C3 - REPORT

GENERAL MANAGER DEVELOPMENT

ITEM C3.1 **NINETY MILE BEACH SUBDIVISIONS – OMBUDSMAN REPORT**

DIVISION: DEVELOPMENT

ACTION OFFICER: GENERAL MANAGER DEVELOPMENT

DATE: 3 DECEMBER 2019

IMPACTS									
Financial	Communication	Legislative	Council Policy	Council Plan	Resources & Staff	Community	Environmental	Engagement	Risk Management
✓	✓	✓				✓			✓

OBJECTIVE

To seek Council's final position on the implementation of the recommendations associated with Victorian Ombudsman report 'Investigation into Wellington Shire Council's handing of Ninety Mile Beach subdivisions' dated August 2019 (see Attachment 1).

PUBLIC QUESTIONS AND COMMENTS FROM THE GALLERY

RECOMMENDATION

That Council, having received the Victorian Ombudsman report 'Investigation into Wellington Shire Council's handling of Ninety Mile Beach Subdivisions' and having sought legal advice;

1. ***Resolve to support recommendation one and in doing so:***
   a) ***Reduce general rates on all undevelopable land in the Ninety Mile Beach subdivision to zero from 1 July 2019 onwards;***
   b) ***Cease to levy the Waste Infrastructure Charge on all undevelopable land in the Ninety Mile Beach subdivision from 1 July 2019 onwards;***
   c) ***As a gesture of goodwill, refund (on the request of current landowners or previous landowners who can provide evidence of payment, made within 12 months of this report):***
      - ***rates paid on all undevelopable land in the Ninety Mile Beach subdivisions since rates notices were reinstituted against Flood-prone land in 2006;***
      - ***the Waste Infrastructure Charge paid on all undevelopable land in the Ninety Mile Beach subdivisions since the commencement of the Voluntary Assistance Scheme in 2011.***
2. ***Note that Council has already commenced the implementation of Ombudsman Victoria's Recommendations two and three by:***
   a) ***Actively facilitating the sale of single allotments between landowners in the urban nodes without Council itself acquiring land; and***
   b) ***Updating Council's website to assist communications of relevant information affecting landowners.***
3. ***Note that the Department of Environment, Land, Water and Planning have confirmed in writing that it will take responsibility for implementing recommendation four and the delivery of the compulsory acquisition phase.***

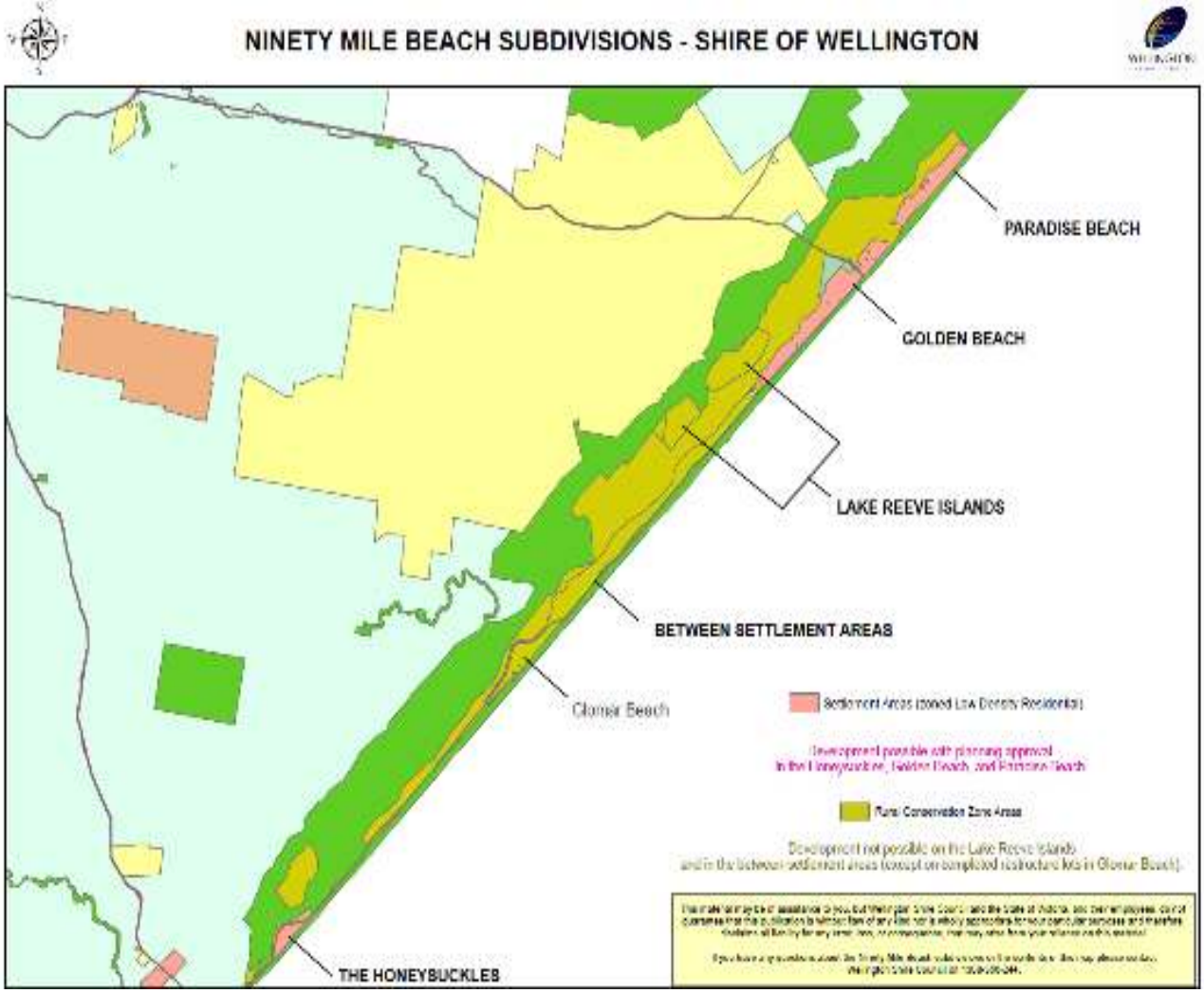
BACKGROUND

Overview

The Ninety Mile Beach subdivision is a 25-kilometre strip of land located between Bass Strait and Lake Reeve, which extends north of the Honeysuckles to Paradise Beach. The land was subdivided into about 11,800 small lots from 1955 to 1969 prior to the introduction of planning controls. Lots were sold by development companies using vigorous marketing campaigns to thousands of people and in many cases to new migrants in Australia.

Much of the area is now inappropriate for development (e.g. due to flooding, lack of services etc). Areas unsuitable for development are contained in the Rural Conservation Zone. In contrast, land contained in the Low-Density Residential Zone in the Honeysuckles and Golden Beach/Paradise Beach settlements can be developed with planning permit approval (refer to Figure 1 below).

Figure 1: Ninety Mile Beach Subdivision Area



As identified by the Independent Planning Panel appointed by the Minister for Planning in 2012 when considering appropriate planning controls, '*the history of the Ninety Mile Beach subdivisions between Glomar Beach and Golden Beach represents one of the perhaps longest running and most difficult episodes in land use planning in Victoria. The saga is filled with stories of personal financial hardship, impossible planning decisions, unscrupulous developers and at the heart of it all, the natural values of an iconic part of the Victorian coastline*'.

Ombudsman report

Due to the complex history of the Ninety Mile Beach subdivision (and associated landowner concerns), in December 2018 the Victorian Ombudsman announced an investigation into the Ninety Mile Beach subdivision. The Victorian Ombudsman has finalised this investigation and the final report 'Investigation into Wellington Shire Council's handing of Ninety Mile Beach subdivisions' dated August 2019 has now been tabled in the Victorian Parliament. A copy of the Ombudsman report can be accessed via https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports and is also included in Attachment 1.

Council Officers welcome the independent Ombudsman review of the complex issues associated with the Ninety Mile Beach subdivision.

It is critical to note that the Ombudsman has clearly identified that Council's actions have been lawful and competently handled ('*the Council's administration of these schemes is competent and well managed in the circumstances*', page 57), but it is recognised that improved communication strategies can be put in place, particularly in relation to the use of Council's website.

As identified in the Foreword of the Ombudsman Report (page 4 and 5):

There is no evidence the decisions to limit or prohibit development were not reasonable or made on sound environmental grounds.

It is abundantly clear that at the heart of many of the complaints is an issue we cannot deal with, that people, many of them new arrivals to this country, bought land in good faith, but were in fact sold a pup. They understandably feel cheated, and their experience sadly reflects the era before planning controls protected our natural environment. But my investigation cannot overturn that original flawed transaction, for which the government or council of today cannot be held responsible. Caveat emptor, buyer beware.

Wellington Shire Council cooperated fully with my investigation, as did the Department of Environment, Land, Water and Planning. It was plain that the council had inherited the whole sorry mess from its predecessor and has devoted countless hours to meetings and discussions in attempts to resolve it.

In my view the Ninety Mile Beach subdivisions that cannot ever be developed should not be subject to rates and charges - but ultimately, should be returned to state ownership for the benefit of all.

So, I have recommended that the council cease levying charges on the blocks that cannot be developed, and refund those who have paid since charges began in 2006, on request. But to bring this unsatisfactory state of affairs to an end I have also recommended that, when the current voluntary buy-back program ends in 2021, the government should facilitate compulsory acquisition of any remaining blocks so the whole area can be returned to public ownership.

Key observations identified by the Ombudsman (page 61) are also outlined below:

Some of the complaints stem from misunderstanding, which is not surprising given the complexity of the problem. In fact, the council was not profiteering from its buy-back program as alleged. The council's acquisition and proposed sale of land generally followed appropriate processes and was not unreasonable.

The imposition of rates and other charges on land that cannot be developed under any circumstances is not contrary to law and indeed was a decision taken by the council on legal advice. But while the investigation accepts the council has acted in good faith, in all of the

circumstances of the subdivision's history these charges are ultimately unfair, and indeed pointless if the council continues its current policy of not recovering debts from this cohort.

Finally, it is my firm view that this long running saga must be brought to an end, and the only way this will happen is if the land that cannot ever be developed is acquired, in the public interest, for the benefit of all.

Ombudsman Recommendations

Recommendation 1

Review its rating strategy with a view to:

(a) reducing the rates levied against all undevelopable land in the Ninety Mile Beach subdivisions to zero

(b) cease levying the Waste Infrastructure Charge on all undevelopable land in the Ninety Mile Beach subdivisions

*(c) **as a gesture of goodwill** (emphasis added), refund (on the request of current landowners or previous landowners who can provide evidence of payment, made within 12 months of this report)*

- *rates paid on all undevelopable land in the Ninety Mile Beach subdivisions since rates notices were reinstituted against Flood-prone land in 2006*
- *the Waste Infrastructure Charge paid on all undevelopable land in the Ninety Mile Beach subdivisions since the commencement of the Voluntary Assistance Scheme in 2011.*

Recommendation 2

Actively facilitate the sale of single allotments between landowners in the Urban Nodes without itself acquiring land.

Recommendation 3

Update its website to assist the communication of relevant information to affected landowners, including:

(a) information on the Rates Calculation webpage regarding special arrangements in place for Ninety Mile Beach subdivision landowners

(b) all significant events in respect of the Ninety Mile Beach Plan in the New and Public News feed

(c) facility be provided to enable landowners to determine the category of their land by searching their address.

Recommendation 4

That the State Government work with Wellington Shire Council to facilitate a program of compulsory acquisition of privately-owned undevelopable land in the Ninety Mile Beach subdivisions once the council's Voluntary Assistance Scheme and Voluntary Transfer Scheme conclude in 2021.

Council first considered the Ombudsman's report on 20 August 2019, and resolved as follows:

That Council:

1. ***receives the Victorian Ombudsman report Investigation into Wellington Shire Council's handling of Ninety Mile Beach Subdivisions, dated August 2019;***

2. ***supports the Ombudsman's Recommendation One in principle, and in doing so seeks legal advice regarding the most appropriate way to implement the recommendation;***
3. ***supports the Ombudsman's Recommendations Two and Three and commences implementing required actions; and***
4. ***write to the Minister for Planning seeking a formal position on how the State Government proposes to action Recommendation 4 of the Ombudsman Report.***

Response to recommendation 1:

Legal advice was sought, and this confirmed the *Local Government Act 1989* requires Councils to rate all rateable land (including undevelopable land on the ninety mile beach), however once rated, Council can elect to "write off" a rate if considered appropriate. Given this advice, Council will rate the applicable land and then subsequently write off the amount raised, and this will result in no rate notices being issued.

The legal advice also confirmed that Council can determine what "area" or range of properties are subject to a charge (in this case the Waste Infrastructure Levy) and therefore there is nothing stopping Council from implementing the Ombudsman's recommendation.

There also appears to be no legislative blockages should Council choose to refund any rate or charge already paid.

Response to recommendation 2 and 3:

Following the adoption of the resolution, Council commenced the immediate implementation of recommendations two and three.

Response to recommendation 4:

Council wrote to the Minister for Planning on 24 August 2019 and then met with Mr Andrew Grear, Executive Director Planning & Heritage, Department of Environment, Land Water and Planning in October to work through the roles and responsibilities associated with the potential compulsory acquisition of all privately-owned undevelopable land in the Ninety Mile Beach subdivisions. As a result of the correspondence and subsequent meeting, the Department of Environment, Land, Water and Planning have now confirmed in writing that it will take responsibility for implementing recommendation four and the delivery of the compulsory acquisition phase.

OPTIONS

1. Council may choose to support the recommendation outlined in this report; or
2. Council may choose to seek further information for consideration at a future Council meeting.

PROPOSAL

That Council, having received the Victorian Ombudsman report 'Investigation into Wellington Shire Council's handling of Ninety Mile Beach Subdivisions' and having sought legal advice;

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2. *Note that Council has already commenced the implementation of Ombudsman Victoria's Recommendations two and three by:*

   a) *Actively facilitating the sale of single allotments between landowners in the urban nodes without Council itself acquiring land; and*

   b) *Updating Council's website to assist communications of relevant information affecting landowners.*

3. *Note that the Department of Environment, Land, Water and Planning have confirmed in writing that it will take responsibility for implementing recommendation four and the delivery of the compulsory acquisition phase.*

CONFLICT OF INTEREST

No staff and/or contractors involved in the compilation of this report have declared a conflict of interest.

FINANCIAL IMPACT

The maximum financial liability associated with Recommendation 1 is estimated to be approximately $300,000. This financial impact is not considered unreasonable and can be accommodated within Council budgets.

COMMUNICATION IMPACT

The public release of the Ombudsman Report has been widely reported in State and local media. Communication with landowners will be ongoing, using Council's website to communicate information about current status and upcoming implementation, and through direct one on one landowner contact with Council's Major Land Use Planning Project Coordinator and Rates Team.

LEGISLATIVE IMPACT

Council's legal advice has considered the Ombudsman's recommendations in the context of the requirements of the *Local Government Act 1989*.

COUNCIL PLAN IMPACT

The Council Plan 2017–2021 Theme 2: Services and Infrastructure states the following strategic objective and related strategy:

Strategic Objective 2.3

'Wellington Shire is well planned, considering long term growth and sustainability.'

Strategic Objective 3.1

'Conserve and protect our natural environment through responsible and sustainable management practices.'

Strategy 3.1.1

'*Ensure development is appropriate to conserve our environmentally sensitive landscape for future generations*.'

Strategy 3.1.2

'*Work in partnership to protect and preserve Wellington Shire's natural environment, biodiversity, resources and environmental heritage*.'

This Report and the associated recommendation support the above Council Plan strategic objectives and strategies.

COMMUNITY IMPACT

It is assumed that affected landowners and the broader community will support Council's position of positively responding to the independent recommendations of the Victorian Ombudsman but given the emotive and long-standing nature of this complex issue some landowners will presumably remain aggrieved.

ENVIRONMENTAL IMPACT

The Ombudsman's recommendation to the State Government to advance a compulsory acquisition process will result in a positive environmental impact for the Victorian community by returning environmentally sensitive and significant land along the Ninety Mile Beach into public ownership for future generations.

RISK MANAGEMENT IMPACT

There are no significant risk management impacts associated with the Recommendation.

VICTORIAN ombudsman

Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions

August 2019

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The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my *Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions.*

Deborah Glass OBE
Ombudsman

7 August 2019

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Foreword

> *'It was unbelievable, the amount of people that were there, they had been bussed down by the Estate Agent, it was almost like a fair atmosphere ... Like most others my family purchased a block of land for me as I was still a minor. It was to be my security.'*
>
> - Landowner's complaint to Ombudsman

The story of the development of Ninety Mile Beach is a sorry tale indeed. Thousands of people, mostly migrants, lured by developers with the promise of their own slice of paradise on Victoria's own Gold Coast. The brochures promise a well-planned resort, with shopping centres and amenities, illustrated by pictures of glamorous women in bathing costumes on the golden sands.

Then as the years wear on the promises unravel. Much of the land cannot be developed, at least in its present form. Some of it is beach dunes. Some of it is flood-prone. Much of it is inaccessible. Successive environmental studies confirm what should have been seen at the outset, that it should never have been sold off in the first place. The original developers have disappeared.

In the meantime, some owners have continued to pay rates and other charges on their now worthless slices of paradise. Others have refused to pay. Yet others have sold their land back to the council for the nominal sums reflecting the land's current value, later accusing the council of profiteering. In recent years the anger and frustration of many current and former landowners seems to have escalated, and to date has resulted in 67 complaints to my office.

Those complaints underlined that for many people, not only were their dreams crushed, of a comfortable beach-side retirement, a legacy for their grandchildren – they also felt the actions of the council had added insult to injury.

I decided to investigate the Ninety Mile Beach saga because of the significant public interest in whether the council had treated landowners fairly and reasonably.

I made it clear at the outset that I was not able to meaningfully investigate the planning decisions, or lack of them, of the earlier decades when the land was bought in the 1950s and 60s. We did however look at the files still available, and they form an important part of the context. There is no evidence the decisions to limit or prohibit development were not reasonable, or made on sound environmental grounds.

It is abundantly clear that at the heart of many of the complaints is an issue we cannot deal with, that people, many of them new arrivals to this country, bought land in good faith, but were in fact sold a pup. They understandably feel cheated, and their experience sadly reflects the era before planning controls protected our natural environment. But my investigation cannot overturn that original flawed transaction, for which the government or council of today cannot be held responsible. Caveat emptor, buyer beware.

The focus of my investigation was on the present, and recent past. Was it reasonable for the council to be charging for rates on worthless land, or land as good as worthless, and waste management charges when no services were being provided? Was the council in fact profiteering from its buy-back program?

Wellington Shire Council cooperated fully with my investigation, as did the Department of Environment, Land, Water and Planning. It was plain that the council had inherited the whole sorry mess from its predecessor and has devoted countless hours to meetings and discussions in attempts to resolve it. Proposals put forward over the years included various voluntary buy-back schemes, rate adjustments and hardship policies. But some of these proposals exacerbated people's grievances, with the council being accused in effect of bullying people into giving up their land and profiteering from the process.

The council's attempts have been made even more difficult by the fact that not only do different controls apply to different areas in which the blocks are located, but that zoning controls themselves have changed over the years. Almost all the landowners are non-resident, and many do not speak English as a first language. Nor have all the complainants been reasonable: some have bought land knowing it could not be developed, or made little effort to find information that was available to them.

In effect, there are now two categories of land. Some blocks, those in Coastal Dunes and Flood-prone areas, can never be developed. Other blocks, those in the 'urban settlement nodes', can be developed, but only if the original individual lots are combined with three others to form a single block.

We found that some of the complaints stem from misunderstanding or poor communication, not surprising given the apparent language difficulties of some of owners and the complexity of the problem. In fact, the council was not profiteering from its buy-back program. But it could have communicated better, and would be wise to limit its buy-back to land that cannot be developed at all. Where blocks can be combined, the council should actively work with owners to facilitate this.

The imposition of rates and other charges on effectively worthless land is another matter. While it is both lawful and understandable – and the level of rates reflects the low current value – it is ultimately unfair, and indeed pointless if the council continues its current policy of not recovering debts from this cohort.

So what is the fair outcome to a saga that has its roots in planning failures more than fifty years old? And that is fair not only to the owners of unusable land but to the other ratepayers of Wellington Shire Council and indeed the Victorian public?

In my view the Ninety Mile Beach subdivisions that cannot ever be developed should not be subject to rates and charges – but ultimately, should be returned to state ownership for the benefit of all.

So I have recommended that the council cease levying charges on the blocks that cannot be developed, and refund those who have paid since charges began in 2006, on request. But to bring this unsatisfactory state of affairs to an end I have also recommended that, when the current voluntary buy-back program ends in 2021, the government should facilitate compulsory acquisition of any remaining blocks so the whole area can be returned to public ownership.

I welcome the council's acceptance of my recommendations. While I recognise they may be cold comfort to some landowners, I hope they will ultimately be to their benefit, and indeed to the long-term benefit of all who love our golden beaches.

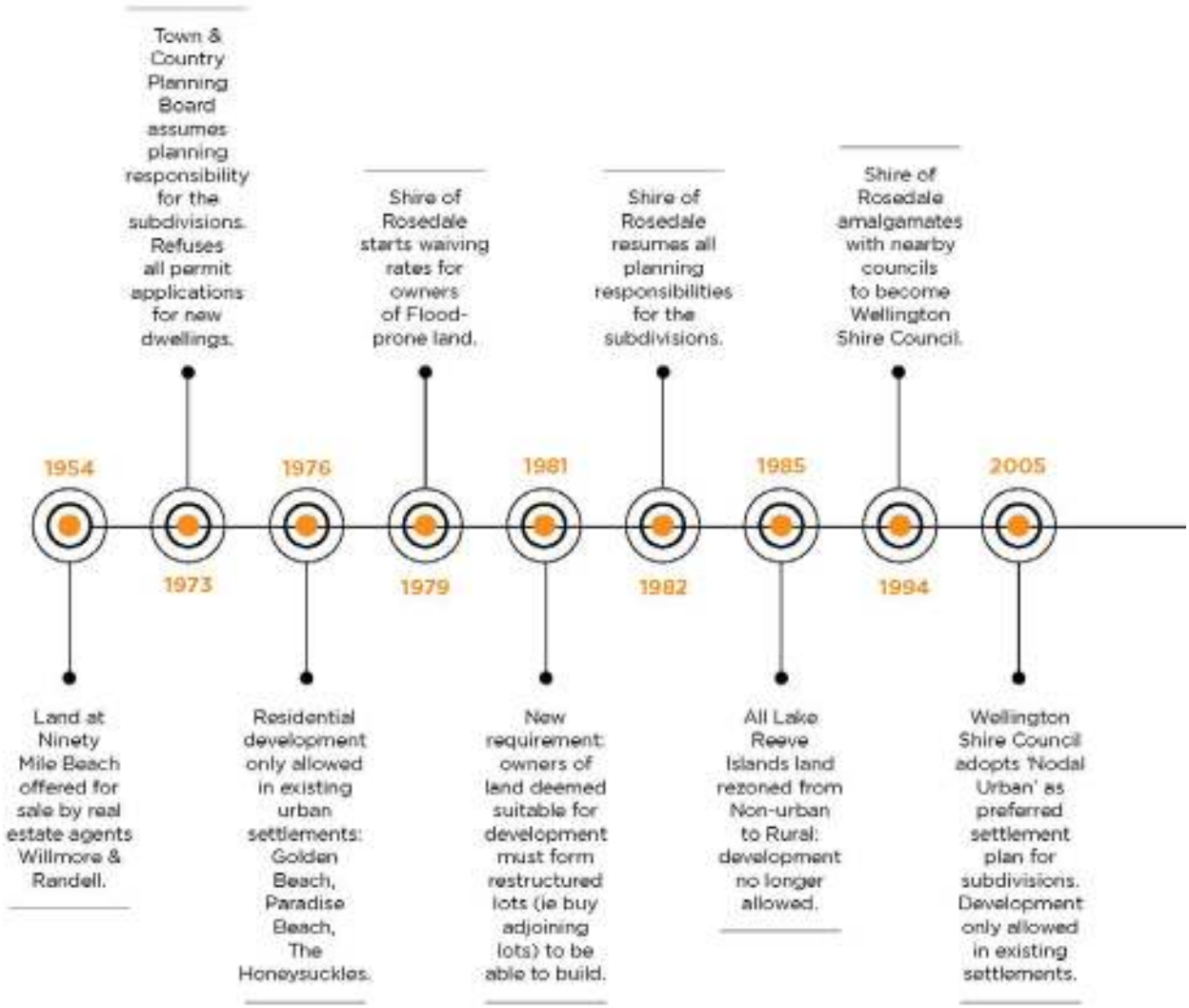
Deborah Glass
Ombudsman

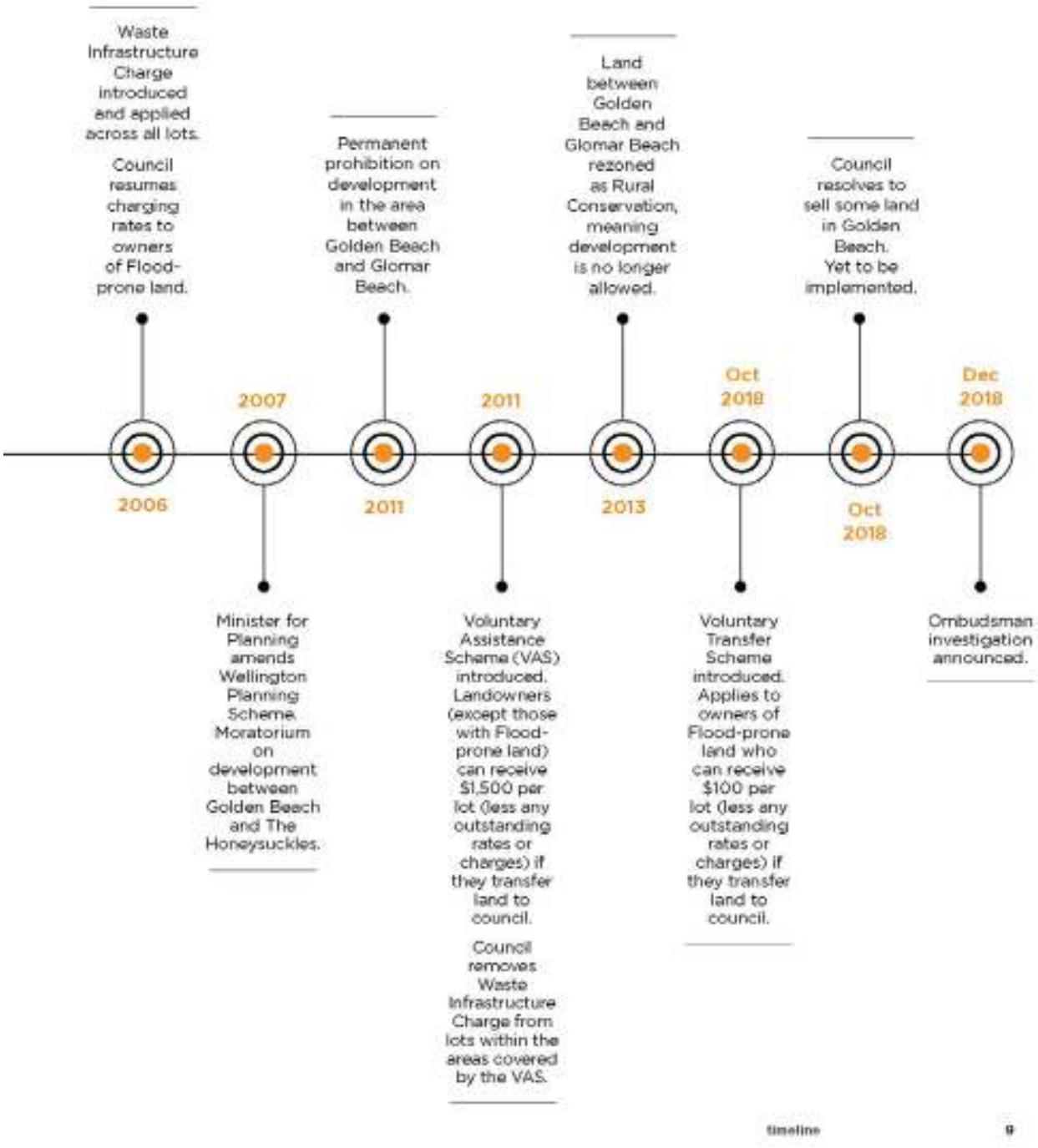
Glossary

Between Settlements	That area of the Ninety Mile Beach subdivisions between Paradise Beach/ Golden Beach and Glomar Beach.
Coastal Dunes	That area of the Ninety Mile Beach subdivisions between Glomar Beach and The Honeysuckles. Also referred to as Beach Dune land before preparation of the Wellington Coast Subdivision Strategy.
Fire Services Property Levy	Levy introduced under the *Fire Services Property Levy Act 2012* (Vic) and collected by the Wellington Shire Council on behalf of the State Revenue Office.
Flood-prone land	Land in the Ninety Mile Beach subdivisions that has been deemed to be liable to flooding. This includes the Lake Reeve islands and parts of Paradise Beach adjacent to Lake Reeve.
Lake Reeve islands	Two islands located in Lake Reeve which were wholly subdivided into small urban-sized lots and sold. Properties are considered to be Flood-prone and cannot be developed.
Ninety Mile Beach Plan	Term currently used by Wellington Shire Council to describe the overarching administration of matters affecting landowners in the Ninety Mile Beach subdivisions.
Ninety Mile Beach subdivisions	The land that is the subject of this investigation between The Honeysuckles and Paradise Beach/Golden Beach.
Shire of Rosedale	Council originally covering the Ninety Mile Beach subdivisions. Was subsumed in 1994 into the new Wellington Shire Council.
Town and Country Planning Board	Victorian state government authority responsible, in part, for the oversight of the development and implementation of planning schemes across Victoria. It operated between 1945 and 1981 at which time its responsibilities were transferred to the Minister and Department of Planning.
Urban Nodes	That area of the Ninety Mile Beach subdivisions within the urban boundaries of Paradise Beach/Golden Beach and The Honeysuckles.
Voluntary Assistance Scheme (VAS)	Scheme that commenced in June 2011 administered by Wellington Shire Council which allows landowners in the Between Settlements area and Coastal Dunes to transfer their land to the council in exchange for an assistance payment of $1,500, less outstanding fees and charges. Currently due to close in 2021.
Voluntary Transfer Scheme (VTA)	Scheme that commenced in October 2018 administered by Wellington Shire Council which allows the owners of Flood-prone land to transfer it to the council in exchange for a transfer payment of $100, less outstanding fees and charges. Currently due to close in 2021.

Waste Infrastructure Charge	Charge levied by Wellington Shire Council under the *Local Government Act 1989* (Vic) against rateable properties for the purpose of covering the costs associated with management of recycling and transfer stations.
WCS Strategy	Wellington Coast Subdivision Strategy is the major scheme which led to the Ninety Mile Beach Plan. It resulted in the current settlement pattern for the Ninety Mile Beach subdivisions.
Willmore & Randell	Melbourne-based real estate agents responsible for the original sale of subdivision land in conjunction with developers Western Builders. No longer in operation.

Timeline


1954
Land at Ninety Mile Beach offered for sale by real estate agents Willmore & Randell.
1973
Town & Country Planning Board assumes planning responsibility for the subdivisions. Refuses all permit applications for new dwellings.
1976
Residential development only allowed in existing urban settlements: Golden Beach, Paradise Beach, The Honeysuckles.
1979
Shire of Rosedale starts waiving rates for owners of Flood-prone land.
1981
New requirement: owners of land deemed suitable for development must form restructured lots (ie buy adjoining lots) to be able to build.
1982
Shire of Rosedale resumes all planning responsibilities for the subdivisions.
1985
All Lake Reeve Islands land rezoned from Non-urban to Rural: development no longer allowed.
1994
Shire of Rosedale amalgamates with nearby councils to become Wellington Shire Council.
2005
Wellington Shire Council adopts 'Nodal Urban' as preferred settlement plan for subdivisions. Development only allowed in existing settlements.


Waste Infrastructure Charge introduced and applied across all lots.
Council resumes charging rates to owners of Flood-prone land.
2006
2007
Minister for Planning amends Wellington Planning Scheme. Moratorium on development between Golden Beach and The Honeysuckles.
Permanent prohibition on development in the area between Golden Beach and Glomar Beech.
2011
2011
Voluntary Assistance Scheme (VAS) introduced. Landowners (except those with Flood-prone land) can receive $1,500 per lot (less any outstanding rates or charges) if they transfer land to council.
Council removes Waste Infrastructure Charge from lots within the areas covered by the VAS.
Land between Golden Beach and Glomar Beach rezoned as Rural Conservation, meaning development is no longer allowed.
2013
Oct 2018
Voluntary Transfer Scheme introduced. Applies to owners of Flood-prone land who can receive $100 per lot (less any outstanding rates or charges) if they transfer land to council.
Council resolves to sell some land in Golden Beach. Yet to be implemented.
Oct 2018
Dec 2018
Ombudsman investigation announced.
timeline
9

The investigation

Why we investigated

1. In April 2018, the Ombudsman began receiving complaints from landowners whose families bought land in the Ninety Mile Beach subdivisions, on the south eastern coast of Victoria, in the 1950s and 1960s

2. The developer who subdivided and sold the land promoted the area as 'a new Gold Coast'. But over time it became clear many of the lots were unsuitable for development. Most lacked basic infrastructure. Some were on sand dunes too unstable for building. Others were subject to regular flooding. State and local government authorities spent the following decades arranging multiple reviews, planning changes and assistance schemes as they tried to find a solution.

Figure 1: Area subject to this investigation

Source: Wellington Coast Subdivision Strategy (2007)

3. The landowners approaching the Ombudsman raised concerns about the area's current local council, Wellington Shire Council. They said the council:

   - required them to pay rates and charges on their land, even though it had no running water, electricity, gas or sewerage and was subject to building restrictions
   - was offering minimal compensation in exchange for their titles
   - acquired land from landowners at no or low cost under various assistance schemes and was now planning to sell it on the open market
   - did not provide adequate information about its management of the subdivisions.

4. The complaints coincided with a series of articles in *The Age* about the situation, prompting more landowners to contact the Ombudsman.

5. Landowners variously expressed the view that they were 'scammed' by the developer or the council's predecessor, the Shire of Rosedale, or both. They also described their disappointment at not being able to build on – or in many cases even access – their land, and their incredulity that they could not obtain adequate compensation from either the council or the state government for their economic loss and emotional distress.

6. After receipt of the first complaints, Ombudsman officers made enquiries with the council under section 13A of the *Ombudsman Act 1973* (Vic). Ombudsman officers also met with staff from the Department of Environment, Land, Water and Planning in October 2018 to discuss the history of the Ninety Mile Beach subdivisions. In November 2018, we also met with the Acting Chief Executive Officer of Wellington Shire Council to discuss the complaints.

7. The Ombudsman was concerned as to whether the council had treated landowners fairly and reasonably.

8. On 7 December 2018, the Ombudsman notified the Minister for Local Government, the Hon Adem Somyurek MLC, the council's Chief Executive Officer, David Morcom, and its Mayor, Alan Hall, of her intention to conduct an 'own motion' investigation into the council's management of the Ninety Mile Beach subdivisions.

9. After the Ombudsman announced the investigation publicly on 12 December 2018, more landowners came forward. In total, the Ombudsman received 67 complaints from landowners or their descendants.

10. Those landowners who provided information to the investigation were all dissatisfied with the manner in which the council was dealing with them and their land. All but one landowner reside outside the council area and therefore only deal with the council in respect of this matter. Of the 60 approaches to the Ombudsman by current landowners, 18 came from the original owners, 16 came from the children or other relative on behalf of the original owners, and the remaining 26 came from the children or other relative of the original owners who had inherited the land.

11. More information about the affected current and former landowners who provided information, and their properties, can be found at Appendix A.

Jurisdiction and methodology

12. The Ombudsman's jurisdiction to conduct an 'own motion' investigation derives from section 16A of the Ombudsman Act, which provides that the Ombudsman may conduct such an investigation into any administrative action taken by or in an 'authority'.

13. The meaning of 'authority' includes a body corporate that is established under an Act for a public purpose.[1] The council is a body corporate established under the *Local Government Act 1989* (Vic) for the benefit of its community and satisfies this definition. Staff of a council also satisfy the definition of 'authority' under the Act.[2]

14. A number of landowners expressed the view that the original subdivision of land in the 1950s should not have been permitted and that the Wellington Shire Council should, as the current responsible authority, be held accountable for the resulting disadvantage they suffered.

15. Some landowners questioned the appropriateness and lawfulness of the various changes made to the Rosedale and Wellington Planning Schemes that resulted in either permanent prohibition or significant restrictions on their ability to develop their lots.

16. In considering the terms of reference for the investigation, we examined relevant planning files where available and met with staff from the Department of Environment, Water, Land and Planning. While the history going back to the 1950s remains important context for the investigation, with the passage of time it is not practicable for the Ombudsman to investigate those earlier decisions. Nor would it be reasonable for the Wellington Shire Council to be considered responsible for the decisions associated with the original subdivision, including decisions made by the former Shire of Rosedale.

17. Information available to the investigation does not support the view that the prescribed processes for making changes to planning schemes, which are signed off by and become the decisions of the Minister for Planning, were not adhered to. These issues therefore do not form part of this investigation.

18. The terms of reference for the investigation focussed on the recent decisions and actions of Wellington Shire Council; specifically, to investigate the council's management of the Ninety Mile Beach subdivisions including:

    - the levying and collection of rates and other charges on properties within the Ninety Mile Beach subdivisions
    - administration of a council Voluntary Assistance Scheme for affected landowners
    - acquisition of land in accordance with the *Land Acquisition and Compensation Act 1986* (Vic) or otherwise under council plans
    - consideration of the sale of land deemed to be surplus
    - communication with affected landowners.

19. The investigation involved:

    - assessing the information provided by each landowner who raised concerns
    - reviewing relevant legislation, including:
        - *Fire Services Property Levy Act 2012* (Vic)
        - *Land Acquisition and Compensation Act 1986* (Vic)
        - *Local Government Act 1989* (Vic)
        - *Planning and Environment Act 1987* (Vic)

1 *Ombudsman Act 1973* (Vic) s 2. Refer to definitions of 'authority', 'public statutory body', 'specified entity' and Schedule 1 item 13.

2 Ibid Schedule 1 item 15.

- reviewing publicly available Wellington Shire Council documentation including:
  - minutes of council meetings
  - relevant policies
  - the Wellington Planning Scheme and documentation relevant to various scheme amendments
- making enquiries with the council and considering its responses dated 13 February and 15 March 2019
- providing the Ombudsman's draft report to the council for comment and considering its responses dated 8 and 19 July 2019
- providing the Ombudsman's draft report to the Department of Environment, Land, Water and Planning.

Procedural fairness and privacy

20. This report contains adverse comments about Wellington Shire Council. In accordance with section 25A of the Ombudsman Act, the Ombudsman gave the council a reasonable opportunity to respond to her draft report. This final report fairly sets out its responses.

21. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are identified because the Ombudsman is satisfied:
    - it is necessary or desirable to do so in the public interest; and
    - identifying those persons will not cause unreasonable damage to their reputation, safety or wellbeing.

22. Throughout this report, case studies detail the experiences of individuals who own, or previously owned, land in the Ninety Mile Beach subdivisions and who provided information to the investigation. For privacy reasons, the names used are not the real names of the individuals involved.

History of Ninety Mile Beach subdivisions

23. Landowners' concerns about the Ninety Mile Beach subdivisions date to the 1950s and have been fuelled by decades of reviews and studies, planning changes, council rates policies and government assistance schemes. It is not possible to understand the concerns raised with the Ombudsman without understanding this history. A comprehensive chronology of events can be found at Appendix B of this report. This chapter summarises the most significant events and how they impacted on landowners.

1950s and 1960s – a 'holiday wonderland' for sale

24. Melbourne-based real estate agents Willmore & Randell, acting for developer Western Builders, began offering blocks of land at Ninety Mile Beach in 1954. These blocks were the first of 23 subdivisions, spread over 25 kilometres of coastline, over the next 15 years.

25. The marketing brochures for the subdivisions (see excerpts on the following pages) promised buyers a 'holiday wonderland' of beaches and lakes, close to fishing spots and national parks. One brochure contained the headline, 'A new Gold Coast is Born'. Another said, 'Mile after mile of glittering golden sand lies waiting for the holiday-makers, the fisherman and the home builders'. The names of the estates also conjured images of idyllic coastal life – Honeysuckle Beach, Flamingo Beach, Golden Beach and Rainbow Beach.

26. Landowners told the investigation that Willmore & Randell heavily promoted the new estates to newly arrived migrants from Europe, and arranged for potential buyers to be driven down to Ninety Mile Beach to view land for sale. One landowner told the Ombudsman how her family came to buy land at Glomar Beach in 1967:

> My parents were told by family friends that land was being sold in Sale close to both the lakes and the Ninety Mile Beach and that it was a great investment ... So like many others on that weekend, my family drove down to the sale office where the agents from Willmore & Randell had set up so that all the Estates with the plan of the blocks were available to be seen and also they would take you personally to the vacant block that you were interested in so that you could see it at first hand before you purchased it. It was unbelievable, the amount of people that were there, they had been bussed down by the Estate Agent, it was almost like a fair atmosphere ... As it was a 4 hour drive there and 4 hours to drive back home everyone made it into a picnic, and like most others my family purchased a block of land for me as I was still a minor. It was to be my security.

Excerpts from Willmore & Randell advertising

WORLD'S UNIQUE NINETY MILE BEACH

This famous scenic wonder stretches farther than the eye can see along the coast of Victoria. Mile after mile of glittering golden sand lies waiting for the holiday-makers, the fishermen, and the home builders. No other State can boast of such a beach as this; it is unique both in its length and in its unspoiled beauty. The Willmore and Randell up-to-date, town-planned Golden Beach Estate is designed to retain this natural beauty, and, at the same time, to make it available to the public.

HOLIDAY WONDERLAND

Aside from its own splendid surf fishing, Golden Beach lies close to the wonderful sporting and holiday district of Gippsland and the Lakes Entrance. Duck-shooting, National Parks, lake and estuary fishing, beautifully-appointed motels, and five-day Lakes Cruises on the "Tambo Princess" all help to make this area a terrific attraction for tourists and holiday-makers.

In a district which overflows with visitors, what better investment than land at Golden Beach?

A NEW GOLD COAST IS BORN

Ten years ago, Queensland's Gold Coast was a straggling collection of good (and not so good) beach-land, which quickly soared to financial fame. Turn back to the Gold Coast map page, and see for your-self how high Gold Coast real estate prices are today.

Now, think of the price potential of the Willmore and Randell preplanned resort-development at Golden Beach Estate on the Ninety Mile Beach. Shopping centres, surf sheds, car-parks and many other amenities are all part of a well-designed estate. So is a protective building-covenant, which ensures that no sub-standard dwellings or shops may be erected. Golden Beach Estate has been planned as a resort-community, to include many facilities for the people who buy land there. And because the Estate has been carefully planned, from the beginning, the land will have a more secure price-potential.

Yes, a new Gold Coast is being born. Wise planning and steady development of these great beach estates gives everyone the chance of a lifetime, the chance to get in at the start, when prices are low.

BUY LAND AT GOLDEN BEACH NOW.

Source: Provided to the investigation by current landowner

Further example of Willmore & Randell advertising

Source: Panel Report into the Wellington Planning Scheme Amendment C71 (2012)

27. At the time, there were no planning controls in place for Ninety Mile Beach. Planning controls across Victoria were generally fragmented with planning schemes being developed either by the Town and Country Planning Board or by the local council with assistance and oversight by the Board. Initially, the local council was obliged to apply its seal to each subdivision if each one complied with the provisions of local government legislation.

28. At the time of the first land sales at Ninety Mile Beach, around half of the Melbourne Metropolitan municipalities had planning schemes in place and only 20 per cent of municipalities outside Melbourne had planning schemes under development. The planning scheme for the Shire of Rosedale was not drafted until July 1962.

29. By the start of the 1960s, the Board began to express concern about the extensive subdivision of land within council areas, which frequently occurred in areas with minimal or no planning controls. While the Board did not specifically reference the Ninety Mile Beach subdivisions, its comments reflect a concern for the practice, as indicated in its 1960 annual report:

> The Board is greatly concerned with the wide scale subdivision of land in various municipalities into building allotments which, in many cases, are in unsuitable locations and greatly in excess of probable requirements for housing.
>
> These ventures are generally sponsored by land speculators usually in areas where there are no planning controls and in some cases where the local authorities are not administering the planning powers obtained in a realistic and proper manner.
>
> ...
>
> The present unrealistic subdividing of land into building sites follows a similar pattern to the large scale land speculations which occurred 25 to 40 years ago, when large areas were subdivided and sold on terms as a result of extensive advertising and high pressure salesmanship to people who in many cases never viewed the sites.

30. In the mid-1960s, the Board began to look more closely at Ninety Mile Beach. It was involved in a parliamentary committee inquiry into the control, maintenance, promotion and development of the Gippsland Lakes area in 1966, and commenced a survey of the coastline including Ninety Mile Beach in 1967. The Board noted in its 1967 Annual Report that the coastal landforms would suffer significant detriment if uncontrolled development was permitted:

> The inherent natural beauty of the [Gippsland] Lakes emphasizes their outstanding potential for development as a tourist attraction and consequently their vulnerability to over-exploitation. ... the instability of the coastal landforms in the area such as the beaches, swamps, shores of lagoons and estuaries already apparent in several places could be greatly aggravated by further uncontrolled development.

31. However, in the absence of planning controls, the Shire of Rosedale continued to seal the developer's subdivision plans.

32. By 1969, Willmore & Randell had sold a total of 11,800 small urban-sized lots across the subdivisions. These lots covered all freehold land in the area bordered by Paradise Beach in the north and The Honeysuckles in the south, and between the sand dune crest of Ninety Mile Beach and the southern shore of Lake Reeve.

33. Some current and former landowners who approached the investigation provided information regarding the purchase price of their land. One landowner indicated her parents paid £148 in 1961, while another stated her parents paid $648 for their allotment in 1968. Using the Reserve Bank of Australia's inflation calculator this would roughly equate to $4,285 and $8,023 in 2018, but does not take into account the changing value of real estate.

1970s – emerging environmental and planning concerns

34. By the early 1970s, the Board became more involved in studies considering the potential impact of development on the physical environment.

35. A Board-initiated coastal survey of the Gippsland Lakes area, including Ninety Mile Beach, was undertaken between 1972 and 1976. This survey sought to measure the available physical and social resources and formulate appropriate policy for future development.

36. In 1973, the Board issued an interim development order under the *Town and Country Planning Act 1961* (Vic), allowing it to take over responsibility for development controls and permits from the shire. It began exploring ways to manage development in the area, releasing guidelines on appropriate development in 1973 and a report containing options for the future use of the area in 1975.

37. Under the interim development order, all new uses, works and development across the Gippsland Lakes area after September 1973 were subject to a permit from the Board, this specifically included new houses or alterations to existing buildings. The Board refused to issue new permits for new houses in the Ninety Mile Beach subdivisions, but did not oppose extensions to existing dwellings.

38. After lengthy consideration, and in consultation with the Shire of Rosedale, the Board introduced the first restrictions on building in parts of the Ninety Mile Beach subdivisions in September 1976, prior to the approval of a new Rosedale Planning Scheme. Controlled residential development was permitted in existing urban settlements at Golden Beach, Paradise Beach and The Honeysuckles. It restricted development of land outside of these areas pending further review. In its press statement at the time, the Board explained:

> Owners of these lots would generally be issued with a permit by the Board for the erection of houses on the basis of one house per allotment. However, to prevent deterioration of the environment, conditions could be attached to the permits for such aspects as the prevention of pollution, protection of vegetation and stability of the soil.

39. A review began the following year, with the Board, the Shire of Rosedale, the Ministry for Planning and the Environment Protection Authority forming a steering committee to consider future planning options for the subdivisions. In 1978, they devised a restructure plan which allowed low density development in some areas subject to strict conditions on the disposal of domestic waste.

40. The Board and Shire of Rosedale subsequently advised landowners of a new classification of land as part of the restructure plan:

- Development land – these areas were classified as suitable for low density housing.
- Beach Dune land (later named Coastal Dunes) – these areas were classified as unsuitable for development because of unstable soil.
- Land affected by flooding – these areas were also classified as unsuitable for development because of the risk of flooding by Lake Reeve.

41. The Shire of Rosedale and the state government began offering financial relief for some of the landowners affected by the new restrictions, but this varied depending on the area. Landowners with Beach Dune land were invited to participate in a state government scheme, under which landowners could opt to sell their lots to the Crown for $700. Landowners in Flood-prone areas had no such scheme, but the council decided to waive council rates from 1978.

42. In 1978, the Shire of Rosedale resumed responsibility for some planning controls from the Board; this included in those areas where residential development had previously been permitted.

1980s – new planning changes

43. The 1980s brought further changes in planning responsibilities and rules for the Ninety Mile Beach subdivisions.

44. The Shire of Rosedale took back all planning controls from the Board in 1982, under the Rosedale Planning Scheme.

45. Outside urban areas, planning rules continued to restrict landowners' ability to build on their land.

46. Landowners with developable land had their land classified as suitable for low density housing in 1978. Changes to the Rosedale Planning Scheme in December 1981 clarified what this meant for landowners. The changes required landowners to acquire three or four lots, and consolidate them into one larger lot, before they could build on the land.

47. This consolidation process meant landowners with single lots had to convince their neighbours to sell them adjoining lots before they could build. Some landowners told the Ombudsman this proved impossible in practice.

One said:

> Having been given the name and address of one other adjacent block owner, we attempted to negotiate, but found that the man was old and ailing and did not speak English. His children told us that their father did not wish to sell. The situation became too hard and we gave up the idea of consolidating our block.

48. Another wrote:

> When the Council imposed a requirement to purchase neighbouring properties in order to build, my parents were provided with the owner details of neighbouring properties and reached out to the adjoining land owners. Like my parents, adjoining land owners were either not in a position to acquire neighbouring blocks or not inclined to sell as they too had invested so much both emotionally and financially and hoped that the rules would change once again to allow building on a single block.

49. Meanwhile, landowners in Beach Dune and Flood-prone areas were still prevented from building on their land. In 1984, the Minister for Planning and Environment declared the Lake Reeve islands to be an 'inappropriate subdivision'. This declaration was made in recognition that the islands were wholly unsuitable for development.

50. This was followed by a planning scheme amendment in 1985 that rezoned all land comprising the Lake Reeve islands from Non Urban Zone to Rural Zone thereby prohibiting development.

51. State and local authorities continued to offer limited assistance to these landowners. The state government's $700 buyback scheme for land in Beach Dune areas continued throughout the 1980s, as did the Shire's rates moratorium for Flood-prone areas.

1990s – council acquisitions begin

52. As landowners' difficulties stretched into the 1990s, the council implemented a series of processes under which it started acquiring lots from landowners.

53. In 1990, the Shire of Rosedale began a limited approach to acquiring land to achieve restructured lots. This was later expanded to a more comprehensive approach focussing on restructure stages. This involved the council in some instances acting as an intermediary between landowners, and otherwise negotiating with landowners to purchase and then on-sell allotments of developable land to create restructured lots.

54. On 2 December 1994, the Shire of Rosedale merged with the neighbouring local government authorities to form the new Wellington Shire Council.

55. Just over two years later, in January 1997, council minutes show the Wellington Shire Council decided to continue an established Shire of Rosedale policy of accepting title to land in lieu of unpaid rates. The council wrote to landowners advising them of this policy in September 1997 and again in September 1999.

56. One person who approached the Ombudsman said his father took advantage of the policy:

> Dad, in his later years, became very disillusioned with the process of paying rates for no service and inability to sell and/or build on the land. Financially he was somewhat strapped for funds and I paid the land rates on the property for many years on his behalf prior to him deciding to cut his losses and hand back the land to Council sometime around 1999.

57. The council also decided in 1997 to compulsorily acquire land under the *Land Acquisition and Compensation Act 1986* (Vic) in certain circumstances, to facilitate the consolidation of single lots into restructured lots.

58. In 1999, the council decided to develop a new planning framework for the area, and sought state government support to find an improved solution.

2000s – reviews, strategies and rates changes

59. The council's desire to find a lasting solution for the subdivisions led to a series of local and state government-commissioned studies and strategies:

    - a 2000 report *Scoping Study of Inappropriate Subdivisions Along the Gippsland Coast* that recommended further studies be undertaken
    - a draft *Wellington Coast Subdivision Strategy* (WCS Strategy) in late 2003, offering five options for the future development of the Ninety Mile Beach subdivisions.

60. In 2003, the council decided to cease any further compulsory acquisition of land while the WCS Strategy was being developed.

61. After six months of community consultation, in September 2005 the council resolved to adopt Option 4 – Nodal Urban from the WCS Strategy as its preferred settlement structure for the subdivisions. This option involved focussing development in existing coastal settlements (nodes) and returning the areas in between to either public land or management as large rural conservation lots. Figure 2 on the following page shows an explanatory map of this option. In December 2006, the state government established a joint state government and council project to develop a plan to implement the WCS Strategy.

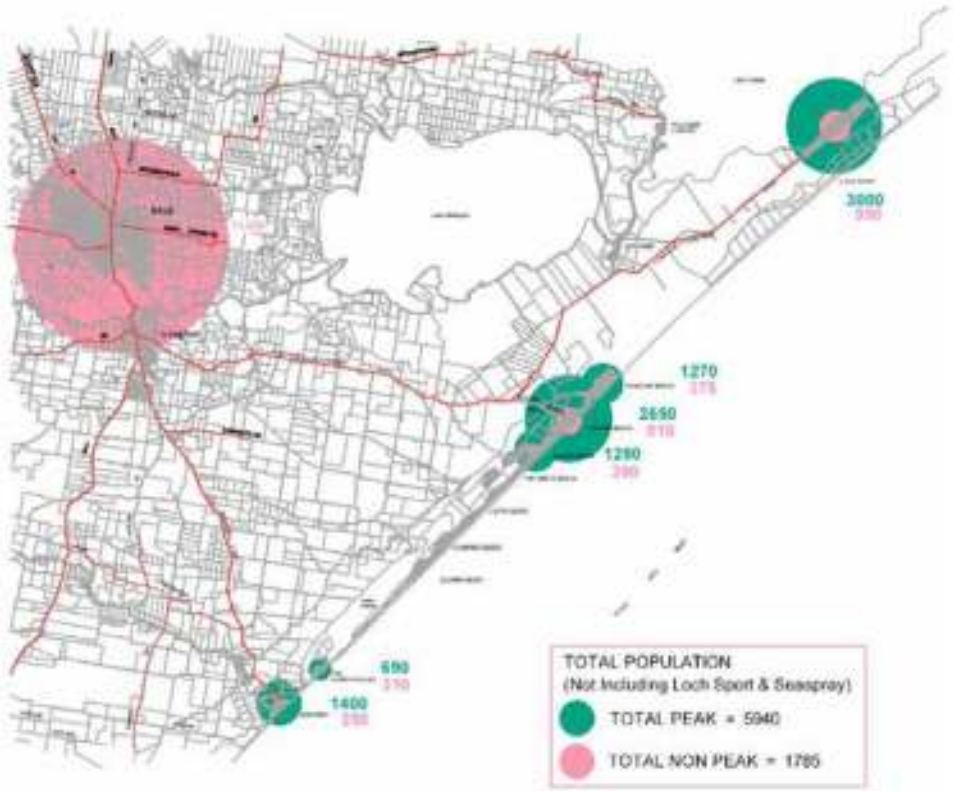
62. In December 2007, the Minister for Planning amended the Wellington Planning Scheme at the council's request, imposing a moratorium on development in the areas of the Ninety Mile Beach subdivisions between the established settlements of Paradise Beach/Golden Beach and The Honeysuckles until 1 July 2009. This temporary prohibition was intended to prevent inappropriate development until permanent planning controls could be determined and put in place.

63. In support of a business case for the implementation of the WCS Strategy, new investigations were conducted including mapping, land capability studies, analysis of the impact of predicted climate change, infrastructure requirements and stakeholder and community consultation.

64. In April 2009, the council endorsed a WCS Strategy implementation package to be delivered over six years. It included:

    - extending the prohibition on development in the area between Golden Beach and The Honeysuckles until 30 June 2015
    - rezoning land between Golden Beach and Glomar Beach (later known as the Between Settlements area) as Rural Conservation
    - applying controls on the development of land identified as being at particular environmental risk
    - creating a voluntary assistance package for landowners in the Between Settlements area and Glomar Beach, under which the council would buy undeveloped land
    - continuing planning controls in Golden Beach and Paradise Beach
    - considering urban development options for Golden Beach and Paradise Beach.

Figure 2: Wellington Coast Subdivision Strategy – Settlement Option 4



OPTION 4: URBAN NODES

Source: Wellington Coast Subdivision Strategy (2007)

65. In March 2008, a group of landowners formed the Ninety Mile Beach Property Rights Action Group which advocated to the council, state government and the state opposition. The group's objectives were to:

- have the moratoriums on development lifted
- have the proposals to rezone land withdrawn
- insist that if the council pursued the rezoning of land, that fair compensation be paid to affected landowners.

66. In August 2007, six landowners took action in the Victorian Civil and Administrative Tribunal (VCAT) against the council's refusal to issue planning permits upon application, in part because the applications were contrary to the Wellington Planning Scheme. The Deputy President determined that there was no reason why, as a matter of principle, planning permits may not be granted.[3] She ordered that VCAT be reconstituted at a later date to determine each of the permit applications.

3 *Rafferty v Wellington SC (Red Dot)* [2007] VCAT 1985.

67. Five of the landowners returned to VCAT in March 2008 to have their permit applications determined. However, as the Minister for Planning had amended the Wellington Planning Scheme since VCAT's first decision, VCAT affirmed the council's decision to not issue planning permits.[4]

68. In 2009, the Minister made a further amendment to the Wellington Planning Scheme which extended the moratorium for a further two years, until 30 June 2011.

69. The council also started reviewing rates and charges for all landowners. These reviews led to four main changes to council rates and charges:

- a new Waste Infrastructure Charge of $25 for all rateable properties from 2005-06 to cover the costs associated with establishing and operating recycling and transfer stations, rehabilitating landfills and monitoring existing and closed landfills
- an across-the-board increase in council rates of around 10 per cent to offset the abolition of a municipal charge
- reinstatement of rates for landowners in Flood-prone areas, resulting in rates notices being sent to 2,500 landowners for the first time since 1978, on the basis of legal advice that rates notices must be issued on these properties
- new policies for charging penalty interest and collecting debts for unpaid rates from landowners in the Ninety Mile Beach subdivisions, which took effect in March 2007.

70. Council policy still allowed landowners to surrender land in lieu of paying outstanding debts.

71. The Ombudsman heard the council's previous debt collection and penalty interest approach reportedly scared at least some owners into giving up their land. The daughter of former landowners told the Ombudsman:

> In April 2004 a notice (before summons) from Forbes Dowling lawyers was sent to my parents, who had stopped paying their rates a short time earlier, to recover the amount outstanding ... The 'notice' demanded that the money be paid in three days or legal action would commence. So threaten[ed] and scared by the legal document [were my parents] that [they] ordered me to send the Title and the monies to Council to put an end to the whole sordid mess.

2010s – permanent planning restrictions and council land acquisitions

72. As a new decade began, the council began to implement its WCS Strategy and plans. In 2011, it appointed a full-time project coordinator to administer the 'Ninety Mile Beach Plan', which included the outcomes of the WCS Strategy, and began pursuing a number of changes.

Planning changes and permanent bans on development

73. The council implemented several changes to planning rules for the subdivisions:

- In June 2011, two amendments to the Wellington Planning Scheme (Amendment C50 Part 1 and Amendment C66) extended prohibition on development in the Between Settlements areas, and implemented coastal settlement boundaries around the existing settlement areas of Paradise Beach/ Golden Beach and The Honeysuckles.

4 *Theologou v Wellington SC* [2008] VCAT 438.

- In May 2013, following normal statutory exhibition and independent panel processes, another amendment to the Wellington Planning Scheme (Amendment C71) rezoned the land between Golden Beach and Glomar Beach as Rural Conservation, effectively imposing a permanent ban on future development in the areas, except on consolidated restructured lots in Glomar Beach.
- In January 2014, a further planning scheme amendment (Amendment C33) applied updated and new flood overlays for Flood-prone areas.

74. After the 2011 amendments to the Wellington Planning Scheme, properties in the Ninety Mile Beach subdivisions were commonly described as being in the following zones:
    - Urban Nodes of Paradise Beach/ Golden Beach and The Honeysuckles
    - Between Settlements, meaning that area between Paradise Beach/Golden Beach and Glomar Beach
    - Coastal Dunes
    - Flood-prone, including the entirety of land on the Lake Reeve islands.

75. These amendments replicated the proposed settlement structure outlined in the WCS Strategy and shown in Figure 3 on the following page.

Rates, charges and levies

76. The council also reviewed and changed its rating policies for land in the subdivisions. In March 2011, it held an internal workshop to consider options for rates and other charges.

77. The council continued to charge rates on all land in the subdivisions with all affected land attracting the 'general rate'.

78. In June 2011, the council decided to stop levying its Waste Infrastructure Charge on vacant properties in the Between Settlements area. This meant the charge was only levied on vacant land in the Urban Nodes, Coastal Dunes and Lake Reeve islands and all land with existing dwellings. The cost of the charge rose from $32 in 2010-11 to $55 in 2018-19.

79. In July 2013, landowners became liable to pay the state government's Fire Services Property Levy. The levy was introduced under the *Fire Services Property Levy Act 2012* (Vic) after the Victorian Bushfires Royal Commission recommended that the existing levy attached to insurance premiums be replaced with a property-based levy. The council began collecting that levy on behalf of the State Revenue Office.

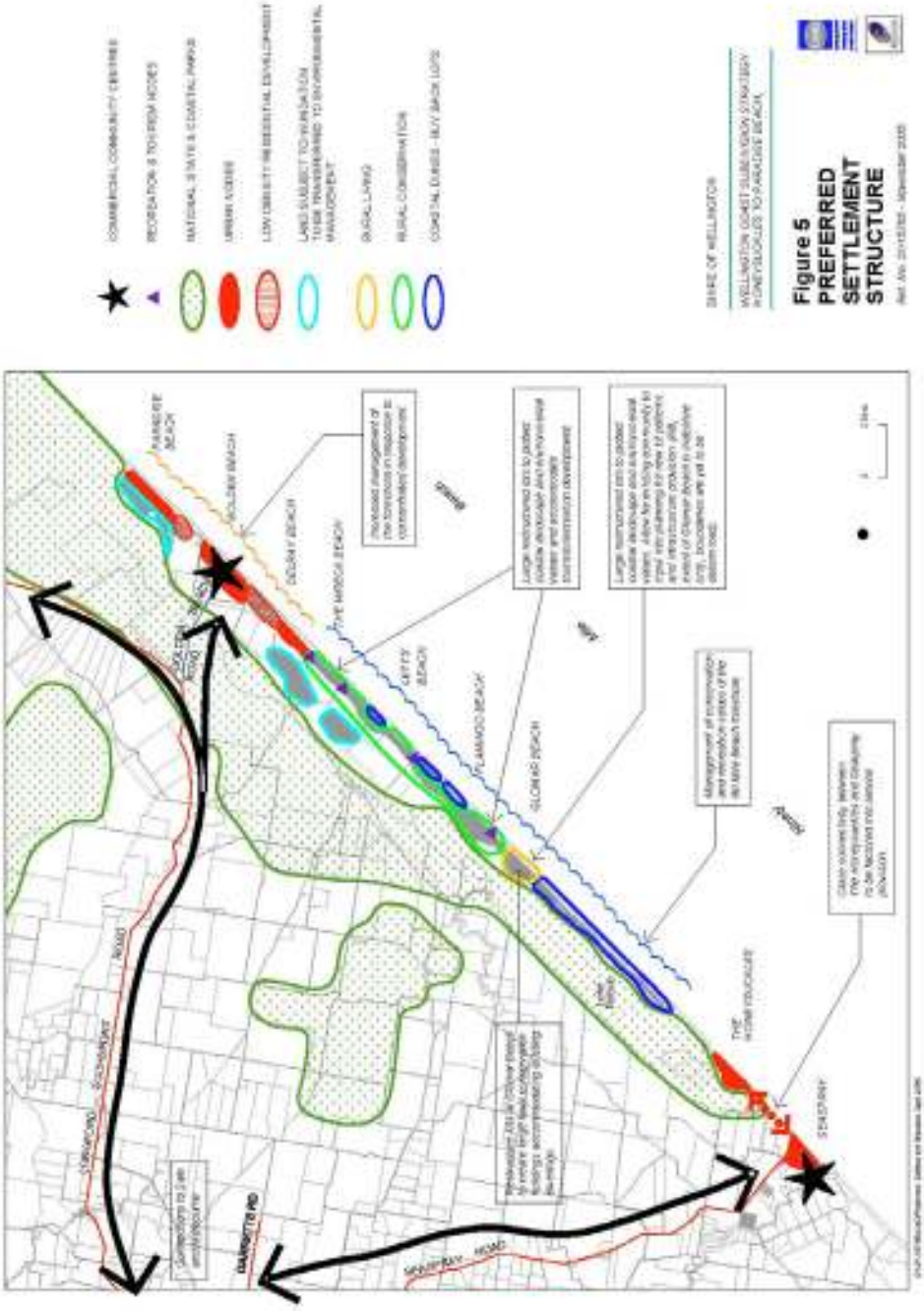
Voluntary and compulsory land acquisitions

80. The council also began implementing a Voluntary Assistance Scheme for landowners in the Between Settlements areas. The council opened the scheme on 23 June 2011 after securing $6 million in state government funding.

81. The scheme was originally scheduled to end on 30 December 2015, but in July 2014, the council secured the state government's agreement to extend the scheme to 30 June 2021. In 2017, the scheme was extended to include land in the Coastal Dunes.

82. Based on advice from the Valuer-General Victoria, the council offered landowners $1,500 per single lot in both the Between Settlements areas and in the Coastal Dunes.

Figure 3: Wellington Coast Subdivision Strategy, Preferred Settlement Structure



Source: Wellington Coast Subdivision Strategy (2007)

83. The council states that it was unable to locate all landowners eligible under the scheme, despite extensive enquiries. A small number of landowners expressed interest but were unable to provide appropriate proof of ownership. In September 2016, the Governor-in-Council made a new declaration under the Land Acquisition and Compensation Act allowing the council to begin compulsorily acquisition of land in the Between Settlements and some Flood-prone areas. The council initiated the process at the start of 2017, using valuations provided by the Valuer-General.

84. In late 2018 the council began a further Voluntary Transfer Scheme for land in Flood-prone areas. Based on advice from the Valuer-General, the council offered landowners $100 per single lot.

Council land sales

85. These acquisition schemes made the council a significant landowner at Ninety Mile Beach.

86. Council documents show it started to consider selling some of the land acquired as early as October 2015, when it conducted internal workshops. In mid-2017, it obtained valuations of four restructured blocks it had acquired in the Golden Beach urban area. The council resolved to commence the process to sell the four lots in July 2018 and opened its plans to public submissions. In October 2018, the council decided to proceed to sale, but the sale process is on hold, pending the finalisation of this investigation.

Landowner activity

87. The Ninety Mile Beach Property Rights Action Group continued lobbying with the government; and after amendments were made to the Wellington Planning Scheme, commenced legal action for damages in 2012. This action was abandoned in 2014.

2019 – current land ownership

88. Wellington Shire Council provided information to the investigation about the current status of land ownership in the Ninety Mile Beach subdivisions. That information, as at 31 May 2019, is shown in Table 1 on the following page.

89. At present, the council owns just over a third of all land in the Ninety Mile Beach subdivisions, with more than half remaining in private ownership. The breakdown of ownership across the four areas of the subdivisions is reflective of the long term vision for the area as outlined in the Wellington Coast Subdivision Strategy. That is, private development is to be contained within the Urban Nodes, with the remainder of land being transferred to the council with a view to it remaining in public ownership. According to the Department of Environment, Land, Water and Planning, final arrangements for ongoing management of the land are to be determined.

90. The Voluntary Assistance Scheme introduced in 2011 has resulted in the council becoming the owner of 80 percent of land in the Between Settlements area and 36 per cent in the Coastal Dunes; across these two areas less than 20 per cent of the allotments are privately owned.

91. The ownership of land deemed Flood-prone remains predominately private; this reflects the limited effect that the recently introduced Voluntary Transfer Scheme has had thus far.

Table 1: Ownership of land in the Ninety Mile Beach subdivisions as at 31 May 2019

Category	Stat Govt	Council		Private		Other		Total
		Restructured	Single	Restructured	Single	Restructured	Single	
Urban Nodes	0	141		2,594		1		2,736
Vacant	0	18	123	149	1,559	0	1	
Dwellings	0	0	0	116	770	0	0	
Between Settlements	0	64	2,849	57	665	0	49	3,684
Coastal Dunes	192	0	152	0	81	0	0	425
Flood-prone	2	0	409	0	2,554	0	0	2,965
Total	**194**	**82**	**3,533**	**322**	**5,629**	**0**	**50**	**9,810**

Source: Wellington Shire Council

Photo 1: A dry Lake Reeve as viewed from the Coastal Dunes just outside The Honeysuckles, November 2018

Photo 2: Golden Beach, November 2018

Photo 3: Surf Edge Drive – the main commercial road in Golden Beach, November 2018

Rates and other charges

92. A number of landowners who approached the investigation complained about the council's levying of rates on properties that could not be developed, either because development was permanently prohibited, or because the Wellington Planning Scheme required several lots be consolidated into a restructured lot before a building permit application could be considered.

93. They also raised concerns about the council's application of the Waste Infrastructure Charge on some properties within the Ninety Mile Beach subdivisions, and its collection of the Fire Services Property Levy.

Rates

94. Wellington Shire Council is empowered under section 155 of the *Local Government Act 1989* (Vic) to declare rates and charges on rateable land and can determine the system of valuing land for the purpose of determining rates.

95. Since the 1992-93 financial year, the council has used the Capital Improved Value methodology which allows it to employ a differential rating system. The council currently applies two differential rates:

    - General rates – applicable to residential, vacant land, inappropriate subdivisions and commercial/industrial
    - Farm rates.

96. All land in the Ninety Mile Beach subdivisions is rateable land and attracts the general rate. In around 1978 the then Shire of Rosedale determined to waive rates on flood-prone land until such time as a decision was made regarding the future of that land.

97. As a result of a rate review conducted in 2006 which suggested that the council had wrongly classified land subject to flooding as non-rateable, 2,500 new rates assessments were created. A number of approaches to the investigation were from owners of land affected by this decision. One landowner provided a copy of a letter he sent to the council in September 2007 after receiving his rates notice:

> I ... reject to pay rates for a block of land underwater or subject to flooding and therefore unbuildable according to your shire. ... Last year when I received bill for charges I rang the shire and was told to disregard the charges and not pay, because land is not accessible. I am sending copies of letters sent by you stating this. Now unless land became able to build or sell please do not send any rates notices.

98. Of the landowners approaching the investigation who were impacted by this decision, more than a third have a current rates debt resulting from their decision to not pay rates issued after 2006.

99. In its Rating Strategy 2015-18, the council considered the special circumstances of the inappropriate subdivisions within the shire. The council described that land as being 'generally vacant, low valued land that has little use to the owners because the land is restricted to no development in its current form.' The council's view is that the low valuation of affected land reflects 'the service benefits received by these properties' and results in low rates being payable.

Table 2: Indicative Rates Assessments for Single Lots			
Location of land	Capital Improved Value	Rate in the dollar	Annual Rates Payable
Urban Nodes	$20,000	0.005297	$105.94
Between Settlements	$500	0.005297	$2.65
Coastal Dunes	$1000	0.005297	$5.30
Flood-prone	$100	0.005297	$0.53
	$200	0.005297	$1.06

Source: Victorian Ombudsman

100. The Rating Strategy also suggests that the council considered the situation of the affected land when recommending that the general rate be applied to those properties, as essentially, the rates levied were minimal. An indication of rates currently payable against single lots in the Ninety Mile Beach subdivisions is shown in Table 2 above.

101. The current valuation of affected land reflects the limited utility of that land and consequently the rates levied. However, a question arises in the council's reasons for applying the general rate to all land in the Ninety Mile Beach subdivisions. The council indicates that the affected land is 'restricted to no development in its current form'. The reality is that a significant number of allotments against which rates are being levied are restricted to no development in *any* form.

102. Generally, single lots in the Urban Nodes of Paradise Beach, Golden Beach and The Honeysuckles, currently zoned as Low Density Residential, cannot be developed unless three or four single lots are consolidated to form a restructured lot. It is therefore correct that such land cannot be developed in its current form. Depending on the overlay controls in place in the Urban Nodes, in some circumstances single lots can be developed.

103. However, the amendment of the Wellington Planning Scheme to permanently prohibit future development of land that is currently zoned Rural Conservation in the remaining areas means there are no circumstances in which this land can be developed. As noted earlier, the exception to this is the completed restructured lots in Glomar Beach.

104. Council local laws permit camping on vacant private land for a total of 28 days in a calendar year. This represents the maximum benefit that can be derived from ownership of land zoned as Rural Conservation. This benefit is further limited by restrictions on vegetation clearing, lack of road access, and inability to identify individual lots.

Alan's story

Alan purchased a block of land in Golden Beach in the 1960s from Willmore & Randell. Alan paid rates on his property in Shoreline Drive until he was advised the council was no longer accepting payments, only to be told later that rates were again due and payable. Alan states he is still unsure why he cannot build on his land or sell it for market value.

Miriam's story

Miriam purchased a block of land in Golden Beach from Willmore & Randell in 1968 for $648. She estimates that since that time she has paid around $800 in council rates and $1,100 in municipal charges. Her rates are currently up to date.

In around 2006, the address of Miriam's property in Santa Rosa Avenue was changed from Golden Beach to Flamingo Beach. It is currently zoned Rural Conservation, is located in the Between Settlements area and is valued at $500.

Miriam has been prevented from building on her single lot since the 1970s when it became necessary for her to form a restructured lot by purchasing properties on either side of her own. Various moratoriums on development followed and permanent prohibition resulted from amendment to the Wellington Planning Scheme in 2011.

Waste Infrastructure Charge

105. The Waste Infrastructure Charge (WIC) introduced in the 2005-06 financial year, and the pre-existing user-pays garbage collection charge, are levied in accordance with section 162(1)(b) of the Local Government Act which allows council to declare a service charge for 'the collection and disposal of refuse'.

106. The WIC was initially levied against all rateable properties in the shire but ceased being applied to undeveloped properties in the Between Settlements area after a decision by the council in 2011-12.

107. A number of approaches to the investigation were from owners of land on the Lake Reeve islands against which the WIC is currently levied. The landowners expressed the view that it was unfair for the charge to be levied on land that could not be developed.

108. The council told the investigation its decision to suspend levying the WIC on properties in the Between Settlements area was made on the basis that development of this land was permanently prohibited in 2011 at the time a Voluntary Assistance Scheme was introduced, and landowners should be provided with an opportunity to participate in this scheme.

109. Meanwhile, the council said owners of land deemed Flood-prone and in the Coastal Dunes have been aware since 1979 that development of the land was not permitted, and therefore the council believed they have had ample opportunity to divest themselves of the land and associated costs.

Emmanuel and Francesca's story

Emmanuel's mother, Francesca, currently owns a double-sized block of land in Golden Beach that she originally purchased with her now deceased husband for £365. The property in Colorado Drive is currently zoned as Rural Conservation, is located on one of the Lake Reeve islands and is deemed to be Flood-prone.

Emmanuel said there was a period of time during which the council did not issue rates notices before they were reinstated. He acknowledges that the rates payable are minimal, but Francesca is liable for other charges. Emmanuel is unhappy that rates and other charges are levied against a property that receives no council services and cannot be built on.

Between 2006 and 2019, $470 in WIC was levied against Francesca's property. For the 2018-19 financial year, the property was valued at $200 and was liable for the WIC of $55.

110. The council also stated that, subject to a future council decision, the WIC will again be levied against properties in the Between Settlements area once the Voluntary Assistance Scheme closes in 2021.

111. While the council can waive the whole or part of any charge in circumstances of financial hardship, there is no information to indicate the waiver decision was made on this basis. Rather, the temporary cessation of applying the WIC to certain properties in the Between Settlements was as a result of the recent changes to the planning controls to prohibit development.

112. At the time the WIC was introduced, development of land was only possible on restructured lots in the Ninety Mile Beach subdivisions and was not permitted at all on land in the Coastal Dunes or land deemed Flood-prone. Notwithstanding these limits, the WIC was applied to all properties until permanent prohibition on future development was applied to properties in the Between Settlements area through amendment to the Wellington Planning Scheme in 2011.

113. For the 2018-19 year, the charge has been set at $55 – this represents an increase of 120 per cent over 13 years. With the value of Flood-prone land being between $100 and $200, the charge represents a significant financial liability against land that is permanently prohibited from being developed.

114. Further, the WIC continues to be levied on single lots within the Urban Nodes which have been subject to development prohibition in their current form since 1981.

Nick's story

Nick owns a single lot in the Urban Node of Golden Beach that he inherited after the death of his father and two uncles who originally purchased the property from Willmore & Randell in the 1960s. As the land is a single lot, Nick cannot build on the property and must purchase adjoining properties to form a consolidated lot; one of these lots is owned by the council.

The Fire Services Property Levy of around $110 per annum is currently applied to Nick's property on Sea Glint Avenue which is valued at $20,000.

Fire Services Property Levy

115. The *Fire Services Property Levy Act 2012* (Vic) provides that the council, as a collection agency, can collect a levy on all land other than land that is exempt under the Act. The levy is set and controlled by the State Revenue Office.

116. Land can be exempt for a number of reasons including where it is publicly owned or where it has been allocated an exempt land use classification. Land use classifications are based on specific Australian Valuation Property Classification Codes (AVPCC) under the *Valuation of Land Act 1960* (Vic).

117. The council informed the investigation that prior to the legislation being passed, it made submissions regarding the financial impact the levy would have on owners of low value land in the Ninety Mile Beach subdivisions. The council subsequently approached the Valuer-General's office which resulted in the creation of a new AVPCC code for inappropriate subdivisions. The council is applying that code to properties in the subdivisions zoned as Rural Conservation.

118. As a result, only those properties that have development potential, that is, those in the Urban Nodes of Paradise Beach, Golden Beach and The Honeysuckles, and those outside these areas with existing dwellings, are required to pay the levy.

Debt collection and interest charging

119. The council's *Debt Collection and Interest Charging – Rates, Charges and Fire Services Property Levy* policy includes references to the Local Government Act in respect of the council's responsibilities around issuing rates notices and its power to:

- levy interest against unpaid rates and other charges
- vary payment arrangements or waive penalty interest charges upon application
- take legal action to recover unpaid rates or other charges
- sell land for unpaid rates or other charges.

120. In the 2006-07 financial year, the council introduced a policy framework for dealing with the collection of rates in the Ninety Mile Beach subdivisions. That framework shows that rates are levied on all affected land, but penalty interest is payable and debt collection action taken on only that land within the Urban Nodes, restructured lots within the Glomar Beach area, and any lot with an existing dwelling. The framework is at Figure 4 on the following page.

121. Council minutes indicate that the framework was implemented as a result of community consultation during the development of the Wellington Coast Subdivision Strategy. Feedback revealed significant ratepayer dissatisfaction with the fact that rates were being levied against properties that could not be developed.

122. Several current and former landowners contacted the investigation about debt collection. In one instance, a landowner provided a copy of a letter of demand dated 7 May 2018 in respect of unpaid rates and other charges (Figure 5 on the following page). The council's recovery action in this instance was in accordance with its debt collection policy as the subject land is within the Golden Beach Urban Node. However, the council informed the investigation that this debt recovery action was 'on hold pending sale of properties jointly'.

123. Several landowners indicated they were told about the council's policy regarding debt collection and penalty interest after making enquiries with the council, either in writing or over the telephone.

124. Notwithstanding information from the council that it notified all landowners of the change to policy, some landowners continued to pay rates and other charges and have not accrued a debt with the council.

125. While the debt collection policy is available on the council's website, the particular manner in which the council deals with penalty interest and debt recovery action across the Ninety Mile Beach subdivisions is not otherwise proactively communicated to affected landowners.

126. All rates notices issued by the council state that penalty interest will accrue until the rates are paid and debt recovery action may result, and there is no indication that collection of rates and other charges is handled differently for properties in the subdivisions.

Figure 4: Excerpt from the council's Rates Debt Collection and Interest Charging Policy, 20 March 2007

Description of land/precinct	Charge rates	Charge interest	Debt collection action
1. Urban Nodes	Yes	Yes	Yes
2. Low Density Residential - where lots have been restructured, or owner holds all blocks that comprise a restructure lot - where lots have not been restructured	Yes Yes	No No	No No
3. Subject to Inundation (Vacant Land only)	Yes	No	No
4. Rural Living (Glomar Beach) - where lots have been restructured, or owner holds all blocks that comprise a restructure lot - where lots have not been restructured	Yes Yes	No No	No No
5. Commercial Lots (90 Mile Beach Inappropriate Subdivision only)	No	No	No
All other restructure areas i.e. Rural Conservation, Beach Dune Buy Back	Yes	No	No
All lots with existing dwellings	Yes	Yes	Yes

Source: Wellington Shire Council

Figure 5: Letter of demand sent to landowner

arl

ARN 96 103 234 659

07 May 2018

Phone: 1300 366 244

ARL Reference: [redacted]

Client Reference: [redacted]

RE: Wellington Shire Council

Amount Due
$3010.39
Payable within 7 days

Property Address: [redacted]

Assessment Number: [redacted]

We have been instructed by the Wellington Shire Council to act in the recovery of the outstanding rates and charges, on the above mentioned property, amounting to $3010.39.

You are requested to pay the amount in full to Wellington Shire Council, within 7 days. If the full amount is not paid or no contact is made with this office within 7 days, legal proceedings may be issued without further notice.

As a result of these legal proceedings, costs may be claimed against you, in accordance with the Scale of Costs set out below.

OUTSTANDING DEBT	LESS THAN $500	$500 TO $1,000	$1,001 TO $4,999	$5,000 TO $7,499
LEGAL COSTS	$522.00	$826.00	$983.90	$1,114.90

If you have any queries with this account or require assistance, please contact Council's Rates Department on 1300 366 244 immediately.
If you have recently paid this account in full please disregard this letter.

Yours faithfully

Australian Receivables Ltd

Payment Slip/Options

POST billpay

PAY

PO BOX 14390 MELBOURNE VIC 8001 (P) 03 9520 2599 (W) www.arlcollect.com.au
SYDNEY MELBOURNE BRISBANE ADELAIDE PERTH CANBERRA

Source: Provided to the investigation by current landowner

Maria's story

Maria's parents purchased a block of land in Golden Beach in 1964, they have been unable to build on their land which is situated on one of the Lake Reeve islands.

In 1980 the council advised Maria's parents that it would excuse rates on the basis of the location of their property. However, in 2006 rates notices were again issued, with the council explaining to Maria's parents that it was legally obliged to issue notices.

The council wrote to them in 2014 and stated that while it would continue to issue rates notices, properties in the inappropriate subdivisions would not incur penalty interest for non-payment, and it would not commence legal action in recovery.

On principle, Maria and her parents have not paid rates on their property since the council's initial waiver, and as of November 2018 have an accrued debt of $525.35 on property that is valued at $100.

Antonio's story

In August 1964, Antonio and his brother purchased a block of land in Golden Beach. They were diligent in paying rates until 1991 when the council wrote to Antonio and explained that it had waived rates for the 1978-79 year and would continue to do so until the future of the land was known; the council returned Antonio's rates cheque. The subject property is located on one of the Lake Reeve islands and is deemed to be Flood-prone.

Rates notices were again issued in 2006, and in 2007 Antonio wrote to the council declaring that he would not pay rates on a block of land that was subject to flooding and could not be built on. In response, the council confirmed in writing that rates and other charges would be levied against Antonio's property but that properties in the inappropriate subdivisions would not incur penalty interest for non-payment, and it would not commence legal action in recovery.

Antonio has not paid rates since the council's waiver and has an accrued debt of $525.35 on a property that is valued at $100.

Voluntary land transfer programs

127. As part of the council's implementation of the Urban Nodes settlement strategy arising from the *Wellington Coast Subdivision Strategy* (WCS Strategy), in June 2011 it resolved to implement a Voluntary Assistance Scheme (VAS) which would apply to land in the Between Settlements area of the Ninety Mile Beach subdivisions. This scheme was extended to include land in the Coastal Dunes in 2017.

128. The state government agreed in June 2011 to provide $6 million in funding over the following six years to support the council's VAS.

129. On 15 July 2014, the council resolved to implement a Voluntary Transfer Scheme (VTS) which would apply to land deemed to be Flood-prone within the subdivisions.

130. The Attorney-General wrote to the council on 31 October 2014 confirming that the existing funding agreement would be extended to 2021.

Voluntary Assistance Scheme

131. The VAS commenced in June 2011 and applies to landowners affected by Amendment C66 to the Wellington Planning Scheme which, among other things, rezoned land between Golden Beach and Glomar Beach from Low Density Residential and Business 1 to Rural Conservation; this is the Between Settlements area. In 2017 the VAS was extended to include land in the Coastal Dunes.

132. Under the VAS, landowners can transfer ownership of their properties to the council in exchange for an assistance payment of $1,500 per lot, less any outstanding rates or charges.

133. The sum offered is based on advice prepared by the Valuer-General as to an appropriate amount for an ex-gratia payment in the circumstances. The payment is designed to 'recompense owners for the inconvenience and effort in transferring the land'.

134. Under the VAS, the council wrote to landowners in the Between Settlements area and Coastal Dunes inviting them to participate. The process adopted by the council under the scheme is outlined below:

- The council wrote to landowners to explain the VAS and invite them to participate by completing an expression of interest form.
- Responses were recorded by the council, with those expressing interest then being provided with instructions as to the process for transferring their land.
- For landowners who did not respond, or who responded in the negative, the council sent follow up correspondence at various intervals either reminding them to return the expression of interest form, or that the scheme was still open.

135. Correspondence the council sent to landowners in relation to the VAS included an information sheet about the scheme in the form of 21 frequently asked questions. The information sheet:

- described the VAS
- identified who was eligible to participate
- explained how the assistance payment was calculated
- explained the impact of an outstanding rates debt on the assistance payment
- indicated that surrendered land would be allowed to regenerate, and the council would work with Parks Victoria to ensure the land is managed in conjunction with the adjoining Gippsland Lakes Coastal Park.

136. As at 31 May 2019, 1,913 properties in the Between Settlements area and 150 in the Coastal Dunes have been transferred to the council under this scheme.

137. Landowners raised concerns about this program primarily in respect of the amount offered for land, which they believed was manifestly inadequate compensation. They pointed to the fact that they, or their parents or other relatives, had purchased the land in the 1950s or 1960s for a not inconsiderable sum, had faithfully paid rates and been prevented by various mechanisms from building on their lots.

138. A number said their properties were worth significantly more than the ex-gratia payment the council was offering under the VAS. In two instances, they indicated that land in the area sells on the open market for around $100,000. This view is not supported by the investigation's review of land sales in the Golden Beach and The Honeysuckles areas.

139. Others said the council should consider the original purchase price and rates paid to date when making a decision as to what financial settlement it should offer.

Matthew's story

Matthew currently owns a block of land on Toledo Drive, Glomar Beach that his late father originally purchased. He continues to pay rates and other charges levied against the property which he would like to visit but cannot do so due to lack of roads and signage.

Matthew told the investigation about the devaluation of his land as a result of rezoning. Documentation that Matthew provided shows that his land was valued at $10,000 in 2006 but was revalued to its current value of $1,000 in 2010.

He approached the council about relinquishing the title and suggested that an appropriate sum in compensation would be the original purchase price, plus all rates paid to date plus five percent. The council declined Matthew's offer.

Joseph's story

Joseph purchased a block of land in Golden Beach for £258 in May 1964. After various changes to the Wellington Planning Scheme, the property is now valued at $500 and has accrued a debt of more than $1,200.

The property, in San Jose Drive, is currently zoned Rural Conservation and is located in the Between Settlements area of the Ninety Mile Beach subdivisions which was permanently prohibited from development in 2011.

The council invited Joseph to participate in the VAS in June 2011 and he declined the offer. Notwithstanding his decision, the council wrote to him again on at least three occasions to repeat the offer of an assistance payment of $1,500, less his outstanding debt, in exchange for his land.

Table 3: Participation in the Voluntary Assistance Scheme as at 31 May 2019					
	Offers made	Responses received		Transferred to council	
		Accepted	Declined	Assessments/ Lots	Percentage accepted
Between Settlements	1,762	1,357	312	1,649 / 1,913	94%
Coastal Dunes	160	98	32	135 / 150	84%

Source: Wellington Shire Council

Participation in the scheme

140. The council estimates that 3,684 individual allotments were created in the Between Settlements area of the Ninety Mile Beach subdivision. Prior to the introduction of the VAS, around 1,000 allotments were transferred to the council or Gippsland Water, and a number of allotments had dwellings which attracted existing use rights and were not subject to the scheme.

141. At the time that the Coastal Dunes were included in the VAS, council estimates there were 420 lots in the area. Of those, 194 were not part of the scheme as they were owned by the state government (187), or the council (two) or had existing dwellings (five).

142. As there had been some consolidation of single lots in both the Between Settlements area and Coastal Dunes, invitations to participate in the VAS were sent to owners on the basis of rate assessments. In some circumstances individuals owned more than one single or consolidated lot. The participation rate for the VAS is shown in Table 3 above.

Voluntary Transfer Scheme

143. The VTS commenced in October 2018 and applies to landowners whose properties have been deemed Flood-prone.

144. Under the VTS, landowners can transfer ownership of their properties to the council in exchange for a payment of $100 per lot, less any outstanding rates or charges.

145. As with the VAS, the sum offered under the VTS is based on advice prepared by the Valuer-General as to an appropriate amount for an ex-gratia payment in the circumstances.

146. The first round of correspondence was sent to eligible landowners in October 2018, and the next in December 2018. The council told the investigation that the scheme will progress with correspondence being sent to landowners in stages. As with the VAS, at present the VTS will continue until 2021.

147. The council has a process for the VTS similar to that of the VAS, with landowners being advised of the VTS and invited to return an expression of interest form to indicate their willingness, or otherwise, to participate in the scheme.

148. An information sheet sent to landowners comprises 14 frequently asked questions similar to those accompanying correspondence under the VAS. The information sheet provides an explanation as to why the ex-gratia payment for land under the VTS is less than that offered under the VAS.

> Lots that are not Flood-prone have a much higher Council valuation than $100 and those owners are therefore receiving a higher Voluntary Assistance Scheme payment (less outstanding rates and charges) for each lot.

Maggie's story

Maggie currently owns a block of land in Golden Beach that she and her deceased husband purchased. That block of land is on one of the Lake Reeve islands and is deemed to be Flood-prone.

The council wrote to Maggie on 19 December 2018 and invited her to participate in the VTS. Under the scheme, Maggie would be entitled to a payment of $100 in exchange for her land. However, as there is an outstanding debt of $350 against the property in Granada Grove, if Maggie were to accept the council's offer she would receive no payment. Maggie has declined the council's offer.

Table 4: Participation in the Voluntary Assistance Scheme as at 31 May 2019

Offers made	Responses received		Transferred to council	
	Accepted	Declined	Assessments/Lots	Percentage accepted
1,115	239	162	154 / 201	14%

Source: Wellington Shire Council

149. As at 31 May 2019, 201 parcels of land deemed to be Flood-prone have been transferred to the council under this scheme.

150. Landowners complained about this program, again in relation to the inadequacy of the amount offered for land. Of the landowners who approached the investigation and who are currently, or will be, eligible to participate in the VTS, more than a third have acknowledged rate debts in excess of the ex-gratia payment the council is offering.

Participation in the scheme

151. The council estimates that at the time the VTS commenced, there were 2,965 lots that had been declared Flood-prone. Of these, 219 are not eligible for the scheme as they are owned by the state government (two), or the council (208), or have existing dwellings (nine). As the council is making offers in stages, not all owners have been approached to participate in the scheme and a significant number of offers have not been responded to. The activity under the scheme undertaken thus far is shown at Table 4 above.

152. The land that is subject to both the VAS and VTS comprises all land within the Ninety Mile Beach subdivisions that is now permanently prohibited from development. In implementing these schemes, the council is offering a solution to those landowners who retain ownership of this land who incur annual rates and, in some instances, other charges.

153. The ex-gratia payments offered by the council are as a result of advice sought from the Valuer-General and, in the case of the VAS, are in excess of the estimated value of the subject land.

Acquisition of land

154. Information received from landowners and the council shows the council has acquired a significant number of properties within the Ninety Mile Beach subdivisions. This has been achieved through:

- surrender of title by landowners of their own volition in lieu of outstanding rates and other charges
- participation in the Voluntary Assistance Scheme (VAS)
- participation in the Voluntary Transfer Scheme (VTS)
- compulsory acquisition.

Surrender of title by own volition in lieu of debt

155. Several former landowners described the circumstances of their decisions to relinquish ownership in favour of the council.

156. In one instance, the owners had reportedly attempted to create a consolidated lot to satisfy the planning restrictions before submitting an application for a building permit, but were unsuccessful:

> Actively encouraged by Council communications to the point of duress and combined with the continued financial burden of annual rates for a block that could not be developed, my parents reluctantly agreed to relinquish their land to Wellington Shire in 2000.

157. The council told the investigation that between 2001 and 2017, 108 properties were surrendered to the council in lieu of outstanding rates and charges. The majority of these were properties that had been declared Flood-prone, and the transfer occurred as a result of approaches to the council by the landowners.

Voluntary Assistance Scheme

158. The VAS remains open and available to landowners with undeveloped land in the Between Settlements and Coastal Dune areas of the Ninety Mile Beach subdivisions. The scheme is scheduled to end in June 2021 at which time landowners will no longer be able to exchange their land for an ex-gratia payment.

Voluntary Transfer Scheme

159. The VTS commenced in October 2018 and is, or will become, available to landowners with undeveloped land in the Ninety Mile Beach subdivisions that has been declared to be Flood-prone. This scheme runs concurrently with the VAS and is scheduled to end in June 2021 at which time landowners will no longer be able to exchange their land for an ex-gratia payment.

Compulsory acquisition

160. The council completed two stages of compulsory acquisition of land in the Ninety Mile Beach subdivisions. The first, in the Between Settlements area, occurred between January and April 2017 and resulted in 444 lots being transferred into the council's ownership. The second round was in the Coastal Dunes between February and April 2018 and resulted in 51 lots being transferred into the council's ownership.

161. Compulsory acquisition was only pursued in respect of land where the council could not identify or locate the registered owners, or for willing parties who did not have the required paperwork.

162. While the Ombudsman did not receive approaches from former landowners whose land was compulsorily acquired, the issue of acquisition was raised by current landowners in the context of the council's proposal to sell land. It is for this reason that the council's compulsory acquisition of land was considered in the investigation.

Legislative framework

163. The Local Government Act provides the council with the power to compulsorily acquire land that is, or may be, required by the council for, in connection with, or as incidental to the performance of its functions or exercise of its powers.[5] The *Land Acquisition and Compensation Act 1986* (Vic) then prescribes the process.

164. The process includes the following actions:

- The council must serve a notice of intention to acquire land with a statement setting out rights and obligations, in the prescribed forms, to persons with an interest in the land, generally the current landowners.[6]
- Where the landowners cannot be served in person or by post, the notice and statement must be published in a newspaper circulating generally throughout Victoria, and be affixed in a prominent place on the subject land.[7]
- The council acquires the land by publishing a notice of acquisition, in the prescribed form, in the Government Gazette not less than two months after the notice of intention to acquire is served.[8]
- The council must serve the notice of acquisition, and a statement explaining the acquisition, on persons with an interest in the land,[9] and publish the notice in a newspaper circulating generally in the area in which the land is situated.[10]

165. The Local Government Act also requires that all public notices be published on the council's website.[11] The notice of intention to acquire and notice of acquisition are public notices.

Implementation

166. The information available shows that the council generally followed the process outlined in the legislation for the compulsory acquisition of land. As the council's program of acquisition was of land where the owners could not be found, it published the notice of intention to acquire and subsequent notices of acquisition in the *Herald Sun* and *Gippsland Times-Spectator*, and in the *Victorian Government Gazette* where appropriate.

167. Both notices were also posted on the subject land as they could not be served on the landowners.

168. In conjunction with both notices, the council is required to serve statements outlining the principal rights and obligations of persons interested in the subject land, and explaining the acquisition. It is not clear whether these statements were posted on the subject land at the time the notices were posted.

5 *Local Government Act 1989* (Vic) s 187(1).
6 *Land Acquisition and Compensation Act 1986* (Vic) ss 6, 8.
7 Ibid s 10A(2).
8 Ibid ss 19-21.
9 Ibid s 22.
10 Ibid s 23.
11 *Local Government Act 1989* (Vic) s 82A(2)(a).

169. It is acknowledged, however, that in the circumstances, the impact of any failure to post those statements would be minimal as the owners of the land were unlikely to visit it.

170. The investigation reviewed the council's website, particularly the 'News and Public Notices' section, but could not find the required publication of the notices of intention to acquire or notices of acquisition.

Compensation

171. Persons with an interest in land that is compulsorily acquired are entitled to compensation.[12] The Land Acquisition and Compensation Act outlines the process for negotiating that compensation. It involves the council making an offer to the person with interest in the land along with documentation including a valuation and statement of rights and obligations. A person who receives an offer can either accept it, or serve a claim for compensation on the council. If a person has had their land compulsorily acquired, but did not receive an offer of compensation from the council, they can make a claim to the council within two years of the date of acquisition.

172. As the landowners for the properties compulsorily acquired could not be located, the council did not make any offers of compensation for that land. It did, however, place the money that would have been offered into the council's unclaimed money ledger where it is held for 12 months before being transferred to the State Revenue Office.

173. To date, the council has not received any claims for compensation from landowners whose land was compulsorily acquired.

Compulsory acquisition with landowner consent

174. In response to enquiries from the investigation, the council provided information about its compulsory acquisition of land that occurred after persons with an interest in land became aware of the proposed acquisition.

175. After the notices of intention to acquire were published in the *Herald Sun*, a number of people approached the council claiming an interest. As a result, 15 properties in the Between Settlements area and three in the Coastal Dunes continued to acquisition by the council, and compensation was paid. It appears the council followed the prescribed processes in acquiring the land, including providing the landowners with notices, statements and offers of compensation.

12. *Land Acquisition and Compensation Act* 1986 (Vic) s 30.

Proposal to sell council land

176. On 3 July 2018 the council passed a resolution in respect of four restructured lots, on Shoreline Drive and Waikiki Way at Golden Beach, currently in its ownership. The resolution determined to declare the subject lots as being not required for council purposes and to commence the process of bringing the lots to the market. The location of the subject land is shown below at Figure 6.

Figure 6: Land proposed to be sold by the council

Source: Wellington Shire Council

177. Sixteen current landowners approached the investigation raising concerns about the council's proposal to place the restructured lots on the open market. The issues raised can be summarised as:

- General concern about the council's proposal.
- Why can the council sell land that was relinquished on the basis that it could not be built on?
- Council will be profiteering from the sale of land that it obtained for low cost.
- Council is selling land that was originally deemed as being Flood-prone and was surrendered to the council on that basis.
- The Council Committee that heard submissions about the proposal was used to 'intimidate' objectors and did not respond to questions asked.

178. One landowner said:

> This land is approximately 850 metres up from the first block that is deemed Flood-prone and 2.5kms from land that is now outside the development area all the way to the Honeysuckles, about 35kms away. The council has stated this land is likely to sell for over $1 million dollars; yet it was picked up for $1,500 per lot.

179. One person approached the investigation on behalf of her mother who, after inheriting a block of land in the Between Settlements area, surrendered it to the council in the knowledge that it could not be developed or used:

> Recently we have heard that the council is planning to sell the blocks and allow development. My mother and her siblings feel like this is wrong and the council has acted deceitfully ... If the council plans to profit from the block my mother and her siblings would like it back. The family would like to be the ones to benefit from the sale of the block (after paying rates for many years). OR we would like the block to be used for the good of the community, but not for the council to profit.

180. These, and similar comments received by the investigation, show some misunderstanding on the part of current, and some former, landowners regarding the zoning, location and acquisition of the land that the council is proposing to sell.

Acquisition

181. Information from the council is that it acquired 16 single lots that were consolidated into four restructured blocks prior to 2003. These lots are located in the Urban Node of Golden Beach and therefore may be developed once application has been made to and approved by the council.

182. The council told the investigation that the records are unclear in respect of how the acquisition was facilitated other than that it was under the Land Acquisition and Compensation Act. The council was unable to state with certainty whether the acquisition was as a result of an approach by the then landowners to the council, or vice versa.

183. The council also told the investigation that the notices of acquisition for the individual lots were dated January 2003 and provided documentation showing compensation was paid in accordance with valuations prepared by an independent qualified property valuer.

Assessment of surplus

184. The council's meeting agendas for the ordinary meetings of 3 July and 16 October 2018, both refer to the properties being assessed as surplus and suitable for sale. A report attached to the agenda for the meeting on 16 October 2018 states:

> In line with Council policy, land which has been assessed as not being required for a Council or a community purpose is designated surplus. The assessment process involves land being referred to relevant business units within Council including roads, planning and community. The surplus land process is consistent with the Local Government Act and Victorian Government Guideline.

185. In its response to our enquiries about the process for deeming this land surplus, the council stated:

> Property was identified as surplus in line with Council policy indicating that land not required for [community or other Council purposes] be progressed towards a sale.

186. The council also provided a copy of its *Sale, Exchange and Acquisition of Land* policy dated 18 December 2018 which indicates that the council should undertake regular land evaluations to identify council-owned land that is no longer required. The policy describes the criteria that should be considered when conducting the evaluation and states that land evaluation reports should be completed with recommended actions and presented to the council on an annual basis or as required.

Sale of land

187. The Local Government Act prescribes the process for selling council land. There are different requirements that must be met depending on the reasons for the sale. In this case, the land is being sold as it is no longer required for a council purpose and therefore the process is as follows:[13]

- The council must give public notice of its intention to sell at least four weeks prior to selling the land.
- The council must obtain valuation of the land not more than six months prior to the sale.
- Submissions can be made in respect of the proposed sale.

13 *Local Government Act 1989* (Vic) s 189.

188. The Local Government Act also prescribes the manner in which submissions are to be sought and obtained.[14] This includes:

- The council must publish a public notice containing specific information about the sale including the date by which submissions must be made, and a person making a submission can request to appear in person in support of their submission.
- The council must provide an opportunity for people to be heard in person, and must provide adequate notice of the time, date and place where they will be heard.
- If a committee hearing submissions is not the relevant decision-maker, it must provide a report to the council or other decision-maker.
- The decision-maker must consider all submissions made and notify in writing each person who makes a submission of the decision and the reasons for that decision.

Public notice

189. The council indicated that the notice of intention to sell land was published in the *Gippsland Times* on 10 July 2018. The notice includes all the requisite information, including that submissions can be made, the date on which submissions will close, that persons can make a request to be heard in person in support of their submission, and the date on which submissions will be heard.

190. The investigation reviewed the council's website, particularly the 'News and Public Notices' section, but could not find publication of the notice of intention to sell. In its response to enquiries the council acknowledged this.

Valuation

191. The agendas for the council's ordinary meetings on 3 July and 16 October 2018 make reference to an attached document which was designated as being confidential under section 77(2)(c) of the Local Government Act on the grounds that it may prejudice the council or any person.

192. The issue of confidentiality was raised by those making submissions to the council in respect of the proposed sale of land, and the council responded in a report attached to the agenda for the meeting of 16 October 2018. In that report, the council clarified that property valuations were included in a confidential attachment as that information would be disclosed to other parties involved in the sale process, and remained confidential to ensure the integrity of that process.

193. The council provided information to the investigation that shows it obtained current market valuations for the four restructured lots in June 2017. It also clarified that further valuations will be obtained prior to the sale of land to comply with the six months period for valuations prescribed in the Local Government Act.

Submissions

194. The notice of intention to sell published by the council appears to have been designed to fulfil two objectives: to notify of its intention to sell the land and to invite submissions in respect of that intention. While the notice contains the prescribed information and was published in the *Gippsland Times*, it was not published on the council's website.

195. Landowners who raised this issue with the investigation were not specific about how they became aware of the council's proposal. A number of people indicated that they 'were aware' or 'had heard', and none specifically referred to the public notice that had been published in the *Gippsland Times*.

14 Ibid s 223.

Committee of Council

196. At the council's ordinary meeting on 3 July 2018 it resolved to form a committee comprising three councillors and an alternative representative to form the Proposed Sale of Surplus Council Land Committee to consider written submissions and hear any person who requested to be heard in support of their submission. This committee is referred to as the Committee of Council in this report.

197. The Committee of Council was formed under the Local Government Act which provides that if a person making a submission requests to be heard in support of their submission, the council must provide an opportunity for this at either a meeting of the council or a committee determined by the council.

198. The council provided a sample letter to the investigation showing that it wrote to each person who made a submission and requested to be heard. That letter is dated 14 August 2018 and specifies the date, time and place where persons will be able to attend before the Committee of Council in support of their submission.

199. The timeline for submissions was as follows:

- 3 July 2018 – the council determined to commence the sale of land process
- 10 July 2018 – the public notice was published
- 10 August 2018 – last date for written submissions
- 21 August 2018 – Committee of Council heard submissions

200. The council received 104 written submissions in respect of the proposed sale of land all of which appeared to be opposed to the sale. All but one of the written submissions was in the form of a template letter that raised issues regarding the council's actions in commencing the process for the proposed sale, concerns that the council would profit from the sale, and questions regarding environmental factors. There were six requests to be heard in person by the Committee of Council. Five of the six appeared before the Committee on 21 August 2018 and each expressed their objection to the proposed sale.

Report to the council

201. As the Committee of Council was not the decision-maker in respect of the proposed sale of land, it must provide a report on its proceedings, including a summary of hearings, to the council as the decision-maker.

202. Item C3.2 in the agenda for the ordinary council meeting on 16 October 2018 describes the circumstances leading to the call for submissions in respect of its proposal to sell land. It outlines the process adopted to call for written submissions, notes that a committee was formed to hear oral submissions and states that oral submissions were heard on 21 August 2018.

203. There are two documents attached to this agenda item. The first is titled 'Submissions' which outlines the submissions received both in writing and made in person. The second document titled 'Council Officer response to submitters – proposed sale of surplus council land, Golden Beach' provides background to the proposed sale and answers the matters raised in submissions.

204. While the documentation does not explicitly state that it is a report of the Committee of Council made to the council under the Local Government Act in respect of its proceedings, the content of those documents appears to meet the requirements of such a report.

Notification to submitters

205. On 16 October 2018, the council resolved to proceed with the sale of the land determined to be surplus. Once that decision was made, the council was required to advise all persons who made submissions of the decision reached and the reasons for that decision.

206. The council provided to the investigation a proforma letter dated 26 October 2018 sent to submitters informing that the council had resolved:

- to proceed with the sale
- to authorise the Chief Executive Officer to progress the sale
- that proceeds from the sale would be directed towards the Golden Beach Shoreline Drive Path project.

Status of sale

207. The council informed the investigation that while a preferred real estate agent has been selected after an expression of interest process, the sale of the surplus land has been placed on hold pending the finalisation of this investigation.

Communication with affected landowners

208. Approaches received by the investigation about the council's administration of the Ninety Mile Beach Plan often reflected landowners' dissatisfaction with their engagement with the council.

209. Some landowners made general comments regarding the lack or quality of information provided by the council about the subdivisions. Others commented on their confusion about the council's levying of rates and information they had received from the council that rates did not have to be paid, or that it was policy that council would not institute proceedings to recover unpaid rates.

Information on website

210. Part of a communication strategy for a council is placing information on its website. For affected landowners, information on the website directly relevant to their ownership of land in the Ninety Mile Beach subdivisions can be found on a number of pages; this includes information that is relevant to all landowners, and that which is specifically about their land.

Rates and other charges

211. Information about the calculation of annual rates and levying of other charges is outlined on the council's Rates Calculations page. This includes basic information about the rating structures for different categories of land, and the additional charges levied on properties in the shire such as the Waste Infrastructure Charge and Fire Services Property Levy.

212. This information is directed to all landowners in the shire and does not make specific reference to land in the Ninety Mile Beach subdivisions. There is no information on this page regarding the council's policies about the waiving of the Waste Infrastructure Charge for properties in the Between Settlements area of the Ninety Mile Beach subdivisions, or the various arrangements in place regarding penalty interest and debt collection action for each section of the subdivisions.

213. The Debt Collection and Interest Charging policy is not easily found on the website. The council includes all policies, except the procurement policy, in a single Council Policy Manual which is available on the website on the Documents Available for Public Inspection page.

214. While the council's policy regarding penalty interest and debt collection is alluded to in the Frequently Asked Questions Sheet for Flood-prone land, it is not included in the equivalent document for Between Settlements and Coastal Dunes land.

215. Reference to the policy as it applies to land in the Ninety Mile Beach subdivisions has been made in a number of council meetings. One instance of this was on 16 October 2018 in the context of the council providing answers to submissions about its proposal to sell surplus land. In the documentation attached to the agenda for this meeting, the council stated:

> Some submitters queried the issuing of rates notices on land which can't be developed. The issuing of rates notices is a statutory requirement, however, Council has a current policy to not pursue outstanding rates in coastal areas with no development rights.

216. As noted earlier in this report some landowners who contacted the investigation indicated that the council had told them that penalty interest would not be charged against their outstanding rates debt and that it would not commence action to recover debt.

217. While the effect of the debt collection policy on land in the subdivisions has been discussed in council meetings, the policy itself is difficult to find and is not routinely communicated to landowners. This raises issues of equity and transparency.

218. Similarly, information on the council's website about the Fire Services Property Levy is limited to providing a link to the applicable website. There is no reference to the fact that the council collects the levy on behalf of the state government and that it is not a council charge. Clarification of this may be helpful to landowners, some of who raised the matter with this investigation and appeared to think that it was a council levy.

Meeting minutes and agendas

219. The council publishes all agendas and minutes of ordinary and special council meetings on its website. A number of matters brought to the attention of the investigation were discussed at council meetings and appeared in both the agendas and minutes for those meetings. This includes the proposal, and ultimate decision, to sell land deemed to be surplus.

220. Information received from landowners suggests that affected landowners do not routinely review the publicly available documentation associated with council meetings.

Ninety Mile Beach Plan

221. The council maintains a webpage for information regarding the Ninety Mile Beach Plan. The page includes a brief summary of the history of the Ninety Mile Beach subdivisions and includes information about the current status of the various categories of land within the subdivisions. There is also information directed at affected landowners in respect of the current VAS for land in the Between Settlements and Coastal Dunes areas, and the VTS for Flood-prone land.

222. Information on the page provides useful advice regarding action the council has taken, and is taking, under the Plan. The page does not include information regarding council policies that affect owners of land in the subdivisions differently, the proposed sale of surplus land in the subdivisions, or any public notices that the council is required to publish on its website.

223. The information provided is helpful for those landowners who are certain as to the classification of their land, that is, whether it is in the Between Settlements or Coastal Dunes areas or is Flood-prone.

224. Information received from landowners suggests many are not clear about this. It would be useful if the page provided a facility whereby landowners could enter their address and be given information regarding the classification of their land.

225. The webpage is updated as circumstances change, but it is not possible to determine from the page when the last update was made. This would be a useful addition so that interested parties can determine the currency of the information.

News and public notices

226. Prominent on the home page of the council's website is a News and Public Notices feed showing the most recent items, as shown at Figure 7 on the following page. Further news items can be accessed through a hyperlink at the bottom right of the feed, and there is an RSS button to enable users to subscribe to the feed.

227. The council includes in this feed public notices that it is required to publish under the Local Government Act.[15]

228. A review of the feed for the period from the beginning of 2017 to February 2019 shows 10 public notices published, none of which relate to the Ninety Mile Beach subdivisions. Two news items appear, the first published in January 2017 is titled 'Ninety Mile Beach Notices of Intention to Acquire Land'. The second item is an acknowledgement of the commencement of this investigation. During this period, the council engaged in a compulsory acquisition process which included statutory requirements for public notices to be published on the council's website. It appears that those notices were not published. It is worth noting that while the news item regarding the council's intention to acquire land was published, a follow up in respect of the conclusion of that compulsory acquisition process was not published.

229. Further, as noted earlier, the council failed to publish on its website a Notice of Intention to Sell Land.

230. The News and Public Notices feed provides a valuable resource for members of the extended shire community. While the number of landowners affected by the Ninety Mile Beach Plan may be small, acknowledgement of the complex nature of the Plan, suggests that updates should be included in the news feed.

231. Of the 67 current and former landowners who approached this investigation, only one identified as living within the shire. This highlights the importance of information on the council's website being up to date and comprehensive.

232. The commencement of the VTS in October 2018 was a significant event for owners of Flood-prone land. While the Ninety Mile Beach Plan webpage includes information about this scheme, the commencement of a new strategy or program under the Plan is consistent with the type of item generally included in the news feed.

233. This investigation asked the council whether matters relevant to the Ninety Mile Beach Plan were routinely included in the News and Public Notices feed. In response, the council indicated that only media releases at key stages of the project, including amendments to the Wellington Planning Scheme, were included in the feed. Otherwise, matters about the Plan are provided on the Plan webpage.

15 Ibid s 82A(2)(a).

Figure 7: Wellington Shire Council website homepage, July 2019

Documentation provided to landowners

234. Some landowners indicated that the council had not provided adequate information regarding its handling of land in the Ninety Mile Beach subdivisions. While some information can be found on the council's website and in the minutes of council meetings, landowners have a reasonable expectation that the council will inform them of relevant matters directly through correspondence.

235. In support of their concerns, both current and former landowners provided a variety of correspondence received from the council, the Shire of Rosedale as its predecessor, and the state government in respect of significant events affecting their land. Documentation received included:

- January 1978 – Statement from the Shire of Rosedale providing information regarding the need for studies to be conducted in respect of the subdivisions and the need to continue a policy of not issuing building permits until those studies were complete.
- September 1985 – Letter to landowners from the Secretary for Planning and Environment regarding a proposal to rezone all land on the Lake Reeve islands from Non-Urban Zone to Rural Zone.
- September 1999 – Letter to ratepayers announcing that in response to approaches from landowners, the council has adopted a policy of accepting title in lieu of outstanding rates and charges.
- October 2004 – Letter to landowners notifying that the council has commissioned GHD Pty Ltd to produce a strategy for future planning and development of the Ninety Mile Beach subdivisions and inviting attendance at introductory briefings (including in the Melbourne CBD).
- February 2005 – Letter to landowners providing an update on the community consultation program regarding the Wellington Coast Subdivision Strategy, including an invitation to apply to participate in focus groups and/or provide submissions.
- December 2005 – Letter to landowners informing that the council had decided to adopt an Urban Node model of settlement for the Ninety Mile Beach subdivisions and explaining the actions the council will take as a result.
- January 2006 – Letter to landowners providing information regarding the impact of the Wellington Coast Subdivision Strategy on their property.
- January 2008 – Letter to landowners providing an update on the implementation of the Wellington Coast Subdivision Strategy, including that the Minister for Planning has agreed to a request for an amendment to the Wellington Planning Scheme to prohibit development of allotments outside the recognised settlements of Golden Beach and The Honeysuckles until 1 July 2009.
- January 2010 – Letter to landowners notifying of a proposed amendment to the Wellington Planning Scheme to deal with Flood-prone areas.
- June 2011 – Letter to landowners in the Between Settlements area informing of interim planning controls and inviting participation in a Voluntary Assistance Scheme.
- April 2012 – Letter to landowners notifying of a proposed amendment to the Wellington Planning Scheme to apply permanent development controls on land between Golden Beach and Glomar Beach.

236. Council continues to correspond with landowners in respect of the ongoing application of the VAS, the introduction of the VTS, and in response to individual enquiries.

237. The investigation received correspondence directed to landowners from the council which does not support the assertion that the council failed to provide adequate and relevant information to landowners.

238. Nearly half of the approaches received by the investigation in respect of the Ninety Mile Beach subdivisions are from the children, or other next generation relatives, of the original purchasers of land. Other approaches received were made by children on behalf of their parents who are still alive but not able to make the approach themselves because of language difficulties.

239. All correspondence provided by landowners and the council, and information available on the council's website, is in English. That landowners could not read and understand the correspondence that council sent may have resulted in vital information being discarded. In turn, this could have led to the former, and current, landowners feeling that council has not kept them up to date with changes to planning law and council policy.

Contact with council staff

240. The council told the investigation that a full time project coordinator position was created in 2011 to administer the Ninety Mile Beach Plan. While enquiries from affected landowners about rates, permits and building applications are allocated to the appropriate council team, other matters regarding the subdivisions are directed to the project coordinator.

241. Customer service staff at the council have also been provided with information to convey to affected landowners making enquiries regarding the subdivisions.

242. The council also indicated its awareness of language difficulties for some landowners and confirmed that it had previously engaged the services of interpreters.

243. The council also noted that all enquiries and complaints it receives, including those from owners of land in the Ninety Mile Beach subdivisions, are dealt with in accordance with its Customer Service Commitment which is available on its website. The council's website also has a page explaining its complaint handling process and providing an online Customer Complaint Form.

244. It is apparent from the information available that the council has processes in place for dealing with complaints and enquiries from affected landowners in respect of the Ninety Mile Beach Plan. Its decision to allocate complaints and enquiries depending on the subject matter is reasonable and its creation of a specialised contact point in the Ninety Mile Beach Plan project coordinator should provide a consistent response to customers.

Gary's story

Gary's father purchased two adjoining blocks of land at Golden Beach in 1957. Gary purchased them from his father in 1987 in the knowledge that there were building restrictions in place and that the council intended to turn the area into national park.

The blocks of land in Santiago Drive are zoned as Rural Conservation and are in the Between Settlements zone of the Ninety Mile Beach subdivisions.

Gary has received correspondence from the council in respect of the VAS that he says he found to be intimidating.

Conclusions

Rates and other charges

245. At present, Wellington Shire Council levies rates against all land in the Ninety Mile Beach subdivisions on the basis that it is rateable land within the meaning of the Local Government Act. The limited utility of much of the land is reflected in its official valuation and consequently on the quantum of rates payable.

246. Single lots in the Urban Node of Golden Beach, which cannot be developed unless joined with neighbouring lots, attract rates of around $105 per annum, while land in the Between Settlements area, the Coastal Dunes and Flood-prone land attracts between $0.53 and $5.30 per annum.

247. In conjunction with rates, the council levies a Waste Infrastructure Charge on all rateable properties for the purpose of covering the costs associated with establishing and operating recycling and transfer stations, rehabilitating landfills and monitoring existing and closed landfills.

248. This charge was introduced in the 2005-06 financial year and was applied across the entirety of the shire until 2011-12 when the council decided to waive the charge for those properties in the Between Settlements area. This decision was made on the basis that development rights were permanently removed from those properties as a result of changes to the Wellington Planning Scheme in 2011, and that affected landowners should be allowed an opportunity to participate in the newly introduced Voluntary Assistance Scheme.

249. As an agent under the Fire Services Property Levy Act, the council collects the Fire Services Property Levy on behalf of the State Revenue Office by including the levy in annual rates notices. As the result of the creation of a new Australian Valuation Property Classification Code, the levy is not applied against vacant land in the Between Settlements area, Coastal Dunes and Flood-prone land.

250. The Debt Collection and Interest Charging policy the council has had in place since 2006-07, whereby it does not apply penalty interest or institute debt recovery action for outstanding debts against land that is permanently prohibited from development, is an acknowledgement of the financial burden placed on owners of land from which they derive minimal or no benefit.

251. Further, it is also suggests the view that the affected landowners are not required to make those payments. In which case, the question arises as to why these landowners should be subject to rates and other charges at all.

252. In addition, the fact that the council does not actively communicate this policy to all affected landowners leads to an inequity, with some landowners continuing to pay rates and other charges in the belief that failure to do so will result in legal action by the council. It is not sufficient for the council to adopt a policy of not pursuing outstanding debts and communicate that to landowners who ask; the council should be circulating information about the effect of that policy to all affected landowners.

253. Further, the application of the Waste Infrastructure Charge and Fire Services Property Levy against vacant single lots in the Urban Nodes appears inconsistent with the council's apparent acknowledgement that owners of undevelopable land are not required to pay rates and other charges. While single lots in the Urban Nodes have some development potential, this can only be realised if the owners are able to consolidate their land with adjoining properties to form a restructured lot.

254. It is noted that the council has the power to make decisions regarding the application of the Waste Infrastructure Charge but not the Fire Services Property Levy and therefore those charges are treated differently by the council.

255. Anecdotal evidence from landowners is that there are significant barriers to consolidating land including the inability to contact other private owners, other owners' reluctance to sell, or the complexity of processes associated with purchasing adjoining land owned by the council. These landowners find themselves in the position whereby the council continues to collect rates and other fees on the basis that the land can be developed if certain precursor events take place, but appears to provide no assistance to facilitate those events.

Voluntary land transfer programs

256. Commencing in 2012, the council has implemented two voluntary schemes under which the owners of land in those areas of the Ninety Mile Beach subdivisions that is permanently prohibited from development may transfer ownership to the council in exchange for an ex-gratia payment.

257. The Voluntary Assistance Scheme commenced in 2011 and applies to land in the Between Settlements area of the subdivisions. The council is inviting landowners to surrender their land to the council in exchange for an ex-gratia payment, based on advice from the Valuer-General, of $1,500 per single lot, less any outstanding rates and charges. This scheme was extended in 2017 to include land in the Coastal Dunes.

258. The Voluntary Transfer Scheme commenced in late 2018 and applies to land deemed to be Flood-prone. The council is inviting landowners to surrender their land to the council in exchange for an ex-gratia payment, based on advice from the Valuer-General, of $100 per single lot, less any outstanding rates and charges.

259. Both schemes are financed by a grant of $6 million from the state government and will wind up in 2021; they operate to provide affected landowners with an opportunity to relinquish land from which they can derive no, or minimal, benefit and which is a financial burden.

260. The council's administration of these schemes is competent and well managed in the circumstances.

261. The introduction of these two schemes as part of the implementation of the Wellington Coast Subdivision Strategy, recognises that the initial subdivision and sale of land at Ninety Mile Beach was a mistake. While the Wellington Shire Council cannot be held responsible for events leading to the original sale of land and decisions made by its predecessor, the Shire of Rosedale, it is partly responsible for finding and implementing a solution to a problem that has extended over half a century.

262. Both schemes are time-limited and will close in 2021. While the status of land ownership by the time the schemes close cannot be predicted, it is likely that some lots will remain in private ownership. Landowners who approached this investigation frequently expressed dismay at being required to make a decision about relinquishing ownership of land that their parents had purchased in good faith. But the retained ownership of this land will not only prevent the council from meeting its objective of returning undevelopable land to the public through its inclusion in already existing national parkland, but may also prolong the distress felt by affected landowners.

263. The council has an obligation to realise the objectives of the Ninety Mile Beach Plan as soon as is practicable, and with the assistance of the Department of Environment, Land, Water and Planning, it should consider what actions to take to acquire land currently subject to the Voluntary Assistance Scheme and Voluntary Transfer Scheme once those schemes close in 2021.

Acquisition of land

264. In addition to the voluntary land transfer programs described earlier, the council has obtained ownership of land in the Ninety Mile Beach subdivisions through surrender in lieu of debt and compulsory acquisition.

265. Information available to the investigation indicates that the council acquired over 100 properties from landowners in lieu of outstanding rates and charges between 2001 and 2017. These transfers occurred as a result of approaches made by the landowners to the council.

266. One landowner who approached the investigation said they felt compelled to surrender land after receiving a solicitor's letter in respect of unpaid rates, but there is no evidence to suggest that the council's action in accepting the surrender of land was improper.

267. The council undertook compulsory acquisition of land in the Between Settlements area in January 2017 and in the Coastal Dunes in February 2018. Both rounds of acquisition were in respect of land where the council was unable to locate the registered owners of the land.

268. Some aspects of the process were unclear, however the council generally followed the appropriate processes as prescribed in the Land Acquisition and Compensation Act in respect of the acquisition of the land and providing for appropriate compensation.

269. The council also engaged with 15 landowners who became aware of the compulsory acquisition and agreed to surrender their land in accordance with the Land Acquisition and Compensation Act. Again, information available indicates that the council acquired the land generally in accordance with the legislation and paid appropriate compensation.

270. The acquisition of land capable of development, such as the individual lots in the Urban Nodes, has led to misunderstandings and allegations of profiteering. It would be wise for the council to avoid such acquisitions in future, acquiring only land that should be returned to public parkland, and facilitating the acquisition of developable land between private individuals.

Proposal to sell council land

271. In July 2018 the council proposed to bring to market four restructured allotments of land in the Golden Beach Urban Node on the basis that the allotments were considered surplus to council needs. These four allotments were obtained as 16 individual lots in around 2003 in accordance with the Land Acquisition and Compensation Act, and compensation was paid.

272. The council mostly followed the processes as prescribed in the Local Government Act in respect of the actions to be taken immediately before this land is placed on the market.

273. The council provided the investigation with information regarding its process to determine whether land is surplus, and has stated in a number of documents that the four restructured allotments were assessed to be surplus in accordance with council policy.

274. The Local Government Act provides that all public notices that a council must publish must be included on its website. The council acknowledged that it did not publish a Notice of Intention to Sell Land on its website. This omission is not, in these circumstances, fatal to the outcome of the process prescribed by the Local Government Act.

275. Where the council proposes to sell land, the Local Government Act requires that it must obtain a valuation not more than six months before the sale. The council obtained valuations in June 2017, and the council has advised the investigation it intends to obtain updated valuations before proceeding with the sale.

276. After the council resolved to progress the sale of land in October 2018, it was required by the Local Government Act to advise those who made a submission of the decision reached and the reasons for that decision. The council wrote to people who made submissions and advised them it had decided to proceed with the sale, but it did not provide reasons. This does not invalidate the decision, but it may have contributed to the confusion and misunderstanding about potential profiteering.

Communication with affected landowners

277. Communication has been a significant challenge for both the council and landowners, not assisted by the complexity of the issues, changes to planning controls made over the decades, and the fact that many landowners do not live in the area and some face language barriers.

278. The council has a webpage, as well as processes in place to facilitate the receipt and handling of both complaints and general enquiries from affected landowners. This includes information on its website about the complaints process and an online complaints form. Enquiries specifically about the Ninety Mile Beach subdivisions are directed to a full-time project coordinator to assist in ensuring that affected landowners receive a consistent response.

279. A number of landowners who provided information to the investigation indicated that they, their parents, or other family members, had not been kept up to date with the council's activities affecting their land. However, information provided by both the council and other landowners indicates that the council regularly corresponded with affected landowners and provided information about matters including changes to council policies and amendments to the Wellington Planning Scheme.

280. But it *is* also clear there is widespread confusion and suspicion among landowners about the council's activities, including about the controls applying to individual blocks. Much of the confusion could be alleviated if the council communicated in clear and non-bureaucratic language, including conveying to all landowners whether their land could ever be developed and if so under what conditions, or not.

281. While the council maintains a webpage regarding the Ninety Mile Beach Plan, the information is not as well organised as it could be, updates are not always dated, and the page does not clearly provide information on council policies that apply differently to affected landowners. Of particular significance are the council's policies regarding the application of the Waste Infrastructure Charge and penalty interest on unpaid rates, and the commencement of legal action to recover outstanding debts.

282. Improvement of the Ninety Mile Beach Plan webpage, including dates and relevant links to the council's policies would assist affected landowners in being able to find information and would improve the council's transparency of process.

283. While the council is required by legislation to publish public notices on its website, which has a 'News and Public Notices' feed, it did not do so in respect of its intention to sell council-owned land. It should ensure it does so in future.

Observations

284. It is plain that Wellington Shire Council inherited the Ninety Mile Beach subdivisions saga from its predecessor, and the chronology in this report evidences the many and lengthy attempts to resolve it. Proposals put forward over the years included various voluntary buy-back schemes, rate adjustments and hardship policies. But some of these proposals exacerbated people's grievances, with the council being accused by some in effect of bullying people into giving up their land and profiteering from the process.

285. The council's attempts have been made even more difficult by the fact that not only do different controls apply to different areas in which the blocks are located, but that zoning controls themselves have changed over the years. In effect, there are now two categories of land. Some blocks, those in the Coastal Dunes and Flood-prone areas, can never be developed. Other blocks, those in the Urban Nodes, can be developed, but only if the original individual lots are combined with three others to form a single block.

286. Some of the complaints stem from misunderstanding, which is not surprising given the complexity of the problem. In fact, the council was not profiteering from its buy-back program as alleged. The council's acquisition and proposed sale of land generally followed appropriate processes and was not unreasonable.

287. It appears that some complainants have confused the acquisition of land that could not be developed, with land that could be developed if combined with other lots. It would in future be wise for the council to limit acquisitions to land that cannot be developed at all. In relation to lots that can be developed if combined, the council should actively work with owners to facilitate this.

288. The imposition of rates and other charges on land that cannot be developed under any circumstances is not contrary to law and indeed was a decision taken by the council on legal advice. But while the investigation accepts the council has acted in good faith, in all of the circumstances of the subdivision's history these charges are ultimately unfair, and indeed pointless if the council continues its current policy of not recovering debts from this cohort.

289. It is also plain the council has made multiple and well-intentioned efforts to communicate with landowners, but that misunderstandings and confusion remain prevalent. The complainants may not all have been reasonable in their expectations, but the council could also have communicated better.

290. Finally, it is my firm view that this long-running saga must be brought to an end, and the only way this will happen is if the land that cannot ever be developed is acquired, in the public interest, for the benefit of all.

Recommendations

To Wellington Shire Council:

Recommendation 1

Review its rating strategy with a view to:

(a) reducing the rates levied against all undevelopable land in the Ninety Mile Beach subdivisions to zero

(b) cease levying the Waste Infrastructure Charge on all undevelopable land in the Ninety Mile Beach subdivisions

(c) as a gesture of goodwill, refund (on the request of current landowners or previous landowners who can provide evidence of payment, made within 12 months of this report)

- rates paid on all undevelopable land in the Ninety Mile Beach subdivisions since rates notices were reinstituted against Flood-prone land in 2006
- the Waste Infrastructure Charge paid on all undevelopable land in the Ninety Mile Beach subdivisions since the commencement of the Voluntary Assistance Scheme in 2011.

Council's response: Supported in-principle

While Wellington Shire's ratings strategies are lawful and have been developed taking into consideration the unique circumstances of the municipality, including undevelopable land along the 90 Mile Beach, as a gesture of goodwill, it supports recommendation 1 in-principle.

The implementation of the recommendation will however be subject to the receipt of legal advice that confirms the legislative ability to implement such a plan.

Recommendation 2

Actively facilitate the sale of single allotments between landowners in the Urban Nodes without itself acquiring land.

Council's response: Supported

Wellington Shire supports recommendation 2 and will implement the action identified taking into consideration the requirements of Privacy Legislation.

It should be noted that Wellington Shire has been providing land owners within the urban nodes, following enquiry, with relevant information in an attempt to facilitate the consolidation of restructure allotments. We will now implement a proactive notification procedure.

Recommendation 3

Update its website to assist the communication of relevant information to affected landowners, including:

(a) information on the Rates Calculation webpage regarding special arrangements in place for Ninety Mile Beach subdivision landowners

(b) all significant events in respect of the Ninety Mile Beach Plan in the New and Public News feed

(c) facility be provided to enable landowners to determine the category of their land by searching their address.

Council's response: Supported

In addition to a range of communication strategies already in place, including the allocation of a dedicated project manager to work with impacted stakeholders, Wellington Shire supports the additional actions outlined in recommendation 3.

To the Department of Environment, Land, Water and Planning:

Recommendation 4

Work with Wellington Shire Council to facilitate a program of compulsory acquisition of privately-owned undevelopable land in the Ninety Mile Beach subdivisions once the council's Voluntary Assistance Scheme and Voluntary Transfer Scheme conclude in 2021.

Department's response: Supported

The department remains committed to working with and supporting council to achieve sustainable future ownership and management of the land, consistent with the adjacent Gippsland Lakes Coastal Park.

Appendix A

Information provided by current and former landowners

The information in the table below is a summary of that provided by former and current landowners who approached the Ombudsman as part of this investigation.

The information provided varied and not all approaches included details of property addresses, ownership and rates.

	Location as currently described under the Ninety Mile Beach Plan			
	Urban Node	Between Settlements	Coastal Dunes	Flood-prone
Number of approaches	5	23	3	25
Original Owner	2	10	3	16
Next generation owner	3	13	0	9
Number of affected properties	5	27	3	26
Properties with an outstanding rates debt	2	2	0	9
Landowner is a member of the Property Rights Action Group	Nil identified	10 identified	1 identified	6 identified

Appendix B

Consolidated Chronology

Date	Event	Decision maker
1800s	Most of Ninety Mile Beach area was used for grazing.	N/A
1921	124 blocks created north of Seaspray.	Western Builders (developer)
1954	Paradise Beach Estate of 1309 blocks created – first subdivision along Ninety Mile Beach.	Western Builders (developer)
1959-60	Town and Country Planning Board makes critical remarks about the wide scale subdivision of land with minimal planning controls.	Town and Country Planning Board
1959-62	Subdivisions sealed by Shire of Rosedale under the *Local Government Act 1958*.	Shire of Rosedale
13 November 1962	Subdivisions approved by Shire of Rosedale under an interim development order.	Shire of Rosedale
August 1966	Town and Country Planning Board invited to make submissions to the State Development Committee's inquiry into matters including the development of the Gippsland Lakes area.	Town and Country Planning Board
1967	Town and Country Planning Board commenced survey of the coastline including Ninety Mile Beach.	Town and Country Planning Board
1972	Town and Country Planning Board initiated coastal survey of Gippsland Lakes area, including Ninety Mile Beach.	Town and Country Planning Board
1973	Town and Country Planning Board took out planning control over the Gippsland Lakes area through an interim development order.	Town and Country Planning Board
1975	Town & Country Planning Board produces *The Ninety Mile Beach, The Future of Existing Subdivisions* report.	Town and Country Planning Board
September 1976	Town and Country Planning Board and Shire of Rosedale announced controlled residential development would be permitted in urban settlements of Golden Beach, Paradise Beach and The Honeysuckles	Town and Country Planning Board
21 December 1976	Rosedale Planning Scheme approved by Governor in Council.	State Government
1977-78	Town and Country Planning Board participated in a steering committee with Shire of Rosedale, Ministry for Planning and Environment Protection Authority to consider future planning options for Ninety Mile Beach subdivisions.	N/A

January 1978	• Shire of Rosedale writes to landowners about status of lots in the Ninety Mile Beach area and indicating that studies will be undertaken to determine which properties are Flood-prone, which are environmentally sensitive and how the development of the remainder should be handled. • Confirmation that current council policy to not issue permits for development will continue.	Shire of Rosedale
1978-79	Shire of Rosedale determines to waive rates until further notice for certain properties.	Shire of Rosedale
1978-79	Town and Country Planning Board consulted with Shire of Rosedale and other agencies to formulate a restructure plan for the Ninety Mile Beach subdivisions.	Town and Country Planning Board Shire of Rosedale
December 1978	Shire of Rosedale and State Government advise landowners of classification of land: • Development land – suitable for low density housing • Beach Dune land – unstable soil and not suitable for development • Land affected by flooding by Lake Reeve – unsuitable for development	Shire of Rosedale State Government
1978 to late 1980s	Beach Dune Buy Back Scheme in place whereby owners of land in the Coastal Dunes were invited to sell their lots to the State Government for $700.	State Government
1979	Plan of restructure for development land adopted after exhibition in December 1978.	Ministry for Planning and Environment
22 December 1981	Amendment C6 to the Rosedale Planning Scheme gazetted introducing development controls and restructure plans.	State Government
1982	Planning responsibility transferred to Rosedale Shire Council by including it within the planning scheme.	State Government
21 December 1984	Minister for Planning and Environment declares the Lake Reeve islands to be an inappropriate subdivision.	State Government
September 1985	Secretary for Planning & Environment writes to landowners advising that the Minister proposes an amendment to Gippsland Lakes Planning Scheme Interim Development Order 1976 to rezone all land comprising the Lake Reeve Islands from Non-Urban Zone to Rural Zone, and inviting submissions.	Ministry for Planning and Environment
25 October 1985	Last day for submissions regarding the proposed amendment to the Gippsland Lakes Planning Scheme Interim Development Order 1976.	N/A
23 May 1988	Shire of Rosedale seeks a declaration under section 172(2) *of the Planning and Environment Act 1987* to 'enable the council to more actively promote and participate in the restructuring process in the Restructured Allotment Zone of the Rosedale Planning Scheme'.	Shire of Rosedale

7 September 1988	Notice of Declaration under section 172(2) of the *Planning and Environment Act 1987* gazetted. Allows the Shire of Rosedale to compulsorily acquire land in the Restructured Subdivision Zone.	Ministry for Planning and Environment
12 September 1988	Ministry writes to Shire of Rosedale providing copy of declaration and Gazettal notice.	Ministry for Planning and Environment
1990	Shire of Rosedale begins a limited approach to acquiring land to achieve restructured lots.	Shire of Rosedale
1992	Shire of Rosedale advises rate payers of change to method for calculating rates to Capital Improved Value.	Shire of Rosedale
October 1993	Rosedale Planning Scheme local section updated and land included in an R4 Residential Restructure Zone. Allows for a dwelling to be built on restructured lot without a building permit, subject to certain conditions.	Ministry for Planning and Environment
2 December 1994	Shire of Rosedale is abolished and merged with the City of Sale and parts of the Shires of Alberton and Avon to form the Shire of Wellington.	State Government
28 January 1997	Council resolves to continue policy of receiving title to land in lieu of unpaid rates and to advise landowners of this policy, and to compulsorily acquire land in certain circumstances to facilitate the consolidation / restructure of lots.	Wellington Shire Council
12 September 1997	Council writes to affected landowners advising that it has adopted a policy of accepting title to land in lieu of outstanding rates and charges.	Wellington Shire Council
1999	Council resolves to • seek political and State Government support for finding an improved solution to deal with inappropriate subdivisions • encourage development in selected locations • review the council's Strategic Plan and Planning Scheme to include a new planning framework for the area.	Wellington Shire Council
20 September 1999	Council writes to affected landowners advising that council has adopted a policy of accepting title to land in lieu of outstanding rates and charges.	Wellington Shire Council
August 2000	Strategic Facilitation Pty Ltd produces *Scoping study of inappropriate subdivisions along the Gippsland Coast*, and recommends a further study.	N/A
2002	Restructure Stages 2-4 in Golden Beach largely complete.	N/A
December 2002	Council, State Government and the Gippsland Coastal Board engage GHD Pty Ltd to undertake the *Wellington Coast Inappropriate Subdivision Strategy*.	Wellington Shire Council State Government Gippsland Coastal Board

2003	• Council ceases active facilitation of the restructure process while the WCIS Strategy is under development. • Council puts in place moratorium on the sale of council land.	Wellington Shire Council
January 2003	Council acquires title to 16 parcels of land subsequently restructured into four lots in Waikiki Way and Shoreline Drive, Golden Beach.	Wellington Shire Council
Late 2003	*Wellington Coast Subdivision Strategy* completed. Five options for future development of the Ninety Mile Beach subdivisions proposed.	N/A
8 October 2004	Council and GHD write to 6,600 landowners advising that the draft *Wellington Coast Subdivision Strategy* is available for public comment and feedback, and advising of public briefings.	Wellington Shire Council
2 February 2005	Council and GHD write to landowners providing an update on the Wellington Coast Subdivision Strategy and inviting expressions of interest to participate in focus groups.	Wellington Shire Council
17 May 2005	Council resolves to adopt the Waste Management Facility Strategy Report.	Wellington Shire Council
June 2005	GHD prepares *Wellington Coast Subdivision Strategy – Consultation Report*.	N/A
2005-06	Council commences levying of Waste Infrastructure Charge on all rateable properties- $25 flat rate.	Wellington Shire Council
July 2005	GHD prepares *Wellington Coast Subdivision Strategy – Recommendations Report*.	N/A
20 September 2005	• Council resolves to conduct a rating review to address perceived inequalities in the rating system and the increasing accumulated rates debt for properties in the Wellington Coast Subdivision. • Council resolves to adopt Wellington Coast Strategy Option 4 – Nodal Urban prepared by GHD in the *Wellington Coast Subdivision Strategy*.	Wellington Shire Council
14 December 2005	Council writes to landowners to advise its decision to adopt Option 4 of the *Wellington Coast Subdivision Strategy* and explain actions council will take over next 6-12 months.	Wellington Shire Council
31 January 2006	Council writes to landowners advising of impact of adoption of Option 4 on property and actions it will take over next 6-12months.	Wellington Shire Council
3 March 2006	Council receives legal advice regarding rating options, specifically with regards to writing off rates and charges and applying rebates and concessions.	N/A
21 March 2006	Council Briefing Committee receives presentation from Worksmiths regarding its rate review.	N/A

April 2006	*Coastal Spaces Landscape Assessment Study* produced by the Coastal Spaces Steering Committee (auspiced by Department of Sustainability and Environment)	Department of Sustainability and Environment
2 May 2006	Council resolves to designate information provided in meeting of 21 March 2006 regarding the rate review as confidential under Section 77 of the *Local Government Act 1989*	Wellington Shire Council
11 May 2006	Final *Wellington Coast Subdivision Rate Review* report produced by Worksmiths.	N/A
2006-07	After receiving advice that it must levy rates on land deemed as Flood-prone, council creates 2,500 new assessments.	Wellington Shire Council
2006-07	Municipal charge to be removed and short-fall covered by increase in rates.	Wellington Shire Council
December 2006	Secretary of the Department of Sustainability and Environment establishes joint State Government and Council project to develop plan to implement Wellington Coast Subdivision Strategy.	Department of Sustainability and Environment
20 March 2007	Council's Debt Collection and Interest Charging Policy is updated to introduce a new framework for levying rates, charging penalty interest and undertaking debt collection in respect of the properties in the Ninety Mile Beach subdivision.	Wellington Shire Council
15 May 2007	Council resolves to authorise the CEO to write to the Minister for Planning seeking an amendment to the Wellington Planning Scheme by placing a temporary moratorium on development in areas that will be negatively affected by implementation of the *Wellington Coast Subdivision Strategy*.	Wellington Shire Council
October 2007	VCAT orders that dwellings can be permitted in accordance with the zone even though they do not accord with policy. *Rafferty v Wellington SC* (Red Dot) [2007] VCAT 1995	Victorian Civil and Administrative Tribunal
20 December 2007	Planning Scheme Amendment C49 is gazetted. This imposes a moratorium on development in the Ninety Mile Beach subdivisions until 1 July 2009.	Minister for Planning
2 January 2008	Council writes to landowners providing an update on the Wellington Coast Subdivision Strategy, and notifying them of the effect of Amendment C49.	Wellington Shire Council
March 2008	VCAT affirms council's refusal of dwelling applications. *Theologou v Wellington SC* [2008] VCAT 438	Victorian Civil and Administrative Tribunal
2008	GHD produces *Land Capability Assessment*.	N/A

21 April 2009	Council resolves • to endorse the Wellington Coast Subdivision implementation package over 6 years including o extension of Amendment C48 development prohibition until 30 June 2015 o amend the Wellington Planning Scheme to rezone the Between Settlements area as Rural Conservation o formulate and apply controls on the development of land identified as being at particular environmental risk o make offer to purchase undeveloped properties in the Between Settlements area and Glomar Beach as part of a voluntary adjustment assistance package o retain current planning controls in Golden Beach and Paradise Beach o consider urban development of Golden Beach and Paradise Beach • that the CEO write to the Minister for Environment, Climate Change and Innovation and the Minister for Planning to seek approval of the implementation package.	Wellington Shire Council
30 June 2009	Planning Scheme Amendment C61 extends Amendment C48 moratorium to 30 June 2011.	Minister for Planning
25 January 2010	Council writes to landowners advising of preparation of Amendment C33. Amendment proposes to apply an updated Floodway Overlay and Land Subject to Inundation Overlay to l and reliably know to be affected by flooding.	Wellington Shire Council
8 February 2010	Council writes to the Deputy Valuer-General to request indicative valuations on properties in the Between Settlements area.	Wellington Shire Council
18 March 2010	Last day for submissions to council in respect of Amendment C33.	N/A
17 May 2010	Valuer-General provides valuation advice to the council.	Valuer-General
2010-11	Waste Infrastructure Charge increased to $32 (28% increase).	Wellington Shire Council
July 2010	CPG Australia Pty Ltd produces final report of its Wellington Planning Scheme Review.	N/A
23 December 2010	Council writes to Valuer-General seeking further valuation advice, in particular, in respect of an appropriate ex-gratia payment to be made to landowners who participate in a proposed voluntary adjustment scheme.	Wellington Shire Council
18 February 2011	Valuer-General provides valuation advice to the council and indicates an ex-gratia payment of $1,500 per single lot would be appropriate to be made to participants in the proposed voluntary adjustment scheme.	Valuer-General

29 March 2011	Council holds a Rates Options Workshop to consider options for rates and other charges.	N/A
7 June 2011	Council resolves to request that the Minister for Planning • Prepare, adopt and approve Amendment C66 to the planning scheme that would, among other things, remove the moratorium on the sale of council land in the Golden Beach and Paradise Beach settlements and for specific completed restructure lots in Glomar Beach. • Authorise the council to prepare Amendment C71 which would implement permanent planning controls on land in the Ninety Mile Beach subdivisions. Council resolves to • Endorse the implementation of a Voluntary Assistance Scheme to commence after Amendment C66 is approved by the Minister for Planning. • Remove the moratorium on the sale of council land in Golden Beach, Paradise Beach and specified restructured lots in Glomar Beach.	Wellington Shire Council
23 June 2011	Planning Scheme Amendment C50 Part 1 is gazetted. This extends development prohibition and implements coastal settlement boundaries.	Minister for Planning
23 June 2011	Voluntary Assistance Scheme commences. Council writes to landowners inviting participation in the VAS and provides information about interim planning controls.	Wellington Shire Council
28 June 2011	Council determines to not levy Waste Infrastructure Charge on properties in the Between Settlements area, except where there is an existing dwelling.	Wellington Shire Council
28 June 2011	Attorney-General writes to Council advising that $6 million in funding has been approved to support the council's VAS.	Attorney-General
29 June 2011	Attorney-General and council A/CEO sign Activity Schedule for VAS commencing 30 June 2011 and ending 30 December 2015.	N/A
29 June 2011	Attorney-General authorises council to prepare Amendment C71.	Attorney-General
30 June 2011	Amendment C66 is gazetted. This introduces new planning provisions which effectively extend the development prohibition in the Between Settlements area.	Minister for Planning
6 December 2011	Council's Rates Debt Collection and Interest Charging policy is amended to reflect the changes to zoning per the Wellington Planning Scheme.	Wellington Shire Council
2011	Council appoints a full-time project coordinator to administer the Ninety Mile Beach Plan.	Wellington Shire Council

5 April 2012	Council writes to landowners advising of the preparation of Amendment C71 which provides for permanent planning controls on land in the Ninety Mile Beach subdivisions.	Wellington Shire Council
21 May 2012	Last day for submissions to council in respect of Amendment C71.	N/A
26 June 2012	Council holds an open council briefing to consider the Amendment C71 submissions received, issues raised and officer responses.	Wellington Shire Council
17 July 2012	Council resolves to: • consider written submissions received in respect of Amendment C71 • make changes to Amendment C71 as a result of several submissions • request the Attorney-General appoint an independent planning panel to consider all written submissions made in respect of Amendment C71.	Wellington Shire Council
August 2012	Independent Planning Panel appointed to consider Amendment C71.	Attorney-General
18 December 2012	Planning Scheme Amendment C71 Panel Report produced.	N/A
16 January 2013	Independent Planning Panel report into Amendment C71 released to the public.	Wellington Shire Council
19 February 2013	Council briefed on the Independent Planning Panel report into Amendment C71.	N/A
5 March 2013	Council resolves to: • consider the panel report for Amendment C71 • adopt Amendment C71 subject to some minor changes • request that the Attorney-General approves Amendment C71.	Wellington Shire Council
29 May 2013	Council seeks legal advice regarding a proposal to rely on an existing section 172(2) declaration to compulsorily acquire land where owners cannot be located.	Wellington Shire Council
30 May 2013	Planning Scheme Amendment C71 gazetted. This rezones the area in between preferred settlement nodes of Golden Beach and Glomar Beach as Rural Conservation.	Minister for Planning
28 June 2013	Council receives legal advice regarding its proposal to compulsorily acquire land.	N/A
1 July 2013	Fire Services Property Levy comes into effect with council collecting the levy on behalf of the State Revenue Office.	State Government
16 January 2014	Amendment C33 is gazetted. This puts in place new and modified flood controls for Flood-prone areas.	Minister for Planning

18 March 2014	Council is briefed on the progress of the Ninety Mile Beach Plan project.	N/A
15 July 2014	Council resolves to authorise the CEO to write to the Attorney-General to seek a variation to the Wellington Coast Subdivisions funding agreement and an extension of time to 30 June 2021. Variation will: • include the inappropriate subdivision areas subject to inundation via a Voluntary Transfer Scheme • include the Coastal Dunes in the existing Voluntary Assistance Scheme.	Wellington Shire Council
24 July 2014	Council writes to the Attorney-General requesting a variation to the funding agreement and extension of time for another six years for funding agreement with no change to funding amount.	Wellington Shire Council
31 October 2014	Attorney-General approves council's request for variation to and extension of funding agreement subject to conditions. Funding extended to 30 June 2021.	Attorney-General
3 March 2015	Council resolves to request the Minister for Planning to recommend to the Governor in Council that a new Section 172(2) declaration be made to enable council to compulsorily acquire land where owners cannot be contacted.	Wellington Shire Council
17 March 2015	Council writes to Minister for Planning requesting new section 172(2) declaration to enable council to compulsorily acquire land where owners cannot be contacted.	Wellington Shire Council
17 March 2015	Council resolves to adopt its Rating Strategy 2015-18.	Wellington Shire Council
15 May 2015	Council adopts Waste Management Facility Strategy.	Wellington Shire Council
28 May 2015	DELWP writes to the council seeking further information in respect of the request for a new section 172(2) declaration, specifically in regard to land values that would apply under any future compulsory acquisition.	Department of Environment, Land, Water and Planning
19 June 2015	Council writes to Valuer-General seeking valuation advice in respect of appropriate ex-gratia payments for lots in the Coastal Dunes and those deemed to be Flood-prone.	Wellington Shire Council
June 2015 to August 2016	Council makes enquiries to locate persons with interest in land in the Between Settlements area; list of 'address unknown' owners compiled.	Wellington Shire Council
14 July 2015	Valuer-General writes to council providing advice regarding land values. In regard to ex-gratia payments: • confirmation that $1,500 is appropriate for single lots in the Between Settlements zone • advice that $1,500 is appropriate for lots in the Coastal Dunes • advice that $100 is appropriate for lots that are deemed to be Flood-prone.	Valuer-General

2015-16	Waste Infrastructure Charge increased to $35 (9% increase)	Wellington Shire Council
October 2015	Council conducts internal workshops regarding sale of council land.	N/A
2016-17	Waste Infrastructure Charge increased to $45 (29% increase)	Wellington Shire Council
24 July 2016	Attorney-General signs Activity Schedule for VAS to extend scheme to 2021.	Attorney-General
16 August 2016	Council resolves to commence compulsory acquisition of properties in the Between Settlements area where owners cannot be located.	Wellington Shire Council
8 September 2016	Minister for Planning writes to council and advises that new section 172(2) declaration has been made and gazetted (same day).	Minister for Planning
3 October 2016	Council receives independent valuations from Valuer-General for properties in Between Settlements area to be compulsorily acquired under the Land Acquisition and Compensation Act.	Valuer-General
5 January 2017	Council publishes on News and Public Notices page on website re placement of Notices of Intention to Acquire in Between Settlements area.	Wellington Shire Council
18 January 2017	Council places Notice of Intention to Acquire in *Herald Sun* in respect of properties in the Between Settlements area.	Wellington Shire Council
19 January 2017	Council makes application to Registrar of Titles regarding intention to acquire under Section 10(1) of the Land Acquisition and Compensation Act for properties in Between Settlements area.	Wellington Shire Council
20 February 2017	Notices of Intention to Acquire served on 7 contactable persons and application to Registrar of Titles under Section 10(1) of the Land Acquisition and Compensation Act for properties in Between Settlements area.	Wellington Shire Council
30 March 2017	Notices of Acquisition published in Government Gazette in respect of properties in Between Settlements area.	Wellington Shire Council
30 March 2017	• Council makes application to Registrar of Titles to obtain certificates per Section 54 Transfer of Land Act 1958 for properties in Between Settlements area. • Notice of acquisition and compensation offer served on owners of 8 properties in Between Settlements area as required by Land Acquisition and Compensation Act.	Wellington Shire Council
4 April 2017	Council places Notice of Acquisition of Interest in Land in *Herald Sun* in respect of properties in the Between Settlements area.	Wellington Shire Council

18 May 2017	• Notice of acquisition published in Government Gazette and Gippsland Times-Spectator in respect of properties in Between Settlements area. • Council makes application to Registrar of Titles to obtain certificates per Section 54 Transfer of Land Act for properties in Between Settlements area.	Wellington Shire Council
23 May 2017	Council seeks valuation advice from certified practising valuers on four restructured blocks in Waikiki Way and Shoreline Drive, Golden Beach.	Wellington Shire Council
29 May 2017	Notice of acquisition and compensation offer served on owners of 7 properties in Between Settlements area as required by Land Acquisition and Compensation Act (intention to acquire served 20 February 2017)	Wellington Shire Council
June 2017	Compensation for non-contactable owners transferred to council's unclaimed money ledger and held for 12 months before transfer to State Revenue Office per Land Acquisition and Compensation Act in respect of properties in Between Settlements area.	Wellington Shire Council
13 June 2017	Certified practising valuers provide current market valuations on four restructured blocks in Waikiki Way and Shoreline Drive, Golden Beach to council.	N/A
2017-18	Waste Infrastructure Charge increased to $50 (11% increase)	Wellington Shire Council
July 2017	Voluntary Assistance Scheme commences for Coastal Dunes.	Wellington Shire Council
July to December 2017	Council makes enquiries to locate persons with interest in land in Coastal Dunes; list of 'address unknown' owners compiled.	Wellington Shire Council
19 December 2017	Council resolves to commence statutory process to compulsorily acquire land in the Coastal Dunes where owners cannot be located.	Wellington Shire Council
15 February 2018	• Notice of Intention to Acquire Land in Coastal Dunes published in *Herald Sun* and posted on all subject land. • Council makes application to Registrar of Titles regarding intention to acquire under Section 10(1) of the Land Acquisition and Compensation Act for properties in Coastal Dunes.	Wellington Shire Council
26 April 2018	• Notice of Acquisition in respect of properties in the Coastal Dunes, published in the Government Gazette and on the subject land. • Council makes application to Registrar of Titles to obtain certificates per Section 54 Transfer of Land Act for properties in Costal Dunes.	Wellington Shire Council
1 May 2018	Notice of Acquisition in respect of properties in the Coastal Dunes published in the Gippsland Times-Spectator.	Wellington Shire Council

2 May 2019	Notice of Acquisition in respect of properties in the Coastal Dunes published in the *Herald Sun*.	Wellington Shire Council
3 May 2018	Council receives independent valuations from Valuer-General in respect of properties in the Coastal Dunes for the purpose of assessing compensation under the Land Acquisition and Compensation Act.	Valuer-General
18 May 2018	Compensation for non-contactable owners transferred to council's unclaimed money ledger and held for 12 months before transfer to State Revenue Office per Land Acquisition and Compensation Act in respect of properties in Coastal Dunes.	Wellington Shire Council
2018-19	Waste Infrastructure Charge increased to $55 (10% increase).	Wellington Shire Council
3 July 2018	Council resolves to commence process to sell four restructured lots in Waikiki Way and Shoreline Drive, Golden Beach.	Wellington Shire Council
10 July 2018	Council publishes Notice of Intention to Sell Land.	Wellington Shire Council
10 August 2018	Last day for written submissions to be made to the council, and for request to be heard, in respect of proposal to sell four restructured lots in Waikiki Way and Shoreline Drive, Golden Beach.	N/A
14 August 2018	Council writes to persons requesting to be heard in respect of proposed sale of land in Golden Beach advising of date, time and place of hearing.	Wellington Shire Council
21 August 2018	Council committee hears submissions on the proposal to sell 4 restructured lots in Golden Beach.	Wellington Shire Council
3 October 2018	Council acknowledges receipt of submission regarding proposal to sell four restructured lots and advising that decision will be made on 16 October 2018.	Wellington Shire Council
16 October 2018	Council resolves to authorise the CEO to progress the sale of four restructured lots in Golden Beach.	Wellington Shire Council
18 October 2018	Council writes to landowners inviting participation in the Voluntary Transfer Scheme for Flood-prone lots.	Wellington Shire Council
26 October 2018	Council advises persons making submissions regarding proposed sale of four restructured lots that council has resolved to progress the sale.	Wellington Shire Council
5, 12 and 19 December 2018	Council writes to landowners inviting participation in the Voluntary Transfer Scheme for Flood-prone lots.	Wellington Shire Council

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Investigation into the imprisonment of a woman found unfit to stand trial
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Investigation into allegations of improper conduct by officers at Goulburn Murray Water
October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College
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Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria
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Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies
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Investigation into the administration of the Fairness Fund for taxi and hire car licence holders
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Investigation into Maribyrnong City Council's internal review practices for disability parking infringements
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Investigation into Wodonga City Council's overcharging of a waste management levy
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Investigation of a matter referred from the Legislative Council on 25 November 2015
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Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre
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Investigation into Victorian government school expulsions
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Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board
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Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board
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Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville
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Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint
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Investigation into the transparency of local government decision making
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Ombudsman enquiries: Resolving complaints informally
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Investigation into the management of complex workers compensation claims and WorkSafe oversight
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Report on recommendations
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Investigation into Casey City Council's Special Charge Scheme for Market Lane
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Investigation into the misuse of council resources
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Investigation into public transport fare evasion enforcement
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Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting
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Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations
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Investigation into the rehabilitation and reintegration of prisoners in Victoria
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Conflict of interest by an Executive Officer in the Department of Education and Training
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Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight
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Investigation into allegations of improper conduct by officers of VicRoads
June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service
April 2015

Councils and complaints – A report on current practice and issues
February 2015

Investigation into an incident of alleged excessive force used by authorised officers
February 2015

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Investigation following concerns raised by Community Visitors about a mental health facility
October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria
August 2014

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