorate officer asked her to get SCWRAG to write to Mr Perera, advising that 1100 residents were disappointed by the deferral. In evidence, the electorate officer maintained that they could not recall receiving assurances or suggesting a letter from SCWRAG.

There was no transparency around these dealings, and the extent of the interactions only came to light through the use of IBAC's investigative powers.

During examination, the electorate officer conceded that they came to doubt whether Ms Schutz was in fact representing the community's interests, but that they continued to liaise with her about the C219 proposal. It was not clear what authority the electorate officer was acting under or how their activities should have been overseen in the absence of Mr Perera.

Operation Sandon demonstrated that current regulations do not sufficiently address the risk that electorate officers may be targeted by lobbyists. Victoria's lobbying regulatory regime is silent on the risks related to electorate officers. Electorate officers are not covered by the Lobbyist Code of Conduct, because they are not defined as 'government representatives'.⁴⁵⁴ Similarly, the Code of Conduct for Parliamentary Electorate Officers does not include any obligations on electorate officers in their dealings with lobbyists.

The risks associated with electorate officers being targeted by lobbyists, and the lack of transparency around such interactions, is exacerbated by the limited means by which electorate officers are held to account. Although the Department of Parliamentary Services (DPS) is responsible for managing electorate officer employment arrangements,⁴⁵⁵ its ability to do so in practice is constrained. In Operation Naxos, an investigation beginning in 2017 into allegations of fraudulent practices within the electorate office of a former MP, IBAC found that DPS had limited control over

⁴⁵³ PPV 2018, Panel Report, *Casey Planning Scheme Amendment C219, Changes to Cranbourne West PSP*.

⁴⁵⁴ The Lobbyist Code of Conduct (s 3.2) defines 'government representatives' as ministers, cabinet secretaries, parliamentary secretaries, ministerial officers employed under s 98 of the *Public Administration Act*, persons seconded or otherwise placed, contracted or engaged in a Ministerial office, and persons employed, contracted or engaged by a public sector body as defined in the *Public Administration Act*.

⁴⁵⁵ Electorate officers are employed by presiding officers, under the *Parliamentary Administration Act 2005* (Vic), which the Premier and Minister for Government Services administer. DPS is responsible for operational and administrative matters under the Act, including managing electorate officer employment arrangements.

electorate officer activities. The investigation also showed that the code of conduct had little or no resonance with electorate officers.⁴⁵⁶ Operation Watts, a joint investigation by IBAC and the Victorian Ombudsman into allegations that some MPs were misusing public funds to pursue factional political interests, uncovered similar concerns. It found that MPs and electorate officers received insufficient training about their roles and responsibilities, and that DPS was in a weak position to enforce the obligations of electorate officers whose daily work was directed by their MP. Operation Sandon also highlighted how the unavoidable absence of an MP may heighten issues around the accountability of electorate officers.

6.3.3 Inadequate lobbying controls

Operation Sandon highlighted deficiencies in the scope of Victoria's lobbying regulations. Despite the existence of controls in crucial areas, their narrow application has weakened their ability to effectively mitigate related corruption risks.

6.3.3.1 Success fees

Expert witness for Operation Sandon Dr Ng stated in her submission to IBAC that success fees incentivise lobbyists to engage in potentially unethical or corrupt behaviour. This risk is recognised in Victoria, where since 2013 the Lobbyist Code of Conduct has prohibited lobbyists from receiving success fees. The code defines success fees as those contingent on the tendering or awarding of a public project from the Victorian Government or a public sector body.

Operation Sandon showed that success fees or payments in kind were an incentive for registered lobbyists to push for planning changes. However, planning matters – including rezoning decisions – do not appear to fall within the Lobbyist Code of Conduct's narrow definition of a success fee.

IBAC revealed the following examples of success fees or payments in kind offered by Mr Woodman or his son:

- Mr Staindl and Mr Leigh were engaged on the Brompton Lodge matter under a success fee arrangement. Following the inclusion of Brompton Lodge in the UGB, both lobbyists received \$500,000 from UDIA (a company part-owned by Mr Woodman's son) as payment for their services.

- Ms Wreford was employed by Mr Woodman to lobby Casey councillors on matters including Amendment C219. Mr Woodman gave evidence that, although he did not offer Ms Wreford a success fee, if her efforts contributed to the approval of C219 he 'would shout her and her boyfriend to a trip to Europe'.

Although not registered as a lobbyist, Mr Woodman acted as a consultant for Leighton Properties on Amendment C219. In a lawfully intercepted telephone call, Mr Kenessey asked Mr Woodman, 'is there no chance that we could speak to – you know, [the Minister for Planning's] boss or bosses and tell [them] to just get on with it?' After clarifying what Mr Kenessey meant, Mr Woodman replied, 'Well, I don't want to tell you this Tom, but ... I am not going to the Premier of Victoria about C219'. A few days later, in another lawfully intercepted telephone call, Mr Woodman discussed Mr Kenessey's request with Ms Schutz, telling her, 'Two million bucks to me is not worthy of calling in favourites [sic] with the Premier'. Ms Schutz gave evidence to IBAC that this figure referred to '[Mr] Woodman's success fee in relation to the Cranbourne West rezoning if it was approved by government'. Mr Woodman agreed during his evidence that the \$2 million was a success fee.

6.3.3.2 The involvement of lobbyists in political activities

Registered lobbyists are frequently aligned with a particular political party. Indeed, that very alignment is what often underpins their ability to obtain privileged access to, and influence over, decision-makers. For example, Mr Staindl is a longstanding member of the Labor Party, was an endorsed candidate for election, and has sat on various Labor Party committees. Similarly, Mr Leigh has a long-term affiliation with the Liberal Party, starting in the late 1970s.⁴⁵⁷ He was elected as an MP in 1982, a position he held until 2002.⁴⁵⁸

⁴⁵⁶ IBAC 2023, Media release – IBAC charges three people in relation to electoral fraud investigation, www.ibac.vic.gov.au/article/ibac-charges-three-people-in-relation-to-electoral-fraud-investigation.

⁴⁵⁷ Crook A 2010, 'For Liberal lobbyists, it's a case of form a queue in Spring Street', *Crikey*.

⁴⁵⁸ Geoff Leigh was the Liberal MP for Malvern from 1982 to 1990, and Mordialloc from 1992 to 2000.

In Operation Sandon, IBAC observed politically aligned lobbyists seeking to influence government representatives, or the parties of government representatives, for whom they had also helped source donations. In addition to the existing potential conflict of interest based on party loyalties and personal connections, this created a further risk that those representatives might have felt obligated to return the favour, potentially leading them to look more favourably upon the concerns of the lobbyists' clients.

Although lobbyist affiliations with political parties are not definitively prohibited, the Lobbyist Code of Conduct does recognise that they pose risks. The code requires that lobbyists 'strictly separate' their lobbying from their 'personal activity or involvement on behalf of a political party'.⁴⁵⁹ Further, under the code, a lobbyist or government affairs director who wishes to engage in lobbying activity must provide their details, which are recorded on the register of lobbyists, including whether they have held the positions of national or state secretary, director or deputy or assistant secretary, or director of a registered political party.⁴⁶⁰

However, the rationale and intent of this requirement – that lobbyists keep their lobbying activities separate from their political party involvements – is not clearly stated in the code. Nor does the code explicitly reference and manage the risk associated with a lobbyist donating to, or helping to gather donations for, elected officials.

During examination, Mr Staindl was asked whether his role in facilitating donations from Mr Woodman was inconsistent with his responsibility to separate his duties as a lobbyist from his political activities. Mr Staindl argued that because he was not formally engaged by the Labor Party to raise funds, there was no crossover in his loyalties. He also said he was not involved 'in a formal sense with a political party', but rather 'as a Labor supporter', noting that he stopped working on the party's behalf from 2010.

It is doubtful whether this was in the spirit of the Lobbyist Code of Conduct. Mr Staindl gave evidence that he believed his actions were consistent with the intent of the relevant provision.

6.3.3.3 Cooling-off periods

The movement of senior government representatives to lobbying positions, where they can exploit their knowledge base, relationships and networks gained during office to influence decision-makers, is a well-recognised integrity risk. This risk is heightened for representatives moving into roles in areas where they previously had portfolio responsibility, such as ministers and senior executives, as well as in circumstances where the former officials had significant political connections, such as MPs.

The risk posed by this 'revolving door' between public office and lobbying is believed to decline over time, the longer a government representative has been out of office. 'Cooling-off periods' – the minimum time before which former public officials may accept employment in certain private-sector roles⁴⁶¹ – are therefore crucial to managing this risk, so that an unfair advantage is not conveyed to the parties involved.⁴⁶²

The Lobbyist Code of Conduct prescribes cooling-off periods for ministers, Cabinet secretaries, parliamentary secretaries, former public sector executives, and ministerial officers. Although the revolving door between these groups of former government employees and the lobbying industry was not a significant issue in Operation Sandon, the investigation did reveal a gap in the existing regulations covering the movement of former MPs into lobbying.

Operation Sandon found that Ms Wreford, after losing her state seat of Mordialloc in November 2014, moved in early 2015 from her position as an MP into working as a lobbyist for Mr Woodman. As an MP, Ms Wreford was not bound by any cooling-off period under the Lobbyist Code of Conduct. Before being elected as an MP, Ms Wreford was a councillor at the City of Casey.

Ms Wreford gave evidence that, after losing her state seat, she struggled to find other employment. Therefore she accepted the position offered by Mr Woodman to work for him as a lobbyist, using her local and state government contacts.

459 Victorian Government Professional Lobbyist Code of Conduct, s 8.1(d).

460 Victorian Government Professional Lobbyist Code of Conduct, s 5.1(e) and s 5.2.

461 Martini M 2015, 'Cooling-off periods: regulating the revolving door', *Transparency International*, p 1.

462 Evans M, Stoker G, Halupka M 2018, Australians' trust in politicians and democracy hits an all-time low: new research, *The Conversation*, theconversation.com/australians-trust-in-politicians-and-democracy-hits-an-all-time-low-new-research-108161.

6.4 Proposed policy reform

Operation Sandon showed how, in the absence of robust regulatory oversight, lobbying can provide privileged and non-transparent access to decision-makers. It showed how Victoria's existing lobbying regulations were insufficient to manage the risks posed by Mr Woodman's lobbying, and use of lobbyists, at both the local and state levels of government.

IBAC observed lobbyists failing to register as lobbyists, while the design and administration of the existing regulatory framework meant that compliance with the Lobbyist Code of Conduct was not adequately monitored or enforced. In turn, these integrity risks were magnified by lobbyists' ability to interact with ministerial advisors and electorate officers without any transparency, conduct which took place in an environment of limited accountability and oversight.

Broad reform across all these areas is needed.

IBAC's Donations & Lobbying special report provided an in-depth analysis of the corruption and integrity risks posed by lobbying. Recommendations 3 and 4 in the report aimed to manage lobbying risks in a way that:

- recognises and preserves the legitimate role of lobbying in helping the public to access, and promote their views to, their public representatives
- reduces the risk of improper access and influence that may distort, or possibly corrupt, government decision-making processes
- supports trust and public confidence in public administration and government by promoting transparency of dealings between lobbyists and public officials.

Operation Sandon provides further evidence of the need for these reforms. In particular:

- changing the definitions of 'lobbying activity' and 'government representatives' to capture *all* activity calculated to influence decision-making at both the state and local levels of government, and using this definition as the trigger for regulatory controls
- introducing transparency and accountability safeguards to better protect the integrity and fairness of our public decision-making from privileged access. This includes strengthening fundraising disclosures, requiring lobbying and ministerial office activity to be publicly recorded, maintaining records of electorate officers' contacts with lobbyists, and specifying in political staff codes of conduct that they must comply with lobbying regulations.
- making Victoria's lobbying framework fit for purpose by examining the development of a new lobbying regulator with monitoring and enforcement functions. Existing controls must also be reformed to broaden the prohibition on success fees, prohibit lobbyists from lobbying elected officials whom they have supported politically, and imposing cooling-off periods that reflect system risks, including for MPs.⁴⁶³

These recommendations must be implemented to counter the vulnerabilities identified in Operation Sandon, ensuring that lobbying cannot be used for corrupt or improper purposes. To this end, it is important that the Taskforce work closely with those progressing the Donations & Lobbying special report's recommendations so that their implementation is informed by the risks revealed by Operation Sandon.

⁴⁶³ IBAC 2022, Special report on corruption risks associated with donations and lobbying, www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-donations-and-lobbying.

Recommendation 15

IBAC recommends that the Premier ensures that the implementation of Recommendations 3 and 4 from the Donations & Lobbying special report appropriately addresses the lobbying risks highlighted in Operation Sandon.

IBAC's Operation Daintree special report also included several recommendations aimed at managing integrity risks related to ministerial advisors. Of specific relevance to Operation Sandon, the report recommended that the new Parliamentary Integrity Commissioner receive and investigate alleged non-criminal breaches of the Ministerial Staff Code of Conduct. It also recommended that the new Commissioner run education sessions on the Code for ministerial staff.⁴⁶⁴

The IBAC and Victorian Ombudsman joint special report on Operation Watts also made a series of recommendations designed to strengthen the accountability and transparency arrangements for electorate officers. Recommendations particularly relevant to Operation Sandon included that:

- the DPS Secretary become electorate officers' employer, that their term of appointment be increased and separated from the electoral cycle, and that they review recruitment, training and supervision processes for electorate officers
- an effective complaints process be established to ensure that electorate officers have a clear process for raising concerns about their employment
- the DPS strengthen their audit program of electorate office activities.⁴⁶⁵

In response to the Operation Watts special report, the Victorian Government committed to supporting and implementing all of the report's recommendations,⁴⁶⁶ with a focus on strengthening the training, education and support for electorate officers.⁴⁶⁷ To this end, IBAC notes that the Electorate Officers' Code of Conduct is now public, after having been updated and published on the Parliament of Victoria website in November 2022.⁴⁶⁸

Implementing recommendations from the Operation Watts and Operation Daintree special reports will help to better manage the integrity risks arising from interactions between political staff and lobbyists in the future.

Specific to Operation Sandon, IBAC observed an electorate officer having significant dealings with Mr Woodman and his associates, some of which took the form of lobbying activity. This occurred at a time when the electorate officer was left unsupervised for significant periods of time while the MP was absent due to illness. To address this issue, IBAC is making one further recommendation (Recommendation 16) to improve the accountability of electorate officers when an MP is on leave.

While IBAC does not seek to prescribe the exact arrangements that should govern such situations, it is aware of a case in the United Kingdom where a 'locum member of parliament' was used to cover an MP on extended leave.⁴⁶⁹ In that case, the locum position was advertised. The appointed locum could not vote or speak in parliament on the MP's behalf, but she did meet with other MPs to discuss constituent matters, and she spoke to ministers on behalf of constituents. The locum consulted regularly with the MP to keep her up to date. While 'proxy' votes or 'pairing' in parliament are well-known conventions,⁴⁷⁰ the use of a locum recognises that an MP's work extends beyond voting in parliament. Similarly, as previously noted, arrangements could be made to allow other MPs to assume certain responsibilities during another MP's absence.

Regardless of the form chosen, the arrangement should be appropriately designed to account for the relatively smaller size of Victoria's parliament, and be formalised and publicised to ensure clear lines of accountability within electorate offices at all times.

Recommendation 16

IBAC recommends that the Department of Parliamentary Services develops guidelines to apply to electorate officers when a Member of Parliament is on extended leave, to ensure electorate officers are appropriately supervised and are subject to clear lines of accountability.

464 IBAC 2023, Operation Daintree Special Report, www.ibac.vic.gov.au/node/891.

465 IBAC and Victorian Ombudsman 2022, Operation Watts Special Report, www.ibac.vic.gov.au/node/326.

466 Premier of Victoria 2022, 'Sweeping integrity reforms for Victoria', www.premier.vic.gov.au/sweeping-integrity-reforms-victoria.

467 Premier of Victoria 2022, 'Action and funding to deliver integrity reforms', www.premier.vic.gov.au/action-and-funding-deliver-integrity-reforms.

468 Parliament of Victoria 2023, Electorate Officers: Our values, new.parliament.vic.gov.au/about/careers/electorate-officers/eo-values/.

469 Hinsliff G 2020, 'I could be the first and the last': Kizzy Gardner on life as the UK's only locum MP, *The Guardian*.

470 In Victoria, Standing Orders of the Legislative Assembly and Legislative Council prescribe how absences from the Assembly and Council are to be handled. An MP is required to advise the Speaker if they are absent on nine consecutive sitting days. See Legislative Assembly of Victoria, August 2021, Standing Orders, s 26.

Summary

Operation Sandon showed that, as a group, Casey councillors exhibited and tolerated behaviour that did not meet the standards expected of them. In the case of some councillors, this involved a conscious departure from those standards, and for others it demonstrated a poor understanding of their obligations as elected officials. The prevailing lack of effective governance enabled some Casey councillors to act improperly, including by receiving benefits from individuals and companies with financial interests in matters before the Casey Council, failing to properly declare conflicts of interest, manipulating meeting processes to promote private and corporate interests over the public interest, and by councillors with conflicts of interest trying to influence other councillors' votes.

Although Operation Sandon focused on planning decisions, integrity risks exist in all areas where councillors make decisions. The 'culture of avoidance' at the Casey Council, together with wide variation between councils on codes of conduct and meeting procedures, shows the need for:

- model codes of conduct and model governance rules to promote a consistently high standard of conduct and decision-making procedures in all councils
- appropriate training and resources on managing conflicts of interest, so that councillors understand not only what is required of them, but also why transparency and accountability are essential to performing public duties.

Some of the conduct observed in Operation Sandon – electing a Casey councillor as mayor weeks after a misconduct finding was made against them (as detailed further in this chapter) and conflicted councillors trying to influence others – requires legislative amendments to specifically prohibit and penalise those actions. For these provisions to effectively deter poor behaviour, IBAC recommends that information about complaints be made publicly available by the Principal Councillor Conduct Registrar.

Operation Sandon showed that although council CEOs are well placed to observe integrity breaches involving councillors, their ability to deal with such breaches is limited by legislation and the fact that they were directly employed by those same councillors. A mandatory standard contract for council CEOs would strengthen their capacity to respond to poor councillor conduct. CEOs should also be reminded of their obligation to notify IBAC of any reasonable suspicion of corrupt conduct.⁴⁷¹

⁴⁷¹ IBAC Act, s 57.

7.1 Introduction

Operation Sandon highlighted significant issues with council governance and councillor conduct, including councillors' repeated failures to comply with their obligations on conflicts of interest, decision-making without full transparency, and councillors bullying council officers as well as each other. IBAC's investigation also demonstrated that the consequences of failing to control poor councillor behaviour and support councillors who lack the skills needed to perform their functions can adversely affect the use of resources and damage the community's trust in its local council. In this instance, it resulted in the loss of democratic representation, following the dismissal of the Council in February 2020.⁴⁷²

Two other local councils in Victoria were also under administration at that time, following significant governance shortcomings that resulted in the dismissal of those elected officials.⁴⁷³ This shows the issues of poor councillor conduct and capability exposed by Operation Sandon are not unique to the City of Casey.

Where the culture of a council is characterised by poor councillor behaviour and limited councillor capability, this can divert attention and energy from councillors' main responsibility: providing strategic direction for the organisation as democratically elected representatives of the community. Such a culture can undermine the organisation's effective operation and integrity.

It is particularly important to identify and manage conflicts of interest at the local government level because of the relationships and personal links that councillors have with the communities they represent. Indeed, the effectiveness of a councillor will depend significantly on the extent to which they are involved in their community and understand its needs.⁴⁷⁴ However, these connections also potentially expose councillors to a perception that their impartiality is in question. Where a councillor has a personal interest in a matter, the public is right to query whether those interests have affected a councillor's decision.

Operation Sandon exposed a large number of instances where some Casey councillors participated in Casey Council decision-making on planning and other matters despite having financial links or other commercial arrangements with an individual or company with a material interest in the matter being decided. In this way, a clear conflict arose between these councillors' private interests and their public duty, yet in most cases the conflict was either not declared, or their declaration was inadequate.

Sound decision-making processes are important for the effective operation of any organisation. Without good governance – where the systems and processes are clear and trusted – decisions can be disputed and reputations can be damaged, undermining an organisation's effectiveness.

At the Casey Council, numerous practices contributed to an overall lack of transparency in meeting processes. This allowed some councillors to exploit Casey Council meeting processes to limit scrutiny of planning proposals in which particular developers had an interest, and to expedite decisions on certain matters.

Before identifying the practices and behaviour that undermined effective governance and compliance with integrity standards at the Casey Council, it is necessary to explain the regime of statutory principles, codes, guides and policies that governed integrity at the Casey Council at the time of the events covered in Operation Sandon.

⁴⁷² On 18 February 2020, the Victorian Parliament passed the *Local Government (City of Casey Council) Act 2020* (Vic), which came into operation on 20 February 2020.

⁴⁷³ The *Local Government (South Gippsland Shire Council) Act 2019* (Vic) provided for the dismissal of the South Gippsland Shire Council and the appointment of administrators until October 2021; *Local Government (Whittlesea City Council) Act 2020* provided for the dismissal of the Whittlesea City Council and the appointment of administrators until October 2024; and the *Local Government (City of Casey Council) Act 2020* provided for the dismissal of the Casey Council and the appointment of administrators until October 2024.

⁴⁷⁴ DELWP 2016, *Act for the future – Directions for a new Local Government Act*, p 26.

7.2 Legislation and policy governing councils

7.2.1 Local Government Acts 1989 and 2020

The Local Government Act sets out how Victorian councils are required to function and serve their communities.

In March 2020, the LGA 1989 – which governed council activities during the conduct investigated in Operation Sandon – was superseded by the LGA 2020.

In her Second Reading Speech for the Local Government Bill 2019 the Minister for Suburban Development stated that the Bill provided a 'principles-based framework' to determine how councils are created and elected, and that it 'significantly improves how councils are governed'.⁴⁷⁵

Below is a summary of the provisions of the LGA 1989 and LGA 2020 relevant to issues identified in Operation Sandon.

7.2.1.1 Expected standards of conduct

The LGA 1989 set out a range of principles governing councillor conduct that are relevant to the conduct observed in Operation Sandon. In particular, councillors were required to:

- act with integrity and in a way that did not improperly seek to confer an advantage or disadvantage on any person⁴⁷⁶
- exercise their responsibilities impartially and avoid conflicts between their public duties as a councillor and their personal interests and obligations⁴⁷⁷
- otherwise conduct themselves lawfully.⁴⁷⁸

Under the LGA 1989, it was an offence for a councillor to misuse their position (including directing staff and failing to disclose a conflict of interest).⁴⁷⁹ Councils were required to adopt a councillor code of conduct that set out details of the council's internal procedure for dealing with alleged breaches of the code by councillors.⁴⁸⁰

Poor councillor behaviour was identified as a key issue in the 2019 review of the LGA 1989. In the Second Reading Speech for the Local Government Bill 2019, 'poor conduct by a minority of councillors' was identified as 'an ongoing challenge' in local government.⁴⁸¹ The Minister for Suburban Development asserted that the Bill would provide clear standards to improve conduct, define communities' expectations of councillors, provide a consistent framework for determining complaints, and require candidates and councillors to undertake specialised training to improve their competency and skills.⁴⁸²

Instead of specifying principles for councillor conduct, the LGA 2020 states that the purpose of a council's code of conduct is to specify 'the standards of conduct expected to be observed by councillors in the course of performing their duties and functions as councillors'.⁴⁸³ The standards of conduct that must be reflected in all councillor codes of conduct are detailed in the Local Government (Governance and Integrity) Regulations 2020.⁴⁸⁴ Those standards include:

- not engaging in abusive, obscene or threatening behaviour in dealings with members of the public, council staff and councillors
- diligently using council processes to become informed about matters which are subject to council decisions
- being fit to conscientiously perform the role of a councillor when acting in that capacity or purporting to act in that capacity
- complying with any policy, practice or protocol developed and implemented by the CEO
- enforcing the governance rules adopted by the council
- not discrediting or misleading the council or public.⁴⁸⁵

475 Minister for Suburban Development, The Hon M Kairouz, 14 November 2019, Second Reading Speech, Local Government Bill 2019, Legislative Assembly, Hansard, p 4322.

476 LGA 1989, ss 76B(a) and (c).

477 LGA 1989, ss 76BA(a) and 76B(b).

478 LGA 1989, ss 76BA(a) and (f).

479 LGA 1989, s76D with reference to ss76E and 77A.

480 LGA 1989, s 76C.

481 Minister for Suburban Development, The Hon M Kairouz, 14 November 2019, Second Reading Speech, Local Government Bill 2019, Legislative Assembly, Hansard, p 4322.

482 Ibid., p 4322.

483 LGA 2020, s 139.

484 Local Government (Governance and Integrity) Regulations 2020 (Vic), Sch 1.

485 The standards of conduct in Local Government (Governance and Integrity) Regulations 2020, reg 12 and Sch 1, cls 1(c), 2(b), 2(c), 3(a), 3(c), and 4(1) and (2) respectively, with reference to LGA 2020, ss 46 for policies developed by the CEO and 60 for governance rules adopted by the council.

7.2.1.2 Functions of the mayor, councillors and CEO

Both the LGA 1989 and LGA 2020 clearly distinguish a councillor's role from that of the CEO, making clear that it is the CEO who is responsible for 'ensuring the effective and efficient management of the day-to-day operations of the council'.⁴⁸⁶ The LGA 2020 sets out the roles of the mayor, councillors and CEO in the following terms:

- The mayor's role is to lead, guide and take action if a councillor's conduct is preventing the council from conducting its business.⁴⁸⁷
- A councillor's role is to participate in council decision-making in a way that represents their community's interest, and contribute to the strategic direction of the council through the development and review of strategic documents.⁴⁸⁸
- The CEO's primary roles include supporting the mayor and the councillors in performing their roles and ensuring the effective and efficient management of the day-to-day operations of the council.⁴⁸⁹

7.2.1.3 Conflicts of interest

7.2.1.3.1 LGA 1989: Six categories of direct and indirect conflicts of interests

The LGA 1989 provided detailed guidelines on councillor conflicts of interest,⁴⁹⁰ categorising direct and indirect conflicts of interest into six classes:

1. Close association – where interests are held by a councillor's close associates. This can include their spouse, a family member residing with the councillor, or a relative.
2. Indirect financial interest – where the councillor or their close associate is likely to gain or lose in a way that can be measured in money, resulting from the interests of another person, company or body.
3. Conflicting duty – where a councillor has a particular type of duty to another person or organisation that may conflict with their duties towards the council.
4. Applicable gifts – where the councillor has previously received a gift with a total value of more than \$500 in the past five years from someone with a direct interest in the matter.
5. Party to the matter – where the councillor becomes an interested party in a civil proceeding in the matter, including before VCAT.
6. Residential amenity – where there would be an impact on the councillor's residential amenity depending on the outcome of the matter (above the impact of the decision on all residents of the municipality).⁴⁹¹

The LGA 1989 also stipulated that a councillor would *not* have a conflict of interest in certain situations, such as in a decision on the payment of allowances to the mayor or councillors.⁴⁹²

⁴⁸⁶ LGA 1989, s 94A(1)(a) and (c), and LGA 2020, s 46(1)(b).

⁴⁸⁷ LGA 2020, ss 18 and 19.

⁴⁸⁸ LGA 2020, s 28. Note LGA 1989, s 65(1) was substantially the same.

⁴⁸⁹ LGA 2020, s 46.

⁴⁹⁰ DELWP conducted a review of the LGA 1989 in 2015. Public consultation for the review found that many people and organisations were concerned about the complexity of conflict-of-interest provisions in the Act, particularly given that many councillors come to the role with no previous experience, and that the definitions and exemptions in the Act run to 11 pages. See Victorian Government, October 2015, *Local Government Act Review, Conflict of Interest in Local Government, Background Paper #1*, p 6.

⁴⁹¹ LGA 1989, s 77A.

⁴⁹² LGA 1989, s 79C.

Although the onus was ultimately on councillors to decide if they had a conflict of interest in a particular matter, Local Government Victoria (LGV) guidance stated that advice could be sought from the council CEO, council officers, peak bodies or a personal lawyer.⁴⁹³

Where a councillor identified a conflict, the LGA 1989 required them to fully disclose the interest and absent themselves from the meeting when the item was discussed. That Act also specified the details to be included in such disclosures, and how the declarations should be made.⁴⁹⁴

The LGA 1989 also made clear that councillors were required to declare an indirect conflict of interest arising from receipt of an applicable gift.⁴⁹⁵ 'Gift' was defined as the provision of property or a service (other than volunteer labour) made by one person to another. The disclosure threshold for gifts and benefits was the accumulated value of \$500, within five years preceding an occasion on which the councillor made a decision at council that benefited the giver of the gift.⁴⁹⁶ In the context of Operation Sandon, this included payments and contributions from individuals at fundraising events.

7.2.1.3.2 LGA 2020: two categories of general and material conflicts of interest

The LGA 2020 has classified conflicts of interest in a different way, creating two broad classes of conflicting interests:⁴⁹⁷

- A **general** conflict of interest arises if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.
 - *Private interests* are any direct or indirect interest of a person that does not derive from their public duty (not including personal opinions or beliefs).
 - *Public duty* means the responsibilities and obligations that a relevant person has to the community.⁴⁹⁸

- A **material** conflict of interest arises if an affected person would gain a benefit or suffer a loss depending on the outcome of a matter.⁴⁹⁹

- *An affected person* is defined as the councillor, a family member of the councillor, a body corporate of which the councillor or their domestic partner is a director or a member of the governing body, an employer of the councillor, a business partner of the councillor, a person for whom the councillor is a trustee of a discretionary trust, or a person from whom the councillor has received a disclosable gift.⁵⁰⁰

The LGA 2020 also sets out a range of exemptions, including conflicts that are so remote that they would not be reasonably regarded as capable of influencing the decisions of the relevant person.⁵⁰¹

Although the LGA 2020 does not prescribe a process for councillors to disclose conflicts of interest – requiring instead that the process be set out in a council's governance rules – it does make clear that, to manage a conflict of interest, a councillor must take two steps:

1. disclose the conflict of interest in the manner required by the council's governance rules
2. exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter at any council meeting or delegated committee, and any action in relation to the matter.⁵⁰²

493 LGV, *In the Public Interest, A conflict of interest guide for councillors*, pp 6–7, states that advice can be sought from the CEO, council staff, a private lawyer, the MAV or Victorian Local Governance Association, adding, 'Local Government Victoria can also provide information about the disclosure of conflicts of interest and general guidance but cannot provide legal advice'. The guide was updated in October 2020.

494 LGA 1989, s 79.

495 LGA 1989, s 78C.

496 Exceptions to this provision were the receipt of reasonable hospitality at an event or function the councillor attended in their official capacity, or a gift that was received more than 12 months before the person became a councillor, member of council staff or a member of a special committee.

497 While the previous legislative framework was complex, it was prescriptive. The current LGA 2020 is very subjective, which can make it difficult for time- and resource-poor councillors to interpret their obligations.

498 LGA 2020, Part 6, Division 2, s 127.

499 LGA 2020, Part 6, Division 2, s 128.

500 LGA 2020, Division 2 – Conflict of interest s 128(3).

501 LGA 2020, Division 2, s 129.

502 LGA 2020, s 130(2).

7.2.1.4 Governance principles

While the LGA 1989 stated that councillors must ‘observe principles of good governance’,⁵⁰³ it did not give any indication of what this involved.

The LGA 2020 clarifies that the ‘overarching governance principles’ require (among other things) that:

- councils must take regional, state and national plans and policies into account in strategic planning and decision-making
- actions and information be transparent
- council decisions be made and actions taken in accordance with the relevant laws
- priority be given to achieving the best outcomes for the community, including future generations.⁵⁰⁴

7.2.1.5 Provision of local laws under LGA 1989 and governance rules under LGA 2020

During the conduct investigated by IBAC, the LGA 1989 required that councils make local laws governing the conduct of council meetings.⁵⁰⁵ Local laws governing council meetings in Victoria covered essentially the same matters, but specific details and requirements varied between councils.

The LGA 2020 stipulates that councils must adopt ‘governance rules’ (instead of local laws) for activities, including the conduct of council meetings, the election of a mayor and deputy mayor, and the procedures for a councillor disclosing a conflict of interest.⁵⁰⁶

7.2.1.6 Training requirements for new councillors and disqualification criteria

The LGA 1989 did not prescribe any training for councillors. The LGA 2020 seeks to improve councillor behaviour and capability through ‘minimum training requirements for candidates and councillors and clear standards of behaviour with stronger mechanisms to address poor conduct’.⁵⁰⁷

Under the LGA 2020, councillors must complete induction training within six months of taking office,⁵⁰⁸ having also completed the prescribed training *before* nominating as a candidate for election as a councillor.⁵⁰⁹ The LGA 2020 also precludes a person from being a councillor if they have multiple findings of serious misconduct against them or if they have been convicted of an offence, including a failure to lodge an election campaign donation return for the current term of the council.⁵¹⁰

7.2.2 Local government policies and guidance

7.2.2.1 Draft model governance rules

In mid-2020, LGV issued draft Model Governance Rules for the conduct of council meetings.⁵¹¹ This was intended to give councils time to adopt governance rules for council meeting procedures by 1 September 2020. LGV’s draft rules draw on provisions in existing local laws and include many of the better council meeting practices in place across the state.⁵¹² IBAC understands that as of 2023, the rules are still in development.

503 LGA 1989, s 65(2)(b).

504 LGA 2020, s 9(2). Note s 9(3) also states that councils must take into account five further supporting principles in relation to: community engagement, s 56; public transparency, s 58; strategic planning, s 89; financial management, s 101 and service performance, s 106.

505 LGA 1989, ss 91(1) and (2) which stipulated that the local laws needed to be consistent with the Act.

506 LGA 2020, s 60(1).

507 Department of Jobs, Precincts and Regions, Local Government Bill 2019, localgovernment.vic.gov.au/our-programs/local-government-act-review.

508 LGA 2020, s 32.

509 LGA 2020, s 256(7). Also see Department of Government Services 2023, Candidate Training, www.localgovernment.vic.gov.au/council-governance/candidate-training.

510 LGA 2020, ss 34(2)(i) and (j).

511 LGV, June 2020, *Draft Model Governance Rules*.

512 The Model Governance Rules were developed through co-design with the sector, including a working group.

7.2.2.2 Draft model public transparency policy

LGV also issued a draft model Public Transparency Policy in mid-2020 to help councils meet the requirement to adopt and maintain such a policy.⁵¹³ The policy lists the types of records that should be available on a council's website at a minimum, including meeting agendas and minutes, registers of gifts and conflicts of interest, and election campaign donations.⁵¹⁴

The policy also reiterates that a decision at council meetings 'will be made fairly and, on its merits, and where any person whose rights will be directly affected by a decision of the council will be entitled to communicate their views and have their interests considered'.⁵¹⁵

7.2.2.3 Guidance on managing councillor conflicts of interest

In 2020, LGV reviewed and updated two guidelines on conflicts of interest:

- *In the public interest: a conflict of interest guide for councillors, delegated committee members and council staff* provides detailed guidance on what constitutes a conflict of interest, possible implications of failing to disclose, and practical examples that reflect issues that can arise in local government (including conflicts in the context of a planning permit, or a planning scheme amendment).⁵¹⁶
- *Managing personal interests in local government: a manual for council managers and governance officers* is intended for use by 'staff managing conflict of interest and related processes, as well as staff advising councillors, committee members and council staff about interest disclosure matters'.⁵¹⁷ This guide includes information about the CEO's role in receiving disclosures and keeping records of conflicts of interest. For instance, the guide advises councils to develop governance rules that allow a councillor to provide a written disclosure to the CEO prior to the meeting instead of making a formal, public disclosure, but also notes that this provision 'should only be allowable if the public description would require disclosure of another person's private information'.⁵¹⁸

Similarly, the Municipal Association of Victoria (MAV) has produced several guides on councillor conduct, including guidance on managing conflicts of interest. For example, MAV's *Land use planning in Victoria, councillor guide 2016* reinforced the importance of properly declaring and managing conflicts of interest, and of remaining unbiased in decision-making.⁵¹⁹ MAV also runs workshops on conflicts of interest to build councillors' understanding of their obligations.

7.2.2.4 Good governance guide

Although references to legislation may be out of date, the *Good governance guide*, produced for Victorian councils by the Victorian Local Governance Association, MAV, LGV and Local Government Professionals, provides sound advice on the main elements of good governance, including the following:⁵²⁰

- Councils are obliged to report, explain and be accountable for the decisions they make for their communities.
- Decision-making processes should be transparent, enabling people to see how and why a decision was made, including what information and advice were considered.
- Anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision.
- Council decision-making should follow the rule of law, ensuring compliance with relevant legislation, the common law and council powers.

513 LGV, June 2020, *Draft Public Transparency Policy*, with reference to LGA 2020, s 57.

514 Ibid., p 2.

515 Ibid., p 2.

516 LGV 2020, *In the public interest: a conflict of interest guide for councillors, delegated committee members and council staff*. For examples, see pp 33–35.

517 LGV 2020, *Managing personal interests in local government: a manual for council managers and governance officers*.

518 Ibid., p 16. Note that while the LGA 2020 does not expressly provide for councillors to advise the CEO of their conflict in writing prior to the meeting it does not prohibit this practice.

519 MAV 2016, *Land use and planning in Victoria, councillor guide*, pp 6–7.

520 MAV, Victorian Local Governance Association, LGV and Local Government Professionals 2012, *Good governance guide*, p 7.

7.2.3 The City of Casey Council's codes, policies and local laws

At the time of IBAC's investigation, the City of Casey's Councillor Code of Conduct set out the standards required of councillors, and endeavoured to foster good working relations between councillors 'to build public confidence in the integrity of local government'.⁵²¹ The code also restated the councillor conduct principles in the LGA 1989,⁵²² which stipulated that councillors should not misuse their position, improperly seek to confer an advantage or disadvantage on any person, or improperly influence a Casey Council officer.⁵²³ It also set out the process for resolving disputes and conflicts (as required under the Act), and emphasised expectations of councillors in dealing with Casey Council officers and use of Casey Council information.⁵²⁴ Unlike some other codes of conduct, the City of Casey's Councillor Code of Conduct did not require that councillors sign a public statement acknowledging their awareness of and commitment to the code.⁵²⁵

The City of Casey released an updated Councillor Code of Conduct in 2023. The updated policy now includes the requirement for councillors to make a written declaration that they will abide by the code, as well as obligations with respect to land use planning decision-making.⁵²⁶

Under the LGA 1989, the City of Casey Council's Local Law, Meeting Procedures and Use of the Common Seal (local law) set out the basic requirements governing the Casey Council's meeting procedures, including notices of motion, urgent business and record-keeping.⁵²⁷ It also specified how councillors should declare conflicts of interest,⁵²⁸ and provided that the chair or any councillor could question a member if they considered that a member may have a conflict of interest relating to an item listed or raised for consideration at a meeting.⁵²⁹

In August 2020, the Casey Council adopted new governance rules which were largely based on the LGV's draft Model Governance Rules. For meeting procedures, the Casey Council's Governance Rules are generally consistent with the Model Governance Rules. The inconsistencies relevant to IBAC's investigation were that the Casey Council's Governance Rules do not:

- require that a negative or substantially contrary motion be treated as an alternative motion
- prohibit or otherwise provide any guidance on the practice of voting on a group of items at the same time (often referred to as 'en bloc' voting)
- set out the same advice and declaration requirements as those set out in the model code in relation to conflicts of interest.

The Casey Council's Governance Rules state that a councillor who has a conflict of interest in a matter being considered at a meeting they are attending must:

- disclose the conflict of interest by explaining the nature of the conflict to those present at the meeting immediately before the matter is considered
- leave the meeting immediately after giving the explanation or making the announcement and not return to the meeting until after the matter has been dealt with.⁵³⁰

The Casey Council Governance Rules have since been further updated.⁵³¹ The Rules now include a provision on the admission of urgent business during Casey Council meetings. However, as discussed in section 7.3.2.2, these requirements still fall short of those recommended in the draft Model Governance Rules.⁵³²

⁵²¹ City of Casey 2016, Councillor Code of Conduct, Version 9.1, para 1.

⁵²² Ibid., para 5.3.

⁵²³ Ibid., para 5.3.

⁵²⁴ Ibid., para 5.4.

⁵²⁵ At the time of the conduct under investigation in Operation Sardon, a number of councils included a signed acknowledgment that their councillors were aware of and committed to abide by the code of conduct. See Whitehorse City Council's 2016 Councillor Code of Conduct, p 6 and City of Stonnington's 2016 Councillor Code of Conduct, p 3. This practice is currently adopted by Melbourne City Council, see Melbourne City Council's 2020 Councillor Code of Conduct, p 7.

⁵²⁶ City of Casey 2023, Councillor Code of Conduct, pp 4, 8 and 9.

⁵²⁷ City of Casey 2016, Local Law (No. 1), Meeting Procedures and Use of the Common Seal.

⁵²⁸ Ibid., cl 37.1.

⁵²⁹ Ibid., cl 37.4.

⁵³⁰ City of Casey 2020, *Governance Rules*, cl 102.

⁵³¹ The Governance Rules were updated in August and September 2022 and again in April 2023. Changes to the rules primarily included new virtual meeting provisions, election period policy and provisions on responding to community feedback. City of Casey April 2023, *Governance Rules*.

⁵³² Ibid., p 14.

At the time of the conduct under investigation in Operation Sandon, the Casey Council also had other policies and guidelines intended to govern councillor conduct, including:

- **Governance Charter** – articulated the various roles, responsibilities and authorities of Council and the administration in developing the vision for the future of the community and the management of Casey Council operations and performance.⁵³³
- **Compliance and Integrity Framework** – emphasised the importance of a positive ethical culture, noting that the Casey Council would ‘actively demonstrate a commitment to a compliance culture with the aim of promoting good governance, accountability and transparency of decision-making’.⁵³⁴
- **Councillor Communication Protocol** – required councillors to direct all their enquiries to the CEO, the appropriate director or manager or specified support staff, noting that persistent failure to follow the protocol could be dealt with under the Casey Council Councillor Code of Conduct.⁵³⁵
- **Gifts, Benefits and Hospitality Policy for Councillors** – provided guidance to councillors on how to deal with gifts and hospitality that may be offered to them in their capacity as councillors, to avoid perceived and real conflicts of interest.⁵³⁶
- **Protocols for Councillors in Administering Planning Applications** – advised councillors not to place themselves in a compromised position by appearing to be an advocate for or against a proposal or by having meetings with parties to an application without Casey Council officers or the other parties being present.⁵³⁷
- **Councillor Briefing – A Guide to Town Planning Applications** – noted that planning decisions often need to balance competing policy objectives and that councillors are obliged to make fair and merit-based decisions.⁵³⁸

These legislative provisions, local laws, guides and other resources were designed to make sure that councillor conduct met an appropriate standard and supported good governance. This raft of measures did not translate into practice at the Casey Council. As discussed below, Operation Sandon found significant governance shortcomings in the Casey Council, including poor and sometimes egregious councillor behaviour and capability issues.

7.3 Issues identified in Operation Sandon

Operation Sandon highlighted the following shortcomings in the behaviour of Casey councillors and governance controls:

- an absence of responsibility for governance
- abuses of Casey Council meeting procedures
- a lack of transparency in decision-making
- numerous failures to declare and manage conflicts of interest
- ineffective measures to deal with poor councillor conduct
- limits on the Casey Council CEO's authority over councillors.

These issues are discussed below.

7.3.1 Absence of responsibility for governance

To achieve the best outcomes for their local communities, councillors must consider and balance the interests and perspectives of a range of public stakeholders including residents and community service providers, and private stakeholders such as developers. Therefore, it is important that elected representatives participate in debate as part of the council decision-making process. Governance rules and codes of conduct give councillors a framework for respectful and constructive discussion, as well as mechanisms to moderate attempts to behave in a manner that is not accountable, lacks transparency or is otherwise inappropriate. However, these tools must be understood and used properly.

⁵³³ City of Casey 2019, *Governance Charter*.

⁵³⁴ City of Casey 2018, *Compliance and Integrity Framework*.

⁵³⁵ City of Casey, 2016 *Councillor Transition Program*, p 10.

⁵³⁶ City of Casey 2018, *Gifts and Other Hospitality Policy for Councillors*.

⁵³⁷ City of Casey 2017, *Protocols for Councillors in Administering Planning Applications*, Version 2.2, p 1–2. The City of Casey also issued *Protocols for Councillors – Land Use Planning*, in April 2020, several months after the IBAC investigation into councillors and property developers began. That protocol includes a reminder to councillors that ‘requests to have matters determined by Council at a council meeting should be made carefully so as to not give rise to any perceived or actual conflict of interest by Council and to make sure matters are called in for the reasons of there being a broader community interest’ (existing emphasis). This policy was updated in 2021 to include references to the new Proponent Requested Planning Scheme Amendment Policy, endorsed by the Casey Council in April 2021.

⁵³⁸ City of Casey 2016, *Councillor Briefing Paper – A Guide to Town Planning Applications*.

In Operation Sandon, it was apparent that the Casey Council, as a collective, repeatedly failed to perform its role to effectively serve its constituents. Rather, Casey councillors acted in a way that suggested a lack of understanding of good governance and integrity principles, and, in some cases, a wilful breach of these obligations. For instance, as discussed in section 7.3.5, Councillor Aziz was elected by other councillors as mayor in 2015, shortly after being found guilty of misconduct by a councillor conduct panel (and was subsequently elected mayor for a second term in 2016).⁵³⁹

Similarly, Councillor Ablett and Councillor A were elected by other councillors as mayor in 2017 and 2018 respectively, after being associated with a Victorian Ombudsman investigation. Although the Ombudsman's 2015 report did not substantiate the allegations against Councillor Ablett and Councillor A, it did note that both councillors received funding from Watsons ahead of the 2014 state election and that both declined to answer any questions. The Ombudsman's report was mentioned in both the local and national media at the time.⁵⁴⁰ This should have led other Casey councillors and the Casey Council CEO to more closely scrutinise motions promoted by these councillors that involved developments connected to Mr Woodman and his companies, and should also have led to an enhanced focus on integrity at the Casey Council.⁵⁴¹ However, when asked about their knowledge of the Ombudsman's report, the former Casey Council CEO and a number of other Casey councillors variously said that they had either not read it in detail, or not read it at all. In fact, despite the Ombudsman's investigation, Councillor Ablett, Councillor Aziz and Councillor A were prepared to continue to act improperly in further advancing Mr Woodman's interests.

These instances of poor governance point to broader concerns regarding the culture among councillors. In 2020, the Municipal Monitor report on the City of Casey noted:

*There is an overriding view that if one or both councillors, at the centre of the investigation to date, were removed everything would be all right and that the remaining councillors have 'done nothing wrong'. This is an inadequate response to the situation because it is illustrative of a lack of understanding by the councillors of the poor governance practices underpinning the IBAC allegations, their collective responsibilities to meet the requirements under the Local Government Act [1989] and the mechanisms available to them to hold one another to account when individual councillors fail to meet the standards required of them under the Act.*⁵⁴²

In his submission to IBAC, Philip Shanahan, a former CEO of several Victorian councils, observed that in his experience, the problems identified in Operation Sandon were not unique to the Casey Council. Indeed, broader concerns that councillors lack understanding of their roles, have limited competence in complex and high-risk areas such as planning, and are reluctant to undertake professional development have been raised in a number of reviews and investigations of other Victorian councils.⁵⁴³

7.3.1.1 Lack of standardised councillor codes of conduct

During the conduct under investigation in Operation Sandon, councillors were required to review and adopt a councillor code of conduct. The only obligation was that the code be reviewed and adopted within a specified time.⁵⁴⁴ The Casey councillors declared that they would abide by the code following their election in October 2016.⁵⁴⁵ However, this did not guarantee compliance.

539 City of Casey, 26 October 2015, Council meeting minutes, Item 6.1, Election of mayor. Councillor Aziz was elected unopposed. The minutes indicate Councillor Crestani, Councillor Rowe, Councillor Serey and another councillor dissented. Also see Casey Council, 10 November 2016, meeting minutes, Item 6.4, Election of mayor, where Councillor Aziz was again elected unopposed. The minutes do not record any dissent.

540 Victorian Ombudsman 2015, Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations.

541 For example see Moorhead, L 2015, 'Councillors cleared of misconduct', *Berwick Star News*; and Edwards, J 2015, 'Victorian Ombudsman calls for 'urgent reform' of state's political donation disclosure laws', ABC News Online, www.abc.net.au/news/2015-11-25/ombudsman-calls-for-changes-to-victorian-political-donation-laws/6973066.

542 Municipal Monitor 2020, *City of Casey Municipal Monitor Report*, p 4–5.

543 See for example, *Commission of inquiry into Greater Geelong City Council* 2016; LGI 2017, *Investigation into 2016 Wyndham City Council election*; and Victorian Ombudsman 2009, *Investigation into the alleged improper conduct of councillors at Brimbank City Council*.

544 LGA 1989, s 76C.

545 Casey Council, 7 June 2016, meeting minutes, 'Mayor led councillors in signing code'.

For instance, when asked about his obligation to declare conflicts of interest, Councillor Ablett stated, 'it is in our code of conduct and I should have been aware of it but I wasn't. I've only read it in the last few weeks before IBAC', repeating later, 'I read the code of conduct only just very recently'. Similarly, Councillor A confirmed that councillors in the last term of the Casey Council had limited understanding of the Casey Councillor Code of Conduct as it concerned conflicts of interest. Hence, in February 2020, the Casey Council was put into administration until the 2024 local government elections, to give the administrators sufficient time to 'embed good governance practices' at the Casey Council.⁵⁴⁶

Under the LGA 2020, councils are still responsible for developing their own councillor codes of conduct, but the code must include the standards of conduct prescribed by the regulations.⁵⁴⁷ In addition, LGV has suggested a structure and topics to be covered in councillor codes of conduct, which should prompt councils to consider the following (among other things):

- What do you want to stand for – what are the councillor values?
- What do you want to hold each other to account to?
- How will you conduct yourself personally?⁵⁴⁸

It is not clear why the core values, accountabilities or expected standards of personal conduct should vary between councils.⁵⁴⁹

By contrast, New South Wales, Queensland and Western Australia all require that local councils adopt a model code of conduct for councillors.⁵⁵⁰ The NSW Model Code of Conduct is the most comprehensive in coverage, applying equally to 'councillors, administrators, members of staff of councils [and] delegates of councils, (including members of council committees that are delegates of a council)'.⁵⁵¹ Thus in New South Wales there can be no misunderstanding or discrepancies between the standards of conduct expected of different types of council officials. Western Australia's Model Code applies to councillors, committee members *and candidates*,⁵⁵² while the Queensland Model Code focuses on councillors.⁵⁵³

The LGI supported standard council procedures in a report published in September 2020. That report called for model policies to provide greater consistency on expenses and reimbursement, noting that 'public confidence in the process would be improved if there was greater consistency in the policies'.⁵⁵⁴

Proposed reforms

The repeated instances of poor councillor conduct observed in Operation Sandon, together with a failure to recognise poor governance after IBAC's investigation, demonstrate why more must be done to make councillors take responsibility for how their council is governed. This must start with a clear and consistent statement of obligations and conduct expectations for all councillors.

Councillor codes of conduct should be consistent across all councils in Victoria. Now that the standards of conduct are mandated under the LGA 2020 and associated regulations, the next logical step is a model code that all councils can adopt.

546 Rollanson B, February 2020, 'City of Casey could be without elected council until 2024 after damning report prompts sacking', *ABC News*.

547 *LGA 2020*, s 139(3)(a), together with Local Government (Governance and Integrity) Regulations 2020, reg 12 and Sch 1, set out the standards of conduct in three categories, namely, treatment of others, performing the role of councillor, compliance with good governance measures, adding that a councillor must not discredit or mislead the council or the public (cl 4) and that the standards do not limit robust political debate (cl 5).

548 LGV 2020, Councillor Code of Conduct, index. Note LGV's guidance also includes a link to the NSW Model Code and the LGI's better practice examples from 2016. See engage.vic.gov.au/local-government-act-2020/councillor-code-of-conduct.

549 DELWP 2015, *Local Government Act review*, discussion paper, p 90.

550 *Local Government Act 1993* (NSW), s 440(3), *Local Government Act 2009* (Qld), s 150D, and *Local Government Act 1995* (WA), s 5.103.

551 NSW Office of Local Government 2020, *Model code of conduct for local councils in NSW*, Part 1. Also see *LGA 1993* (NSW), s 440(1), and Local Government (General) Regulation 2005 (NSW), Part 8.

552 Local Government (Model Code of Conduct) Regulations 2021 (WA), Sch 1, cl 3. Councils are required to adopt the overarching principles and rules of conduct without alteration but can specify additional behaviours that will be managed by the council.

553 *Code of Conduct for Councillors in Queensland*, August 2020, p 4.

554 LGI 2020, *Councillor expenses and allowances: equitable treatment and enhanced integrity*, p 23.

Development of a model code by a body such as LGV would also prompt councils to adopt best practice. Such consistency and clarity are likely to improve awareness of councillor conduct requirements by promoting a shared understanding. If it is considered necessary to let councils tailor their councillor code of conduct, councils could be empowered to include provisions over and above those contained in the model code. In that case, the model code must make clear that additional provisions would be invalid to the extent that they are inconsistent with the minimum standards specified in the Model Councillor Code of Conduct.

Recommendation 17

IBAC recommends that the Minister for Local Government:

- (a) ensures that Local Government Victoria develops and maintains a Model Councillor Code of Conduct that includes better practice provisions that will apply to *all* councils, noting that councils can adopt additional provisions to the extent that they are consistent with the minimum standards specified in the Model Councillor Code of Conduct
- (b) develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic), or amends relevant regulations to specify that councils must adopt the Model Councillor Code of Conduct.

7.3.1.2 Need for targeted training to reinforce good governance practices

Councillors must undertake appropriate training on a regular basis to reinforce good governance practices, regardless of the extent of their experience as councillors. As the Municipal Monitor observed about the Casey Council:

*Despite the information arising from the IBAC investigation, there have been no requests from Councillors to refresh or have additional training around conflict of interest and their governance responsibilities more generally.*⁵⁵⁵

This lack of awareness of basic obligations and availability of training was reflected in comments from the current Casey Council CEO,⁵⁵⁶ and in evidence from councillors themselves.⁵⁵⁷

To improve councillors' understanding of their role, the LGA 2020 now requires that *candidates* undertake prescribed training and declare that they have completed this training when nominating for local government elections.⁵⁵⁸ In the lead-up to the October 2020 local government elections, the pre-training involved a one-hour ungraded online course that covered councillor responsibilities (including the role and obligations of councillors, the CEO and council officers), governance and decision-making (including the councillor code of conduct, conflicts of interest, local government legislation and policies), as well as councillor allowances and available support.⁵⁵⁹ The regulations require that the relevant government department keep a register of those who have attended or been given access to the training.⁵⁶⁰ The register is confidential, but the Chief Municipal Inspector (CMI) and the Victorian Electoral Commission may request information by written notice.⁵⁶¹

Although the introduction of candidate training is welcome and should improve awareness of what is required of a councillor, it cannot guarantee that candidates who stand for elections are in fact capable of performing the role.

⁵⁵⁵ Municipal Monitor 2020, *City of Casey Municipal Monitor report*, pp 4–5.

⁵⁵⁶ For instance, in evidence Mr Patterson indicated there was insufficient interest from Casey councillors to provide more formal training on conflicts of interest. See section 7.3.6, Limits on the CEO's ability to act on identified integrity issues.

⁵⁵⁷ As discussed in section 7.3.1.1 in relation to this issue.

⁵⁵⁸ LGA 2020, s 256(7) and Local Government (Electoral) Regulations, cl 33–36. Note that under s 293 it is an offence for a person to provide false or misleading information in any declaration or application in relation to an election under the Act or regulations.

⁵⁵⁹ Department of Jobs, Precincts and Regions 2020, Local Government Candidate Training – Information for Candidates.

⁵⁶⁰ Local Government (Electoral) Regulation, reg 35 states that the Secretary, Department of Jobs, Precincts and Regions (or Department of Government Services from 1 January 2023), must keep a register of candidates who were provided with the Local Government Candidate Training. LGV maintains this register on behalf of the Secretary.

⁵⁶¹ *Ibid.*, cl 36.

Once councillors are elected, the LGA 2020 states that the CEO must make induction training available to councillors and provide reasonable assistance to enable councillors to complete the training.⁵⁶² Councillors are then obliged to make a written declaration to the CEO stating that they have completed the training. This applies to all councillors, including those who have served as councillors previously.⁵⁶³ More broadly, the LGA 2020 states that the council must make sure that the mayor and councillors have access to the resources and facilities reasonably necessary to enable them to perform their role effectively.⁵⁶⁴ To promote take-up of training by councillors, the LGA 2020 provides that, in the event that a councillor fails to take or complete induction training, 'the councillor's allowance is withheld until the councillor has completed induction training and made the written declaration'.⁵⁶⁵

Councillors bear the primary responsibility for understanding and complying with laws and regulations governing their role. However, the LGA 2020 is clear that council CEOs – through their governance staff – must make sure that training closes gaps in the skills or knowledge required of councillors to perform their role effectively.⁵⁶⁶ To help councils implement the new training requirements of the LGA 2020, LGV has worked with peak bodies to produce six videos that CEOs can use when inducting councillors, and a suite of resources and templates to assist councils in developing councillor induction training.⁵⁶⁷ LGV also worked with the local government sector to develop the councillor induction training regulations.⁵⁶⁸

The need for regular training for councillors and support from council officers was also highlighted in the LGI's September 2020 report on *Councillor expenses and allowances*. That report recommended, in part, that:

- LGV should provide guidance regarding training and development courses to be completed by councillors and mayors over the course of their terms⁵⁶⁹
- councils should educate councillors about the resources, facilities and support available to them during councillor induction training and should provide refresher training midway through the councillor term
- councils should individually survey their councillors to identify their needs for resources, facilities, support, and skills and knowledge training during the induction process.⁵⁷⁰

Together with the new training provisions of the LGA 2020, these measures would help give councillors the training and support that they require, and which is both consistent (based on standardised LGV guidance) and tailored (in response to local survey results) to address the identified needs of a particular councillor cohort.

⁵⁶² LGA 2020, s 32(4).

⁵⁶³ LGA 2020, s 32(3). In addition, the Local Government (Governance and Integrity) Regulations 2020, cl 6, prescribe matters to be addressed in the councillor induction training, which includes: the role of a councillor, mayor and CEO; any practices or policies in relation to interaction between councillors and council officers; the overarching governance principles; the standards of conduct, misconduct and the processes for handling allegations of misconduct.

⁵⁶⁴ LGA 2020, s 42.

⁵⁶⁵ LGA 2020, s. 33(1).

⁵⁶⁶ LGA 2020, s. 46(1).

⁵⁶⁷ Note that the six videos cover a principles-based LGA 2020; leadership and integrity; integrated strategic reporting framework; gender equity; traditional owners' and community engagement

⁵⁶⁸ Local Government (Governance and Integrity) Regulations 2020, reg. 6.

⁵⁶⁹ LGI 2020, *Councillor expenses and allowances: equitable treatment and enhanced integrity*, p 12. Noting that the LGA 2020, s. 32 prescribes councillors must complete induction training within six months of taking office.

⁵⁷⁰ LGI 2020, *Councillor expenses and allowances: equitable treatment and enhanced integrity*, p 12.

Proposed reforms

Mandatory induction training is an important step in achieving consistently higher level governance skills and capabilities among councillors. Operation Sandon demonstrated that regular, targeted training for councillors on governance and integrity is important to reinforce councillor obligations. This was reiterated in the 2022 *Local Government Culture Project: insights report*, which observed that the current candidate training does not appear to translate into a genuine understanding and expectation of the role, that councillor induction training may be perceived as a ‘tick box’ exercise, and that regular ongoing training is not consistent across councils.⁵⁷¹ That report also noted the importance of teaching leadership skills and requiring that leadership principles be upheld by councillors, given their role in setting the ethical tone and promoting good governance and behaviour in local government.⁵⁷²

An important improvement would be to require all councillors to undertake refresher training halfway through their term, so that they understand their obligations, with an increased focus on governance, leadership and integrity. Such training should lead to consistent understanding of the role and responsibilities of councillors and should not, therefore, be left to the discretion of each council.

Recommendation 18

IBAC recommends that the Minister for Local Government uses an appropriate mechanism, such as amendments to the *Local Government Act 2020* (Vic) or relevant regulations, to require that councillors undertake mid-term refresher training on governance, leadership and integrity.

7.3.2 Abuse of council meeting procedures and lack of transparency in decision-making

Council meeting procedures are intended to regulate the conduct of council meetings.⁵⁷³ A lack of clear procedures or a failure to comply with procedures can increase a council’s exposure to corruption risks by making it difficult to moderate behaviour that occurs during decision-making processes. The significance of the council meeting process is highlighted in the Casey Council’s Governance Charter, which reminds councillors:

One of the most important functions undertaken by the mayor and councillors is to attend and participate in the decision-making process at Council meetings. Councils are empowered by law to make decisions on many matters of importance to their local communities.⁵⁷⁴

Operation Sandon demonstrated how poor meeting governance presents a corruption risk. This includes processes that admit alternative motions without justification, or ‘urgent’ business without consideration of whether the matter was truly urgent. These procedural issues can expose a council to the risk of having its agenda hijacked.

These problems can be exacerbated when councillors are not adequately prepared for meetings and unable to participate in the debate, or when relationships between councillors and council officers are so lacking in trust that officer recommendations (council officers’ proposals to councillors on the best way to resolve an issue raised in a report to council) can be dismissed without proper justification.

These issues are discussed below.

⁵⁷¹ PwC 2022, *Local Government Culture Project: Insights report*, p 30. Also see Department of Jobs, Precincts and Regions, December 2021, *Local Government Culture Project*, Discussion Paper, Question 5.

⁵⁷² PwC 2022, *Local Government Culture Project: Insights Report*, p 20.

⁵⁷³ City of Casey 2016, *Local Law (No. 1), Meeting Procedures and Use of the Common Seal*, cl 2(a).

⁵⁷⁴ City of Casey 2019, Governance Charter.

7.3.2.1 Misuse of alternative motions

Before each council meeting, councillors are given an agenda and reports prepared by council officers on matters that councillors will be required to consider and vote on. These reports usually include a recommendation by the council officer and provide relevant background, policies and issues to help councillors to decide a matter.

Councillors do not always support the recommendations that council officers put forward. In these circumstances, a councillor may seek to promote an alternative motion to the one recommended in the officers' report.⁵⁷⁵

Alternative motions are an important and valid way of allowing democratically elected members to put forward a different recommendation from the one proposed by a council officer. However, the mechanism must be applied in such a way that decisions are made in an accountable and transparent manner, to mitigate the risk that alternative motions could be misused to facilitate corrupt conduct.

At the time of Operation Sandon, the Casey Council's local law did not contain any specific provisions on alternative motions, and while the Casey Council's Guide to Town Planning Applications stated that councillors are 'strongly advised' to consult the Casey Council's planning office, it did not require consultation before introducing an alternative motion.⁵⁷⁶

As a result, Councillor Aziz was able to introduce an alternative motion that sought to compel Dacland to build the H3 intersection immediately, thus indirectly benefiting Mr Woodman by reducing the costs payable by his associates. Another alternative motion moved by Councillor Aziz removed open-space requirements in Pavilion Estate, also benefiting Mr Woodman's clients or associates. These alternative motions were:

- moved without the Casey Council first considering the Casey Council officers' recommendations, effectively taking control of the agenda item
- drafted by Ms Schutz, Mr Woodman's planning consultant, rather than by Casey Council planning officers, meaning that the motions considered and carried by the Casey Council were crafted by a developer with significant financial interests in that decision.

7.3.2.1.1 Circumventing the Casey Council officers' recommendations

It was not contrary to the Casey Council's local laws for Councillor Aziz to move alternative motions as soon as those agenda items were raised (that is, before councillors had properly considered or voted on the Casey Council officers' substantive recommendations). However, it represented particularly poor practice that can expose councils to potentially corrupt conduct.

In relation to the H3 intersection, the Casey Council's meeting agenda for 4 September 2018 listed for consideration a Casey Council officers' report titled 'Hall Road, Cranbourne West'. That report recommended that the Casey Council note the report and write 'to VicRoads reaffirming that an upgrade of the Hall and Evans Road intersection is a priority and that [funds are available]'. However, before councillors could discuss the merits of the substantive recommendation or vote on it, Councillor Aziz was permitted to move an alternative motion.⁵⁷⁷

As explained in section 3.2, this motion, which Ms Schutz had drafted for Councillor Aziz, shifted the focus to another section of Hall Road – the H3 intersection. It sought to impose the requirement that Dacland construct the intersection immediately, and referred to both a letter from SCWRAG expressing safety concerns and a crash data report, despite the report indicating that there had not been any collisions at the site in the preceding five years.

⁵⁷⁵ Other options may include amending the motion or adding to the motion when the change proposed is relatively minor or consistent with the primary recommendation.

⁵⁷⁶ City of Casey 2016, Councillor Briefing, A Guide to Town Planning Applications, 2.7, Officers recommendations.

⁵⁷⁷ Casey Council, 4 September 2018, meeting agenda, Item 6.6.

Councillor Aziz's alternative motion clearly supported Mr Woodman's interests by attempting to shift responsibility and costs for construction to another developer, namely Dacland.⁵⁷⁸ Dissenting views were expressed by other councillors and the vote was initially split evenly. However, Councillor Aziz's alternative motion was ultimately carried with the casting vote of the deputy mayor and acting chair of the meeting, Councillor Smith. In evidence, Councillor Smith asserted that he was not aware that Mr Woodman was involved with Watsons or Woldene, or that he had any interest in these planning matters. Councillor Smith told IBAC he often did not read the voluminous Casey Council planning papers, instead preferring to follow Councillor Aziz's lead because he had confidence in Councillor Aziz's judgment on those matters.⁵⁷⁹

Similarly, when on 3 April 2018 the Casey Council considered a request to amend the planning permit for Pavilion Estate, the officers' recommendations were not discussed or voted on before an alternative motion (again, drafted by Ms Schutz) was introduced by Councillor Aziz.⁵⁸⁰ The Casey Council officers recommended that the Casey Council reject the proposed amendments to delete open-space and road-width requirements. The officers' report argued that the existing permit requirements were in the community's interests by maintaining open space, the existing PSP requirements and the original advice provided to the developer during the application process.

The Casey Council officers' report also queried whether an amendment was warranted (given that the original permit had been issued only a month before the amendment request) and stated that legal advice suggested that the restrictions specified in the existing permit would probably be upheld if appealed to VCAT. The officers' report detailed the proposed change's adverse consequences for the amenity of the residential estate, and for the neighbouring Casey Fields facilities.⁵⁸¹

Regardless, Councillor Aziz's alternative motion was carried without dissent, meaning that no other councillor challenged Councillor Aziz's assertions that the amendment would not adversely affect the neighbouring Casey Fields sports field or the amenity of Pavilion Estate, despite the concerns raised in the Casey Council officers' report.⁵⁸²

Local laws in other councils at the time recognised the benefits of considering the substantive proposal *first* by specifying that an alternative motion would be considered only if the motion before the council was lost. For instance, Whitehorse City Council's local law stated:

*If the amendment effectively negates the substance of the motion it is ruled to be an alternative motion and shall only be considered in the event that the motion is lost.*⁵⁸³

This principle is broadly reflected in the draft Model Governance Rules issued by LGV:

*If a proposed amendment is ruled to be the negative of, or substantially contrary to, the motion, it should be treated as an alternative motion to be considered only in the event that the motion before the chair is lost.*⁵⁸⁴

Such a procedure can help to prevent a councillor from taking control of an agenda item before a council officers' report is considered. This requirement is not yet reflected in the Casey Council's new Governance Rules.⁵⁸⁵ The Casey Council has specified that a member of Casey Council staff *may* introduce a Council officers' report (and note the reasons for any recommendations) before the report is considered.⁵⁸⁶ However, this will help to mitigate the risk of councillors improperly taking control of an agenda item only if Casey Council officers (rather than councillors) have the power to exercise this option. It is not clear in Casey Council's Governance Rules how this would work.

578 Casey Council, 4 September 2018, meeting agenda and minutes, Item 6.6, which sought to impose a condition on Dacland that would require that developer to construct the H3 intersection before a statement of compliance could be issued for the last two stages in their subdivision, meaning that those lots could not be sold.

579 See various instances where Councillor Smith indicated that he followed Councillor Aziz's lead on planning matters in section 3.2.7, The H3 intersection; section 3.3.5, Pavilion Estate; and section 3.6.4.2, Councillor Aziz's financial dealings with Mr Kostic.

580 Casey Council, 3 April 2018, meeting agenda and minutes, Item 6.1. The Casey Council officers' report states that the amendment application was lodged by Ms Schutz on behalf of the developer Woldene on 20 December 2017, one month after the permit was issued on 22 November 2017, and that the changes requested in the amendment were repeatedly denied during the original application process.

581 Casey Council, 3 April 2018, meeting agenda, Item 6.1 officer's report, attachment A, p 4.

582 Casey Council, 3 April 2018, meeting minutes, Item 6.1.

583 Whitehorse City Council, *Meeting Procedures and Common Seal Local Law 2013*, cl 27.10. Local Laws in place at the City of Darebin, City of Melbourne, Yarra City Council, and Whitehorse City Council also contained similar provisions.

584 LGV 2020, *Draft Model Governance Rules*, cl 10.4.

585 City of Casey 2020, *Governance Rules*.

586 *Ibid.*, cl 37.

7.3.2.1.2 Introduction of alternative motions drafted by developers

The motion about the H3 intersection moved by Councillor Aziz at the meeting on 4 September 2018 was rescinded at the next Casey Council meeting on 18 September 2018.⁵⁸⁷ At that meeting, Councillor Rowe noted that the motion to rescind was based on legal advice that the process lacked procedural fairness because it failed to give the developer, Dacland, an opportunity to respond before a decision was made that adversely affected its interests, and arguably breached the rule against bias.

The risk of alternative motions falling foul of planning requirements was flagged in the City of Casey Council's Guide to Town Planning Applications, which stated:

If councillors wish to put a different motion to the council meeting, they are strongly advised to ask the Planning Office to assist in drafting it. Whatever is carried becomes council's position if it is appealed to VCAT and the resolution should be worded so as to provide the most defensible position possible. Officers have no difficulty drafting such 'alternative motions'. It is particularly important to get the grounds for the alternative decision technically correct... If this is not done, the final position may be inadequate or, in an extreme case, unlawful.⁵⁸⁸

Requiring councillors to consult with council planning officers in drafting any alternative motions clearly represents better practice. It would reduce the opportunity for the perverse situation to arise in which a developer can lodge a request for a permit amendment *and* draft the proposed council response (as occurred for the Pavilion Estate permit amendment), or push for council decisions that favour their business interests by proposing alternative motions on relevant agenda items (as occurred for the Hall Road agenda item, which sought to trigger immediate construction of the H3 intersection).

Proposed reforms

The issues observed in Operation Sandon point to an unacceptable risk of manipulating alternative motion processes. The draft Model Governance Rules developed by LGV provide appropriate guidance that have led to some of the better practices other councils use for alternative motions.

But there is no clear rationale for the variation in meeting processes observed across the local government sector. A lack of harmonisation leads to poor public understanding of the correct process to be followed and also makes it more difficult to know when a process is not being properly followed or is improper.

IBAC recommends that all councils be required to adopt the standards set out in LGV's Model Governance Rules to promote clearer and more consistent meeting processes across the sector. This would allow LGV to identify better practices and update the model rules as issues arise, so that lessons learnt in one council are shared with the sector more broadly. Councils could then adopt additional meeting procedures to the extent that those additional procedures are consistent with the Model Governance Rules.

Recommendation 19

IBAC recommends that the Minister for Local Government:

- (a) ensures that Local Government Victoria develops and publishes Model Governance Rules to operate as the minimum standards for council meeting procedures
- (b) develops and introduces to Parliament amendments to the *Local Government Act 2020*, or amends relevant regulations to specify that councils *must* adopt the Model Governance Rules
- (c) ensures that Local Government Victoria maintains the Model Governance Rules in a way that promotes better practices that apply to all councils, noting that councils can adopt additional rules to the extent that they are consistent with the minimum standards specified in the Model Governance Rules.

⁵⁸⁷ Casey Council, 18 September 2018, meeting agenda and minutes, Item 11.

⁵⁸⁸ City of Casey 2016, Councillor Briefing, A Guide to Town Planning Applications, 2.7, Officers recommendations.

7.3.2.2 Improper use of urgent business process

The agenda for a council meeting is usually settled and circulated a number of days before the meeting. However, 'urgent business' can be considered when matters require immediate attention. This generally applies to items that have come to the council's attention after the agenda has closed, and which cannot safely or conveniently be deferred until the next meeting.

The Casey Council's Local Law No. 1 specified two procedural requirements for admitting urgent business to a Casey Council meeting:

- that the Casey councillor proposing the urgent business outline the subject of the business to the meeting
- that the Casey Council pass a resolution to admit an item of urgent business.⁵⁸⁹

Although the local law listed matters that could not be the subject of urgent business, that list did not include planning matters.⁵⁹⁰

Other councils' local laws at the time did not generally prohibit planning matters from being admitted as urgent business, but some councils had stronger controls over introducing urgent business. For example:

- requirements to provide reasons why the matter could not be either deferred to the next meeting,⁵⁹¹ or addressed by council officers as an operational service request⁵⁹²
- lodgement of the request in writing with the CEO by a specified time on the day of the meeting⁵⁹³
- a minimum two-thirds majority vote of councillors to admit an item as urgent business.⁵⁹⁴

On 4 February 2014, Councillor Aziz successfully sought leave 'to introduce an item of urgent business relating to rezoning of a parcel of land in Cranbourne'. At this time, the Casey Council had not received any formal requests to change the permissible use of the land in question. By his actions, Councillor Aziz was able to kick-start the rezoning process before Casey Council officers had an opportunity to review the proposal and provide councillors with formal, considered advice. This land ultimately became the subject of Amendment C219.⁵⁹⁵

Although it is not clear from the minutes whether the motion to admit this item as urgent business was discussed or opposed,⁵⁹⁶ it is unlikely that the motion involved a breach of the local law. Given that 'proposed rezoning' was not prohibited by Local Law No. 1 from being the subject of urgent business, all that was needed was the agreement of a majority of councillors, who were not required to consider whether the matter was, in fact, urgent.

IBAC finds it difficult to see why a rezoning proposal would ever require immediate action or attention.

Indeed, in examinations, Mr Tyler, CEO of the Casey Council at the time, agreed that it was unusual for planning matters to be introduced in urgent business, but added that he was not in a position to contest the issue with the mayor in the Casey Council meeting, stating, 'I can't get up and say, "Mr Mayor, I don't agree with the council, it's not urgent". It's not up to me [as CEO] to debate, I didn't have that [authority]'.

589 City of Casey 2016, *Local Law (No. 1), Meeting Procedures and Use of the Common Seal*, cl 28.

590 Ibid. The list of matters inadmissible as urgent business include staffing, policy decisions, the sale or lease of an asset, or the commitment of funds or contributions for any purpose in excess of \$5000.

591 Due to safety reasons (for example, Greater Dandenong City Council, *Meeting Procedure Local Law 2019*, cl 38(c)(ii) and Frankston City Council, *Governance Local Law 2018*, cl 30(2)(b)) or a negative impact on the council or community (for example, Greater Geelong City Council, *Council Meeting Procedures Local Law 2017*, cl 3.44.2.2).

592 Greater Geelong City Council 2017, *Council Meeting Procedures Local Law 2017*, cl 3.44.2.3.

593 Ibid., cl 3.44.3.

594 Ibid., cl 3.44.1.

595 Casey Council, 4 February 2014, meeting minutes, Section 14, Item 2. One week later, by letter dated 11 February 2014, Leighton Properties and Watsons (on behalf of the other landowners) formally requested that the council rezone their land to allow residential development.

596 Casey Council, 4 February 2014, meeting minutes, which do not indicate whether there was discussion or dissent (and there was no video or audio recording of Casey Council meetings at the time).

Procedurally, urgent business allows the introduction of items without prior notice, meaning a decision may be made with less scrutiny. In examinations, Councillor Rowe observed the following about both urgent business and alternative motions that are not foreshadowed:⁵⁹⁷

A no surprises rule should, I think, have [been applied]. If you try and do it through urgent business, if you try and ambush somebody by pulling it out and introducing an alternative motion in the chamber, it should be disallowed or the matter withdrawn for future consideration.

Had LGV's draft Model Governance Rules applied at the Casey Council at that time, the CEO would have been required to play a 'gatekeeper' role for urgent business. The Model Governance Rules:

- define urgent business as 'a matter that relates to or arises out of a matter which has arisen since distribution of the agenda and cannot safely or conveniently be deferred until the next meeting'⁵⁹⁸
- require a councillor proposing that a matter be admitted as urgent business to lodge it in writing to the CEO no later than 3 pm on the day of the meeting⁵⁹⁹
- specify that a matter can only be admitted as urgent business by council resolution, and only if the item:
 - could not be deferred to the next meeting without adverse impact
 - involves a matter of urgency as determined by the CEO
 - cannot be addressed through an operational service request process.⁶⁰⁰

The updated Casey Council Governance Rules now define urgent business and include provisions on the admission of urgent business.⁶⁰¹ These provisions are broadly in line with the Model Governance Rules and represent a positive step towards strengthening the integrity of Casey Council practices.

The requirements set out in the Model Governance Rules represent good practice and should be adopted by all councils. This would minimise the risk of using the urgent business meeting process to bypass council officer consideration, as Councillor Aziz did when first attempting to have the Casey Council consider the rezoning of land in Cranbourne West.

Proposed reforms

The approach to urgent business in the draft Model Governance Rules is practical and appropriate in that it does not prohibit any matters – thus allowing some discretion – while applying checks and balances to minimise the risk of inappropriate items being introduced as urgent business. If followed, these measures should be sufficient to prevent a recurrence of the situation observed in Operation Sandon of items being inappropriately raised as urgent business.

This provides a formal process (including vetting by the CEO), which clarifies that an urgent matter is one that has arisen since the agenda was circulated, and requires that reasons be given to explain why the matter cannot be deferred.

As stated above with respect to the misuse of alternative motions, IBAC recommends that all councils adopt the standards for meeting procedures specified in Model Governance Rules which would be issued and maintained by LGV.

597 City of Casey 2020, *Governance Rules*, p 5 define a foreshadowed item as 'a matter raised in the relevant section of the council meeting that a councillor intends to submit a Notice of Motion for the next council meeting'.

598 LGV 2020, *Draft Model Governance Rules*, Definitions (1).

599 Ibid., cl 6.4(2).

600 Ibid., cl 6.4(1).

601 City of Casey 2023, *Governance Rules*.

7.3.2.3 Lack of preparedness for meetings

Well-informed debate on matters considered by a council, underpinned by a shared understanding of the rules and responsibilities governing councillor behaviour and the decision-making process, is essential to achieve the best outcomes for local communities. This can also help mitigate the risk of corrupt conduct, because councillors who are actively involved in the decision-making process – including the subject matter and the procedural obligations – are better equipped to identify and raise concerns.

In Operation Sandon, IBAC identified shortcomings in councillors' general levels of preparedness for Casey Council meetings. This was not limited to the councillors under direct investigation. The lack of preparation by councillors and its implications were highlighted in the CEO's examination:

Mr Patterson: It's not up to me to determine the level or quality of debate, but I would agree ... that there were a number of councillors who didn't engage very thoroughly with some of the items that were listed on the council meeting agendas.

Counsel Assisting: And does it follow then that there was, in your observation, at times a lack of analysis of the issues?

Mr Patterson: Yes.

Counsel Assisting: And you would agree then, wouldn't you, that if that was the case, councillors are not engaging with the issues and debating them appropriately, they are not necessarily fulfilling their obligations under the Local Government Act [1989], are they?

Mr Patterson: Correct.

In examinations, a number of Casey councillors confirmed the CEO's observations that they did not engage with the topics for consideration, failed to properly review agenda papers and on some occasions asked others how they should vote.

For instance, Councillor Smith told IBAC that he 'didn't take a real active interest in planning matters', and agreed to 'follow [Councillor Aziz's] lead' on an alternative motion that Councillor Aziz proposed to move, allowing a developer to make a financial contribution rather than build a bridge as proposed by the Casey Council's planning officers in February 2019. Similarly, Councillor Ablett asserted that before the December 2018 meeting, Councillor Crestani sought his guidance on how she should vote on the H3 intersection, even though she knew he had a conflict of interest in the matter.⁶⁰² Councillor Crestani refuted this assertion.

Following the introduction of the LGA 2020, the Local Government (Governance and Integrity) Regulations 2020 now state that councillors have an obligation to diligently use council processes to become informed about matters which are subject to council decisions.⁶⁰³ Indeed, if councillors do not diligently scrutinise the matters before them for decision, the corruption risk is heightened, as other councillors may be able to exploit that lack of scrutiny to pursue their own interests.

During IBAC's investigation, many Casey councillors spoke of the voluminous amount of paperwork, including agendas and associated papers (which could run to hundreds of pages), which were generally circulated five days before the meeting, which provided only limited time for consideration by councillors (who, with the exception of the mayor, are employed on a part-time basis). The inference to be drawn in the case of a number of the councillors was that they were unable to sufficiently familiarise themselves with relevant information concerning motions on which they were required to vote.

⁶⁰² Casey Council, 18 December 2018, meeting minutes, Item 6.33 Lochaven Estate request for secondary consent. Note the motion ultimately passed en bloc, meaning there was no debate on the officers' recommendation and the item was carried unanimously.

⁶⁰³ Local Government (Governance and Integrity) Regulations 2020, Sch 1, cl 2(b).

The limited time that councillors can dedicate to their council roles and the volume of material some councillors are required to consider at each meeting has previously been identified as a concern by the LGI⁶⁰⁴ and Victorian Ombudsman.⁶⁰⁵ There would be merit in councils delegating business that *can* be delegated to enable councillors to focus on strategic and policy matters, so that all matters receive the attention they require. Reform (such as that proposed through Recommendations 10–12) which seeks to remove statutory planning decision-making responsibilities from councillors, will help reduce the workload placed on councillors, allowing them to concentrate on strategic issues and governance as is envisioned by the LGA 2020.⁶⁰⁶

Proposed reforms

To help councillors fulfil their obligation to diligently use council processes and inform themselves about matters, agendas and officer reports must be clear and timely to allow adequate consideration before the council vote.⁶⁰⁷ This is consistent with LGV’s draft Model Governance Rules, which specify ‘an agenda for each council meeting must be provided to councillors in advance so that they can prepare adequately for the council meeting.’⁶⁰⁸

To drive these necessary changes, LGV should play a greater role in supporting and embedding best practice across local government. This would include working with councils to develop further guidance, supporting council officers in their role, and ensuring that agendas and associated papers are circulated in a way that promotes considered decision-making by councillors.

However, councillors must also take responsibility individually (by preparing for meetings) and as a group (by delegating matters that can or should be delegated) so that the council can focus on providing strategic leadership on policy issues. To this end, as recommended in section 4.3.7, IBAC proposes that statutory planning matters – such as decisions on individual permits – be delegated to appropriately qualified planning professionals, noting that the majority of statutory planning decisions are already made by council planning officers under delegation.⁶⁰⁹

As discussed in Chapter 4, it is likely that this would reduce the amount of time required to consider general council meeting agenda papers and allow councillors to focus on the policy settings of the council – including important decisions in the planning process.

Recommendation 20

IBAC recommends that the Minister for Local Government encourages diligent, considered councillor decision-making by providing guidance and training to councils on administrative and council meeting best practice.

604 LGI 2020, *Councillor expenses and allowances: equitable treatment and enhanced integrity*, p 12. The LGI report notes that a 2020 survey of councillors found that the majority of respondents (89 per cent) indicated they spent an average of 8–32 hours per week on their role as councillor, while 82 per cent of respondent mayors and 74 per cent of respondent councillors selected ‘balancing work, family and their role as councillor/mayor’, when asked ‘What do you find most challenging or difficult about being mayor/a councillor?’

605 Victorian Ombudsman 2016, *Investigation into the transparency of local government decision making*, p 28. The Ombudsman’s report notes that the agendas reviewed for that investigation were between 48 and 1160 pages long and reports that one council CEO observed the length of agendas was a hindrance to councillors getting across issues, which could be addressed by means of delegation if councillors so desired.

606 LGA 2020, s 28(c).

607 *Ibid.*, pp 27–28.

608 LGV 2020, *Draft Model Governance Rules*, cl 3.

609 See section 4.3.7, Conflicted councillors and discretion in the permit approval process. In summary, approximately 97 per cent of planning permit decisions are made by officers under delegation from the responsible authority.

7.3.2.4 Ineffective working relationships between councillors and council officers

A breakdown in the working relationships between councillors and staff at the Casey Council played a part in facilitating the misuse of Casey Council meeting procedures by some councillors.

In Operation Sandon, one councillor who was relatively new to the Casey Council at the time of the conduct under investigation said that, during the tenure of its CEO Mike Tyler, there was very little respect between the longstanding officers and councillors. It is likely that some councillors, for improper reasons, actively encouraged the view that little weight should be attached to the opinions of Casey Council officers on particular matters. As an example, one councillor said that the vote on the amendment of the Pavilion Estate permit occurred at the height of councillors' distrust of officer advice and that this distrust made it easy for Councillor Aziz to create doubt among other councillors about the Casey Council officers' recommendation. It was in this context that Councillor Aziz's alternative motion to remove open-space requirements, reduce road widths and make the Casey Council financially responsible for the cost of constructing Morison Road in the Pavilion Estate development was carried unanimously, contrary to the officers' recommendations.

Around the time that IBAC's investigation became public, a number of other councils proactively conducted reviews to assess their exposure to the risks revealed by Operation Sandon. Some of those reviews noted the important role of council officers in supporting and informing councillors by providing impartial and expert advice on relevant matters. Echoing similar concerns, the March 2020 report of the Whittlesea City Council Monitor noted that a report to councillors stated that 'greater trust and accountability are required to change the current dynamics, to strengthen relationships between Councillors and with the CEO and Officers'.⁶¹⁰ The updated Casey Council Councillor Code of Conduct now also includes further provisions on councillor–staff interactions and relationships.⁶¹¹

Proposed reforms

Where trust between councillors and council staff breaks down, efforts to develop better policies and achieve better outcomes for a community – based on thorough, independent advice – can be undermined. Therefore, it is important that all councils foster a culture of trust between councillors and staff, to promote confidence in the impartiality and rigour of council officers' advice and recommendations.⁶¹²

It is acknowledged that in councils with problematic councillor–staff interactions, it will take considerable effort to shift the culture, and that those efforts will need to be tailored to each council's circumstances. However, reform must start with a clear statement of expectations to guide councillors and staff in their interactions. Building on a framework of shared understanding, measures to promote mutual respect and a constructive culture must consider opportunities and barriers from both the councillor and council officer perspectives.

The NSW Model Code of Conduct, which applies to both councillors and council officers, includes a section on relationships between council officials, detailing the roles and obligations of councillors (or administrators) and staff, and what constitutes inappropriate interactions.⁶¹³

Any assessment of effective working relationships must consider the interaction between councillors and council officers, with reference to the issues identified in Operation Sandon, noting that councillors are better able to serve their community when they have constructive working relationships with council officers, characterised by mutual respect for the ability of councillors as decision-makers and council officers for their expertise and impartiality.

Recommendation 21

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria includes in the Model Code of Conduct for Councillors a clear statement of expectations to guide councillors and staff in their interactions with each other.

⁶¹⁰ Municipal Monitor 2020, *Whittlesea City Council Municipal Monitor report*, p 12, quoting *Beyond excellence, report to councillors*, November 2019.

⁶¹¹ City of Casey 2023, *Councillor Code of Conduct*, pp 7–8.

⁶¹² Kingston City Council 2021, *Kingston City Council probity review: a summary*, 2021, p 3, similarly recommended that the council, 'Take steps to foster constructive and collaborative relationships and mutual respect between councillors and officers'.

⁶¹³ NSW Office of Local Government 2020, *Model Code of Conduct for Local Councils in NSW*, Part 7.

7.3.3 Lack of transparency in decision-making

Open and transparent council meetings are vital to hold a council to account for the decisions it makes on behalf of the community. As noted in the *Good governance guide*:

*People should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made – what information, advice and consultation council considered, and which legislative requirements (when relevant) council followed.*⁶¹⁴

A number of unsatisfactory practices at the Casey Council restricted the community's view of decisions by limiting access to information that would help to explain how matters were resolved in Casey Council meetings. This included the practice of convening a private meeting before the public Casey Council meeting, deciding agenda items (including planning matters) en bloc, and recording minimal details in Casey Council minutes. These three issues are discussed below.

7.3.3.1 Private 'pre-council' meetings

At the time of the conduct under investigation in Operation Sandon, the LGA 1989 contained detailed requirements for public access to, and record-keeping for, council meetings.⁶¹⁵ Council was required to make its decision-making transparent and accountable in seeking to achieve the best outcomes for the community.⁶¹⁶ The LGA 2020 has adopted a more principles-based approach, which emphasises the importance of transparency but gives councils discretion to adopt a policy and procedures that give effect to transparency principles.⁶¹⁷ However, the requirement to hold meetings in public remains explicit.⁶¹⁸

At the Casey Council, councillors had a practice of holding what was termed a 'pre-council' meeting. This essentially involved a councillor briefing and discussion behind closed doors immediately before the public Casey Council meeting, undermining the transparency of Casey Council's decision-making processes.⁶¹⁹

Under examination, the current CEO, Mr Patterson, explained the process as follows:

[there] is a council pre-meeting that occurs for half an hour immediately prior to the meeting. It's an opportunity for councillors – there's a number of things that are covered off in that meeting, but one of those is to go through the agenda items and for councillors to be given the opportunity to indicate which items that are on the council agenda that they either wish to withdraw for discussion or to change a recommendation and put an alternative resolution. So there are no decisions made at that pre-meeting. There's no indication of how councillors are going to vote. It's really an opportunity just to indicate to the chair of the meeting, the mayor, which items are to be withdrawn, and then the balance of items that are not withdrawn are then passed in one bulk motion and approved in the council meeting.

Mr Patterson also advised that the Casey Council no longer convenes pre-council meetings. Although councillors may not have followed a formal voting process in the pre-meeting, and generally recorded details of that meeting in a manner consistent with requirements for assemblies of councillors under the LGA 1989,⁶²⁰ Mr Patterson's evidence suggests that councillors *did* reach agreement on a large number of matters, by advising which matters they wanted to discuss during the Casey Council meeting proper – the remainder generally being carried in bulk without debate.⁶²¹

614 MAV, Victorian Local Governance Association, LGV and Local Government Professionals 2012, *Good governance guide*.

615 LGA 1989, ss 89 and 93.

616 LGA 1989, ss 3C(1) and (2)(g).

617 LGA 2020, ss 57 and 58.

618 LGA 2020, s 66.

619 For instance, at the 18 September 2018 Casey Council meeting, the chair, Councillor Smith, noted that, 'Prior to the council meeting tonight there was a pre-council meeting... [in which] we were advised that this motion is legal'.

620 LGA 1989, ss 3(1), (6), and 80A. Casey Council, 18 September 2018, meeting agenda, p 84 notes details of the pre-council meeting held on 4 September 2018.

621 For example, in the recording of the 18 September 2018 council meeting, it takes about one minute for the council to identify what matters will be withdrawn for discussion and confirm that the remaining five recommendations will be adopted without discussion.

The issue of pre-meetings obscuring council decision-making processes from public view is not unique to the Casey Council. The Victorian Ombudsman's 2016 report *Investigation into the transparency of local government decision-making* noted that 44 of the 79 councils in Victoria hold 'pre-meeting' briefing sessions on the day of council meetings, which generally involve reviewing the agenda and clarifying any last-minute questions from councillors.⁶²²

The Ombudsman noted that other states have specific legislation and guidance aimed at deterring councillors from reaching agreement outside public council meetings.⁶²³ The South Australian *Local Government Act 1999* sets rules for conducting informal gatherings or discussions involving councillors and council officers, including that:

- a matter which would ordinarily form part of the agenda for a formal meeting of the council must not be dealt with in such a way as to obtain or effectively obtain a decision on the matter outside a formally constituted meeting of the council
- the council must adopt and comply with a policy on the holding of informal gatherings or discussions that complies with any requirements prescribed by the regulations.⁶²⁴

In Western Australia, guidance to councils warns against holding forums immediately before ordinary council meetings, noting:

*Anecdotal evidence suggests that in discussing the agenda of the forthcoming meeting [in a forum immediately prior to an ordinary council meeting] implied decisions may be made. This familiarity with the issues and known attitudes can lead to debate at the ordinary council meeting being stifled or non-existent much to the chagrin of the public who are not privy to the earlier discussions. Forums held immediately prior to ordinary council meetings cause more complaints of secret meetings and predetermined decisions than any other type of forums.*⁶²⁵

The WA guideline identifies planning matters as a 'particular issue of concern' for private council meetings, because different rules often apply to the decision-making process for planning. Therefore, the guideline states that briefing sessions for planning matters 'should be conducted with the strictest of rules', adding that debate should not be permitted between elected members in private meetings, and that the session should instead focus on the relevant officer giving information, with questions directed through the chair where necessary.⁶²⁶

In Victoria, the LGA 2020 requires that councils give effect to the transparency principles,⁶²⁷ one of which is that decision-making processes must be transparent except when the council is dealing with confidential information.⁶²⁸ Councils are also required to adopt a public transparency policy.⁶²⁹

Again, these provisions suggest that councils *should* think holistically about their decision-making processes – including any pre-meetings they convene – to make sure that they are open and transparent wherever possible. However, it remains to be seen how these principles will be put into practice.

LGV circulated a draft model Transparency Policy in June 2020 which specifies aspects of council work that should be open and transparent, including decision-making at council meetings.⁶³⁰ However, the draft policy does not provide any guidance on briefings and informal meetings (as in South Australia). It does not highlight the risks involved in discussing planning matters in pre-council meetings, or warn against holding pre-council meetings at all (as in Western Australia).

Proposed reforms

The conduct of councillors revealed by Operation Sardon demonstrates the fundamental need for transparency as a foundational requirement of all council meetings. Discussing agenda items in a private forum immediately before a council's formal public meeting can (inadvertently or otherwise) stifle debate – even if no formal decisions are made during that discussion.

622 Victorian Ombudsman 2016, *Investigation into the transparency of local government decision making*, p 93.

623 Ibid., p 9.

624 *Local Government Act 1999* (SA), ss 90(8), (8a) and (8b).

625 WA Department of Local Government, Sport and Cultural Industries 2004, *Local Government Operational Guideline Number 5: Council Forums*, p 8. Elsewhere, the guideline notes that concept forums involve meetings to propose, discuss and formulate ideas, strategies and concepts for the development of the district that are in the early planning stages only.

626 WA Local Government Operational Guideline Number 5: Council Forums 2004, p 7.

627 LGA 2020, s 9(3).

628 LGA 2020, s 58(a).

629 LGA 2020, s 57.

630 LGV 2020, *Draft Public Transparency Policy*.

IBAC understands that the practice of holding pre-council meetings can serve a legitimate purpose, such as in regional councils where councillors may have limited opportunities to regularly meet, and the pre-council meeting provides an opportunity to discuss and agree upon meeting procedures. While allowing for such flexibility is important, Operation Sandon demonstrates the need for parameters around pre-meetings so that the practice does not obscure council decision-making.

Pre-council meetings should be covered by the Model Governance Rules and Transparency Policy, to make clear that transparency is a governance issue for which all councillors must take responsibility. This would augment existing transparency requirements in the LGA 2020.

Recommendation 22

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria:

- (a) develops and publishes a Model Transparency Policy to specify the minimum standards for council openness and transparency
- (b) ensures that the Model Governance Rules and Model Transparency Policy:
 - highlight the importance of open government and the related risks in holding pre-council meetings
 - note the limited circumstances in which it may be appropriate to hold pre-council meetings immediately before a public council meeting, such as to discuss procedural arrangements for the meeting
 - make clear that councillors must not discuss the substance of agenda items in detail, reach agreements on council agenda items in private, and that briefings should involve the presentation of information only
- (c) develops further guidance to explain to councillors *why* deliberation on an agenda item (not just voting) in public is important, particularly for planning matters.

7.3.3.2 En bloc voting on unrelated items, including planning matters

Councils are required to conduct meetings in public unless a relevant exception applies.⁶³¹ However, the value of holding public meetings is undermined if the decision-making process cannot be understood due to a lack of debate, or inadequate record-keeping.

At the Casey Council, en bloc voting was not a documented meeting procedure outlined in the local law. However, in practice it involved councillors 'indicating' in the pre-council meeting if there were any Council officer reports they wished to discuss in the Casey Council meeting, then moving to the Council chamber, where they would unanimously resolve to pass the agreed Council officer report recommendation items without debate. The only discussion during the Casey Council meeting involved listing the relevant agenda item numbers (not their subject matter) and confirming that those matters were carried.

En bloc voting effectively conceals from public view a council's reasons for decisions, while allowing a council to claim that decisions were technically made in public because the vote itself occurred during a public council meeting.

Although en bloc voting is uncommon, the practice was not unique to the Casey Council. The Victorian Ombudsman's 2016 report noted that at least nine councils operated 'consent agendas', in which all agenda items are decided en bloc, unless a councillor 'withdraws' a matter and requires that it be considered in the public council.⁶³² Of equal concern was the failure to document that practice in any way at the Casey Council. In comparison, the City of Geelong Council's local law expressly prohibits en bloc voting, stating: '[The] council must not consider similar agenda items en bloc. Each agenda item must be considered individually and must have a mover and a seconder'.⁶³³

631 LGA 1989, s 89 and LGA 2020, s 66.

632 Victorian Ombudsman 2016, *Investigation into the transparency of local government decision making*, p 45. At the time of the Ombudsman's report, this included Macedon Ranges Shire Council and Cardinia Shire Council. The report notes it is possible that other councils are voting en bloc and not recording this in their minutes, p 47.

633 Greater Geelong City Council, *Council Meeting Procedures Local Law 2017*, cl 3:18.3.

The Municipal Monitor's 2020 report on the Casey Council was highly critical of the large proportion of agenda items being resolved in this manner, stating that in the second half of 2019, 70 per cent of officer reports were adopted en bloc. As a result, there was no debate and therefore no opportunity for the community to understand the reasons for those decisions.⁶³⁴

The Municipal Monitor referred to the Victorian Ombudsman's 2016 report on transparency in councils, which warned that the practice 'is not consistent with transparency principles' and its use in planning matters may be 'contrary to principles of natural justice'.⁶³⁵ That report recommended that en bloc voting should not be used to decide planning matters, or other matters involving the interests of third parties.⁶³⁶

Despite the Ombudsman's report, the Casey Council continued to group and determine agenda items en bloc – including planning matters. For instance, at the 18 December 2018 meeting, the Casey Council unanimously adopted recommendations for two planning matters without debate, including Dacland's formal request to defer construction of the H3 intersection.⁶³⁷

LGV's draft Model Governance Rules permit en bloc voting, but only on 'like items' and only if the resolution does not involve the commitment of council resources:

*The chairperson may allow like Motions to be moved, or request councillors to move like items, in a block (en bloc), only if the Motions note actions already taken and will not commit [the] council to further action, spending or changes to policy.*⁶³⁸

It is not clear how grouping 'like items' would work in practice. The draft LGV limitation on en bloc voting is not reflected in the Casey Council's current Governance Rules. Those rules are silent on en bloc voting, providing no guidance to regulate its use. This is a significant deficiency.

Proposed reforms

In light of the issues observed in Operation Sandon, and the Victorian Ombudsman's warning that voting en bloc is inconsistent with the principle of transparency, the practice should be expressly prohibited for all matters.

IBAC notes that this change might increase the length of council meetings as items would need to be considered and voted on in turn. However, it is arguable that matters not considered significant enough to warrant debate – and which in the past have been grouped and carried en bloc – should find another pathway for decision, such as delegation to council officers. In this way, uncontentious or administrative matters could be cut from the meeting, allowing the council to focus on strategically significant and contentious items that attract a range of public views and require robust debate.

As noted in Chapter 4 and further discussed in section 7.3.2.3, IBAC's recommendation for statutory planning matters to be determined by planning professionals (see Recommendations 10–12) would likely reduce the amount of time required to consider general agenda items and papers, thereby helping to offset the impact of this reform.

Recommendation 23

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules expressly prohibit voting en bloc in council meetings.

7.3.3.3 Maintaining minimal meeting records

In accordance with section 93 of the LGA 1989, and the Casey Council local law, the Casey Council maintained minutes of its meetings.⁶³⁹ However, those records failed to provide transparency or facilitate understanding of the Casey Council's decision-making process.

For instance, the lack of transparency created by en bloc voting was compounded by a lack of basic details in the Casey Council's meeting minutes on *what* had been considered by the Council, much less *how* decisions had been reached. Figure 9 shows how 31 matters (in two groups) that were determined en bloc were recorded in the minutes for the 18 December 2018 meeting.⁶⁴⁰

634 Municipal Monitor 2020, *City of Casey Municipal Monitor Report*, p 8.

635 Victorian Ombudsman 2016, *Investigation into the transparency of local government decision making*, December 2016, pp 7 and 141.

636 Ibid., p 148.

637 Casey Council, 18 December 2018, meeting minutes, Item 6.33, moved by Councillor Rowe, seconded by Councillor Smith.

638 LGV 2020, *Draft Model Governance Rules*, cl 1.08.

639 City of Casey 2016, *Local Law (No. 1), Meeting Procedures and Use of the Common Seal*, cl 40.

640 Example shown taken from Casey Council, 18 December 2018, meeting minutes, p 4.



Minutes of the City of Casey Council Meeting
held in the Function Centre, Bunjil Place, Narre Warren
on Tuesday, 18 December 2018 commencing at 6:33 p.m.

SECTION 6
OFFICERS' REPORTS – INITIAL CONSIDERATION CONT.

FORMAL MOTION

COUNCILLORS ROWE/SMITH

That the recommendations in Items 6.2, 6.3, 6.15, 6.16, 6.18 and 6.33 be adopted

Carried

COUNCILLORS [REDACTED]

That the recommendations in Officers' Reports be adopted with the exception of Items deferred for further discussion, as follows:-

RECOMMENDATION ADOPTED	WITHDRAWN (DEFERRED) FOR FURTHER DISCUSSION
6.1, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.17, 6.19, 6.20, 6.21, 6.22, 6.23, 6.24, 6.25, 6.26, 6.27, 6.28, 6.29, 6.30, 6.31, 6.32, 6.34, 6.35, 6.36	6.4, 6.5, 6.6, 6.7, 6.14

Carried

Figure 9: Extract from the City of Casey Council meeting minutes on 18 December 2018

In this instance, the matters carried en bloc were split into two groups due to conflicts of interest declared by Councillor A and Councillor Serey.

The first set – items 6.2, 6.3, 6.15, 6.16, 6.18 and 6.33 – resulted in those six items being carried in one vote, without debate. IBAC found that these items included several planning decisions, although there is no way of knowing that from the minutes.⁶⁴¹ To illustrate how varied the matters carried in that one vote were, the six agenda items concerned:

- Planning Application – Secondary Consent Request – Lochaven Estate
- Amendment C225 to the Casey Planning Scheme – Botanic Ridge Stage 4
- Casey Planning Scheme Review 2018
- Update on Funding and Innovation Opportunities for Planning Services
- 2019 Casey Australia Day Awards
- Funding and Sponsorship for Events.⁶⁴²

Figure 9 also shows that a further 25 items (listed under 'Recommendation adopted') were carried by the Casey Council without debate.⁶⁴³ As a result, only 5 of a total 36 agenda items listed for consideration at that meeting were debated.

For the agenda items withdrawn for discussion, the Casey Council – like many other councils – did not state in its minutes whether an item was in fact discussed, nor what the discussion involved. For instance, at the 4 September 2018 Casey Council meeting, two councillors formally opposed Councillor Aziz's alternative motion (which sought to require immediate construction of the H3 intersection by Dacland). However, the only indication of this in the meeting minutes is a record that Councillor Rowe was granted an extension of time to speak.⁶⁴⁴

Minutes of council meetings should include sufficient information to allow the community to understand how decisions have been made. This does not need to be onerous. As a starting point, recording who spoke and how they voted on each motion provides greater transparency than simply recording the proposal and outcome (along with the name of the mover and seconder).

Recording these details can make the decision-making process more transparent and allow the public to assess how individual councillors have voted on related matters. For instance, at the 21 October 2014 meeting, the Casey Council considered a Council officers' report that recommended certain revisions to the Cranbourne West PSP.⁶⁴⁵ That report noted:

One of the key Council Plan objectives and Advocacy Priorities of Council is to enhance local job opportunities for residents in Casey. A key outcome of this PSP review is to ensure that the delivery of local jobs (a minimum job target of 10,000) is maintained. The revisions to the PSP respond to this key outcome by:

- *merging industrial and business uses to employment land*
- *increasing opportunities for alternative forms of development such as mixed use (including residential)*
- *ensuring no conversion of employment land to conventional residential land is recommended. It is considered that there is not adequate justification to do so.*⁶⁴⁶

The Casey Council officers' report ultimately recommended:

- that the report be noted
- that Council endorse the revisions to the Cranbourne West PSP and place the document out for public consultation for a period of four weeks.⁶⁴⁷

641 This vote was taken in the absence of Councillor A and Councillor Serey who declared conflicts in relation to those matters. See Casey Council, 18 December 2018, meeting minutes, p 4.

642 Casey Council, 18 December 2018, meeting minutes. These agenda items were grouped together due to conflicts of interest involving Councillor Serey and Councillor A, who left the chamber for the vote. Otherwise, they would have been included in a much longer list of matters resolved en bloc at the beginning of the meeting.

643 While this longer list of matters considered en bloc did not include any planning decisions, it did include the possible sale of council land that was no longer required for road widening, a report from the planning committee (focusing on timeliness), and reports for noting on VCAT appeal decisions (items 6.9, 6.20 and 6.21 respectively).

644 Casey Council, 4 September 2018, meeting minutes, p 13.

645 Casey Council, 21 October 2014, meeting agenda, Section 8, Item 1, Planning for Casey's Community.

646 Casey Council, 21 October 2014, meeting agenda, Section 8, Item 1, Planning for Casey's Community.

647 Casey Council, 21 October 2014, meeting agenda, Section 8, Item 1, Planning for Casey's Community.

The Casey Council accepted the two recommendations in the Council officers' report, but, additionally and inconsistently, resolved that 'the proposed PSP be further amended by the inclusion of the [...] and Leighton's land as being totally residential'.⁶⁴⁸ This was contrary to the clear advice that the Casey Council should *not* convert employment land to conventional residential land.

In the minutes of that meeting, the additional resolution appears between the two elements of the Casey Council officers' recommendation, as shown in Figure 10.⁶⁴⁹ It may not be apparent to a reader of the minutes that the second point in the resolution was *not* part of the officers' report but, rather, involved a significant amendment which was contrary to the officers' advice. There is also no indication in the minutes whether the resolution was discussed or if any Casey councillors dissented from the Council officers' recommendation or from the amendment.

Minutes of the City of Casey Council Meeting
held in the Council Chamber, Magid Drive, Narre Warren
on Tuesday, 21 October 2014 commencing at 6.31 p.m.



SECTION 8 OFFICERS' REPORTS – DEFERRED FOR CONSIDERATION

PLANNING FOR CASEY'S COMMUNITY

ITEM 1 CRANBOURNE WEST PRECINCT STRUCTURE PLAN REVIEW

Council Plan Reference: 3.2

Purpose of Report:	To seek Council's endorsement to place the proposed amendments to the Cranbourne West Precinct Structure Plan out for public consultation.
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COUNCILLORS ROWE/AZIZ:

- 1. That the report be noted**
- 2. The proposed PSP be further amended by the inclusion of the [REDACTED] and Leighton's land as being totally residential.**
- 3. That Council endorse the revisions to the Cranbourne West Precinct Structure Plan and place the document out for public consultation for a period of four weeks.**

Carried

Figure 10: Extract from the Casey Council meeting minutes on 21 October 2014

⁶⁴⁸ Ibid. Motion moved by Councillor Rowe and seconded by Councillor Aziz.

⁶⁴⁹ Ibid.

It is difficult to see how this meeting record could help the community understand the Casey Council's decision-making processes and in particular its departure from the Council officers' recommendation on a planning matter that would affect potential business investment and employment opportunities in the area.

Clear and accurate minutes of council meetings are a basic but essential transparency measure. The governance principles in the LGA 2020 state that 'the transparency of council decisions, actions and information is to be ensured'.⁶⁵⁰ The public transparency principles state, 'Council decision-making processes must be transparent except when the council is dealing with information that is confidential by virtue of this Act or any other Act'.⁶⁵¹ Together, these provisions emphasise the importance of councils promoting transparency through their meeting minutes.

In light of the issues identified in Operation Sandon and the Victorian Ombudsman's report on the importance of transparency in council decision-making, all councils should follow the simple practices identified in the Ombudsman's report to actively promote transparent decision-making.⁶⁵²

Consistent with the Ombudsman's recommendations, IBAC further recommends that accountability would be well served by recording the names of councillors who speak on each motion, and recording which councillors voted for and against each motion, regardless of whether or not a division is called, noting that:

- Maroondah City Council's meeting minutes record the names of the councillors who spoke on each motion.⁶⁵³
- Warrnambool City Council's meeting minutes routinely record who voted for and against each motion, irrespective of whether a division was called.⁶⁵⁴

Recording these details need not be onerous and would allow community members to see how their councillors make decisions and how they voted.

Proposed reforms

The Model Governance Rules to be issued by LGV as recommended earlier in this report should help strengthen transparency obligations, including by requiring councils to record details of debate and voting in council meetings. These measures would help to remedy the lack of transparency in Council meeting minutes observed in Operation Sandon, by giving the public a clearer view of the main issues considered by councillors in reaching decisions, which councillors were actively debating specific agenda items, and how councillors voted on them.

Further, as noted above, all councils should be required to adopt the provisions of the Model Governance Rules.⁶⁵⁵

Recommendation 24

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules require council meeting minutes to state:

- (a) the names of councillors who spoke on each motion
- (b) the names of councillors who voted for and against each motion (regardless of whether a division was called).

7.3.4 Failures to declare conflicts and attempts to influence other councillors

If properly applied, conflict-of-interest provisions allow councillors to publicly demonstrate that they have properly considered whether their personal interests affect or could be perceived to affect the performance of their public duties.⁶⁵⁶ In this way, conflict-of-interest processes should help to reassure the public that decisions by their local government representatives are made impartially and in the public interest. The gravity of this responsibility is reflected in the LGA 2020 and Councillor Code of Conduct, which emphasise that conflict-of-interest procedures are an important element of good governance.

⁶⁵⁰ LGA 2020, s 9(2)(i)).

⁶⁵¹ LGA 2020, s 58(a).

⁶⁵² Victorian Ombudsman 2016, *Investigation into the transparency of local government decision making*, pp 150–151.

⁶⁵³ Ibid., p 50–51, and for an example, Maroondah City Council, 17 February 2020, meeting minutes, p 7.

⁶⁵⁴ Ibid., and for an example, Warrnambool City Council, 5 March 2018, meeting minutes, pp 100 and 104.

⁶⁵⁵ See Recommendation 20 in section 7.3.2.3, Misuse of alternative motions.

⁶⁵⁶ The other key mechanism being the personal interest returns process, LGA 2020, Part 6, Division 3.

Councillors disregarding or failing to properly consider their conflict-of-interest obligations can represent a heightened risk of corruption in a council. In Operation Sandon, IBAC found numerous instances of Casey councillors failing to declare or fully disclose their conflicts of interest. Specifically:

- Councillor Aziz blatantly failed to declare conflicts between his personal interests and duties as a councillor
- Councillor Ablett, Councillor Smith, Councillor Serey and Councillor A claimed ignorance of the parties who would be affected by a Casey Council planning decision or of the source of donations that gave rise to a conflict of interest
- Councillor Ablett, Councillor A and Councillor Serey provided only partial declarations which obscured the extent to which their interests would be affected by Casey Council decisions.

These issues are discussed below.

7.3.4.1 Blatant failures to declare conflicts of interest

As discussed in section 3.6, Councillor Aziz had numerous financial arrangements with Mr Woodman, Mr Nehme and others, which he failed to declare when debating and voting on matters involving their interests. In doing so, Councillor Aziz consistently showed a disregard for his obligations to disclose direct and indirect conflicts of interest under the LGA 1989 and his responsibilities under the Councillor Code of Conduct,⁶⁵⁷ and advanced false explanations for his failure to do so.

Councillor Aziz actively sought out or agreed to arrangements that enabled him to benefit personally from his position as a councillor. Moreover, the timing of many of those payments coincided with his interventions in Casey Council decisions to support resolutions that would be favourable to Mr Woodman and Mr Nehme, as discussed in section 3.6. Councillor Aziz was conflicted in several ways in dealing with motions that benefited Mr Woodman and Mr Nehme, including:

- From around August 2018 Councillor Aziz sought to obtain approximately \$750,000 through the sale of a property to Mr Woodman. However, he did not declare this interest on any of the four occasions when the H3 intersection came before the Casey Council between September and December 2018,⁶⁵⁸ despite knowing that Mr Woodman would benefit from the Casey Council's decision.⁶⁵⁹ In fact, Councillor Aziz *led* the Casey Council's consideration of the matter by putting forward alternative motions that went against the advice of its Council planning officers.
- In a June 2013 email to the head of Action Realty Australia, Mr Nehme described how he had secured Councillor Aziz's support for the sale of Casey Lifestyle Centre by providing assistance to Councillor Aziz, stating:

it has been a fortunate situation as I have been able to assist his spouse who requires support from a [company] ... I know their CFO [chief financial officer] and he has kindly assisted them in growing their business hence Mr Aziz feels compelled to respond with a favour to me so let's put him to the test.

In a closed Casey Council meeting in December 2014, Councillor Aziz moved the motion to begin the process to sell the Centre. Despite the opposition of Casey Council officers and other councillors, Mr Nehme's associates ultimately acquired the Centre in 2016. Mr Nehme's above email makes clear that Councillor Aziz had a connection with Mr Nehme before moving the motion to sell the Centre, a conflict of interest that was deliberately not disclosed.

⁶⁵⁷ LGA 1989, Part 4, Division 1A and ss 76BA(a) and 76B(b). Expected standards of conduct to be included in the Councillor Code of Conduct at the time included exercising responsibilities impartially and avoiding conflicts between their public duties as a councillor and their personal interests and obligations.

⁶⁵⁸ The H3 intersection was considered at the Casey Council meetings on 4 September 2018, 18 September 2018, 16 October 2018 and 18 December 2018.

⁶⁵⁹ This is seen in the message Councillor Aziz sent Ms Wreford on 14 November 2018, after he had been advised that Mr Woodman wanted to delay the house settlement, in which he threatened to reverse a decision on the H3 intersection (see section 3.2.6.1).

7.3.4.1.1 Proposed reforms

At the time of the conduct under investigation, the LGA 1989:

- stressed the importance of councillors acting impartially, with integrity, and avoiding conflicts between their public duties and their personal interests and obligations⁶⁶⁰
- specified what a conflict involved and set out the process for declaring a conflict of interest, which included making a full disclosure of the interest and absenting oneself from the relevant meeting⁶⁶¹
- stipulated that failure to comply with the disclosure provision was an offence,⁶⁶² and that failure to declare a conflict of interest could amount to misuse of position, which carried a penalty of 600 penalty units or imprisonment for five years or both.⁶⁶³

The conflict-of-interest provisions in the LGA 2020 have changed substantially since the conduct investigated in Operation Sandon. However, the new principles-based approach is arguably more open to interpretation by councillors, which could give rise to continued problems with councillor compliance with and enforcement of conflict-of-interest provisions. This is particularly true of general conflicts of interest, which appear to be so broadly defined as to make them difficult to enforce. It would be prudent to review the efficacy of these provisions after a reasonable time has elapsed.

As in the LGA 1989,⁶⁶⁴ under the LGA 2020, participating in a decision on a matter in which a councillor has a conflict of interest still amounts to misuse of position, which carries a penalty of 600 penalty units or imprisonment for five years or both.⁶⁶⁵

In addition, the LGA 2020 provides that failure to disclose a material conflict is itself an offence that carries a maximum 120 penalty units.⁶⁶⁶ A council must make an application to a councillor conduct panel, alleging serious misconduct, via the CMI.⁶⁶⁷ This provides a mechanism to address conflicts of interest by means of a councillor conduct panel, thus avoiding a lengthy criminal prosecution.

As discussed below,⁶⁶⁸ to date the councillor conduct panel process – which has resulted in a total of 12 determinations since August 2017 – has not been an effective mechanism to address serious misconduct or deter councillors from engaging in such conduct.⁶⁶⁹ The 2022 *Local government culture project, insights report* noted the importance of early intervention in addressing councillor misconduct, and how the absence of such timely action can inadvertently help embed cultures of misconduct.⁶⁷⁰

As Councillor Aziz's conduct and explanations make clear, his failure to disclose conflicts of interest was not due to a lack of understanding of what constitutes a conflict of interest or how a declaration should be made. Rather, he did not perceive the environment in which he operated as likely to lead to exposure of his conflicts or to preclude him from exerting influence on decisions in which he had a clear conflict of interest.

IBAC considers that the current conflict-of-interest provisions and enabling processes are insufficient to ensure that councillors declare conflicts of interest and that suspected breaches are dealt with promptly and effectively.

Recommendation 25

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria undertakes a review, and introduces related reforms, to ensure that councillor breaches of the conflict-of-interest provisions are addressed in a timely and effective manner.

660 LGA 1989, ss 76BA(a) and 76B(b).

661 LGA 1989, ss 77A and 79.

662 LGA 1989, s 79(9) unless s 80 (ministerial exemption) applied. Councillor could be fined up to 120 penalty units.

663 LGA 1989, s 76D.

664 LGA 1989, s 76D.

665 LGA 2020, ss 123(1) and (3)(f).

666 LGA 2020, ss 130(2) and (3).

667 LGA 2020, ss 130(5) and 154(4).

668 See section 7.3.5.1, Lack of consequences for poor behaviour.

669 Department of Jobs, Precincts and Regions, Councillor Conduct Panels, localgovernment.vic.gov.au/council-governance/councillor-conduct-framework-and-councillor-conduct-panels. LGA 1989, s 81T(1)(d) introduced a requirement to publish Councillor Conduct Panel decisions which took effect from 1 March 2016.

670 PwC 2022, *Local Government Culture Project, insights report*, p 39.

7.3.4.2 Wilful ignorance

A number of Casey councillors gave evidence that sometimes they were unaware that items of Casey Council business involved developers with whom they had private arrangements or from whom they had received donations. In Operation Sandon, there were plainly occasions where a Casey councillor's failure to enquire, or their wilful blindness, allowed them to maintain that they were not aware that a person or entity had an interest in the matter before the Casey Council that obliged the councillor to declare a conflict.

For instance, Councillor Smith appeared wilfully blind to his conflict-of-interest obligations on numerous occasions. In connection to donations received from Mr Woodman via Ms Halsall's spouse, Councillor Smith acknowledged to IBAC that he did not ascertain the source of donations that ultimately benefited his community work. He said, *'I wasn't aware that it was John [Woodman] ... I never spoke to John about it ... I – I kept out of that'*. When questioned about his support in Casey Council meetings for Mr Woodman or Watsons planning matters, Councillor Smith said he could not be sure whether he voted in favour of the relevant matters, because he *'didn't know who the backers [applicants] were ... all sorts of company names and estate names came up'*. Councillor Smith went on to say, *'I wasn't aware of the companies that [Mr Woodman] may have been involved in or have an interest in. He never personally contacted me ... and I don't know that his representatives did either'*.

Similarly, in evidence, Councillor Serey agreed that she received a donation from Mr Woodman to her 2014 state election campaign before the 21 October 2014 Casey Council meeting, where the Cranbourne West rezoning application was discussed. The Casey Council officers' report on the proposal stated that there was 'not adequate justification' to convert the land from industrial to residential use.⁶⁷¹ Contrary to the officers' recommendation, the Casey Council resolved that the PSP be further amended by designating the land in question as 'totally residential'.⁶⁷² The record shows that Councillor Serey did not declare a conflict of interest in relation to this item.⁶⁷³ When questioned about this omission,

Councillor Serey said she 'did not perceive a conflict of interest at that time ... because in the report there's actually no mention of Woodman and Watsons'. Councillor Serey said she did not read the attachment to the Casey Council officers' report, which contained more detail about the organisations involved in the application. Further, Councillor Serey told IBAC, 'I find that a lot of these reports are anywhere between three and 600 pages. So I can't be across the detail of every single report that comes in front of me. It's just not reasonable'.

A council officers' report should ordinarily contain information that would enable councillors to identify the parties who are known to have a financial interest in the matter that is the subject of the report. However, as Councillor Serey noted in relation to the matters she was questioned about, 'the reports have a flaw because they don't actually say all the entities that might be involved'. Managing conflicts of interest can be complex for councillors who are involved at a local and direct level with community members and other stakeholders in their local government area. The part-time nature of a councillor's position can add a layer of complexity to the issue of conflicting interests, as councillors usually have other employment or are involved in other local activities. This means that the life of any councillor is likely to involve personal interests that may at times conflict with their public duties. For this reason, an effective conflict-of-interest regime must:

- require that councillors take an informed interest in the origins of gifts and donations to them and diligently enquire as to the parties involved in matters that come before council for a decision
- support councillors to conscientiously fulfil their obligations by providing clear and accessible information about the parties affected by a motion before council.

⁶⁷¹ Casey Council, 21 October 2014, meeting agenda, Section 8, Item 1, pp 2 and 4.

⁶⁷² Ibid.

⁶⁷³ Ibid., p 5.

To help councillors understand their obligations and identify situations that might give rise to a conflict of interest, LGV has developed guidance, *In the public interest*,⁶⁷⁴ which makes clear that, although other people and organisations can help a councillor understand the requirements of the LGA 2020, it is ultimately each councillor's responsibility to accurately identify their interests and disclose any conflicts.⁶⁷⁵ This is appropriate, as any advice from an external party depends heavily on the information provided by the councillor about the nature and extent of their interest.

In the public interest includes a checklist of questions to help councillors identify whether they have a conflict of interest relevant to a matter before council.⁶⁷⁶ It also provides examples of the types of matters that can arise in local government, including planning permits, planning scheme amendments, construction contracts, and the lease of council property, to name a few.⁶⁷⁷

Proposed reforms

In Operation Sandon, a number of Casey councillors claimed ignorance about the origins of gifts and donations or the parties involved in matters that came before the Casey Council. It is unacceptable for councillors to justify not disclosing a material conflict of interest by claiming to be unaware of the origins of donations or other benefits. The community should be concerned if an affected person (that is, someone who stands to benefit depending on the outcome of the matter) provides financial support to a councillor's political, charitable or other community interests, and that councillor fails to declare it.

Although LGV's guidance, *In the public interest*, is clear about a councillor's obligation to declare conflicts arising from donations to local government election campaigns,⁶⁷⁸ it does not refer to donations to state election campaigns from individuals who stand to benefit from a council decision. Operation Sandon showed that it is common for people to move between local and state politics. Therefore, councillors must be required to consider who has donated to their campaign, and what are their donors' local interests, to properly assess whether they are conflicted on council matters.

To help councillors meet their conflict-of-interest obligations and improve transparency, IBAC proposes that applicants and people who make submissions on planning and development matters be required to disclose reportable donations they have made or other financial arrangements that they have with councillors.⁶⁷⁹

In particular, as stated above, council officer reports on planning and other matters should use this information to prepare:

- a schedule of reportable donations and other financial arrangements that have been disclosed to them by interested parties
- a statement that sets out the parties affected by the motion before council, including the names of relevant personnel, company names and registered addresses.

Councillors should also be required to acknowledge they have read the schedule and statement, as an additional step *before* declaring whether they have a conflict in relation to the relevant meeting agenda item for any planning or other matters considered by council.

Although councillors must bear responsibility for identifying and declaring their conflicts of interest, IBAC also recommends consistent training across the sector that emphasises a councillor's obligation to diligently consider their personal interests and the parties involved in matters before the council, and whether the two might conflict. For this reason, IBAC recommends that the Minister for Local Government ensures that LGV develops a model training package for councillors on conflicts of interest, so that they have a consistent understanding of their obligations across the sector, as discussed in section 7.3.4.3.

⁶⁷⁴ LGV 2020, *In the public interest: a conflict of interest guide for councillors, delegated committee members and council staff*.

⁶⁷⁵ Ibid., p 6.

⁶⁷⁶ Ibid., p 32.

⁶⁷⁷ Ibid., pp 33–40.

⁶⁷⁸ Ibid., pp 23–24.

⁶⁷⁹ See Recommendation 7 in section 4.3.5.2, Lack of visibility about vested interests.

Recommendation 26

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules stipulate that:

- (a) council officer reports on local government planning matters be accompanied by:
 - a schedule of reportable donations and other financial arrangements that parties have made or have with councillors (as discussed in Recommendation 7)
 - a statement of the interested parties that includes details of the parties affected by the motion before council, such as the names of personnel, company names and registered addresses
- (b) councillors must acknowledge that they have read the schedule of reportable donations and other financial arrangements and the statement of involved parties before declaring whether they have a conflict of interest in the relevant agenda item for any local government planning matters.

7.3.4.3 Partial disclosures

IBAC found that several Casey councillors misrepresented their conflicts of interest by making declarations that downplayed the significance of their private connections to Mr Woodman and his business interests. These councillors made partial or incomplete declarations, omitted full details of their links to Mr Woodman and left meetings when relevant matters were being discussed. These actions created an impression that they had fulfilled their conflict-of-interest obligations by recusing themselves from relevant debates and decisions.

At the time of the conduct under investigation, the LGA 1989 required that councillors with a conflict of interest in a matter make a full disclosure of that interest by advising either the council or the CEO of both the class of conflict of interest (direct or indirect) and the nature of the interest. If the councillor chose to advise the CEO of the class and describe the nature of the interest in writing, the councillor was required to disclose only the class of conflict at the meeting, before leaving the chamber – without having to describe the nature of the conflict.⁶⁸⁰

Identifying only the class of conflict provided little transparency and denied other councillors the opportunity to understand with whom, and why, the councillor had a conflict. It allowed councillors to make a limited disclosure to the CEO rather than to the Casey Council meeting.⁶⁸¹ The Casey Councillor Code of Conduct did not provide any additional guidance or clarification on disclosure requirements; it only reminded councillors to be aware of their obligations under the LGA 1989.⁶⁸²

As a result, the councillor group usually had only a superficial understanding of their colleagues' conflicts of interests. For example, before the 7 June 2016 Casey Council meeting, Councillor Ablett emailed the Casey Council CEO, Mike Tyler, to inform him of a conflict of interest regarding an item on the agenda relating to Amendment C219. In that email, Councillor Ablett advised Mr Tyler:

I wish to declare a conflict of interest to you for tomorrow night's Council meeting ... as Watson's Town Planners did some survey work in the Cranbourne West area and they donated \$40,000 to the Liberal Party of Victoria which used the money on my State Election Campaign for the seat of Cranbourne in 2014. I also part own a racehorse and one of the owners is employed by Watson's.

Because Councillor Ablett advised the CEO before the Casey Council meeting, his only obligation was to inform the Casey Council meeting of the class of his conflict of interest before leaving the chamber. However, the minutes from the Casey Council meeting of 7 June 2016 record Councillor Ablett as an apology, meaning that the Casey Council did not receive any notification that he had a conflict in the Amendment C219 matter. The fact that other councillors were not informed that Councillor Ablett had a conflict of interest, let alone the nature of the conflict or the persons or entities with whom the conflict arose, denied them knowledge that may have been relevant to their own positions, and made it difficult for them to know that they should not discuss the matter with Councillor Ablett outside Casey Council meetings.

680 LGA 1989, ss 79(2)(a)(ii) and (d).

681 Note however, that under the LGA 1989, ss 79(5), the CEO was required to maintain a record of written disclosures for three years after the date the councillor ceased to be a councillor.

682 City of Casey 2019, Councillor Code of Conduct, p 7.

Councillor Ablett received a range of payments from Mr Woodman which, according to Councillor Ablett, were to assist with the upkeep of the racehorse, help to pay off a credit card debt in the lead-up to an election and were proceeds from the sale of land by Councillor Ablett to Mr Woodman.⁶⁸³ None of these payments were declared, and Mr Woodman's identity was concealed in the limited disclosure that was made to the Casey Council CEO. As a result, both the Casey Council CEO and Council received an incomplete picture of the extent of the connection between Mr Woodman and Councillor Ablett.

At the 4 September 2018 meeting of the Casey Council, Councillor Ablett, Councillor Serey and Councillor A all declared a conflict of interest in an item that concerned the Hall Road intersection. All three made their declaration as written advice to the Casey Council CEO. The meeting minutes reflect that:

- Councillor Ablett declared his class of interest to be a direct interest – direct financial interest
- Councillor A declared their interest to be an indirect interest – by close association
- Councillor Serey declared her interest to be an indirect interest – conflicting duty.⁶⁸⁴

Without being aware of the details of the nature of a conflict and with whom it arises, it is difficult for councillors to comprehend why their colleagues have removed themselves from the chamber, much less the extent to which their private interests may conflict with their public duty.⁶⁸⁵ Thus, the risk eventuated on occasion that conflicted councillors would discuss matters on which they were conflicted with other councillors outside the chamber, often with the intention of influencing their vote. This is discussed further section 7.3.4.4 in relation to attempts by conflicted councillors to canvass other votes.⁶⁸⁶

The LGA 2020 states that councillors making a disclosure must follow the procedure set out in their council's governance rules. LGV's draft Model Governance Rules do not allow councillors to advise the CEO in writing before the meeting, but rather, require that a councillor clearly declare the following details at the beginning of the meeting:

- the item for which they have a conflict of interest
- whether their conflict of interest is general or material
- the circumstances that give rise to the conflict of interest.⁶⁸⁷

The Model Governance Rules also specify that, immediately before discussion of the relevant item, the councillor must again state that they have a conflict and leave the meeting.⁶⁸⁸

The Model Governance Rules state that even if a councillor is not present at the time designated in the agenda for disclosing conflicts of interest, the councillor must still disclose their conflict of interest in the manner described above, and then leave the meeting.⁶⁸⁹ It is not clear if this requirement applies to councillors who are absent from the entire meeting. Coupled with the publication requirements in the Model Governance Rules,⁶⁹⁰ requiring declarations from all councillors (regardless of whether or not they attend the meeting), the current rules promote a greater level of awareness of possible conflicts than existed under the old rules, and alert other councillors to matters that they should not discuss with the declarant.

683 See section 3.6.2, Payments and inducements for more information on payments received by Councillor Ablett from Mr Woodman.

684 Casey Council, 4 September 2018, meeting minutes, Item 6.6, Hall Road, Cranbourne West.

685 Councillor Crestani, for example, told IBAC that the details of Councillor Ablett's conflict of interest 'were never given officially'.

686 See section 7.3.4.4, Attempts by conflicted councillors to canvass other votes.

687 LGV 2020, *Draft Model Governance Rules*, cl 18.3(1).

688 Ibid., cl 18.3(2), June 2020.

689 Ibid., cl 18.3(3), June 2020.

690 Ibid., cl 18.2(4), June 2020 states that the council will maintain a Conflict of Interest Register which will be made available on the council's website.

Although the Casey Council's Governance Rules are not consistent with the draft Model Governance Rules, they improve upon the earlier local laws by removing the option to advise the CEO in writing before the meeting.⁶⁹¹ The Casey Council's Governance Rules also specify that a councillor who has a conflict of interest in a matter being considered at a council meeting they are attending:

*must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the meeting immediately before the matter is considered [and] must leave the meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.*⁶⁹²

Although the LGA 2020 does not prescribe how conflicts of interest must be disclosed, it does require these details to be included in a council's governance rules.⁶⁹³

The draft Model Governance Rules specify a clearer process for disclosing conflicts of interest in council meetings. Firstly, at the time listed in the agenda for disclosing conflicts of interest, a councillor with a conflict of interest for an item on that agenda must state that they have a conflict in the terms stated above. Immediately before the council considers the item in which they have a conflict of interest, a councillor must also advise of the conflict and leave the meeting. This also applies if the councillor is not present at the time designated for disclosing conflicts of interest. Importantly, the Model Governance Rules state that a councillor who discloses a conflict of interest and leaves a council meeting must not communicate with any participants in the meeting while the decision is being made.⁶⁹⁴

These provisions in the Model Governance Rules are welcome, but greater specificity is required so that when stating 'the circumstances that give rise to a conflict', councillors disclose details of the people with whom they have a conflict and identify what donation, monetary arrangement or other circumstance gives rise to the conflict. This information, which under the Model Governance Rules would be published in a register on the council's website, is important to help others understand why the councillor declaring a conflict should not be involved in the decision-making process. To avoid the risk of communications with the conflicted councillor before the council decision, the declaration of a conflict containing the relevant information should be made as soon as possible following circulation of the agenda of council business, so that all councillors are aware that particular councillors are conflicted.

Proposed reforms

To give greater effect to the principles-based approach of the conflict-of-interest provisions enacted in 2020, the Model Governance Rules must make clear that the circumstances that give rise to a conflict should be sufficiently detailed in a conflict-of-interest declaration to help other councillors understand why it is not appropriate for the declarant to participate in the decision-making process, or for the declarant to speak to them about the issue in advance of the decision being made.

As stated above, the details of the people or entities that give rise to the conflict should be included in the declaration and, in the case of a material conflict, the value of any gift or donation or other financial arrangement that exists, as well as any benefit or loss that the councillor or associated person expects to derive or suffer due to the council's decision. As discussed below, this detail is necessary to reinforce with other councillors the importance of not discussing relevant matters with a conflicted councillor.

691 City of Casey 2016, *Local Law (No. 1), Meeting Procedures and Use of the Common Seal*, cl 37.1 stated, 'Members must declare any conflict of interest *either* immediately prior to the matter being raised, or prior to the meeting in writing to the CEO and must remove themselves from the meeting for the duration of debate and vote'.

692 City of Casey 2023, *Governance Rules*, cl 88, p 33.

693 LGA 2020, s 131(2a).

694 LGV 2020, *Draft Model Governance Rules*, cl 18.3(3).

As the LGA 2020 no longer specifies how disclosures should be made,⁶⁹⁵ the Model Governance Rules to be issued by LGV should also be prescriptive and unambiguous on the process for councillors declaring all conflicts of interest, including those involving private information. Currently, the draft Model Governance Rules provide a process for declaring only those conflicts that do not involve any privacy issues, stating that '[the] council will maintain a conflict of interest register which will be made available on [the] council's website'.⁶⁹⁶

Other LGV guidance advises councils to develop rules that allow a councillor to provide a written disclosure to the CEO, before the meeting, if it would involve disclosure of another person's private information. The guide also notes that those records are to be kept secure and confidential.⁶⁹⁷ There will be occasions where it will be necessary for councillors to declare details of their conflict to the CEO due to privacy concerns. However, these two separate processes for the maintenance and publication of a register and secure retention of written disclosures involving another person's private information should be documented in the one place – preferably the Model Governance Rules. Further, as noted above, all councils should be required to adopt the provisions of the Model Governance Rules.⁶⁹⁸

Recommendation 27

IBAC recommends that the Minister for Local Government ensures that the Model Governance Rules (such as through an amendment to clause 18.3 of the draft rules):

- (a) provide a clear process for disclosing all conflicts of interest, including those that involve privacy matters. This process must set out:
 - precisely what matters will be included in the declaration and public register
 - how declarations involving privacy matters will be recorded
 - how long records will be retained
- (b) require councillors to disclose, in sufficient detail, the circumstances that give rise to a conflict of interest, including, but not limited to, the names of the people or entities associated with the conflict and their relationship to the councillor.

Recommendation 28

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria develops model conflict-of-interest training, and an associated strategy to ensure that its completion is enforceable, to consistently reinforce conflict-of-interest obligations across councils. The training should:

- (a) explain why a councillor cannot or should not participate in the decision-making process for a matter in which they have a conflict, during or outside council meetings
- (b) ensure that councillors understand their obligation to:
 - familiarise themselves with the parties who donate to any political, charitable or community interests with which the councillor has an involvement
 - assess whether those donations give rise to a conflict of interest for particular council matters
 - provide precise details of the nature of the conflict when declaring a conflict of interest.

⁶⁹⁵ *The LGA 1989*, ss 79(5) specified that the CEO must keep written disclosures in a secure place for three years after the date the councillor ceases to be a councillor.

⁶⁹⁶ LGV 2020, *Draft Model Governance Rules*, cl 18.2(4). Note that the requirement to make the Conflict of Interest Register public is reiterated in the Transparency Policy. LGV 2020, *Draft Public Transparency Policy*, pp 2–3.

⁶⁹⁷ LGV 2020, *Managing Personal Interests in Local Government: A manual for council managers and governance officers*, p 16.

⁶⁹⁸ See Recommendation 19 in section 7.3.2.1 Misuse of alternative motions.

7.3.4.4 Attempts by conflicted councillors to canvass other votes

As stated earlier, Operation Sandon found that some Casey councillors ostensibly complied with their obligations under the LGA 1989 by declaring a conflict of interest and excusing themselves from Casey Council meetings on matters on which they were conflicted, while seeking to influence the vote in other ways – namely by canvassing other councillors for their vote.

Despite declaring a conflict of interest, Councillor Ablett sought to influence his fellow councillors on the H3 intersection and Amendment C219 votes. On numerous occasions, Councillor Ablett spoke to other councillors before or during the meetings at which Mr Woodman's matters were considered, to try to influence how those councillors would vote. For example, at a meeting on 16 October 2018, where the H3 intersection was discussed,⁶⁹⁹ Councillor Ablett declared a conflict of interest and left the chamber, then sent the following lawfully intercepted text message to another councillor who remained in the chamber:

At 6.55 pm: Councillor Ablett: *'Can you support h3 on hall rd'*

At 6.58 pm: The other councillor: *'I know we r good mates but I can't sorry nothing against you'*

At 7.02 pm: Councillor Ablett: *'Vote as you like. Sorry'.*

Under examination, Councillor Ablett acknowledged that he knew this conduct was improper:

Commissioner: *Did you understand that if you, having a conflict of interest, nonetheless actively either by way of voting or by way of encouraging others to vote where you had a conflict, that you would be misusing your position?*

Councillor Ablett: *Yes, I knew I shouldn't be voting or influencing any other councillor.*

Also on the H3 intersection, IBAC found evidence that Councillor A partially disclosed a conflict of interest,⁷⁰⁰ but nevertheless was involved in marshalling votes outside the Council chamber to support Mr Woodman's interests. For instance, Councillor A discussed whether Councillor Crestani could be influenced by Councillor Ablett to vote in a way that would progress the H3 intersection matter in Mr Woodman's favour.

Although the LGA 1989 did not explicitly prohibit councillors with conflicts of interest from seeking to influence other councillors, this behaviour is plainly at odds with the broader aim of accountability and transparency that conflict-of-interest provisions seek to advance. More specifically, such conduct contravened the councillor-conduct principles to avoid conflicts between their public duties and personal interests and obligations, and to not improperly seek to confer an advantage or disadvantage on any person.⁷⁰¹

The LGA 2020 also does not explicitly prohibit councillors with a conflict of interest from communicating with other councillors outside the council chamber. Instead, section 130(2)(b) of the LGA 2020 provides that, having disclosed a conflict of interest in respect of a matter, a councillor must:

*exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.*⁷⁰²

The draft Model Governance Rules are also limited, stating only that a councillor who discloses a conflict of interest and leaves a meeting 'must not communicate with any participants in the meeting while the decision is being made'.⁷⁰³ As presently formulated, the LGA 2020 and Model Governance Rules do not clearly state that a councillor who has a conflict of interest in a matter before council must not discuss the matter with other councillors or council officers.

699 The Casey Council 16 October 2018 meeting recordings indicated that the meeting started at 6.31 pm and concluded at 8.10 pm. Also see Casey Council, 16 October 2018, meeting minutes, Item 6.10.

700 See discussion above regarding Councillor A's conduct in the H3 intersection matter in section 7.3.4.3, Partial disclosures.

701 LGA 1989, s 76B. In section 76D, Misuse of position, the Act stated that councillors must not misuse their position by directly or improperly influencing a member of council staff. Councillors were not included in this prohibition.

702 LGA 2020, s 130(2). Emphasis added.

703 LGV 2020, Draft Model Governance Rules, cl 18.3(4).

Proposed reforms

The issue of conflicted councillors seeking to influence others was a significant concern in Operation Sandon. It was not uncommon for conflicted councillors to attempt to remain involved in decision-making by lobbying other councillors or officers on particular matters.

In Queensland, councillors are expressly prohibited from attempting to influence other councillors on matters in which they have a conflict of interest.⁷⁰⁴ The *Local Government Act 2009* (Qld) states:

*The councillor [with a prescribed conflict of interest or declarable conflict of interest in a matter] must not direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter.*⁷⁰⁵

Councillors with a conflict of interest in a matter are permitted to provide the CEO with factual information that could help the decision-making process, but must otherwise play no part in the debate on the matter. Contravention of this section is misconduct that could result in disciplinary action against a councillor.⁷⁰⁶

The LGA 2020 should be amended to expressly prohibit councillors from seeking to influence how others vote, as such conduct undermines the core aims of transparency and impartiality that conflict-of-interest provisions seek to protect. Such a prohibition should be coupled with appropriate sanctions, with more serious (potentially criminal) sanctions attaching to a conflict that could result in gaining a benefit or suffering a loss.

Recommendation 29

IBAC recommends that the Minister for Local Government develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic) to:

- (a) expressly prohibit councillors with a conflict of interest from attempting to influence other councillors (with reference to the Queensland provisions)
- (b) specify an appropriate penalty for councillors who contravene this provision.

7.3.5 Ineffective measures to address poor councillor conduct

As stated throughout this report, Operation Sandon found repeated instances of poor councillor behaviour and failures to follow procedures. IBAC's investigation also pointed to instances in which Casey councillors involved themselves in staffing matters, were publicly critical of Casey Council planning officers, and gave developers information that was not in the public domain and that they acquired because of the position they held as councillors.

The LGA 2020 has improved how councillors are held to account for their conduct. However, Operation Sandon identified opportunities to further tighten processes for dealing with poor councillor conduct, as discussed below. It is important that the framework for dealing with alleged breaches of councillor codes of conduct be clear, timely and responsive, and apply meaningful sanctions.

7.3.5.1 Lack of consequences for poor behaviour

At the time of the conduct in Operation Sandon, the LGA 1989 required councils to adopt a councillor code of conduct that set out the council's internal procedure for dealing with alleged code-of-conduct breaches by councillors, assessed on the balance of probabilities.⁷⁰⁷ The Casey Councillor Code of Conduct was broadly consistent with this requirement.⁷⁰⁸ However, a code of conduct in isolation will not prevent poor conduct. To be effective, it must be understood and applied.

⁷⁰⁴ This provision was introduced following the Qld CCC investigation, Operation Belcarra: CCC 2017, Operation Belcarra Report, Recommendation 26.

⁷⁰⁵ *Local Government Act 2009* (Qld), s 150EZ.

⁷⁰⁶ *Local Government Act 2009* (Qld), s 150L(1)(c)(iv).

⁷⁰⁷ LGA 1989, s 76C.

⁷⁰⁸ Casey Council, 7 June 2016, meeting minutes, 'Mayor led councillors in signing code'.

Councillor Aziz's failures to comply with the Casey Councillor Code of Conduct were not dealt with effectively. For instance, following a formal complaint about his behaviour in 2014–15, the Casey Council engaged an independent primary assessor who considered Councillor Aziz's alleged pattern of bullying directed towards another councillor. That assessment found that there was a case to answer. When mediation proved unsuccessful, the other councillor made an application to refer Councillor Aziz to a councillor conduct panel. On 8 October 2015, the panel determined that the actions of Councillor Aziz constituted misconduct, reprimanded Councillor Aziz⁷⁰⁹ and directed him to make a written apology to the other councillor. Shortly after, on 26 October 2015, Councillor Aziz was elected Casey mayor,⁷¹⁰ despite dissent from four councillors, including Councillor Crestani, who noted that her opposition was based on Councillor Aziz's history of misconduct.⁷¹¹

The Casey Council's lack of any constructive response to the matters raised by the Victorian Ombudsman reflected a lack of desire on the part of the Casey Council and its CEO to make any improvement in their approach to governance and integrity. As the Municipal Monitor found in 2020, an 'avoidance culture' on matters of integrity continued to exist at the Casey Council at the time of her report.

At the time, the LGA 1989 stated that a councillor conduct panel could direct that a councillor found guilty of misconduct be ineligible to hold the office of mayor for a period not exceeding the remainder of the council term.⁷¹² In this instance, the panel did not make such a direction. Regardless, it is difficult to understand how a councillor found to have engaged in misconduct by a councillor conduct panel could be considered a good leader by their peers, noting that six councillors voted to elect Councillor Aziz mayor in 2015.⁷¹³

The LGA 2020 now provides that a councillor is automatically ineligible to hold the office of mayor following a finding of *serious* misconduct.⁷¹⁴ But a councillor conduct panel cannot direct that a councillor be ineligible to hold the office of mayor following a finding of misconduct.⁷¹⁵ This means that Councillor Aziz could still have been elected mayor under the LGA 2020.

The LGA 1989 councillor conduct complaints process required that councillors first participate in an internal resolution process to deal with alleged breaches of their councillor code of conduct. In comparison, the LGA 2020 provides that all councils must adopt a standardised internal arbitration process to deal with alleged breaches of regulations.⁷¹⁶ Under this process, all complaints of councillor misconduct are first considered by the Principal Councillor Conduct Registrar,⁷¹⁷ who must be satisfied that there is sufficient evidence of a breach of a code of conduct to appoint an arbiter.⁷¹⁸ This appears to provide a degree of independent external oversight of the complaints being raised, unlike the LGA 1989 provisions in place at the time of the conduct in Operation Sandon.

Arbiters are drawn from a panel established by the Secretary of the Department of Jobs, Precincts and Regions (now the Department of Government Services),⁷¹⁹ and are authorised to make a finding of misconduct against a councillor.⁷²⁰ In making a finding of misconduct, the arbiter can:

- direct the councillor to make an apology
- suspend the councillor from office for up to one month
- direct that the councillor be removed for a specified period from any position where the councillor represents the council
- direct that the councillor be removed as chair of a delegated committee for a specified period
- direct a councillor to attend or undergo training or counselling.⁷²¹

709 The reprimand was given in accordance with s 81J(2)(a) of the LGA 1989.

710 Casey Council, 26 October 2015, meeting minutes, Item 6.1, Election of mayor.

711 The other councillors who opposed Councillor Aziz's election as mayor were Councillor Rowe, Councillor Serey and another councillor.

712 LGA 1989, s 81J(2)(d).

713 Casey Council, 26 October 2015, meeting minutes, Item 6.1, Election of mayor.

714 LGA 2020, s 167(2).

715 Ineligibility for the role of mayor was retained as an option following a finding of misconduct in the Local Government Bill 2018, cl 201(2)(d) but was not retained in the LGA 2020, s 167(4). However, a panel or arbiter can direct that the councillor be removed 'from any position where the councillor represents the council for a specified period'.

716 LGA 2020, s 141 and Local Government (Governance and Integrity) Regulations 2020, reg 12.

717 LGA 2020, s 243.

718 LGA 2020, s 144.

719 Department of Jobs, Precincts and Regions (now Department of Government Services), Arbiter Panel list, localgovernment.vic.gov.au/council-governance/councillor-conduct-framework-and-councillor-conduct-panels.

720 LGA 2020, s 147.

721 LGA 2020, s 167(4).

This provides a mechanism for penalties to be imposed locally in a more timely manner, which is an improvement on the LGA 1989. However, as stated earlier, it seems that the arbiter does not have the option to direct that a councillor be ineligible to hold the position of mayor after a finding of misconduct, rather than serious misconduct.

Proposed reforms

Repeated conduct breaches that are not dealt with by adequate sanctions can embolden offenders, who know there will be few, if any, consequences for poor conduct. Moreover, implicitly affirming councillors who are found to have conducted themselves inappropriately (for example, by electing as mayor a person found guilty of misconduct) can deter others from attempting to call out improper practices.

Although the LGA 2020 has improved the way in which councillor conduct is dealt with, there is a need to expand the sanctions that can be applied after a finding of councillor misconduct, including empowering a councillor conduct panel to direct that a person cannot hold the office of mayor.

Recommendation 30

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria reviews the available sanctions for misconduct to ensure that the options provided are adequate and applied in an appropriate way. This includes, but is not limited to, ensuring that the option to direct that a councillor be ineligible to hold the position of mayor after a finding of misconduct can be applied in a way that is both proportional to the conduct and timebound.

7.3.5.2 Restrictions on who can lodge a complaint

To trigger the internal arbitration process when it is alleged that a councillor has breached the code of conduct, a complaint alleging a breach must be made. However, that complaint can only be made by other councillors.⁷²²

Beyond the internal arbitration process, allegations of serious misconduct by a councillor are heard and determined by councillor conduct panels (who can also make a finding of misconduct),⁷²³ while allegations of gross misconduct are dealt with by VCAT.⁷²⁴ These processes similarly require that an application be made by councillors or the CMI, unless referred by the arbiter.⁷²⁵

In both New South Wales and Queensland, the model code procedures make clear that any person can make a complaint alleging that a councillor has breached the code of conduct.⁷²⁶ While in New South Wales such complaints are generally addressed to a council's general manager (equivalent to a CEO in Victoria),⁷²⁷ in Queensland all complaints must be submitted to the Office of the Independent Assessor, who assesses them and determines the category of the allegation.⁷²⁸ Lower-level matters are referred to the relevant council to resolve, while suspected misconduct is investigated by the Office of the Independent Assessor, which may apply to the councillor conduct tribunal for the matter to be heard. Allegations of corruption must be referred to the Queensland Crime and Corruption Commission.⁷²⁹

In Victoria, the LGA 2020 gives the CMI authority to examine, investigate and prosecute any matter relating to a council's operation, electoral matters or possible breaches of the Act.⁷³⁰ However, unlike in other states, Victorian councillor codes of conduct tend to focus on the process available to councillors, rather than to council officers or community members, to make complaints alleging misconduct.

⁷²² LGA 2020, s 143(2).

⁷²³ LGA 2020, s 154(1).

⁷²⁴ LGA 2020, s 171(1).

⁷²⁵ LGA 2020, ss 143(2), 154(2) and 171(2). An arbiter can refer an allegation of serious misconduct to a councillor conduct panel, while a complaint alleging gross misconduct can only be made by the CMI. Also see LGA 1989, ss 81B and 81E.

⁷²⁶ NSW Government 2020, *Model Code of Conduct Procedures*, cl 4.1 and Qld Government 2020, *Code of Conduct for Councillors in Queensland*, p 8.

⁷²⁷ NSW Office of Local Government 2020, *Model Code of Conduct Procedures*, cl 4.6 and 4.11. The General Manager in a NSW council is equivalent to a CEO in a Victorian council.

Note that in June 2021, the NSW Minister for local government requested an independent review of the framework for dealing with councillor misconduct, including, among other things, the process for making complaints under the Procedures.

⁷²⁸ Qld Government 2020, *Code of conduct for councillors in Queensland*, p 8.

⁷²⁹ LGA 2009 (Qld), s 150(O).

⁷³⁰ LGA 1989, s 223B and LGA 2020, s 183. See the LGI website on how to make a complaint: lgi.vic.gov.au/make-complaint-local-government-inspectorate.

For instance, the Casey Council's current Councillor Code of Conduct states that for 'disputes between councillors and staff':

Where a staff member has a complaint in respect of a councillor, the complaint may be made to the CEO who will, if deemed appropriate, discuss the matter with the mayor. Where the mayor deems a breach of the Councillor Code of Conduct has occurred, the mayor will progress the matter in accordance with this dispute resolution process.

Where the complaint involves the mayor, the CEO will discuss the matter with the deputy mayor.⁷³¹

This referral of a complaint back to the mayor or deputy mayor to determine if a breach of the councillor code of conduct has occurred does nothing to reassure staff or the public that a complaint about a councillor's conduct will be assessed impartially.

A number of Casey residents raised concerns about Councillor Aziz and his conduct. However, a lack of clarity around the complaint process appears to have emboldened Councillor Aziz to call on the Casey Council to provide financial support for his personal defamation action against members of the public who raised concerns about his conduct. Specifically, records show that between March 2017 and May 2019 the Casey Council held four closed meetings to discuss Councillor Aziz's personal defamation action against residents. According to the meetings' minutes, councillors took issue with funding Councillor Aziz's personal defamation action at only the first meeting, on 7 March 2017.⁷³² The total cost to the Casey Council was \$80,459 (excluding GST).⁷³³

Proposed reforms

A complaint-handling process that genuinely seeks to address identified conduct issues must be accessible to staff and to the public, as well as to councillors.

The process should clearly specify that a council officer or member of the public may also complain to the CMI, who will then follow the prescribed procedure. If this places significant additional demands on the CMI, the CMI should be given adequate resources to cover those demands.

To improve clarity and awareness, councillor codes of conduct should make it clear to councillors, staff and the public that the council CEO is obliged to make a mandatory report to IBAC if the CEO suspects on reasonable grounds that corrupt conduct is occurring or has occurred.⁷³⁴ Consideration should also be given to the role of complaints from the public, as another means of improving the effectiveness of the complaint-handling process.

At present, there is no requirement that a councillor code of conduct make clear that the CEO must report directly to IBAC.⁷³⁵ Indeed, codes generally state that the CEO must consult with the mayor about possible action in response to an alleged breach of the Councillor Code of Conduct that they suspect amounts to corrupt conduct – such as a failure to declare a material conflict.

Recommendation 31

IBAC recommends that the Minister for Local Government ensures that Local Government Victoria includes in the Model Councillor Code of Conduct a clear statement that:

- (a) council officers and members of the public may make a complaint to the Chief Municipal Inspector
- (b) a CEO must notify IBAC under section 57 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) if they suspect on reasonable grounds that a breach of the Model Councillor Code of Conduct involves corrupt conduct.

7.3.5.3 Monitoring of complaint trends and access to related decisions

As previously noted, Councillor Aziz was elected mayor in 2015 despite a finding of misconduct by a councillor conduct panel only weeks earlier. Available information on that matter suggests that the panel process not only delivered an inadequate outcome, but was fraught with personal or political risks for the complainant, who withdrew part of their application – which sought a finding of gross misconduct – in order to bring the matter to a close.

⁷³¹ City of Casey 2023, Councillor Code of Conduct, p 16.

⁷³² Casey Council, 7 March 2017, closed meeting. Council ultimately resolved to fund the pre-litigation costs as outlined in the report for defamation action launched by Mayor Aziz and that Casey Council be reimbursed for any costs incurred in the event of a monetary settlement. Motion was moved by Councillor Ablett and seconded by another councillor.

⁷³³ Casey Council closed meetings on 6 June 2017, 21 August 2018 and 21 May 2019.

⁷³⁴ IBAC Act, s 57.

⁷³⁵ IBAC Act, s 57.

Indeed, as the Municipal Monitor's 2020 report observed, the City of Casey had an embedded 'avoidance culture':

*There has been a disturbing pattern of withdrawing complaints between Councillors and not pursuing Councillor Conduct Panels. Community members commented on poor behaviour between Councillors and toward themselves, not calling of poor behaviour by mayors at Council meetings and inconsistent treatment of Councillors during Council debates.*⁷³⁶

Other complaints about councillor conduct at the Casey Council were not always pursued.

This problem is not unique to the Casey Council. Publicly available information on decisions made by councillor conduct panels across Victoria shows that only four panel decisions were published in 2019, none was published in 2018 and only one was published in 2017.⁷³⁷ Before March 2016, there was no requirement to publish the decisions of councillor conduct panels.⁷³⁸

IBAC understands that the extremely low number of matters being finalised and published by councillor conduct panels is due in part to the number of matters initiated that are not completed. However, due to limited transparency, it is not clear what proportion of matters are withdrawn, or what action, if any, has been taken by councils on matters not completed but examined by the panel.

By comparison, as at 8 April 2021, the Councillor Conduct Tribunal in Queensland had published five decision summaries for 2021, nine decision summaries for 2020, and 22 for 2019.⁷³⁹ In addition, the Queensland Office of the Independent Assessor provides information on councillor conduct complaints, the complaints process and associated tribunal hearing and prosecution processes.⁷⁴⁰ Similarly, in Western Australia, the Local Government Standard Panel published 21 minor breach findings for matters heard in 2020, and 13 findings for matters heard in 2019.⁷⁴¹

In terms of transparency around complaints alleging breaches of a councillor code of conduct, under the NSW Model Code procedures, the following must be reported to the Office of Local Government annually:

- the total number of complaints about councillors and the general manager under the code
- the outcome of completed investigations
- the total cost of dealing with code complaints made about councillors and the general manager, including staff costs.⁷⁴²

This information is then published by the Office of Local Government.⁷⁴³ As a result, local communities in New South Wales can gain a better insight into the amount of time and resources their council is expending on code of conduct complaints.⁷⁴⁴

Under the LGA 2020, a council's arbitration determinations must now be tabled at the next council meeting after the decision has been made and recorded in the minutes of the meeting. Those decisions are published online as a link to the relevant council's meeting minutes, but give no further information on the matter.⁷⁴⁵

This provides only limited transparency around the internal arbitration process. Considerably more could be done to expose and monitor outcomes and the extent to which the internal arbitration process and councillor conduct panels are used – to assess their utility and improve the efficacy of those complaint-handling mechanisms.

⁷³⁶ Municipal Monitor 2020, *City of Casey Municipal Monitor Report*, p 6.

⁷³⁷ Department of Jobs, Precincts and Regions (now Department of Government Services), Councillor conduct framework, localgovernment.vic.gov.au/council-governance/councillor-conduct-framework-and-councillor-conduct-panels.

⁷³⁸ *The Local Government (Improved Governance) Act 2015* (Vic) established the role of the Principal Councillor Conduct Registrar, whose responsibilities include publishing any determination made by a councillor conduct panel and any reasons given for the determination, *LGA 1989*, s 81T(1)(d).

⁷³⁹ Queensland Government, Department of State Development Infrastructure, Local Government and Planning, Councillor Conduct Tribunal Decision summaries, dlgrma.qld.gov.au/local-government/governance/councillor-conduct-tribunal/decision-summaries.

⁷⁴⁰ Queensland Government, Office of the Independent Assessor, oia.qld.gov.au/make-a-complaint.

⁷⁴¹ West Australian, Department of Local Government, Sport and Cultural Industries, Local Government Standards Panel, Minor breach findings, dlgrma.wa.gov.au/local-government/local-governments/compliance-and-governance/breaches-of-the-local-government-act/minor-breach-findings.

⁷⁴² NSW Office of Local Government 2020, *Procedures for the administration of the model code of conduct for local councils in NSW*, cl 11.1–11.2.

⁷⁴³ NSW Government, see, for example, Complaint Statistics 2018–19, olg.nsw.gov.au/public/complaints-against-councils/council-complaint-statistics/complaint-statistics-2018-19.

⁷⁴⁴ See, for example, Ralph O 2021, 'Outgoing Dubbo mayor demands greater transparency around code of conduct complaints', *ABC News*, which notes that the council spent more than \$236,000 to handle 55 code of conduct complaints in one year.

⁷⁴⁵ Department of Jobs, Precincts and Regions, Tabled internal arbitration process decisions, indicates that three matters were determined and tabled in the relevant council in 2021. There are no 2020 or 2021 decisions published on the Department's website. See localgovernment.vic.gov.au/council-governance/councillor-conduct-framework-and-councillor-conduct-panels.

Proposed reforms

Management of councillor conduct complaints is an important element of good governance. Complaint numbers and determinations should be published in the interests of transparency and accountability.

Data should be collected and reported to help improve the process, including to reduce the risk of councillors misusing complaint processes to cause each other political harm. Increased transparency around the number and type of complaints levelled at councillors can assist in identifying systemic issues with councillor conduct and where interventions may be required.

Given that all applications for an internal arbitration process must be given to the Principal Councillor Conduct Registrar, it is appropriate for that office to report on the number of complaints concerning each council, the nature of the issues examined, and the outcomes and costs of each arbitration, to allow public scrutiny and assist in monitoring trends. The Principal Councillor Conduct Registrar should also report in a more detailed way on councillor conduct panels, including the number of applications received, withdrawn and completed; the nature of the issues examined; and associated costs.

Recommendation 32

IBAC recommends that the Minister for Local Government develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic) to require that the Principal Councillor Conduct Registrar collate and publish data annually on:

- (a) the internal arbitration process, including:
 - the number of applications received
 - the number of applications withdrawn
 - the nature of the issues raised
 - the outcome of completed arbitration processes
 - the cost to the council of dealing with arbitrated matters, including staff costs
- (b) councillor conduct panels, including:
 - the number of applications received
 - the number of applications withdrawn
 - the nature of the issues raised
 - the outcome of completed panel processes
 - the cost to the council of dealing with panel matters, including staff costs.

7.3.5.4 Ministerial oversight

When allegations of serious misconduct are substantiated, appropriate sanctions must be applied. If those measures prove ineffective, it may be necessary for the Minister for Local Government to intervene, especially where councillors' conduct is hindering the effective operation of a council or harming the health and safety of other councillors or staff.

Before the introduction of the LGA 2020, one of the difficulties faced by local councils and the Minister for Local Government was the absence of a mechanism to remove a problematic councillor or councillors without pursuing criminal charges or dismissing a council in its entirety. The LGA 2020 provides a wider range of options than the LGA 1989 to remove a councillor or prevent a councillor who has engaged repeatedly in poor conduct from standing for re-election.⁷⁴⁶

⁷⁴⁶ LGA 2020, ss 34(2)(i) and (j). A person cannot stand for election as a councillor if they have multiple findings of serious misconduct against them or if they have been convicted of an offence, including a failure to lodge an election campaign donation return.

Under the LGA 2020, a person can be disqualified from holding office for four years if they have been subject to two or more findings of serious misconduct by separate councillor conduct panels in an eight-year period.⁷⁴⁷ The LGA 2020 also provides mechanisms for the temporary⁷⁴⁸ and permanent⁷⁴⁹ removal of an individual councillor where there is reason to believe that the councillor is creating a serious risk to the health and safety of councillors, council officers or other people, or otherwise preventing the council from performing its functions.⁷⁵⁰

DELWP produced an information sheet on councillor conduct to accompany the Local Government Bill 2019, noting that the new measures 'will allow action to be taken to uphold the functioning and integrity of the council as well as ensuring they are safe places to work'.⁷⁵¹

Specifically, the LGA 2020 provides that the Governor in Council (Governor) may stand down a councillor (on the recommendation of the Minister for Local Government) for up to six months or until a specified outcome has occurred.⁷⁵² The Minister for Local Government may recommend standing down a councillor if the following criteria are met:

- an application has been made to a councillor conduct panel or VCAT alleging serious or gross misconduct, or the Minister has appointed a Commission of Inquiry into the councillor, or a section 36 'ouster' application has been made to the Supreme Court
- the section 226 report (prepared by the CMI or Municipal Monitor on referral from the Minister) advises that the councillor is creating a serious health and safety risk or preventing the council from performing its functions
- the Minister is satisfied that the councillor is creating a serious health and safety risk or behaving in a manner that is preventing the council from performing its functions.⁷⁵³

To promote timely action, the LGA 2020 also specifies that the section 226 report to the Minister for Local Government must generally be completed within 10 days of referral, and give the subject councillor five days to respond.⁷⁵⁴ Although legislative mechanisms to remove an individual councillor are now in place, the threshold to apply to the Governor is relatively high, especially when compared with other jurisdictions.

Like Victoria, New South Wales requires that certain criteria be met before a councillor can be dismissed.⁷⁵⁵ However, the *Local Government Act 1993* (NSW) allows the Minister for Local Government to temporarily suspend a person from office 'without notice or inquiry' in the following circumstances:

- ICAC recommends that consideration be given to suspension or dismissal for serious corrupt conduct, or
- criminal proceedings are instituted against the person for serious corrupt conduct, or
- the person makes an admission.⁷⁵⁶

In Western Australia, the Minister for Local Government can recommend that the Governor dismiss a council member if the Departmental CEO advises that:

- the member is impeding the council's ability to perform its functions, or it is in the best interest of the council that the member be dismissed
- the seriousness of the situation for the council requires intervention.⁷⁵⁷

⁷⁴⁷ LGA 2020, s 34(2)(i).

⁷⁴⁸ LGA 2020, s 228.

⁷⁴⁹ LGA 2020, s 36 provides that the Minister, the CMI or a council of which a particular councillor is a member may apply to the Supreme Court to oust a person from the office of councillor on the basis that the person holds the office of councillor contrary to the Act.

⁷⁵⁰ LGA 2020, s 228.

⁷⁵¹ DELWP, *Local Government Bill 2019, Theme 3 – Improved Conduct*, p 2.

⁷⁵² LGA 2020, ss 228(1) and (5).

⁷⁵³ LGA 2020, s 228(2).

⁷⁵⁴ LGA 2020, ss 226 and 227.

⁷⁵⁵ *Local Government Act 1993* (NSW), s 440B provides that the Governor may dismiss a person from civic office and disqualify the person from holiday civic office for up to five years if: (a) ICAC recommends consideration be given to suspension or dismissal for serious corrupt conduct AND (b) the person is suspended from civic office by the Minister under this Division AND (c) the Minister advises the Governor that the dismissal of the person is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions.

⁷⁵⁶ *Local Government Act 1993* (NSW), s 440C.

⁷⁵⁷ *Local Government Act 1995* (WA), s 8.15K with reference to s 8.15L regarding the Governor's authority to dismiss.

Queensland appears to give the Minister for Local Government the broadest discretion to dismiss or suspend individual councillors. Under the *Local Government Act 2009* (Qld), the Minister can recommend to the Governor that a councillor be suspended or dismissed if:

- the Councillor Conduct Tribunal recommends that a councillor be suspended or dismissed, or
- the Minister reasonably believes that the councillor is incapable of performing their responsibilities, or
- the Minister reasonably believes that it is otherwise in the public interest that a councillor be suspended or dismissed.⁷⁵⁸

7.3.6 Limits on the CEO's ability to act on identified integrity issues

In evidence, both the current Casey Council CEO, Mr Patterson, and former CEO, Mr Tyler, indicated that on different occasions they had misgivings about decisions or conduct of councillors. However, both felt that they were limited in their ability to address those issues, even when red flags suggested conflict of interests existed or that the conduct of some councillors was disrupting the functioning of the council.

For instance, as discussed in section 3.1.5, when Councillor Aziz introduced urgent business to kick-start the Cranbourne West rezoning process before a formal request was received by the Casey Council, Mr Tyler was said to have advised councillors that it was not appropriate to deal with the item as urgent business, but did not feel he had the authority to contest the point with the mayor in the Casey Council meeting.

Mr Tyler sometimes provided advice to councillors who sent him incomplete conflict-of-interest declarations. For example, in an email exchange between Mr Tyler and Councillor A, he told Councillor A that they needed to disclose the class of interest to the Casey Council at the meeting, in addition to the notification they emailed to him. This was consistent with the LGA 1989 at the time, which specified that:

- a councillor who had a conflict could advise the CEO in writing before the meeting,⁷⁵⁹ and
- the CEO must 'keep written disclosures given to him or her in a secure place for three years after the date the councillor or member of a special committee who made the disclosure ceases to be councillor or member of a committee'.⁷⁶⁰

When asked about an occasion where Councillor A advised of their conflict by emailing their disclosure to Mr Tyler at 5 pm on the same night as the Casey Council meeting, Mr Tyler admitted he did not take further action '*(b)ecause it wasn't something that the [Local Government] Act gave any direct – gave any guidance on. So I ... just accepted that sometimes*'. He told IBAC that it '*was up to the councillor to declare their conflict of interest [it was] not up to the CEO to verify or vet it*'.

Mr Patterson similarly told IBAC that Casey councillors varied in the extent to which they complied with their conflict-of-interest obligations:

Counsel Assisting: *When councillors were declaring conflicts of interest to you, were you satisfied that they met the criteria of the legislation?*

Mr Patterson: *That wasn't done all the time ... In the majority of cases they were done effectively. In some cases it was done without the kind of prescription that the [Local Government] Act would envisage.*

⁷⁵⁸ *Local Government Act 2009* (Qld), s 122.

⁷⁵⁹ LGA 1989, s 79(2).

⁷⁶⁰ LGA 1989, s 79(5)(a).

According to Mr Patterson, he engaged with councillors to raise awareness of their conflict-of-interest obligations. He described instances of councillors emailing him about a possible conflict of interest as opportunities to speak with councillors about their understanding of their obligations. Mr Patterson said that although it was more difficult to provide guidance to councillors on their obligations if they announced their conflicts of interest in Casey Council meetings, he and his governance team would follow up at a later opportunity if required.

In response to councillors failing to properly declare gifts, Mr Patterson said that he and the governance team discussed whether this was an opportunity for formal training, but concluded that there was insufficient interest among councillors in taking it up. As noted above, in her 2020 report the Municipal Monitor also observed a lack of interest among councillors in refresher training on their conflict-of-interest obligations.⁷⁶¹ Mr Patterson described this as surprising, given the public scrutiny of councillor conduct at the time.

As Casey Council CEO, Mr Tyler and Mr Patterson could variously report concerns about possible breaches of the LGA 1989 to the LGI, the Victorian Ombudsman or IBAC (if they believed on reasonable grounds that corrupt conduct had occurred). However, the LGA 1989 did not allow the CEO to make a referral to a councillor conduct panel, as this could be done only by council resolution, a councillor group or the CMI.⁷⁶²

Under the LGA 2020, CEOs are still unable to refer a matter directly to a councillor conduct panel. The LGA 2020 now expressly gives the CMI authority to apply for a councillor conduct panel to make a disciplinary finding of serious misconduct against a councillor for failing to disclose a general or material conflict of interest, rather than requiring the CMI to prosecute the councillor.⁷⁶³ Breaches of material conflicts of interest can still be treated as criminal offences that can be prosecuted at the discretion of the CMI.

However, council CEOs, who are best placed to identify alleged breaches of the conflict-of-interest provisions that could amount to serious misconduct, are neither empowered nor obliged to refer such matters to the LGI.

The NSW Model Code of Conduct for Local Councils is clearer about the authority of general managers to respond to councillor breaches of the code of conduct, noting that in New South Wales all complaints under the code of conduct are directed to the general manager in the first instance.⁷⁶⁴ Further, the NSW Procedures for the Administration of the Code of Conduct stipulate that allegations of conflict-of-interest contraventions *must* be referred to the Office of Local Government, but the general manager has some discretion over how other allegations are dealt with.⁷⁶⁵

In Victoria, attempts to hold councillors to account can be detrimental to a CEO's position. In examinations, Mr Patterson observed:

I and I'm sure all my colleagues, CEOs in the state, take our roles very seriously, and we understand the statutory and other obligations that come with the role. But I would note there's an inherent risk, and we have seen plenty of examples of that, where CEOs have done the right thing and asserted themselves around all sorts of matters with councillors, and haven't – the outcome hasn't been positive for them in terms of their continued employment.

Indeed, in an undated draft letter to Casey Council CEO Mr Tyler, Mayor Ablett wrote that the Casey Council had lost confidence in Mr Tyler following 'a number of serious issues and concerns that have been raised about your performance with Council ... the most serious [concerning] your failure to provide a safe workplace for councillors with respect to egress from Bunjil Place'. The letter stated that, if the terms of the CEO's departure could not be agreed by 14 February 2018, 'an item will be added to the next council meeting agenda for our meeting on 20 February 2018'. The day after that Casey Council meeting, Mr Tyler's resignation was announced by the Casey Council, effective 22 February 2018.⁷⁶⁶

⁷⁶¹ Municipal Monitor 2020, *City of Casey Municipal Monitor Report*, p 5. The Municipal Monitor appointed to the Casey Council in November 2019 noted that during her time observing the Council, she saw 'councillors stumbling over what was required in declaring conflicts of interest and a gallery completely uninformed about the reason behind declared conflicts. This demonstrated a culture of a low-level of understanding and regard for the importance of effectively and transparently managing councillor conflicts of interest'.

⁷⁶² LGA 1989, s 81B.

⁷⁶³ LGA 2020, ss 154(4), 130(2) and (5).

⁷⁶⁴ NSW Office of Local Government 2020, *Model code of conduct for local councils in NSW*. If a complaint is about the general manager, the Code states complaints should be made to the mayor (s 4.6). The Code makes clear that s 4.6 does not prevent a person from making a complaint about the general manager to an external agency (s 4.11).

⁷⁶⁵ The procedures state: 'The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under cl 5.20 (which include complaints regarding a failure to comply with code of conduct provisions and appropriately managing conflicts of interest), where they consider that no action is warranted in relation to the complaint', p 21.

⁷⁶⁶ Bailey M 2018, 'Mike Tyler steps down as Casey Council CEO after 23 years in the job', *The Cranbourne Leader*.

The matter of 'egress from Bunjil Place' is likely a reference to Mr Tyler's decision, following the move to new premises, to reinforce the separation between Casey councillors and Council officers by locking the door that separated the Council administration from the councillor and executive side of the building. Councillors complained to WorkSafe Victoria about the locked door, claiming that it was a safety hazard. IBAC received evidence that WorkSafe did not substantiate the claim. Although the Acting CEO, who started after Mr Tyler's resignation, maintained the locked-door policy without challenge, their tenure as CEO ended after only a month. This Acting CEO announced that they would step down shortly after the Casey Council meeting on 20 March 2018, at which they queried whether Councillor Ablett and Councillor A had a conflict of interest in the Pavilion Estate matter. In August 2018, the next Acting CEO banned Mr Woodman from having contact with particular Casey Council officers for a three-month period, following an allegation of bullying. Mr Patterson was permanently appointed to the role in September 2018.

The risks inherent in the role of a council CEO are well documented. The 2019 LGI report *Managing the employment cycle of a council* discussed the difficulties faced by CEOs who must endeavour to separate themselves from councillor politics while remaining politically sensitive in an environment where their performance is assessed, and employment is determined, by elected councillors.⁷⁶⁷ In particular, the LGI noted that the LGA 1989 gave councils 'full discretion ... on how they employ their CEOs and under what conditions, with minimum regulation based around ensuring that the public is notified if a reappointment is to occur and that the CEO's performance criteria are specified and regularly assessed by the council'.⁷⁶⁸ This results in a great deal of variation between councils, and employment uncertainty for CEOs, who may find it necessary to challenge the conduct or decisions of councillors.

To remove variation between individual contracts and inconsistency in recruitment, performance management and separation arrangements for CEOs, the LGI recommended the development of:

- a standard contract which includes employment terms, time frames and separation arrangements, and excludes bonuses
- a CEO remuneration policy⁷⁶⁹
- best-practice guidelines on CEO remuneration and performance management, to apply across local government, coordinated by LGV, and supported by appropriate training.⁷⁷⁰

In his submission to IBAC, Mr Shanahan, a former council CEO, opined that it is appropriate that councillors are ultimately responsible for the recruitment and performance review of the CEO, but that legislation should be amended to require that councils establish a committee which would have responsibility for CEO employment-related matters. These committees, like council audit and risk committees, should have a majority of independent, skilled members, including the chair. However, Mr Shanahan proposed that such a committee should have decision-making powers (as opposed to audit and risk committees, which are advisory only).

Since the LGI's report, the LGA 2020 has strengthened the security of a CEO's position by requiring each council to develop and adopt a CEO Employment and Remuneration Policy. That policy must describe the recruitment and appointment process, provisions to be included in the contract of employment, performance monitoring and annual review, and 'provide for the council to obtain independent professional advice' on those matters. The policy must be made publicly available, consistent with the Transparency Policy requirements of the LGA 2020. However, the Act does not mandate the involvement of an independent professional for all recruitment and performance-monitoring activities.⁷⁷¹

⁷⁶⁷ LGI 2019, *Managing the employment cycle of a council CEO*, p 5.

⁷⁶⁸ Ibid., p 7.

⁷⁶⁹ DELWP 2016, *Act for the future – Directions for a new Local Government Act* additionally proposed to require that councils publish their CEO remuneration policy on their website, Direction 52, p 64.

⁷⁷⁰ LGI 2019, *Managing the employment cycle of a council CEO*, pp 7 and 16, Recommendations 1, 2 and 4 respectively.

⁷⁷¹ LGA 2020, s 45. Note that councils are required to have a CEO employment and remuneration policy in place by 1 January 2022.

In terms of the CEO's powers and responsibilities regarding poor councillor behaviour, the LGA 2020 specifies that the CEO has responsibilities as 'a deemed employer with respect to councillors, as deemed workers, which arise under or with respect to the *Workplace Injury Rehabilitation and Compensation Act 2013*'.⁷⁷² This Act defines an injury as including any physical or mental injury.⁷⁷³ However, under the LGA 2020, the CEO is not required to lodge a complaint alleging misconduct, serious misconduct or gross misconduct by a councillor, which could include workplace bullying, if a relevant conduct issue comes to the CEO's attention. Although a CEO, like any other member of the public, can lodge a complaint with the CMI, who may examine, investigate and prosecute any matter relating to a council's operation, electoral matters or possible breaches of the LGA 2020,⁷⁷⁴ the discretionary nature of this option can make a CEO vulnerable to retaliation through unwarranted performance management or removal by the councillors who employ them.

In 2022, the *Local Government Culture Project, insights report* recommended consideration of legislative amendments to better protect the CEO or otherwise give CEOs the ability to discipline councillors who display poor behaviour and misconduct. It also suggested that consideration be given to CEO recruitment, performance assessments and governance and culture reviews being conducted by an external party.⁷⁷⁵

In New South Wales, general managers are employed under a standard contract of employment. The Office of Local Government website states that standard contracts 'ensure consistency and certainty in employment relationships at the executive level in local government and reflect community expectations by providing greater transparency and accountability'.⁷⁷⁶ Of note, use of the standard contract is mandatory,⁷⁷⁷ maximum termination payments are specified,⁷⁷⁸ and the Director-General of the Department of Local Government can appoint a mediator to resolve a dispute between the general manager and council.⁷⁷⁹

Proposed reforms

Operation Sardon highlighted the limits on a CEO's ability to act when they have significant concerns about a councillor's conduct, especially given the risks a CEO may face when raising behavioural concerns with their employers. First, it is important that CEOs understand their obligation to notify IBAC if a suspected breach of the material conflict-of-interest provisions could amount to corrupt conduct. Making this notification can protect a CEO's position, because IBAC assesses every complaint received under the *Public Interest Disclosures Act 2012* (Vic) to determine whether a complaint amounts to a protected disclosure.

In addition, it should be mandatory for CEOs to notify the CMI if they suspect that a councillor has failed to declare a material conflict of interest or has committed other serious misconduct, noting that the CMI has the expertise to investigate allegations of this kind and the authority to either apply to a councillor conduct panel or commence criminal proceedings.⁷⁸⁰ However, IBAC understands that mandatory notification to the CMI of suspected material conflicts that have not been declared by councillors would require amendments to supporting legislation, namely the *Public Interest Disclosures Act 2012* (Vic), to allow a CEO to notify the LGI about a councillor.

Other reforms proposed by IBAC go to the employment relationship between CEOs and councillors, and the vulnerability that arises if a CEO acts on concerns about councillor conduct. This vulnerability is heightened by a lack of consistency in contractual arrangements and performance-review processes.⁷⁸¹

⁷⁷² LGA 2020, s 46(2)(f).

⁷⁷³ *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 3.

⁷⁷⁴ LGA 1989, s 223B and LGA 2020, s 183.

⁷⁷⁵ PwC 2022, *Local Government Culture Project, insights report*, p 15.

⁷⁷⁶ NSW Office of Local Government 2006, *Standard Contract of Employment, General Managers of Local Councils in New South Wales*, and 2006, *Standard Contract of Employment, Senior Staff (other than General Managers) of Local Councils in New South Wales*.

⁷⁷⁷ NSW DPC 2001, *Guidelines for the appointment and oversight of general managers*, issued under LGA 1993 (NSW) s 23A, p 9, 'Finalising the appointment'.

⁷⁷⁸ NSW Office of Local Government 2006, *Standard Contract of Employment, General Managers of Local Councils in New South Wales*, cl 11.

⁷⁷⁹ *Ibid.*, cl 17.3.

⁷⁸⁰ LGA 2020, ss 154(4), 130(2) and (5), and 123(1)(2) and (3)(f).

⁷⁸¹ Indeed, in *Peter Schneider v Warrnambool City Council* (2021) VSC 337, the Victorian Supreme Court effectively ruled that a council must ensure procedural fairness by providing a reasonable opportunity to respond before dismissing a CEO prior to the expiry of their contracted term.

IBAC supports a mandatory standard contract, which should cover matters including the role of the CEO, performance review and management, and termination payments (including appropriate limits on such payments). This would be consistent with New South Wales, where councils must use the standard contract. In addition, consideration could be given to prohibiting non-disclosure agreements. Limits on separation payments and a ban on non-disclosure agreements would make it more difficult for a council to terminate the employment of its CEO with a substantial payment.

In addition to a mandatory standard contract, there would be merit in mandating external oversight of contracts and separation payments to improve transparency. Ideally, this would involve establishing a committee (similar to those established for audit and risk) to determine matters concerning the CEO's employment, performance and remuneration. In terms of composition:

- The committee should be chaired by an independent professional with executive experience in local or state government.
- The majority of the committee's members should be independent external members.
- At least one committee member should have expertise in human resources.

This approach would give the process greater impartiality and expertise.

Consideration could also be given to appointing a panel of experts that councils could draw on (for example, through LGV) to ensure greater consistency in the expert advice provided to councils.

Recommendation 33

IBAC recommends that the Premier ensures that the Taskforce identifies the most appropriate mechanism to support a council CEO in making a mandatory notification about serious misconduct. This includes suspected breaches of the conflict-of-interest provisions by councillors – in particular, breaches involving material conflicts of interest – noting that the Chief Municipal Inspector has the authority to apply to a councillor conduct panel or prosecute a councillor for misuse of position due to a conflict of interest, but is not currently authorised to receive a mandatory notification concerning a councillor from a CEO, under the *Public Interest Disclosure Act 2012* (Vic).

Recommendation 34

IBAC recommends that the Minister for Local Government develops and introduces to Parliament amendments to the *Local Government Act 2020* (Vic), or amends relevant regulations, and institutes related enabling processes, to promote greater consistency and independent oversight of recruitment and employment of council CEOs by:

- (a) mandating that councils use a standard employment contract for CEOs that:
 - covers, among other things, the role of the CEO, performance review and management, and termination payment (including limits on such payments)
 - bans non-disclosure agreements between councils and CEOs or former CEOs
- (b) amending section 45 to require each council to establish a committee to determine matters relevant to the recruitment, employment and remuneration of the CEO. The committee must be chaired by an independent professional with executive experience in local or state government, and the majority of its members must be external to the council.

Operation Sandon was a major investigation into the conduct of certain City of Casey councillors and property developers. The investigation sought to establish whether certain individuals breached the public's trust by exercising their public functions for private gain, provided or received improper payments in return for favourable Casey Council decisions, or engaged in deceptive conduct in order to obtain a benefit for themselves or their associates.

IBAC uncovered a web of well-orchestrated strategies designed to manipulate Casey Council decision-making processes, buy influence and undermine the effectiveness of the Victorian planning system in exchange for certain benefits.

As well as exposing improper conduct by numerous individuals, IBAC's investigation laid bare corruption risks in planning, political donations, lobbying and council governance. The confluence of these issues in one investigation is not surprising, given the magnitude of financial gains that can result from government decisions on land use and development, the lack of regulation over donations and lobbying at the time of the investigation, and the ease with which council governance requirements can be manipulated or disregarded by conflicted councillors who play a key role in local planning decisions.

The conduct exposed in Operation Sandon undoubtedly diminished community confidence in the City of Casey councillors to meet their obligation to act in the public interest. However, the vulnerabilities revealed by Operation Sandon are not unique to the individuals and matters that were the subject of IBAC's investigation. It is therefore essential for state and local government decision-makers to be alert to the corruption risks highlighted in this report. In particular, where the public sector is entrusted with decision-making authority, the individuals involved must be aware of the corruption risks that can arise when significant private-sector interests are pursued. In this report, IBAC has put forward a comprehensive suite of reforms to reduce corruption risks associated with planning, political donations, lobbying and council governance.

Large profits can flow from favourable planning decisions, heightening the risk of corrupt conduct.

In Operation Sandon, IBAC observed that decisions on planning permit amendments were repeatedly made by conflicted councillors with limited expertise in planning, while planning scheme amendments were decided with no requirement to record reasons. IBAC's recommendations for planning seek to reduce the incentive to act corruptly by capturing a proportion of all windfall gains where a decision is made that alters the permissible use of land. IBAC's recommendations also emphasise the importance of transparency and accountability in the planning scheme amendment process, and aim to reduce the risk of conflicts of interest in the planning permit and amendment process by shifting decision-making from councillors to independent expert panels.

On the one hand, it is in the interests of a healthy democracy to encourage debate on the matters on which a government is required to make decisions, and to encourage citizens to participate by articulating their views and becoming involved in the political process. Political parties seek to attract and retain supporters by building strong relationships with different groups within the community and crafting policies to align with those supporters' interests.

On the other hand, donations and lobbying can be used to gain privileged access to decision-makers in a political party, especially if that party is in government, by elevating a donor's or lobbyist's profile. Candidates and political parties also actively solicit donations through fundraising activities, requests for in-kind support, direct payments and via associated entities. Together, these factors have the potential to compromise an MP or councillor once elected.

Operation Sandon showed the lengths to which donors and candidates will go to conceal donations. These include splitting payments, donating and soliciting goods and services that are not declared, and using third-party campaigners or donating to a candidate via their political party to obscure the link between donor and recipient. IBAC's investigation also exposed the lack of lobbying regulation in Victoria, and how this can enable lobbyists (registered or otherwise) to gain privileged access to decision-makers, and to others who have influence, without transparency. This can distort and potentially corrupt government decision-making.

Although the state regulatory regime for political donations was amended in 2018, further reform is essential to improve the timeliness and transparency of political donations, and to put in place appropriate regulatory and enforcement measures that reduce the risk of donations being used to improperly access or influence decision-makers. It is also clear that donations at the local government level must be brought into line with state regulations as a matter of priority. IBAC's recommendations in the Donations & Lobbying special report should help prevent well-resourced individuals from unduly distorting the flow of political communication, improve transparency and access to information about political donations by moving towards 'real-time' reporting, and strengthen monitoring and reporting requirements to better support regulatory activities.

Further reforms proposed in the Donations & Lobbying special report seek to reduce the risk of improper access and influence by strengthening the monitoring and enforcement of lobbying, broadening the scope of lobbying regulation and increasing the transparency of dealings between lobbyists and public officials.

In Operation Sandon, IBAC also identified the need for stronger controls over lobbying involving ministerial advisors and electorate officers who, as important points of contact with the public, are frequently seen as having influence, making them targets for lobbyists and their clients. IBAC's recommendations in this and the Operation Watts and Operation Daintree special reports will support greater transparency and accountability around the conduct of ministerial staff and electorate officers.

Operation Sandon revealed a range of corruption risks involving poor council governance. In particular, councillors repeatedly failed to declare clear conflicts of interest, sought to influence other councillors, manipulated the Casey Council's decision-making processes and undermined Casey Council officers in the pursuit of decisions that would advance their own private interests and those of their associates. Accordingly, IBAC's recommendations on council governance aim to make councillors as a group more accountable for their council's governance, and to support them with model procedures and other administrative processes to help them make informed decisions. IBAC's recommendations also support the introduction of effective mechanisms to deal with instances of councillor misconduct.

The suite of reforms recommended by IBAC in this report is necessarily ambitious. Moving beyond the conduct of individuals, Operation Sandon highlighted a range of challenging corruption risks that must be addressed on multiple fronts. In many instances, these reforms aim to bring Victoria's controls for these risks up to the standard already in place in other Australian jurisdictions, while building on lessons learnt elsewhere. The success of these reforms will depend on effective coordination by the Taskforce. It will also require the Victorian Government to make a strong commitment to greater transparency and accountability in planning decisions, stronger regulation of donations, overhauling the regulation of lobbying, increasing the accountability of ministerial staff and electorate officers, and strengthening council governance.

IBAC looks forward to significant reforms in these areas. They are of the utmost importance to the integrity of government decision-making in Victoria.

Appendix A

9

People named or referred to in the report and responses to the draft report

9.1 People and bodies named or referred to in the report who are **not** subject to adverse comments or opinions

In accordance with section 162(4) of the IBAC Act, persons named or otherwise identified in the report who were not the subject of any adverse comment or opinion were given the opportunity to inspect parts of the draft report and to comment on those parts if they wished.

The following persons and bodies are named or identified in the report but are **not** the subject of direct adverse comments, opinions or findings. IBAC is satisfied under section 162(7) of the IBAC Act that naming these persons in the report is necessary or desirable in the public interest and that doing so will not cause unreasonable damage to their reputation, safety or wellbeing.

Persons named or identified in the report who are **not** the subject of any adverse comment or opinion:

- Daniel Andrews, Premier of Victoria
- Geoffrey Leigh
- Glenn Patterson, CEO, Casey Council (September 2018 – present)
- Mike Tyler, former CEO, Casey Council (1994-2018)
- Philip Staindl

Bodies named in the report that are **not** the subject of any adverse comment or opinion:

- All Weather Solutions
- Aziz Family Trust
- BWTW Equities Pty Ltd
- BWTW Ringwood Pty Ltd
- Casey Lifestyle Centre
- Chief Municipal Inspector
- CIMIC Group Limited
- Crime and Corruption Commission (Queensland)
- Department of Environment, Land, Water and Planning (renamed Department of Energy, Environment and Climate Action from 1 January 2023)
- Department of Parliamentary Services
- Department of Transport and Planning
- Dacland Pty Ltd
- Energise Victoria Inc (formerly known as Progressive Business Association Inc)
- Enterprise Victoria
- Local Government Inspectorate
- Local Government Victoria
- Municipal Association of Victoria
- Planning Panels Victoria
- SBPM Consolidated Holdings Pty Ltd
- Wolfdene Café Pty Ltd
- Wolfdene Foundation Ltd
- Wolfdene Management Pty Ltd
- Wolfdene Pty Ltd
- Woodman Equities Pty Ltd
- Victorian Civil and Administrative Tribunal
- Victorian Planning Authority

Persons identified only by pseudonym or title in the report who are **not** the subject of any adverse comment or opinion:

- The Premier
- Treasurer of Victoria (2014–present)
- Former Director, Corporate Services, Casey Council (October 2016–July 2021) and acting CEO of Casey City Council (Feb–Mar 2018)
- Acting CEO of Casey City Council (Mar–Sep 2018)
- City of Casey Council officers
- Former Casey City Councillors not otherwise named in this report
- Councillor Aziz’s former spouse
- Electorate officer to Jude Perera, Local Member for Cranbourne
- the head of Enterprise Victoria (2019–2020)
- General Manager of Leighton Properties
- Ms Halsall’s son
- Labor Party Opposition Leader (2010 – 2014)
- Labor Party Deputy Opposition Leader (2012–2014)
- Landowners with respect to Amendment C219
- Landowners with respect to Brompton Lodge
- Landowner of the Pavilion Estate
- Liberal Party Opposition leader (2018–2021)
- Minister for Planning (2010–2014)
- Minister for Planning (2014–2018)
- the Minister for Planning’s Chief of Staff (2015 – 2022)
- Minister for Roads (2014–2018)
- Minister for Suburban Development (2016–2018)
- Minister for Transport Infrastructure (2018–2022)
- the head of Progressive Business (2015–2019)
- state election candidates not otherwise named in this report
- State President of the Liberal Party (2019)
- Watsons chief financial officer
- Mr Woodman’s son

Bodies identified only by pseudonym or title in the report who are **not** the subject of any adverse comment or opinion:

- Law Firm A
- Organisation A
- the transport planning consultancy

A number of these individuals and entities responded to the draft report and changes were made or incorporated into the report on the basis of those responses. While there is no requirement that IBAC set out the content of those responses, the following responses which warranted further elaboration are set out below.

9.1.1 Organisation A

*Organisation A is **not** the subject of adverse comments or opinions in this report. IBAC has made various changes to the report in response to specific matters raised by Organisation A to make clear that IBAC does not suggest that Organisation A provided Councillor A or their son with preferential treatment due their position as board member or councillor, or as a result of Mr Woodman’s donations.*

Organisation A’s submission included the following observations.

Background and purpose of Organisation A

- It is a not for profit community services organisation that supports people with disability. Its purpose is to enhance each person’s opportunities for learning, growth and community participation.

It supports and receives support from various local businesses and organisations, a practice which allows it to deliver supports and services beyond what it would otherwise be able to provide based on government funding alone.

- The media attention in relation to Operation Sandon, and the allegations of corruption at the City of Casey council were a shock to Organisation A. Similarly, the tragic death of Councillor A devastated the Organisation A community.

Councillor A's involvement with Organisation A

- Councillor A's son attended Organisation A for many years and Councillor A was a member of Organisation A's board of management from November 2015 to July 2017. However, neither were provided with preferential treatment by reason of Councillor A's position on the Board or their position as councillor for the City of Casey Council:
- Councillor A's son received the same level of support and dedication from Organisation A's staff as any other client of the service, and
- Organisation A denies any allegation or inference that Councillor A did not have to pay for, or received a discount for, their son's supports. Councillor A was invoiced for their son's support in accordance with Organisation A's fee schedule.

IBAC does not allege or infer that Councillor A's son received any preferential treatment, or that Councillor A received any discount for their son's support as a result of their position as a Casey City Councillor.

Donations from Mr Woodman and Mr Woodman's involvement with Organisation A

Organisation A submitted that the draft special report omitted important context to Councillor A's involvement in securing donations for Organisation A:

- In early 2016, Councillor A and the CEO of Organisation A attended a meeting with the then Department of Health & Human Services in relation to the proposed service, but were unable to secure funding.
- Councillor A, in their role as a Casey Councillor, advised the CEO of Organisation A that she was going to send the business case for the proposed service to their contacts in an attempt to secure funding – this included private donations.
- Reliance on community support and private donations is not unusual in the not-for profit sector, with many not-for-profit organisations relying on this support in order to provide services (particularly when government funding is unable to be secured).
- In February 2016, Councillor A advised the Board that a private donor had agreed to fund the service.
- Organisation invoiced Mr Woodman for an amount of \$20,570, and used these funds to pay the wages of staff working for the service.
 - Mr Woodman's pro-bono contribution was recognised by letter from Organisation A's CEO dated 18 February 2016. The letter states that the donation would be used for the Clubhouse
 - The payments above were allocated transparently, being used to pay the wages of staff working for the service
- The Board and management of Organisation A were not aware of any conflict of interest that would preclude Councillor A from facilitating the donation from Mr Woodman to Organisation A.
- Councillor A was invoiced for their son's support in accordance with Organisation A's usual fees.

The Woldene Foundation's involvement with Organisation A

Organisation A submitted that the draft report omitted important context in relation to its involvement with the Woldene Foundation:

- Megan Schutz, a director of the Board of the Woldene Foundation, provided pro bono support to Organisation A in 2015, assisting the organisation to make a submission to the Plan Melbourne refresh in relation to housing for people with a disability
- Organisation A has been committed to delivering appropriate accommodation for people with a disability that cannot secure suitable housing since 2011. This commitment is well documented and has formed part of the strategic direction of the organisation for almost a decade
- The Woldene Foundation had been established to support the community, and disability accommodation had been chosen as the first cause to be supported by the foundation
- Councillor A introduced Megan Schutz to Organisation A
- The Board and management of Organisation A were not aware of any conflict of interest that would have precluded Councillor A from facilitating the relationship between the Woldene Foundation and Organisation A
- Councillor A's son did not benefit from the accommodation built by the Woldene Foundation.

9.1.2 Glenn Patterson

*Glenn Patterson is **not** the subject of any adverse comments or opinions in this report.*

IBAC has made various changes to the report in response to specific matters raised by Mr Patterson to make clear that Mr Patterson was not the CEO during the period in which Brompton Lodge, Pavilion Estate or Amendment C219 motions were considered.

IBAC confirms that it did not identify evidence to suggest that Mr Patterson was in fact influenced by Mr Ablett in relation to the H3 intersection and agrees that the Victorian Ombudsman's 2015 and the Municipal Monitor's 2020 reports primarily focused on the conduct of councillors.

Mr Patterson's submission included the following observations.

Tenure as CEO at the City of Casey Council

In relation to the commencement of his tenure as CEO at the City of Casey Council in and the planning matters that were the subject of this investigation, Mr Patterson noted:

- The Pavilion Estate and Brompton Lodge matters were considered by the Casey City Council before Mr Patterson was appointed CEO of the Casey City Council and before he took up that position on 17 September 2018.
- Following Mr Patterson's appointment, the first issue concerning Amendment C219 was the Minister's advice that a determination had been deferred pending a departmental review on 16 October 2018.
- The H3 matter was considered by Council the day after Mr Patterson commenced his role, at the Council meeting on 18 September 2018.
 - IBAC introduced into evidence a lawfully intercepted phone call between Mr Ablett and Mr Patterson, on 26 November 2018. It concerned Mr Ablett seeking an update on the progress of H3.
 - Mr Patterson was examined extensively about this and his evidence that Mr Ablett was, as a councillor for the relevant ward, legitimately seeking information of relevance to his constituents is both credible and logical.
 - Mr Patterson's evidence that he did not see the approach as an attempt to influence him should be accepted by IBAC. Further, there are no other relevant intercepted phone calls concerning H3 between any of the persons of interest and Mr Patterson.

Failure to respond to matters raised by the Victorian Ombudsman's 2015 report and Municipal Monitor's 2020 report

In his submission, Mr Patterson noted that:

- The draft report refers to the failure of the Council and the then CEO to respond to matters raised by the Victorian Ombudsman, in a report in 2015, into donations made to Mr Ablett's political campaign and an observation in the City of Casey Municipal Monitor Report, in February 2020, that an avoidance culture still existed with respect to issues of integrity.
- The criticisms concern the failure of councillors to understand their responsibilities and duties and cannot be said to be criticisms of the Casey City Council in its corporate sense.
- As the Monitor also said in her Report: "My observation is that Councillors have been more concerned about their own reputation rather than that of the City of Casey and have reluctantly taken advice to not generate more media coverage by making further statements."
- This is confirmatory of what Operation Sandon has uncovered; namely, that insofar as there were failings in the Casey City Council, these were the failings of those who had been elected as councillors.

9.1.3 The landowners in relation to Brompton Lodge

*The landowners in relation to Brompton Lodge are **not** the subject of any adverse comments or opinions in this report.*

IBAC has made various changes to the report in response to specific matters raised by the landowners to make clear that IBAC did not find that the landowners were aware of or involved in any alleged improper conduct engaged in by others.

While IBAC does not find that the landowners acted improperly in seeking to have the land rezoned, the Brompton Lodge case study highlights the heightened risk of improper lobbying and donations in circumstances where there are lucrative windfall gains to be made as the result of a rezoning decision.

The landowners' submission included the following observations.

Corruption risks associated with rezoning windfall gains

With regard to IBAC's observation that rezoning of the land known as Brompton Lodge resulted in significant windfall gains for Mr Woodman, the lobbyists and the landowners, the landowners made the following comments.

The draft report irresponsibly infers that our clients' intention to improve the value of their Land and to include their Land in the Urban Growth Boundary is commensurate with improper lobbying and donations.

The inference in the IBAC report is that our clients experienced an undeserved windfall gain. However the draft report does not acknowledge that the Land was purchased approximately 50 years ago when real property had less monetary value and has been used as a home and farm by our clients over this time. The draft report also does not acknowledge that since its establishment the Urban Growth Boundary has expanded including in 2005 when it was expanded to include land on the very boundary of our clients' Land. The draft report also does not acknowledge that the City of Casey supported the inclusion of our client's Land as Future Large Lot Suburban when it released its C21 Planning Amendment in December 2001, well before our client met John Woodman and before any of the City of Casey councillors mentioned in the draft report were elected to Council.

The profits made by [the landowners] are not dissimilar to many landowners who purchased land several decades ago and enjoyed the good luck and good fortune of that land being rezoned as a result of urban sprawl. [The landowners] have owned the land for half a lifetime during which period it was used for farming purposes and as their family home. Given the land around them was being rezoned and the City of Casey had supported the rezoning of the Land in 2001, there is nothing improper in their having engaged what they understood to be an experienced and professional company to assist them in having their Land included in that rezoning activity.

9.2 People and bodies named or referred to in the report who are the subject of adverse comments or opinions

Where IBAC has made a comment or opinion that may be considered adverse, about any person or public body identified in this report, that person or public body has been given a reasonable opportunity to respond to those comments or opinions by being shown a draft version, or in some cases relevant part/s of a draft version, of the report.

A number of persons and entities who are the subject of such comments or opinions responded to the draft report and changes were made or incorporated into the report on the basis of those responses. Those responses are not set out in any further detail in this appendix.

In accordance with sections 162(2) and 162(3) of the IBAC Act, responses that expressed broader concerns about the draft report; that sought changes be made to the draft report that were rejected by IBAC in whole or in part; or that required further elaboration are set out as follows.

9.2.1 Rosalie Crestani

Rosalie Crestani is the subject of adverse comments or opinions in this report

IBAC has reviewed the report in light of Ms Crestani's submission and maintains that this matter highlights vulnerabilities in the City of Casey Council's governance arrangements concerning meeting procedures and the management of conflicts of interest.

*However, IBAC does **not** suggest Ms Crestani acted improperly in relation to decisions concerning the H3 intersection.*

Ms Crestani's submission included the following observations.

The City of Casey Council's decisions concerning the H3 intersection

With regard to the City of Casey Council's decisions concerning the H3 intersection, Ms Crestani noted:

- She was not aware of Councillor Aziz and Councillor A's strategy to gain her support, nor was she capable of being influenced by them because she had a firm resolve to vote her own way.
- She only consulted with Councillor Aziz and Councillor Ablett to understand the potential motions at the meeting she was to chair and asserted that Councillor Ablett's claims that he was able to influence her were 'mere puffery on his part'.
- She was motivated by safety issues and not by other councillors.

Specifically in relation to the 18 December 2018 motion concerning the H3 intersection, Ms Crestani reiterated that:

- The motion was moved by Councillor Rowe and carried unanimously.
- As Deputy Mayor it was natural for her to chair the meeting in the Mayor's absence.
- She was further comforted by comments from a council officer who advised that opposing parties were amenable to the motion.

9.2.2 Geoff Ablett

Geoff Ablett is the subject of adverse comments or opinions in this report.

The following is a summary of the submission Mr Ablett made to IBAC:

Reporting of Mr Ablett's conduct and his overall contribution to the community

Mr Ablett strongly rejected any inferences that he engaged in corrupt, illegal or unethical behaviour. In his submissions he strongly denied any connotations by the Independent Broad-based Anti-corruption Commission (IBAC) that he:

- "...did Mr Woodman's bidding" by progressing his interests before Council, putting his private interests ahead of public obligations as an elected representative
- accepted payments, gifts or other benefits including political donations in exchange for favourable council outcomes in relation to planning, development or other matters
- breached the public trust for a private gain
- engaged in deceptive conduct to obtain a benefit for himself or any associates
- attempted to influence other councillors to achieve Mr Woodman's purported aims by (amongst other things) manipulating any voting processes; and
- engaged in any corrupt conduct.

IBAC rejects these submissions.

Conflicts of interest

- In his submission, Mr Ablett asserted that 'It is incorrect to state that Mr Ablett put his private interests ahead of those of the community. Mr Ablett consistently prioritised his public obligations as an elected representative for the benefit of his constituency. In this regard, Mr Ablett is proud of his efforts in respect of projects, which resulted in grants in excess of \$40 million'.

IBAC acknowledges Mr Ablett's comments regarding his commitment to his constituency. However, as a result of the evidence obtained in Operation Sardon IBAC finds that there were several occasions where Mr Ablett put his own interests ahead of those of the community. For example, Operation Sardon identified payments and other benefits from Mr Woodman to Mr Ablett totalling more than \$550,000 in the period between 2010 and 2019, during which Mr Ablett actively sought to promote Mr Woodman's interests in the City of Casey Council.

- Mr Ablett also stated that his conflict of interest concerned investments he made with Mr Woodman involving horses.

IBAC rejects the assertion that Mr Ablett's conflict of interest was limited to his interests in horses. As noted in section 3.6.2, 3.7.2 and 3.7.4, Mr Ablett's conflict of interest related to a range of payments and other benefits he received from Mr Woodman between 2010 and 2019 which were not limited to his investment in horses.

- Mr Ablett asserted that meetings he attended in relation to the rezoning matter that became known as Amendment C219 occurred before he understood he may have had a conflict of interest, and any meetings he may have attended since declaring the conflict were inadvertent on the basis that he had not read the relevant agenda on that occasion.

This is contrary to the evidence Mr Ablett gave during his IBAC examination, in which acknowledged that he understood he had a conflict in relation to the 'C219 rezoning' as early as the 1 April 2014 Council meeting, stating, 'seeing the word 'Watsons' I should have got out of the meeting, so I apologise for that'.

IBAC's investigation also found that Mr Ablett went on to vote on matters involving Amendment C219 on at least three occasions. Mr Ablett first declared a conflict of interest in relation to Mr Woodman and Watsons on 17 March 2015.

- Mr Ablett insisted that any discussions he may have had with councillors outside the chamber room with respect to matters involving Mr Woodman were not influenced by any benefit Mr Woodman or his associates are alleged to have gained depending on the outcome of the motion, but rather were his own beliefs as to what was in the best interests of his constituency.

IBAC finds that, on the evidence in Operation Sandon, the way in which Mr Ablett voted and acted had the effect of supporting Mr Woodman's interests, and that this occurred during the period in which he took receipt of payments and other benefits totalling more than \$550,000.

Further, in his evidence, Mr Ablett acknowledged that it was wrong of him to text a councillor who was in the chamber to ask that they vote on a motion in a way that would favour Mr Woodman's interests immediately after declaring a conflict of interest and leaving the chamber in relation to a vote on the H3 intersection (see 3.2.3 and 3.2.6.2). This is inconsistent with Mr Ablett's assertion that he was not influenced by Mr Woodman.

- Mr Ablett contended that he did not lead the "push for Mr Tyler's retirement" and that his views and conduct with regard to Mr Tyler were founded on his belief that Mr Tyler did not work as a team with other councillors, and not because he may have opposed Amendment C219.

*In discussing Mr Ablett's efforts to 'push for Mr Tyler's retirement', the report does not state it was **because** Mr Tyler was opposed to Amendment C219. Rather, the report states that Mr Tyler was opposed to Amendment C219 (sections 3.1.1; 3.1.7; 3.6.2) and acknowledges that Mr Ablett provided a range of reasons in support of his action to have Mr Tyler removed (section 3.1.5.6).*

Purported financial benefits

- Mr Ablett stated that he has 'consistently maintained that he did not receive any gifts or funds from Mr Woodman or his associates in exchange for promoting their interests. Any actions taken by Mr Ablett during the relevant period were based on his own beliefs having regard to the best interests of his constituency'.
- Mr Ablett also submitted that the payments attributed to him were either repaid to Mr Woodman, were related to acquiring interests in horses managed or co-owned by Mr Ablett as part of a legitimate business, or were received for services rendered by Mr Ablett in relation to the same business.
- Further, in relation to alleged comments in the draft report that Mr Woodman and/or Mr Ablett stood to lose money if various projects were not approved, Mr Ablett noted that he:
 - never acted with the intention of promoting the interests of Mr Woodman or his associates, but rather always based on what he believed to be in the best interests of his constituency;
 - did not expect to receive any money if projects associated with Mr Woodman were approved;
 - associated any benefit Mr Woodman might receive in relation to projects as meaning Mr Woodman would have greater funds to invest into the horse business they shared (not that it was ever discussed nor expected by Mr Ablett that Mr Woodman would invest further amounts should certain projects be approved).

IBAC rejects Councillor Ablett's submissions in this regard. On the evidence in Operation Sandon, IBAC found that Councillor Ablett solicited financial support from Mr Woodman in exchange for promoting Mr Woodman's interests on Council, and that the report sets out details of:

- *the \$550,000 in payments and other benefits from Mr Woodman to Mr Ablett in the period between 2010 and 2019, and*
- *how Mr Ablett voted and acted in relation to matters that came before Council involving Mr Woodman's interests during that same period (section 3.6.2).*

9.2.3 Councillor A

IBAC acknowledges that due to Councillor A's passing, they were not in a position to respond and unable to refute or defend any of the allegations, comments or findings in the report that could be considered adverse against them. IBAC has considered all available evidence and information, including information obtained through the submissions of others, to ensure all statements regarding Councillor A are reasonable, balanced and accurate.

9.2.4 Janet Halsall

Janet Halsall is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Ms Halsall made the following comments.

Sponsorship provided through a community radio program

With respect to the \$20,000 transferred from Watsons to Ms Halsall and her spouse and their family business between December 2014 and January 2017 (discussed in sections 3.6.5.2 and 5.3.2.5), Ms Halsall notes that:

- Through a community radio program, Mr Woodman provided sponsorship for Councillor Smith, Ms Halsall's spouse, and other representatives of the radio station to attend an annual music festival over several years.
- The funds covered the cost of transport and accommodation in Tamworth for a whole team of people from a community radio program. The intention of this venture was to support a range of young Casey musicians who were then able to perform at the festival.
- Each year that the Casey Councillors were involved in the festival there were great outcomes, however, it required considerable effort and energy on the part of everyone on the team, none of whom sought or received any personal or political recognition for their efforts.

IBAC accepts that the funds conveyed from Watsons to Councillor Smith by Ms Halsall and her spouse were used by Councillor Smith and Ms Halsall's spouse to attend an annual music festival for a community radio show. IBAC also accepts that neither expressly sought any personal or political recognition for their efforts. However, IBAC finds that the increased public exposure afforded by this financial support was provided in a way that was not transparent and reiterates that councillors should be required to declare gifts and donations of this kind.

Involvement in selection of candidates for election to the City of Casey Council

- Ms Halsall asserted that she did not collaborate with Mr Woodman over the choice of candidates for either the 2012 or 2016 Casey Council elections:
- At each election, she believed that Mr Woodman's interests were the same as her own, being to "support good, hard-working, well-intentioned people to be candidates and hopefully be elected to Council", rather than for their compliance or similarity of views to Mr Woodman's interests.
- She was not involved in discussing with candidates in 2012 about how their campaigns were funded. To her knowledge all the candidates who were elected in 2016 held a variety of fundraisers to help fund their campaigns.

IBAC did not find that Ms Halsall was involved in selecting candidates. Rather, the evidence shows that Ms Halsall assisted by arranging photos, printing and postage, and facilitating associated payments for campaign material in support of certain candidates who stood for election to the City of Casey Council in 2012 and 2016.

Brompton Lodge

With regard to Brompton Lodge Ms Halsall stated that her failure to declare a conflict of interest on the Brompton Lodge project was an oversight during a very busy period and stressful Mayoral year. When questioned about this during her examination she expressed her regret for an oversight that occurred more than 13 years ago.

Ms Halsall also stated:

- The fact that she was supportive of the development of Brompton Lodge was not significant – all the Councillors supported the concept of Brompton Lodge being included in the UGB. The Council itself had unsuccessfully sought to have the land considered as part of the 2005 UGB review (at a time that she was not on Council).
- The fact that she denied being contacted about Brompton Lodge in 2008 is because the events occurred 13 years before her IBAC examination.

IBAC does not dispute that other councillors and council officers supported the inclusion of Brompton Lodge within the UGB. IBAC finds that documentary evidence indicates that Ms Halsall accepted donations from Mr Woodman and/or his companies during this period, did not declare a conflict of interest and voted in a manner that had the effect of supporting Mr Woodman's interests.

IBAC also acknowledges Ms Halsall's comment that the events in question occurred more than ten years ago and accepts Ms Halsall's assertion that it was difficult for her to answer questions confidently on those matters given the passage of time.

9.2.5 Ms Halsall's spouse

Ms Halsall's spouse is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Ms Halsall's spouse made the following comments.

Sponsorship provided through a community radio program

In relation to \$20,000 transferred from Watsons to Ms Halsall, her spouse and their family business between December 2014 and January 2017 (discussed in sections 3.6.5.2 and 5.3.2.5), Mr Halsall's spouse made similar submissions to his spouse, which are set out in 9.2.4 above.

IBAC accepts that the funds conveyed from Watsons to Councillor Smith by the Halsalls were used by Mr Halsall and Councillor Smith to attend an annual music festival. IBAC also accepts that there may not have been any explicit discussion of 'strings attached' to the provision of these funds, and notes that it is this lack of obvious quid pro quo that makes donations and sponsorship a particularly hazardous corruption risk.

9.2.6 Thomas Kenessey

Thomas Kenessey is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Mr Kenessey made the following comments.

Mr Kenessey's association with Mr Woodman

With respect to his awareness of the extent of Mr Woodman's activities and involvement in the C219 strategy, discussed in the report at 3.1.1, 3.1.2, 3.1.4, 3.1.5.5 and 3.1.5.7, Mr Kenessey stated that:

- The report leaves the ordinary reader with the impression that Mr Kenessey had knowledge of the full extent of Mr Woodman's activities.
- It was never put to Mr Kenessey that he had any knowledge of Mr Woodman's improper financial arrangements and dealings with various Casey councillors.
- There is a risk that the opposite impression will be conveyed by:
 - repeated descriptions of Mr Kenessey as an 'associate' of Mr Woodman
 - the loose use of the term 'strategy' throughout the draft.

IBAC has made various changes to the report in response specific matters raised by Mr Kenessey, but, on the evidence before it in Operation Sandon, finds that Mr Kenessey was aware of, and in some instances directly supported, Mr Woodman's activities. Details of these findings are set out in the body of the report.

IBAC's assertion that it was not inquiring into the merits of Amendment C219

Mr Kenessey asserted that the draft report 'tends to suggest that any contestation of the strategic planning rationale for reserving the land the subject of Amendment C219 for industrial uses was, in and of itself, illegitimate [and that] the effect of that is to contradict the Commission's position that it is not inquiring into the merits of Amendment C219'.

Mr Kenessey also noted that:

- Strategic planning decisions are invariably contentious precisely because reasonable people with differing motivations — none of which are free of self-interest — can and do disagree about their merits.
- Amendment C219 reflected genuinely held opinions that:
 - industrial uses should not be situated so close to housing, notwithstanding the (laudable) objective of situating employment closer to housing.

IBAC has made various changes to the report in response specific matters raised by Mr Kenessey and agrees that there were genuinely held views that the land subject to Amendment C219 should be rezoned as residential.

IBAC agrees that strategic planning decisions are very contentious, but rejects the assertion that the report 'tends to suggest that any contestation of the strategic planning rationale [... was] illegitimate'.

*The report makes clear that the **methods employed** to contest planning decisions presented a corruption risk. In particular, Chapter 5 on planning highlights the importance of clearer criteria and publication of reasons to ensure that the requirement to consider 'strategic justification' is not manipulated at any stage in the planning process.*

The Planning Panels Victoria hearing for Amendment C219

Mr Kenessey stated that there is no basis in evidence for the assertion that the PPV hearing was 'manipulated', and he expressed concern that the draft report suggested that members of PPV were caused to discharge their duties with something less than the degree of independence expected of them.

IBAC rejects this submission and finds that the panel was misled, in particular by the presentation of SCWRAG as an independent community interest group. IBAC did not find that the panel was knowingly partial, or otherwise acted improperly.

9.2.7 Andrew Nehme

Andrew Nehme is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Mr Nehme made the following comments.

The alleged loan to Councillor Aziz and its repayment

Mr Nehme asserted that he and Councillor Aziz each gave sworn evidence:

- About the circumstances of the loan's creation: Councillor Aziz asked for a personal loan from Mr Nehme to cover urgent financial expenses;
- That the signed loan document dated 1 October 2016 and loan letter dated 1 May 2017 accurately reflected the loan agreement between them, subject to one qualification concerning the initial payment of \$21,000; and
- That loan was subsequently repaid.

Mr Nehme stated that there is no logical or rational basis on which this evidence should be rejected.

Mr Nehme also asserted that the true source of the funds repaid to him (or any change in Councillor Aziz's as to their source) is not a matter that can rationally bear on Mr Nehme's explanation as to the main issue: that he was ultimately repaid. Mr Nehme stated that he does not, and cannot be expected to, know the source of the funds, other than what he was told by Councillor Aziz.

IBAC rejects Mr Nehme's explanation as set out above. In the absence of any corroborating evidence, IBAC rejects Mr Nehme's evidence that Councillor Aziz paid him \$230,000 in cash which he put in a safe rather than repaying the NGOC account from which it was supposedly borrowed.

9.2.8 Pauline Richards

Pauline Richards is the subject of adverse comments in this report.

In a submission to IBAC, Ms Richards made the following comments.

October 2018 meeting between Ms Richards, Mr Staindl and Mr Woodman

Ms Richards made the following comments about a meeting between Ms Richards, Mr Staindl and Mr Woodman at a hotel in October 2018, discussed in the report at 6.3.2.1 Ms Richards:

- Rejected any suggestion that a condition of Mr Woodman's donation was to pledge support for Amendment C219
- stated that she was pressed to accept and pass on a letter from Mr Woodman to the Minister, advocating the amendments, but twice declined to take receipt, telling him it was 'not her role'
- asserted that she did not pass any letter on or make any representations to the Minister or his office in support of Amendment C219

Ms Richards further stated that she 'unequivocally (if unsuccessfully) attempted to give Woodman and Staindl to understand she would not be advancing the matter with the Minister's office, regardless of what impression she may have conveyed as to her own level of support for their proposals', but also repeated the acknowledgement she gave in evidence that she may have given the appearance of being more 'agreeable' than she wished she had, and stressed that she did not agree to any involvement in pressing the case for the planning proposals with the Minister's office.

Ms Richards also noted that she made it abundantly clear in her IBAC examination that funding in excess of the ample sums already by then pledged for her campaign was not a motivating factor for her.

IBAC has made various changes to the report in response specific matters raised by Ms Richards, but notes that it did not identify any evidence to suggest that Ms Richards approached the Minister or his office in relation to this issue.

Personal donations and campaign donations

Ms Richards also asserted that in during her IBAC examination she made clear the distinction between donations made to her personally and campaign donations made to an externally administered election fund, to which she was neither signatory nor a formal decision-making officer. She requested that IBAC be equally clear in its special report.

IBAC does not accept that a distinction should be made between the donations Mr Woodman made to Ms Richards' campaign and donations he offered to Ms Richards that were ultimately made to other campaigns administered by other candidates and their agents.

9.2.9 Leighton Properties

Leighton Properties is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Leighton Properties made the following comments.

Leighton Properties asserted it did not have access to the materials directly relied upon by IBAC to draw the conclusions and make the findings in the draft report and, on it was not in a position to provide any further substantive response or comment on the contents of the draft report or respond to any specific findings of fact made therein.

To the extent the IBAC makes findings in relation to past employees and consultants that were involved with Leighton Properties, it is Leighton Properties' position that:

- such actions were undertaken by those individuals outside the scope of their authority, and contrary to the terms of their employment or contractual arrangements with Leighton Properties; and
- such conduct was contrary to the relevant Code of Conduct and other policies and procedures in place at the time.

9.2.10 Megan Schutz

Megan Schutz is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Ms Schutz made the following comments.

General comments

Influencing councillors is lawful activity

- Her conduct, which was intended to influence local councillors as to how a council might exercise its powers, cannot be held to adversely affect the effective performance of the council's functions as it sought to have the council exercise its powers lawfully and not for an improper purpose. This is so even if the conduct of others was improper.
- The drafting of a motion, and suggesting that the motion be moved at a council meeting, is not unlawful and is not itself corrupt. The statement in the draft report that Ms Schutz' conduct was undue is an inference that is not fair and not justified.

IBAC disagrees with Ms Schutz' assertion that there is nothing improper in a planner drafting alternative motions. A developer and/or their consultant should not lodge a request for a permit amendment and draft the proposed alternative motions on relevant agenda items pushing for an outcome favourable to their business interests, as discussed in 3.2.1; 3.2.6.1; 3.5.7 of this report.

Misconception of planning and planning processes

- It is unfair to criticise a stakeholder (or their agent) for seeking to influence a council or ministerial decision. If a person has lobbied a councillor, or prepared a speech, or drafted a motion – and no more – that cannot be a legitimate basis for criticism
- The inference in the draft report that Ms Schutz unduly influenced the process including that of Planning Panels Victoria is completely wrong and unfair. In her submission, any fair assessment would conclude that she duly influenced the process to achieve a better land use outcome.
- It cannot be said that her attempts to have the council, the panel and the Minister support the Amendment was wrong. In Ms Schutz's submission, the only transparent, independent, and participatory assessment of the matter concluded that what she sought to achieve was justified. She disagrees that this could be described as conduct intended to adversely affect the effective performance by a public officer or body of their functions.

IBAC accepts that it is possible Ms Schutz was motivated to achieve a better land use outcome. But, it is more likely that she was employed by John Woodman to promote this outcome. Amongst other things, IBAC was concerned that the methods employed to promote her desired outcome lacked transparency and accountability. In her submission, Ms Schutz alluded to section 4(1)(a) of the IBAC Act, which states:

*For the purpose of this Act, corrupt conduct means conduct of any person that adversely affects the **honest** performance by a public officer or public body of his or her or its functions as a public officer or public body.*

*IBAC rejects the assertion that its reporting on Ms Schutz's activities is misconceived. IBAC finds that conduct Ms Schutz characterised as 'Merely seeking to influence council and ministerial decisions' reasonably falls within the ambit of conduct designed to adversely affect the **honest** performance of a public function.*

The merits of the planning matters

In relation to the discussion of the H3 intersection in 3.2.2, Ms Schutz asserted that the report included factual errors by implication in that it failed to discuss the limited entry points to Dacland's estate, the faster pace at which Dacland was developing the Lochaven Estate, and the Council's funding list for Cranbourne West DCP funds, which prioritised other work over the widening of Hall Road.

IBAC is not concerned with the merits of the planning matter in question. Rather, the issue under investigation in relation the H3 intersection concerned the use of councillors by a developer to influence a Council decision about a neighbouring developer's permit.

In relation to the discussion of Pavilion Estate in section 3.3 ('Pavilion Estate'), Ms Schutz stated that Schutz Consulting provided a comprehensive planning justification in support of the amendment application, that the application was fair and reasonable given the relevant planning scheme provisions, and that it was the permit issued under delegation by Council officers that was unreasonable in relation to its requirements for open space and road reserves. Ms Schutz also commented that:

"This matter highlights the need for greater transparency around council officer conduct. The report that officers put up to council in relation to the application was biased and not in accordance with an officer's duties to act impartially."

IBAC agrees that greater transparency in statutory planning decisions, and the involvement of independent experts, would help guard against the risk of corruption. IBAC has, therefore, recommended that consideration be given to developing a model structure for independent determinative planning panels for statutory planning matters to address these issues at the council level in 4.3.7.

Provision of planning services to support a planning scheme amendment process

In relation to the discussion in 3.1.1 regarding IBAC's findings in relation to Amendment C219, Ms Schutz denied being involved in a strategy (together with Mr Woodman and Mr Kenessey) to manipulate Council decisions, a PPV hearing and ministerial approval processes, or seeking to influence any of the councillors in favour of Amendment C219. She stated that she only gave one briefing to a councillor, and that her role involved providing planning services to support the planning scheme process.

IBAC has made various changes to the report in response to specific matters raised by Ms Schutz, but rejects the assertion that all of her activities were part of the provision of planning services to support a planning scheme amendment process. In particular, IBAC notes Ms Schutz's involvement in the following activities which played a part in manipulating key decisions:

- registering the domain name 'savecranbournwest.com'
- seeking to influence councillors through SCWRAG
- briefing legal counsel engaged to represent SCWRAG at the PPV hearing.

Drafting of alternative motions and coaching a councillor during the council debate

In relation to the discussion in 3.2.6.1, which provides an overview of IBAC's findings in relation to Ms Schutz, Ms Schutz stated that she would not describe my actions as exerting undue influence on Council's decision making. She asserted that drafting motions, lobbying and briefing councillors are all lawful activities.

In relation to the H3 intersection I drafted suggested alternative notices of motion at the request of John Woodman who I understood was instructing me on behalf of Elysian Group Pty Ltd... I was also asked to provide a briefing and speaking notes if requested. I sent texts to Councillor Aziz during one of the meetings on the H3 matter. I believe the act of sending these texts was simply to brief him live on my client's response to what was being presented to him in the Chamber."

IBAC has made various changes to the report in response to specific matters raised by Ms Schutz, but is satisfied that it is appropriate to use the term "improper influence" to describe conduct that involves a planning proponent:

- drafting an alternative motion on a matter that concerns their client's interests
- helping to draft letters from a community group to Council in support of the alternative motion
- prompting a councillor to refer to that letter during the council debate on the motion
- texting a councillor during the council debate on the motion to state how to respond to objections from other councillors.

In relation to the discussion in 3.2.6.1, which concerns the use of councillors to influence decisions in relation to the H3 intersection, Ms Schutz asserted that she did not direct, instruct or coach Councillor Aziz on the matter of the H3 intersection during the Council's 16 October 2018 meeting.

IBAC rejects this assertion, noting that, in addition to speaking to Councillor Aziz twice before the 16 October 2018 meeting and providing him with a draft alternative motion, she also coached him via SMS messages during the meeting, telling him, You need to read the SCWRAG letter sent to councillors out to the chamber' and 'don't take Rowe's bait', as shown in the extracts below.¹ IBAC finds that these messages amount to directions, instructions and/or coaching.

¹ See CD/19/64390 – SMS exchanges during the council meeting.

Megan Schultz M
Sam
You need to read the SCWRAG letter sent to councillors out to the chamber
Status: Read
Read: 16/10/2018 7:20:58 PM(UTC+11)
16/10/2018 7:20:41 PM(UTC+11)

Source Extraction:
Logical (1)

Casey- Cr Aziz
I have used parts of it.
Status: Sent
Delivered: 16/10/2018 7:21:34 PM(UTC+11)
16/10/2018 7:21:34 PM(UTC+11)

Source Extraction:
Logical (1)

Megan Schultz M
But it's muddled
You need to read it out in full
It shuts them down
Further not only will council be putting the existing community's lives at risk but also the 120 new residents that will move into the 44 lots
Does council really want that on its head ??
Status: Read
Read: 16/10/2018 7:23:12 PM(UTC+11)
16/10/2018 7:22:58 PM(UTC+11)

Megan Schultz M
Don't take Rowe's bait about Wolfdene
Not relevant
This is about community safety
Status: Read
Read: 16/10/2018 7:25:14 PM(UTC+11)
16/10/2018 7:25:14 PM(UTC+11)

Source Extraction:
Logical (1)

Megan Schultz M
Nothing to do with Wolfdene
This is a request from the community only
Status: Read
Read: 16/10/2018 7:25:55 PM(UTC+11)
16/10/2018 7:25:55 PM(UTC+11)

In relation to the discussion of the Pavilion Estate in section 3.3.1, Ms Schutz stated that it was common for Councillors to agree on an alternate motion on an item prior to going into the meeting, and for the alternate motion to be carried without debate.

This comment supports IBAC's concerns that matters were 'agreed' prior to council meeting, and highlights the corruption risks associated with introducing an alternative motion without first considering and voting on the substantive motion or recommendation.

The informal H3 working group

Ms Schutz objected to the use of the term 'H3 working group', asserting that IBAC had made more out of her evidence than what she said under examination, and that the concept was first introduced by counsel assisting IBAC during Ms Schutz's examination.

IBAC rejects this assertion, noting that in evidence, when asked whether 'it would be appropriate for a councillor to engage in this sort of strategic plan with a developer', Ms Schutz replied:

It's not. I don't think it's appropriate for a councillor to be involved in a private developer's working group, which when I look at this note today that's really what – it's got actions arising, people doing various things to achieve an end.

Ms Schutz went on to repeat her acknowledgement that the group that met to discuss the H3 matter was a 'working group', stating 'when you read these minutes, these were a working group, yes'. Based on Ms Schutz's evidence, this appears to be an accurate characterisation.

Association with Ray Walker and SCWRAG

Ms Schutz stated that IBAC made a factual error by stating that she played a key role in establishing SCWRAG. Ms Schutz argued that she made 'suggestions to SCWRAG with respect to the drafting of correspondence they proposed to send to various stakeholders', and that all fees for consultancy services provided by DCT Business Services (the consultancy business owned by Mr Walker) were 'a disbursement on Schutz Consulting invoices at the request of my clients Wolfdene and Watsons'.

IBAC found that Ms Schutz was critical to the establishment of SCWRAG in that she:

- *proposed the idea, noting the need for community support in order to progress C219*
- *suggested and registered the domain name 'savecranbournewest.com' using her personal details*
- *facilitated payments to the Walkers in their personal capacity while they were also involved in SCWRAG.*

In relation to the discussion in 3.5, which concerns SCWRAG, Ms Schutz stated that IBAC also made a factual error by stating that SCWRAG had a 'façade of independence', and that Mr Woodman and his associates sought to maintain SCWRAG's façade of independence, adding:

"There is insufficient evidence to establish that Mr Woodman and I sought to conceal SCWRAG's connections to landowners, developers and their representatives. It was never my intention to conceal the true nature of SCWRAG's connection to landowners, developers and their representatives."

Elsewhere in her submission, Ms Schutz stated with regard to the October 2018 article in *The Age*:

"The intention was that I would deny the connection between SCWRAG and myself if I could. The reason for my intention is that The Age was notorious for biased reporting towards developers and I considered it likely that they would paint my connection with SCWRAG as more than it was."

IBAC finds that the fact that some councillors and MPs were unaware of the link between SCWRAG and Leightons/Watsons confirms that there was a façade of independence with respect to SCWRAG.

In relation to the discussion 3.5, which concerns SCWRAG, Ms Schutz also asserted that IBAC made a factual error by stating that the assistance provided to SCWRAG in terms of funding, organisation and preparation of petitions and letters 'lacked transparency' and 'undermined the integrity of [the relevant] decision making processes'. Specifically, Ms Schutz asserted that:

"SCWRAG was at arms length from the landowner, and Schutz Consulting. SCWRAG was not promoting commercial interests. This was a side benefit of its activities. It had its own interests that it was promoting that were bona fide community interests. SCWRAG's lobbying of its genuine interests did not undermine the integrity of the decision-making process because they were real interests."

SCWRAG's objectives were clearly voiced through the statutory process on Amendment C219 and subjected to the rigorous scrutiny of an independent Panel. SCWRAG also lobbied as is its democratic right the elected decision makers at both state and local level in relation to the much needed upgrades to Hall Road. The consideration of both of these matters as part of the planning process was a relevant consideration based on fact and these considerations did not in any way undermine the integrity of the decisions that were made in relation to C219 and the H3 intersection. They were valid relevant considerations taken into account as part of the decision making process on both matters."

IBAC does not agree that this characterisation of SCWRAG's role in the report amounts to a factual error. While it is undoubtable that SCWRAG's members genuinely wanted the land use changed to residential and were concerned about safety on Hall Road, it was the developers and their associates who came up with the idea of a community group, registered the domain name, called the first meeting and funded the group's operations. IBAC found this was not done transparently.

Ms Schutz also asserted that, contrary to the discussion in 3.5.4, she did not pay DCT Business Services' fees. Rather, her clients Elysian Group, Wolfdene, Watsons and the owners of the Pavilion Estate land instructed her to engaged DCT Business Services to carry out various scopes of work and asked Schutz Consulting to administer DCT's invoices 'as a disbursement... for administrative convenience'.

IBAC rejects the assertion that Ms Schutz did not pay Mr Walker's company, DCT Business Services. IBAC found that Ms Schutz instructed Mr Walker to invoice Schutz Consulting and that he did so. For instance, in an email dated 10 February 2018 with the subject line 'Assignment for this week', Ms Schutz stated, 'Your status is one of a contractor – that is, Schutz Consulting is engaging your business to carry out this work... On this basis, please forward me an invoice for \$1,375 and I will pay it immediately'.

Ms Schutz stated that there is no basis for the conclusion that the Planning Panel that considered Amendment C219 may well have questioned the credibility of SCWRAG's claims had it been aware the legal team was paid for and briefed by the landowners' representatives, stating:

- The funding of SCWRAG's legal representatives was not a secret
- Counsel engaged to represent SCWRAG did not take instructions from the proponent or any other landowner representative, but rather provided independent representation and instructions solely from her client, SCWRAG.

IBAC rejects the claim and maintains that it is open for it to comment that the Planning Panel may have asked different questions or come to a different conclusion if it had been aware that SCWRAG's legal team were being funded by the landowners' representatives.

9.2.11 Susan Serey

Susan Serey is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Ms Serey made the following comments.

Reference to Ms Serey as Councillor Serey in this report

Ms Serey noted that references to 'Councillor' Serey in the report are inaccurate given that she was no longer a councillor at the City of Casey Council at the time of her public examination by IBAC.

IBAC agrees that Ms Serey was not a councillor at the time of her public examination. However, the title 'Councillor' has been used throughout the report for consistency on the basis that Ms Serey and her fellow City of Casey councillors all held office at the time of the events that were the subject of this investigation.

Wilful ignorance

Ms Serey stated that the report (at 7.3.4.2) unfairly infers that she was wilfully ignorant of the contents of the agenda items and associated conflicts of interest for Council meetings, and that, specifically:

- the evidence is clear that Ms Serey endeavoured to ensure that she was properly informed of relevant matters prior to considering them at Council meetings
- the report does not adequately recognise the volume of material required to be considered by City of Casey Councillors, or the delay in the provision of material to councillors
- the report does not recognise the systemic flaw with the Council reports presented to councillors in failing to adequately identify the relevant corporate entities, including their directors and shareholders who had an interest in the subject matter being considered by Council, as well as the nature of their relevant interests.

IBAC has made changes to the report to reflect Ms Serey's comments but rejects the assertion that it is unfair to characterise her failure to declare conflicts of interest as the result of wilful ignorance, noting that Ms Serey's evidence (as set out in 7.3.4.2 of the report) was that she:

- Did not read the attachment to the council officer's report, which contained more detail about the organisations involved in the application.
- 'Find[s] that a lot of these reports are anywhere between three and 600 pages. So I can't be across the detail of every single report that comes in front of me. It's just not reasonable.'
- With regard to the second and third points, IBAC notes that recommendations 20 and 26 aim to improve the administrative and advisory support for council meetings (see section 7.3.2.4 and 7.3.4.2 for further detail).

IBAC accepts that Ms Serey was not a signatory to the Narre Warren South Electorate Council account, and notes that recommendation 33 aims to ensure there are appropriate mechanisms in place to monitor compliance with declaration processes so that State and local candidates are held to account for funding received in support of their campaigns.

IBAC also agrees that some donations were not made directly to the Narre Warren South Electorate Council account and confirms that on 6 October 2014 Mr Woodman made a donation of \$950 to the Enterprise 500 Club with a comment that it be directed to 'Susan Serey Political Donation'. However, references in the report to donations made to Ms Serey's campaign by Mr Woodman **do not** include this amount. This \$950 contribution has been categorised as a donation by Mr Woodman to an associated entity.

Distinction between donations made direct to Narre Warren South and those made via an associated entity

Ms Serey asserted that donations were made to the Liberal Party's Narre Warren South Electorate Council account, which "was not controlled by or in any way connected to her personally, or as a candidate or in her role as a councillor at the City of Casey". She referred to the evidence she gave during her examination that 'in the Liberal party candidates don't handle money', and 'I wasn't a signatory to any of these accounts'.

Ms Serey also stated that 'Some donations were not even made directly to the Liberal Party's Narre Warren South Electorate Council account. They were made to the Enterprise 500 Club (a networking entity associated with the Liberal Party) which subsequently made a payment to the Narre Warren South Electorate Council account'.

Mailout of 9000 flyers in support of Ms Serey's 2018 campaign, paid for by Mr Woodman

Ms Serey asserted that reference to her failure to report the assistance she received from Mr Woodman (in the form of a mail-out of 9000 flyers) to the Liberal party was 'gratuitous', stating that:

- she had given evidence that matters relating to printing of flyers were ordinarily attended to by her campaign team or campaign manager
- at the time she was 'on pre-poll', and
- she did not know the number of letters dropped off to Watson's office because her campaign team would have been stuffing envelopes.

IBAC rejects Ms Serey's assertion that she was not aware of the assistance she had received from Mr Woodman. Text messages from Ms Serey's phone number to that of Mr Kenessey asked 'if John can organise for 9K letters to be sent out' on 13 November 2018, apologised that her team were late dropping them to his office on 15 November 2018, then asked if she could 'get another 10K done' the following day.



Ms Serey's association with Mr Woodman and Thomas Kenessey

Ms Serey stated that inferences that she inappropriately favoured Mr Woodman and/or Mr Kenessey should be deleted from the draft report because there was no basis for these comments. Specifically, Ms Serey stated that:

- She did not know what Mr Woodman's or Mr Kenessey's intentions were and thought Mr Woodman was a supporter of the Liberal Party.
- She gave evidence that she did not perceive her contact with Mr Kenessey (to ask for substantial assistance with her election campaign) as an attempt by Mr Kenessey to influence her, and asserted that she did not think she would have to take a meeting with Mr Woodman if successful in her 2018 State election campaign.
-

- It was not put to her in during her public examination that Mr Woodman or Mr Kenessey had any impact on the way she viewed or dealt with the C219 rezoning, and she voted in favour of progressing the C219 rezoning before she was endorsed as a Liberal Party candidate and before any donation was made by Watsons.
- She did not, and does not, have a relationship with or contact details for Mr Woodman and considered her association with Mr Kenessey to be 'somewhere in between a friendship and an acquaintance'.

IBAC has made various changes to the report in response to specific matters raised by Ms Serey. There was no evidence before IBAC to support the existence of a quid pro quo arrangement in relation to Ms Serey's vote and receipt of assistance from Mr Woodman and Mr Kenessey. However, IBAC found that Ms Serey accepted donations from Mr Woodman between 2014 and 2018 in support of her state election campaigns and voted on council motions in a way that consistently supported his interests without declaring a conflict of interest during that period.

9.2.12 Ray Walker

Ray Walker is the subject of adverse comments or opinions in this report.

In a submission to IBAC, Mr Walker made the following comments.

Responsibility for SCWRAG

Mr Walker has stated:

"I take full responsibility as the leader and driver of SCWRAG all the way through. I also want to acknowledge and convey that the other committee members were passionate and genuine members of the community and provided great assistance and feedback."

IBAC acknowledges Mr Walker's comment.

Community groups and the risk of manipulation through astroturfing

Mr Walker made the following comments with regard to a discussion concerning the risk of manipulation through astroturfing in the report at 3.5.5 and 3.5.8:

"We were not familiar with the term 'Astroturfing' in 2015. It was first brought to our attention with the publication of 'The Age' article in late 2018... Door knockers came to our house in 2015 to ask if we were aware that the land in question was zoned industrial. We were horrified. Without hesitation we signed a form to say that we were against industrial and then invited to a meeting soon after at Quarters Park to get more information."

Mr Walker's submission also:

- strenuously denied assertions that there was only limited local support for the Amendment C219 proposal to rezone the land in question as residential, and
- emphasised that SCWRAG's objections were real and 'not some "trumped up" grass roots group dreamt up [by] landowners'.

IBAC does not dispute that there was genuine local support for the proposal to rezone the land in question as residential, and acknowledges that the corruption risk associated with the manipulation of community groups is difficult to address without discouraging genuine community involvement in debates about planning matters. However, IBAC found that SCWRAG was established by certain landowners, developers and their associates to achieve specific outcomes, and that Mr Walker was recruited by those persons to head the community group (as discussed in the report at 3.5.5 and 3.5.8).

Payments received by Mr Walker from Mr Woodman

With regard to payments received from Mr Woodman in relation to the Hall Road project, Mr Walker stated:

"In July 2016 onwards, I provided sales reports to Watsons, owned by John Woodman who at that time was unknown to me and there was nothing untoward that I could see. I did not disclose this to the SCWRAG Committee and to anyone else as I was not being paid for work performed for SCWRAG until April 2018 when I started work on the Hall Road project. I do acknowledge my conflict of interest with that project."

With regard to other payments received from Mr Woodman, Mr Walker stated:

"The company owner of Watsons was John Woodman. I had never heard of him before this time. He was just another business owner for me at the time and he could have been just one of Megan Schutz's clients for all I knew. Therefore, I did not feel the need or requirement to disclose the relationship. I met John Woodman for the first time in June 2018 and the first conversation of any note with him was towards the end of 2018."

There was no controversy at all, no noise around John Woodman at all from my perspective before the breakout publication in 'The Age' in October 2018 (almost 2.5 years later) which lifted the lid on his 'activities.' This dramatically changed everything from that point on and we were implicated due to our unfortunate connection with him."

IBAC found that the consultancy work for which Mr Walker was paid was manufactured by Mr Woodman in order to gain and maintain influence with Mr Walker and SCWRAG. Mr Walker became aware during his engagement by Mr Woodman's entities that this was the purpose of his payments for consultancy work.

9.2.13 John Woodman

John Woodman is the subject of adverse comments or opinions in this report. IBAC notes that Mr Woodman raised numerous issues regarding the characterisation of a number of individuals named in the report. IBAC has limited its representation of its treatment of natural justice considerations provided by Mr Woodman to statements relating to Mr Woodman.

In a submission to IBAC, Mr Woodman made the following comments.

Mr Woodman disagreed with many of the key findings in Operation Sandon. In particular, he rejected the characterisation of a core group of councillors that supported and furthered his interests. Mr Woodman stated that he:

did not rely on the supposed core group of councillors, two of whom did not vote after April 2014 and Councillor Aziz recommended deletion of Watsons' client in June 2016. This is a false statement without evidence and following June 2016 Watsons had no involvement in planning at the Local Government level, only State Government.

IBAC rejects these assertions. Mr Woodman and his associates sought to advance the proposal using different methods over several years, including directly paying Councillors Aziz and Ablett for their support, cultivating relationships with and providing support to other councillors (for example, by donating to their election campaigns). Between 2014 and 2019, Council progressed this matter in various ways, and voted in its favour on several occasions.

Councillors Aziz and Ablett in particular were instrumental in this. All voted in favour of the amendment at various times and engaged in other ways to promote it. Council processes were insufficient to prevent improper conduct, manage conflicts of interest and ensure that integrity was maintained.

Mr Woodman also rejected that he sought to improperly influence decisions by Council, stating:

There is no evidence that the work of Mr Woodman as a Consultant was to improperly influence, i.e. dishonestly or unlawfully, or unduly influence decisions by Council via any or all the mechanisms alleged. This is a false statement.

The evidence is that any influence by Mr Woodman as a Consultant was for the proper decisions not improper associated with C219, Brompton Lodge, H3 Intersection and Pavilion Estate.

IBAC does not accept Mr Woodman's assertion that none of the donations were illegal or improper. The investigation found that for over a decade, Mr Woodman improperly sought to influence councillors to facilitate favourable Council decisions. This conduct was able to flourish unchecked because the City of Casey Council lacked adequate safeguards to ensure core standards of integrity were met.

Operation Sandon established that Mr Woodman sought to influence Councillors Aziz and Ablett, who in turn actively took steps to promote Mr Woodman's and his clients' interests and received financial and in-kind compensation in return. Each councillor received over \$500,000 from Mr Woodman or related entities over several years. They failed to declare conflicts of interest in relation to their involvement with Mr Woodman or his companies on many occasions throughout this time.

Mr Woodman also disagreed with IBAC's characterisation of him as a developer. He asserted that he:

is not a developer and no evidence that any payments, gifts or other benefits including political donations were exchanged for planning matters that favoured John Woodman. This is a false statement and reference to John Woodman as a land developer and/or developer must be deleted.

IBAC rejects this assertion but has added an additional statement to clarify that Mr Woodman, as the Managing Director of Watsons Pty Ltd, which provides a range of services including land development consultancy, can reasonably be characterised as a land developer, consultant and representative of Watsons.

Mr Woodman has rejected IBAC's finding that "the developer, consultant and investor... sought to achieve planning outcomes that were favourable to his interests at the state and local government level". Mr Woodman has stated:

The favourable outcomes for Watsons' clients (not John Woodman) associated with C219, H3 Intersection, Pavilion Estate and Brompton Lodge were all conducted in accordance with the Planning Environment Act 1987 and, again, Woodman is not a developer nor an investor, both professional vocations not part-time hobbies.

None of these projects were of direct benefit to John Woodman who was, at the time, the Managing Director of Watsons Consulting, Town Planners, Surveyors and Engineers. Councillor Ablett declared a conflict of interest on each occasion from 2014 to 2018 with exception to votes in February 2014 directing Council Officers to speak to landowners and April 2014 when a request by Watsons... as rejected unanimously by Council.

IBAC rejects these claims on the basis that Operation Sandon identified payments and other benefits from Mr Woodman to Mr Ablett totalling more than \$550,000 in the period between 2010 and 2019, during which Mr Ablett actively sought to promote Mr Woodman's interests in the City of Casey Council. IBAC further notes that Mr Ablett's conflict of interest related to a range of payments and other benefits he received from Mr Woodman between 2010 and 2019.

Mr Woodman rejected IBAC's finding that the developer, Wolfdene, and landowner of the Elysian Estate, Elysian Group Pty Ltd, stood to benefit from the strategies devised by their representatives, Mr Woodman and Ms Schutz, in relation to the H3 intersection. By influencing council decisions, the strategy aimed to reduce Wolfdene's construction costs and ultimately the cost of developing the estates. In his submission to IBAC, Mr Woodman stated that:

Evidence is that regardless of the hyperbole of the discussion where John Woodman, on behalf of his son, was remonstrating in regard to Council Officers delaying the commencement of H3 intersection northern leg unnecessarily. As indicated, Watsons and John Woodman had no ownership of Elysian Estate.

IBAC found that the landowner of the Elysian Estate, Elysian Group, and the development manager, Wolfdene, stood to benefit from the strategies devised by their representatives, Mr Woodman and Ms Schutz, in relation to the H3 intersection. By influencing Council decisions, the strategy aimed to reduce construction costs and ultimately the cost of developing the estates.

Specifically, a summary table of Woodman Group entities seized in a search of Wolfdene's premises showed that at the time:

- *Elysian Group Pty Ltd was recorded as being 70 per cent owned by The SBPM Property Trust*
- *SBPM Property Trust was recorded as being fully owned by The SBPM Equity Trust*
- *SBPM Equity Trust was recorded as being fully owned by Mr Woodman's son.*

Mr Woodman's son's involvement with Brompton Lodge was primarily through UDIA Consolidated, while his involvement with Pavilion Estate was primarily through Wolfdene.

In relation to the Property Development Agreement signed between UDIA and the landowners, Mr Woodman stated that:

Evidence is that following the rezoning in December 2012 the... [the landowners] entered into a Development Agreement with UDIA to develop or dispose of the land. Alternately when the sale of the land for \$120 million fell through, a company, UDIA Consolidated, purchased the land from the... [the landowners] for \$55 million. Note Woodman and/or Watsons were neither shareholders or directors of this company and were only guaranteed the future planning, survey and engineering consultancy work for the development phase which is the normal requirement for Watsons involvement in rezoning of land. There is no financial benefit derived by John Woodman and/or Watsons associated with the development of Brompton Lodge other than the consultancy fees as per above.

IBAC found that the Property Development Agreement was signed between UDIA and the landowners, under which UDIA were appointed to develop the land, in exchange for the payment of a development fee calculated at 50 per cent of the profits generated by the development of the land. A family company co-owned by Mr Woodman and his children stood to receive half the development fee. IBAC considers this a potential financial benefit.

In relation to the financial support of SCWRAG, Mr Woodman stated:

The financial assistance of the local community group SCWRAG is neither illegal or improper and for IBAC to suggest without evidence that the Community Group was fake defies belief.

IBAC holds that the report does not suggest financial assistance is illegal, nor does it suggest that SCWRAG is a fake group. IBAC recognises that the interests of community groups can align with private interests, but the evidence demonstrates the direct involvement and support of those paid to progress private interests.

Mr Woodman has questioned IBAC's assessment of the strategic justification of C219 Amendments:

IBAC, in its endeavour to substantiate the alleged improper decisions of Council and the recommendations of the independent panel of experts from Planning Panels Victoria regarding C219, utilised over and over again the supposed lack of strategic justification for the amendment as the sole and only reason that it was improper and without planning rationale.

The suggestion that strategic justification does not include the review process referred to above is without evidence. It may be at the conclusion of a review the amendment is not strategically justified, that is not grounds for the non-commencement and completion of the review process including as mandatory in all approved precinct structure plans in Victoria.

The report is clear that the assessment that there was a lack of strategic justification came from council planning and departmental planning officers, the Minister for Planning and submissions to PPV.

In relation to the H3 Intersection Northern Leg, Mr Woodman states:

in numerous places throughout the draft report IBAC declared that the open space deleted from the Pavilion Permit by the Council unanimously on 3 April 2018 was improper and to the detriment of the Pavilion...

IBAC notes that there is no inconsistency with this statement and IBAC's findings.

In relation to the findings relating to Mr Ablett's declaration and management of interests, Mr Woodman states that:

the Victorian Ombudsman reported to the State Government that although Watsons had supported Ablett with political donations there was no evidence that Ablett improperly supported Watsons' clients as per the following extract.

IBAC does not rely on the Ombudsman's findings.

Mr Woodman raised issues with:

IBAC quoting The Age newspaper accepting the media reporting without researches to the validity of the contents of the article by an Investigator would appear to be not in good faith that is honesty. The Age article in relation to Pavilion Estate and H3 Intersection was based on the alleged improper Council Officers attempt to endanger the lives of ratepayers and the article and the Age Reporters accept the false Council Officer resume of the events.

IBAC has set out statements of fact relating the reporting, with no inference regarding the reliability or veracity of the reporting. IBAC does not comment on the validity or veracity of the reporting.

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