

OFFICIAL: Sensitive



Investigation of a referral by the Select Committee on  
the Conduct of the Hon Vickie Chapman MP | May 2022



OmbudsmanSA

Investigation of a referral by a committee of the House of Assembly under section 14(1) of the *Ombudsman Act 1972* concerning the former Attorney-General, the Hon Vickie Chapman MP.

Ombudsman SA ref: 2021/07047.

## Contacting Ombudsman SA

Our business hours are  
9.00am - 5.00pm, Monday to Friday

Level 8  
95 Grenfell Street  
Adelaide SA 5000

Telephone 08 8226 8699  
Facsimile 08 8226 8602  
Toll free (outside metro area) 1800 182 150

[www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)

## Final report

### Full investigation

#### Parliamentary referral, section 14(1) of the *Ombudsman Act 1972*

<b>Public officers</b>	The Hon Vickie Chapman MP  The Hon Steven Marshall MP
<b>Ombudsman reference</b>	2021/07047
<b>Date referral received</b>	18 November 2021
<b>Issues</b>	<ol style="list-style-type: none"><li>1. Whether the Hon Vickie Chapman MP, the former Attorney-General, committed maladministration by<ol style="list-style-type: none"><li>1.1. failing to avoid a situation in which her private interests conflicted, had the potential to conflict, or appeared to conflict, with her public duty, contrary to clause 3.1 of the Ministerial Code of Conduct.</li><li>1.2. failing to advise the former Premier of South Australia, the Hon Steven Marshall MP, in writing as soon as possible after becoming aware of a conflict of interest, contrary to clause 3.3 of the Ministerial Code of Conduct.</li></ol></li><li>2. Whether the Hon Steven Marshall MP, the former Premier of South Australia, committed maladministration by failing to make any enquiry to ascertain whether there was substance to concerns raised in the media and Parliament about Ms Chapman being in a position of conflict, and ensure compliance with the Ministerial Code of Conduct.</li><li>3. Whether any other public officer committed maladministration in connection with the former Attorney-General's determination of the Smith Bay application.</li></ol>

# Contents

Introduction.....	1
Issues the subject of investigation.....	2
The Ombudsman’s impartiality.....	8
The investigation process .....	9
Procedural fairness .....	11
Background.....	12
Ms Chapman’s property on Kangaroo Island .....	12
Ms Chapman’s meeting with KIPT and Mr Michael Pengilly in 2017 .....	13
Mr Pengilly and his relationship with Ms Chapman .....	15
The Smith Bay application .....	16
Internal discussions about conflict of interest and a possible delegation .....	16
The 2020 Assessment Report .....	18
Ms Chapman’s decision and subsequent events .....	23
The 2021 Assessment Report .....	28
Ms Chapman’s decision.....	32
The Select Committee .....	33
Relevant definitions.....	34
Maladministration and ‘substantial mismanagement’ .....	35
Conflicts of interest.....	36
Conflict of interest and bias .....	38
The Ministerial Code of Conduct .....	39
Evidence.....	41
The evidence of Ms Vickie Chapman.....	41
Ms Chapman’s property in Western River, Kangaroo Island.....	41
The timber plantation in Western River, Kangaroo Island.....	43
Briefings and discussions about the Smith Bay application and a conflict of interest ....	44
The evidence of Mr Stephen Stone and Kiland .....	46

OFFICIAL: Sensitive

Mr Stephen Stone .....	46
Kiland, formerly KIPT .....	47
The evidence of the former Premier, the Hon Steven Marshall MP .....	48
The evidence of the Hon David Ridgway and the Hon Robert Lucas .....	49
The Hon David Ridgway .....	49
The Hon Robert Lucas .....	50
Observations from my visit to Kangaroo Island .....	50
Consideration.....	54
Final views .....	68
Annexures.....	69
Appendix 1: Letter from Ms Andrea Michaels MP .....	70
Appendix 2: The Ministerial Code of Conduct .....	72

# Introduction

This report is the culmination of an investigation I conducted following a referral of a matter on 18 November 2021 from the House of Assembly Select Committee on the Conduct of the Hon Vickie Chapman MP regarding Kangaroo Island Port Application (**the Select Committee**).

I have to concede that I found the referral to be imprecise and requiring a greater level of interpretation by me than is ideal. I accept that it will be a matter of contention whether I have correctly interpreted what the Select Committee wanted me to investigate. However, doing the best I can, I have formulated the referral in a way that I am confident comes within the limits of my jurisdiction. In doing so, the result is that I have accepted that the referral requires me to enquire into matters on which the Select Committee made findings, namely that Ms Chapman was in a position of actual and perceived conflict of interest when she considered the 2020 and 2021 Assessment Reports (Findings 5 and 6) and that, in failing to declare her conflict of interest, she breached the Ministerial Code of Conduct (Finding 9).

To my mind, this is unfortunate because it requires me to draw conclusions on issues about which a parliamentary committee has made findings and puts me in the position of either validating their findings or disagreeing with them. It needs to be remembered that the formation of a Select Committee, the conduct of its inquiry, the findings it makes and the adoption of recommendations it puts to the House are all necessarily part of a political process conducted under the public eye, which is very different to an Ombudsman investigation. An Ombudsman is required by law to conduct an investigation in private without political influence or deference, with full and impartial consideration of the facts and the law and with absolute adherence to procedural fairness. An Ombudsman investigation is not and should not be seen as an extension of the political process of a Select Committee. For this reason, there should be a clear distinction between the matters on which a Select Committee makes findings and the matters that it refers to the Ombudsman to investigate. That has not occurred in this instance. I elaborate on this in my discussion below in the section on 'Issues the subject of investigation'.

In considering the issues that comprised the matter referred to me, I had regard to the evidence received by the Select Committee but formed my own views about it. On matters that were not adequately covered by the Select Committee's evidence for my purposes, I conducted my own enquiries. Whether the evidence was received by the Select Committee or obtained directly by me, I analysed it with an open mind and reached my own conclusions without regard to the Select Committee's findings.

The central issue of the referral was whether Ms Chapman was in a position of a conflict of interest at the relevant time. This required a close examination of both the nature of her private interests and the details of the development application that she had to determine for me to decide whether there was a conflict between those private interests and her public duty to decide the application on its merits. That examination has led me to conclude that Ms Chapman did not have a conflict of interest at the relevant time.

The referral comprised of matters that were ancillary to that issue of whether Ms Chapman was in a position of conflict. I have concluded that no maladministration in public administration was committed by any other public officer in connection with Ms Chapman's determination of the application. This report sets out in detail the basis of my conclusions.

# Issues the subject of investigation

1. The Select Committee referred this matter to me pursuant to section 14(1) of the *Ombudsman Act 1972*. This provision permits any committee of either House of Parliament to refer to me for investigation and report 'any matter that is within the jurisdiction of the Ombudsman' and which the committee considers should be investigated by the Ombudsman.
2. According to section 14(2) of the Ombudsman Act, the Ombudsman must carry out an investigation into any matter referred under this section and must submit a report. In the case of a referral from a committee of the House of Assembly, the report must be submitted to the Speaker.
3. From this it can be seen that I am obliged to investigate the matter referred provided that it is within the Ombudsman jurisdiction. This obligation to investigate the matter referred applies whether or not the Ombudsman considers it in the public interest to do so. In order to define the scope of my investigation in conformity with the requirements of these provisions I must do two things:
  1. identify the matter referred to me by the Select Committee, and
  2. determine whether the matter referred comes within the Ombudsman jurisdiction.
4. Since 7 October 2021, the Ombudsman functions have been set out in section 5A of the Ombudsman Act. Of relevance to the referral, the Ombudsman functions include:
  - (a) to receive, assess and investigate or otherwise deal with complaints made or referred to the Ombudsman about public administration;
  - (b) to receive, assess and investigate or otherwise deal with reports about misconduct and maladministration in public administration made or referred to the Ombudsman.
5. Each of the terms 'public administration', 'misconduct in public administration' and 'maladministration in public administration' are defined in section 3 and section 4 of the Act and these definitions set the boundaries of the Ombudsman jurisdiction in relation to the investigation function. I discuss these definitions in a subsequent section of my report.

6. The Select Committee's referral came to me by way of a letter dated 18 November 2021 from the Select Committee's Chairperson, Ms Andrea Michaels MP. The letter is in the following terms:



7. As can be seen, the referral consists of three matters, none of which are expressed in a way that employs the terminology of my investigation functions, namely, investigations about 'public administration', 'misconduct in public administration' or 'maladministration in public administration', so as to come unambiguously within the Ombudsman jurisdiction. It is unfortunate that the Select Committee, in contemplating a referral to me, did not seek my view on how a referral should be conveyed so that its compliance with the Ombudsman jurisdiction was free from doubt.

8. For example, the referral would have been more clearly expressed as coming within my jurisdiction if it asked me to investigate:
- whether there had been an error or failure in public administration in the circumstances of ... etc.
  - whether public officer A, B or C had committed misconduct in public administration by failing to ... etc., or
  - whether a public officer or public authority had committed maladministration in public administration by failing to ... etc.
9. By utilising the terminology of the Ombudsman investigation functions, doubts about whether I have jurisdiction to investigate the matter can be avoided. Regrettably, the form of this referral requires a substantial level of interpretation by me so that I ensure that I am acting within the limits of the Ombudsman jurisdiction. I will endeavour to do that in order to give the referral efficacy. To a large extent this requires me to discern the intention of the Select Committee in making the referral to me. I have attempted to do this by reference to the Final Report tabled by the Select Committee on 18 November 2021 and the remarks of the Chairperson in her letter of 18 November 2021 that preface the matters referred. While not everyone will agree with my interpretation, it is the best I can do in an imperfect situation given that, following the completion of the Select Committee's Inquiry and tabling of its report in Parliament, the Select Committee ceased to exist and is unable to provide me with any clarification about the referral.
10. At page 16 of the Select Committee's report, the discussion leading to the decision to refer a matter to me consisted of the following:

***2.3 Ministerial code of conduct and potential misconduct or maladministration***

*The Committee heard that the Attorney-General breached the Ministerial Code of Conduct by failing to disclose her actual and perceived conflict of interest regarding the Smith Bay proposal. As Dr Gray QC told the Committee:*

*On any reasonable view of the situation, the questions being reported in the media and the concerns being raised in Parliament should have given rise to some doubt in the Attorney-General's mind as to whether or not she was in a position of conflict. The Attorney-General should have, pursuant to the Code, reported the matter to the Premier, or at the very least, sought advice.<sup>52</sup>*

*The Premier, pursuant to the Ministerial Code of Conduct has a responsibility to address any failure to disclose a conflict of interest<sup>53</sup> and the Premier has a responsibility to take appropriate steps to ensure members of the Cabinet act in accordance with their fiduciary duties.<sup>54</sup> There was no evidence before the Committee that the Premier, upon becoming aware of the matter, made an inquiry about the Attorney-General being in a position of conflict.*

*Whilst there was no evidence before the Committee to make any adverse finding of maladministration against any public officer or the Premier,<sup>55</sup> significant factual matters concerning proper governance practices have been raised during this Inquiry which warrant referral to the Ombudsman for investigation.<sup>56</sup> As Dr Gray QC told the Committee:*

*The evidence adduced before the Select Committee revealed a significant failure of good governance. There are considerable issues that arise for investigation by the Ombudsman concerning the manner in which such a departure from good governance in decision making was able to occur.<sup>57</sup>*

<sup>52</sup> Dr Rachael Gray QC, Submission 15, p. 4.

<sup>53</sup> South Australian Ministerial Code of Conduct, p. 10.

<sup>54</sup> South Australian Ministerial Code of Conduct, p. 4.

<sup>55</sup> See: Appendix E.

<sup>56</sup> Submission 15, p. 5.

<sup>57</sup> Submission 15, p. 9

11. The Select Committee then proceeded to make the following findings:

***Finding 9:***

*The Committee finds that the Attorney-General, in failing to disclose her conflict of interest, breached the Ministerial Code of Conduct.*

***Finding 10:***

*The Committee did not make any adverse finding of maladministration against the Premier, any Chief Executive or any public officer, including Crown law officers.*

***Finding 11:***

*The Committee finds that the following matters should be referred to the Ombudsman pursuant to section 14 (1) of the Ombudsman Act 1975 [sic]*

- a) any matter relevant to whether or not the Attorney-General had a conflict of interest in determining the application;*
- b) any breach of the Ministerial Code of Conduct; and;*
- c) the role that any other public officer undertook relevant to the Attorney-General's decision, including the role and responsibility of the Premier, Chief Executives and other public officers, including Crown Law Officers.*

12. While the Select Committee was certain about the former Attorney-General having a conflict of interest and, by failing to disclose this, having breached the Ministerial Code of Conduct, the one issue they were uncertain about is whether there was maladministration on the part of any public officer, including the then Premier, in connection with the 'significant failure of good governance' in decision making, as submitted by Dr Rachael Gray QC, senior counsel assisting.
13. From Ms Michael's letter of referral to me it is clear that the referral is in consequence of the Select Committee not being able to determine whether maladministration was committed by any public officer despite there being 'significant factual matters concerning proper governance practices' that warranted referral to me for investigation. I take it then that the three matters of a), b) and c) set out in the referral are related to this one question that was left unresolved by the Select Committee; whether maladministration had occurred in regard to the former Attorney-General's determination of an application to develop a deep-water port facility at Smith Bay, Kangaroo Island (**the Smith Bay application**). That, I believe, is the matter that the Select Committee considers should be investigated by me and is the subject of the referral.

14. The referral does not mention misconduct in public administration as defined in the Ombudsman Act and I do not interpret the referral to require me to investigate whether the former Attorney-General or any other public officer committed misconduct in public administration in connection with her determination of the Smith Bay application.
15. An investigation into whether public officers have committed maladministration in public administration comes within the Ombudsman jurisdiction. Interpreting the referral as comprising the matter of maladministration will ensure that the referral is within the Ombudsman jurisdiction and my investigation of the matter is valid.
16. Besides mentioning the former Attorney-General, the referral does not specify which public officers should be subject to my investigation, although there is a general reference to the former Premier, any Chief Executive and any public officer, including Crown law officers. I note that all of these come within the definition of 'public officer' for the purpose of the definition of maladministration in public administration in section 4(2) of the Ombudsman Act.
17. It follows that I interpret the three matters set out in the referral as requiring me to investigate issues relevant to whether the former Attorney-General had a conflict of interest, whether any breach of the Ministerial Code of Conduct occurred and the role of any other public officer relevant to the former Attorney-General's decision; all in the context of determining whether maladministration in public administration occurred.
18. Therefore, doing the best I can with the imprecise terms of the referral, I have formulated the scope of the investigation to cover the following issues so that it stays within the bounds of my jurisdiction:
  1. Whether the Hon Vickie Chapman MP, the former Attorney-General, committed maladministration by:
    - 1.1. failing to avoid a situation in which her private interests conflicted, had the potential to conflict, or appeared to conflict, with her public duty, contrary to clause 3.1 of the Ministerial Code of Conduct
    - 1.2. failing to advise the former Premier of South Australia, the Hon Steven Marshall MP, in writing as soon as possible after becoming aware of a conflict of interest, contrary to clause 3.3 of the Code
  2. Whether the Hon Steven Marshall MP, the former Premier of South Australia, committed maladministration by failing to make any enquiry to ascertain whether there was substance to concerns raised in the media and Parliament about the former Attorney-General being in a position of conflict, and ensure compliance with the Code.
  3. Whether any other public officer committed maladministration in connection with the former Attorney-General's determination of the Smith Bay application.
19. At this point I wish to comment on the appropriateness of this referral to me. The definition of maladministration in public administration that applies most relevantly to this matter is provided in section 4(2)(a)(ii) of the Ombudsman Act. This definition refers to: '*conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions*'. Even though the question of whether

maladministration was unresolved by the Select Committee, I observe with dismay that the referral still requires me to investigate afresh whether the former Attorney-General had a conflict of interest when she considered the Smith Bay application as that is relevant to the question of whether her conduct involved substantial mismanagement in or in relation to the performance of her official functions. Now that I have decided what the matter referred is, and determined that it is within the Ombudsman jurisdiction, I am duty bound to investigate a matter about which the Select Committee has already made findings and the Parliament has voted on, passing a no confidence motion against the former Attorney-General. This may or may not have been the intention of the Select Committee but it is the inevitable result of the imprecise way that the Select Committee has expressed the referral to me.

20. If the Select Committee did intend for me to investigate whether or not the former Attorney-General was in a position of a conflict of interest, an issue that the Select Committee has already made findings on, this is to be regretted. In my view, it is inappropriate for a parliamentary committee to refer to an Ombudsman a matter about which it has inquired into and reached final conclusions and that have then been acted upon by a House of Parliament. The public interest is not served by a referral of such matters. An Ombudsman should only be referred matters on which a parliamentary committee is uncertain, where no conclusions have been reached but the evidence suggests an issue of importance that warrants an in-depth, independent investigation by the Ombudsman. It is not the role of an Ombudsman to either validate the findings of a committee or vindicate a public officer (in this case, a former Minister) who has been the subject of a committee's findings on inquiry. To require me to do so through the obligation under section 14(2) of the Ombudsman Act creates a real risk of politicising my Office and undermining public confidence in my Office's independence and impartiality. More care than has been exhibited in this matter needs to be taken in crafting a referral so that I am not put in the position of having to either confirm or disagree with a parliamentary committee on matters that it has already decided and the Parliament has acted upon.
21. It would have been far better for the Select Committee to have simply identified that it had concerns about the former Attorney-General being in a position of conflict and referring the matter to me for investigation without itself making any findings about the matter. However, in this case the Select Committee felt it had a sufficient basis to make findings and proceeded to do so. Having made those findings, the Select Committee needed to ensure that in making a referral to me, it was not asking me to investigate the same issues it had already determined.
22. Despite my criticism of the referral, I have approached the investigation with an open mind and considered the issues afresh without reference to the possible political ramifications of my conclusions.

# The Ombudsman's impartiality

23. On 24 November 2021, I wrote to Ms Chapman, Mr Marshall, former members of the Select Committee, Ms Caroline Meador, Chief Executive of the Attorney-General's Department, and Ms Ingrid Norman, Crown Solicitor. I outlined my statutory and other relationships with various parties involved in this matter, and offered the recipients of my letter the opportunity to comment on or raise an objection to my carriage of the matter. Relationships of particular relevance include that my Office is funded through a State Budget allocation through the Attorney-General's Department, all my staff are employed with the Attorney-General's Department (albeit assigned to my Office and under my direction) and from time to time I met with Ms Chapman in her role as head of the Attorney-General's Department to discuss operational matters.
24. My view is that none of my statutory or other relationships with the parties give rise to an actual conflict of interest on my part. To the extent that these relationships give rise to a perceived conflict of interest, I assured the parties that this would be appropriately managed so as not to impact on the impartiality and independence of my investigation. My officers are all employed by the department and are assigned to my Office where they are under my direction. I consider that while it has been appropriate for my Officers to assist me in conducting this investigation, it was not appropriate for me to delegate any of my powers or functions (including forming a final view on the facts) to my Officers in this matter.
25. None of the people I consulted raised any objection to my carriage of this investigation.

# The investigation process

## 26. My investigation involved:

- considering the Select Committee's referral, its final report, and the evidence and submissions obtained by the Select Committee in the course of its inquiry
- seeking information by letter and email from:
  - Ms Chapman
  - Mr Marshall
  - Kiland Limited, formerly known as Kangaroo Island Plantation Timbers
  - the owner of a timber plantation located near Ms Chapman's property on Kangaroo Island
  - the Hon Robert Lucas
  - the Hon David Ridgway
- interviewing Ms Chapman under oath pursuant to the Ombudsman's powers under the provisions of the Ombudsman Act and the *Royal Commissions Act 1917*
- travelling to and observing key locations on Kangaroo Island, including Smith Bay, transportation routes proposed in the Smith Bay application, Ms Chapman's property and the timber plantation nearby
- considering:
  - the Ministerial Code of Conduct and historic codes of conduct for ministers in South Australia
  - the *Public Sector Act 2009*
  - the Code of Ethics for the South Australian Public Sector
- considering submissions made to me by members of the public
- preparing a provisional report
- providing a copy of my provisional report to Ms Chapman, Mr Marshall, Ms Caroline Meador, Chief Executive, Attorney-General's Department, and Ms Ingrid Norman, Crown Solicitor, and considering their responses
- preparing this final report.

27. The standard of proof I have applied in my investigation and report is on the balance of probabilities. In determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>1</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved...<sup>2</sup>

---

<sup>1</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>2</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

# Procedural fairness

28. On 13 April 2022, I provided a copy of my provisional report for this investigation to Ms Chapman, Mr Marshall, Ms Caroline Meador, Chief Executive, Attorney-General's Department, and Ms Ingrid Norman, Crown Solicitor.
29. I authorised Ms Meador to disclose relevant excerpts of my provisional report to members of her staff who were potentially the subject of the referral.
30. As the Select Committee ceased to exist after its report was tabled in the House of Assembly on 18 November 2021, I was not able to obtain a 'Committee' response to my provisional views as contained in my provisional report.
31. As parliamentary referrals under section 14 of the Ombudsman Act do not involve a 'complainant', there was no complainant with whom I needed to confer for the purpose of affording procedural fairness in the course of my investigation.
32. Ms Chapman did not raise any objection to the content of my provisional report or my provisional findings.
33. Mr Marshall made no comment in response to my provisional report.
34. Ms Norman made no comment in response to my provisional report.
35. Ms Meador did not provide a response to my provisional report.

# Background

36. In October 2016, Kangaroo Island Plantation Timbers (KIPT) submitted the Smith Bay application, proposing to develop a deep-water port facility at Smith Bay, Kangaroo Island. In February 2017, the Smith Bay application was declared a major development under section 46 of the *Development Act 1993*.
37. While the Smith Bay application originated while the Development Act was in force, the events relevant to my investigation transpired after the adoption of the *Planning, Development and Infrastructure Act 2016* and the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*. Briefly, this resulted in the following:
- from 1 July 2019, the Minister for Planning replaced the Governor (acting on the advice of Cabinet) as the decision-maker
  - for a period of time, this meant that the minister was responsible for preparing an assessment report for the application, as well as being the decision-maker
  - as a result, former Minister for Planning, Mr Stephan Knoll, delegated the power to prepare and approve an assessment report to the then Chief Executive of the Department for Planning, Transport and Infrastructure (DPTI)
  - on 18 July 2020, the Planning, Development and Infrastructure (Transitional Provisions) Regulations were amended, and the State Planning Commission (the SPC) assumed responsibility for the preparation and approval of assessment reports.
38. KIPT was an ASX-listed timber company that owned and managed approximately 14,500 hectares of eucalyptus and pine plantations in western Kangaroo Island. KIPT also owned land at Smith Bay, and proposed to construct the port facility on its land and adjacent Crown land.

## Ms Chapman's property on Kangaroo Island

39. At the relevant times in this matter, Ms Chapman owned or had an expected interest in a number of properties in Western River, Kangaroo Island. The following information appeared against Ms Chapman's name in the House of Assembly Registrar's Statement of Members' Interests in 2020 and 2021:
- "Gum Valley" Kangaroo Island
  - land at Western River, Kangaroo Island
  - the Estate of JR Chapman.<sup>3</sup>

<sup>3</sup> Registrar for the House of Assembly, *House of Assembly Register of Member's Interests* (Statement, June 2020), 5; Registrar for the House of Assembly, *House of Assembly Register of Member's Interests* (Statement, June 2021), 5

40. The statements were tabled and became publicly available in September each year. I sought and obtained further detail about Ms Chapman's property interests in the course of my investigation and this is detailed later in my report.
41. The 'Gum Valley' property, comprised of three buildings and a number of other smaller structures, is shown in the image below. The green section is a timber plantation.

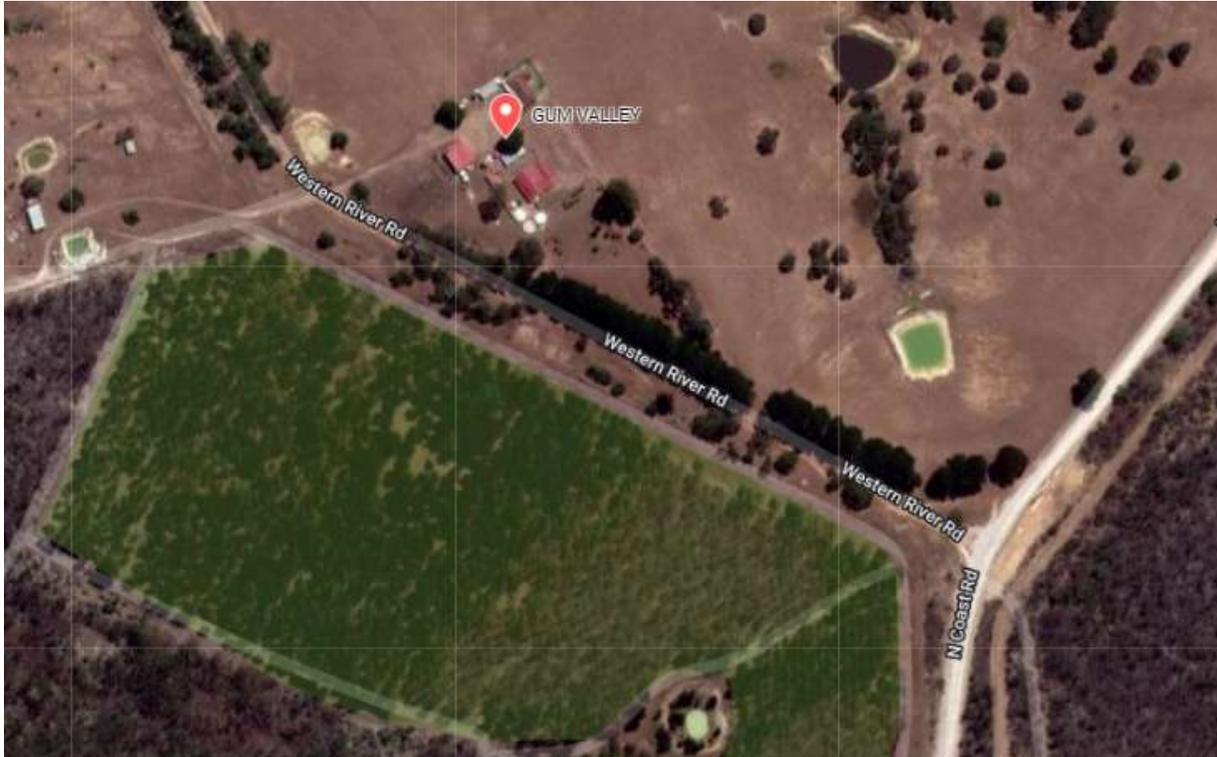


Figure 1: Gum Valley, Western River, Kangaroo Island<sup>4</sup>

## Ms Chapman's meeting with KIPT and Mr Michael Pengilly in 2017

42. In 2017, Ms Chapman met with Mr John Sergeant, then managing director of KIPT, and Mr Greg Coulton, upon the invitation of Mr Michael Pengilly, the then member for Finnis. Mr Pengilly is now the mayor of Kangaroo Island Council. Inconsistent accounts of the meeting were provided to the Select Committee. Mr John Sergeant described Ms Chapman as running the meeting, and expressing the view that Smith Bay was not a suitable location for a port. According to Mr Sergeant, Ms Chapman indicated that:

She found it hard to believe we could have selected a site like Smith Bay, and she said she would like to see a full consideration of all possible sites in the Environmental Impact Statement.<sup>5</sup>

<sup>4</sup> *Google My Maps*, (Web Page) <<https://www.google.com.au/maps/about/mymaps/>>.

<sup>5</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 2 November 2021, 16 [15] John Sergeant.

43. In his written statement to the Select Committee, Mr Sergeant explained:

I concluded that Ms Chapman had settled and firmly-held views opposing the Smith Bay development, a conclusion that was reinforced repeatedly by Mr Pengilly...<sup>6</sup>

44. In her evidence to the Select Committee, Ms Chapman described the meeting as a briefing to herself and Mayor Pengilly, as members of the Opposition at the time, on KIPT's intentions. Regarding Smith Bay in particular, Ms Chapman stated that, 'I was aware that they had looked at a number of different areas and that Smith Bay was the most economical and flat terrain to pursue a port.'<sup>7</sup> Ms Chapman could not recall expressing a view about where the port should be established, or running the meeting as Mr Sergeant had suggested.

45. Mayor Pengilly was not cooperative in his evidence to the Select Committee, and did not provide a detailed account of the meeting except that:

- he had asked Ms Chapman to attend because she was a landholder on Kangaroo Island
- the meeting was an opportunity for KIPT to brief Mayor Pengilly and Ms Chapman. In response, they made suggestions for other port sites.<sup>8</sup>

46. Ms Shauna Black, then an executive director of KIPT, was also present to attend the meeting, but chose not to do so after Mayor Pengilly refused to meet with her.<sup>9</sup>

---

<sup>6</sup> John Sergeant, Submission 2 to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, (2021) 5

<sup>7</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 3 November 2021, 74 [100] Vickie Chapman.

<sup>8</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 5 November 2021, 129 [271] Michael Pengilly.

<sup>9</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 134-5 [294] Shauna Black.

## Mr Pengilly and his relationship with Ms Chapman

47. Mayor Pengilly has been a vocal opponent of the Smith Bay application for some time. On six occasions during his term as the member for Finniss, Mayor Pengilly clearly expressed his complete opposition to the project in the House of Assembly.<sup>10</sup> Since his election as mayor of Kangaroo Island Council, Mayor Pengilly has maintained this view.<sup>11</sup> Each of the assessment reports for the Smith Bay application described submissions from Kangaroo Island Council as follows:

The [Kangaroo Island Council] supports harvesting and export of the Island's timber resource however is of the view that Smith Bay is not the appropriate location for such a development

The Council considers that co-locating a port with the existing aquaculture operation is not feasible, and will lead to ongoing conflict and continued dispute for both companies.<sup>12</sup>

48. Mayor Pengilly did not give an account of his relationship with Ms Chapman when he gave evidence to the Select Committee, although at that stage he had stated on ABC Radio Adelaide that, 'of course she's a friend, she's been a friend all my life'.<sup>13</sup> Ms Chapman described the relationship as follows:

- that she had known him as a colleague in parliament and, since, as mayor of Kangaroo Island Council
- they did not attend school together, and lived on opposite ends of the island when Ms Chapman lived there as a child and teenager
- she would describe Mayor Pengilly as a family friend.<sup>14</sup>

49. The only other account of the relationship between Ms Chapman and Mayor Pengilly in the evidence before the Select Committee was that of Ms Black:

I knew that they had grown up together as childhood friends. I knew that their families were close. This is common knowledge on the island; that's not a secret thing. They appeared together at numerous things, opening agricultural shows. At various things around the island they were often in company. It's not a secret.<sup>15</sup>

---

<sup>10</sup> South Australia, *Parliamentary Debates*, House of Assembly, 16 November 2016, 7863 (Michael Pengilly); South Australia, *Parliamentary Debates*, House of Assembly, 1 March 2017, 8746 (Michael Pengilly); South Australia, *Parliamentary Debates*, House of Assembly, 29 March 2017, 9016 (Michael Pengilly); South Australia, *Parliamentary Debates*, House of Assembly, 5 July 2017, 10383 (Michael Pengilly); South Australia, *Parliamentary Debates*, House of Assembly, 2 August 2017, 10629 (Michael Pengilly); South Australia, *Parliamentary Debates*, House of Assembly, 18 October 2017, 11502 (Michael Pengilly)

<sup>11</sup> Stan Gorton, 'Neighbours concerned about impact of Smith Bay seaport', *The Islander* (online) 13 November 2018, <<https://www.theislanderonline.com.au/story/5754440/neighbours-concerned-about-impact-of-smith-bay-seaport/>>; Stan Gorton, 'KI Council rejects Smith bay location for KIPT port' *The Islander* (online), 15 May 2019 <<https://www.theislanderonline.com.au/story/6126068/ki-council-rejects-smith-bay-as-location-for-kipt-port/>>.

<sup>12</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 23; South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation Timbers*, (July 2021), 202.

<sup>13</sup> *Mornings* (ABC Radio Adelaide, 13 October 2021).

<sup>14</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 3 November 2021, 73-4 [100] Vickie Chapman.

<sup>15</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 148 [368] Shauna Black.

## The Smith Bay application

50. On 22 June 2017, the now defunct Development Assessment Commission determined that an Environmental Impact Statement level of assessment was necessary for the Smith Bay application to be considered. The Guidelines for KIPT to prepare the EIS were released by the Development Assessment Commission on 6 July 2017. KIPT finalised its draft EIS (**the EIS**) in January 2019, and released it for public consultation between 28 March and 28 May 2019. Almost 1400 submissions were received from various government agencies, the Kangaroo Island Council, private businesses and members of the public.
51. In response to public submissions, KIPT amended the in-water components of the Smith Bay application. On 27 September 2019, Mr Knoll determined that the proposed changes significantly altered the substance of the EIS, and required KIPT to prepare an addendum. The amended design (**the First Addendum**) was released for public consultation from 7 November to 20 December 2019. Approximately 100 submissions were received in response.
52. In December 2019 and January 2020, significant bushfires occurred on Kangaroo Island. Approximately 95% of KIPT's plantations were affected but some of the fire-affected timber could be salvaged.
53. On 25 June 2020, KIPT released a response to the submissions received on the EIS and the First Addendum. That day, the SPC also delegated its power to prepare and approve an assessment report to the then Chief Executive of DPTI, superseding the earlier delegation from Mr Knoll.
54. On 26 July 2020, Mr Knoll resigned and, on 29 July 2020, Ms Chapman was appointed Minister for Planning and Local Government. Upon assuming responsibility for the portfolio, Ms Chapman received briefings on major development applications that were pending at the time. This included the Smith Bay application. Further detail about the briefings were sought and obtained in the course of this investigation, and are detailed later in this report.
55. In response to the resulting machinery of government changes, the SPC revoked and remade its delegation to the then Chief Executive of the renamed Department for Infrastructure and Transport (**DIT**)

## Internal discussions about conflict of interest and a possible delegation

56. In their evidence to the Select Committee, Ms Caroline Meador, Chief Executive, Attorney-General's Department, and Mr Oliver Luckhurst-Smith, former ministerial adviser to Ms Chapman, explained that between 2 September and 15 September 2020, they and Ms Chapman's then chief of staff, Ms Jodeen Carney, discussed the possibility of Ms Chapman delegating her responsibility to decide the Smith Bay application to another Minister.

57. Mr Luckhurst-Smith described these discussions as ‘general’ rather than ‘scheduled’, and that the issue of delegation was ‘raised in the context of providing a full and comprehensive suite of documents that the Attorney-General could turn her mind to when making a decision’.<sup>16</sup> At the time, Mr Luckhurst-Smith did not ‘have any knowledge of why the minister may [have wished] to exercise a delegation’ but knew that Ms Chapman came ‘from a family lineage of islanders’.<sup>17</sup>

58. In her evidence to the Select Committee, Ms Mealor explained that while she was aware that Ms Chapman had been raised on Kangaroo Island and that she often travelled there, and she presumed that Ms Chapman had property on the island, she was not aware of Ms Chapman’s actual personal interests on Kangaroo Island.<sup>18</sup> In response to questions by the Select Committee, Ms Mealor explained that it was not her responsibility to ensure that Ms Chapman was not conflicted, but rather ‘to ensure that it was brought to her attention that she should turn her mind to the issue of whether she was conflicted.’<sup>19</sup>

59. On 15 September 2020, Mr Luckhurst-Smith emailed Ms Rina Reina, Executive Solicitor, Commercial, Environment and Native Title Section, Crown Solicitor’s Office;

I was speaking with Caroline late yesterday regarding the upcoming recommendation for the Kangaroo Island Timber Plantation decision.

I understand that the AG [sic] will likely seek to declare a COI on the matter. Are you able to assist with preparing a delegation letter? ...<sup>20</sup>

60. Ms Reina confirmed that a delegation would be prepared.<sup>21</sup> In subsequent email correspondence about procedural matters, Mr Luckhurst-Smith also stated:

From my conversation with Jodeen and Caroline yesterday, I understand the plan is to have the recommendation and a delegation instrument presented to the Attorney-General concurrently so that she can determine whether she has a conflict and can execute the delegation at the same time.<sup>22</sup>

---

<sup>16</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 4 November 2021, 230 [681] Oliver-Luckhurst-Smith.

<sup>17</sup> Ibid.

<sup>18</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide 4 November 2021, 261 [768], Caroline Mealor.

<sup>19</sup> Ibid.

<sup>20</sup> Email from Oliver Luckhurst-Smith to Rina Reina, 15 September 2020.

<sup>21</sup> Email from Rina Reina to Oliver Luckhurst-Smith, 15 September 2020.

<sup>22</sup> Email from Oliver Luckhurst-Smith to Rina Reina, 15 September 2020.

61. In her evidence to the Select Committee, Ms Sally Smith, Executive Director, Planning and Land Use Services, Attorney-General's Department, explained that she was advised by the Attorney-General's office to include information to this effect in the documentation that would be provided to Ms Chapman to enable her to make a decision about the Smith Bay application. In response to questions by the Select Committee, Ms Smith explained that there was not a system for Planning and Land Use Services to check whether a minister's personal interests might give rise to a conflict of interest. Rather, Ms Smith explained:

In undertaking our responsibility in preparing an assessment report we do not look into who owns any land in relation to that. We assess the impacts of the proposal and it's not relevant to the assessment as to who owns the land. In relation to the matter of conflict, we sought [Ms Chapman's] instructions and had clear instructions back that she did not have conflict of interest.<sup>23</sup>

62. On 25 September 2020, the former Chief Executive of DIT, Mr Tony Braxton-Smith, provided Ms Chapman with an assessment report (**the 2020 Assessment Report**), the EIS and other associated documents to enable her to make a decision on the Smith Bay application. The documents were accompanied by a minute (**the September 2020 minute**) signed by Mr Braxton-Smith and Ms Smith.

## The 2020 Assessment Report

63. The 2020 Assessment Report provided a detailed explanation of the key features and issues in the Smith Bay application, having regard to the EIS, public and agency submissions (including that of Kangaroo Island Council), KIPT's response, and the First Addendum.
64. The report explained that KIPT originally intended for two initial rotations of timber harvesting after the port facility was built. Each rotation would occur across a 13 year period. In order to salvage timber affected by the 2019/2020 bushfires, the 2020 Assessment Report explained that the harvest operations originally planned for the first rotation would be condensed into a 5 year period.<sup>24</sup> The report did not describe how this would occur, or which plantations would be subject to the salvage operations.
65. The report explained that the proposed development gave rise to a range of potential benefits, risks and impacts. The most significant were identified as the impact on nearby aquaculture and tourism, traffic and transport impacts, and the impact on the island's character, dynamic and social fabric.

---

<sup>23</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 4 November 2021, 275 [855], Sally Smith.

<sup>24</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 8.

66. Yumbah Aquaculture (**Yumbah**) is a national aquaculture company that has farmed and processed abalone at Smith Bay since 1995. The Yumbah facility is located immediately east of the proposed port-facility, with its intake pipes within 400 metres of the proposed in-water structure. The 2020 Assessment Report detailed Yumbah's objection to the Smith Bay application and noted the company's view that the proposal could not co-exist with its existing operations. The report concluded that:

...the majority of impacts to Yumbah's operations can be managed through the implementation of, and strict adherence to, a suite of Environment Management Plans, strategies, Environmental Protection Policies and Codes of Practices, and the required [Environment Protection Authority] licence. However consideration needs to be given to cumulative impacts and any further measures that may be reasonable and practicable to mitigate them.<sup>25</sup>

67. Regarding tourism generally, the 2020 Assessment Report explained that while tourism is a significant industry on Kangaroo Island, Smith Bay is not within a major tourism area or marine park. While the report predicted that the proposal may have had a short term impact on the availability of tourist housing, it was expected that this could:

...have a neutral impact from an economic point of view for the individual accommodation providers (as the available tourist accommodation will be leased out regardless of who they are leased to)...<sup>26</sup>

68. The only tourism venture specifically identified in the 2020 Assessment Report was a bed and breakfast business called Molly's Run. Molly's Run is located approximately 600 metres south-east of the proposed site at Smith Bay. The 2020 Assessment Report concluded that the proposal was likely to have visual and noise impacts on the business. The report proposed that that the latter could be mitigated through the development of, and adherence to, a noise and vibration management plan.
69. The 2020 Assessment Report explained that two options had been presented for haulage routes to Smith Bay, once the port facility was operational.
70. The first option, shown below, was KIPT's preferred option, and approached Smith Bay from the west. The location of Ms Chapman's property is marked with a red star. This did not appear in the maps provided in the 2020 Assessment Report. The key in the map below indicates that the timber plantations near Ms Chapman's property were not owned by KIPT.

---

<sup>25</sup> Ibid, 141.

<sup>26</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 148.

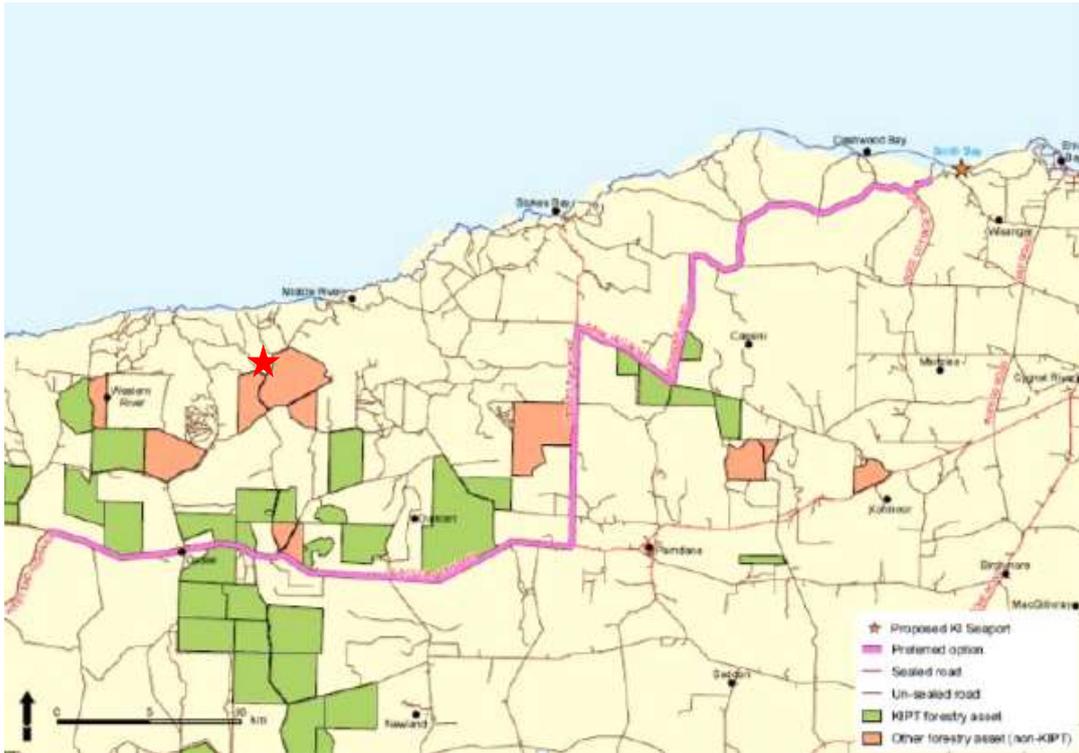


Figure 2: 2020 Assessment Report preferred route<sup>27</sup>

71. The second option was for an open road network as shown below.



Figure 3: 2020 Assessment Report open road network<sup>28</sup>

<sup>27</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 155.

<sup>28</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 156.

72. Again, the approximate location of Ms Chapman's property is marked with a red star. This did not appear in the maps provided in the 2020 Assessment Report,
73. KIPT proposed to use either route on a 24 hour basis, 7 days a week. The 2020 Assessment Report explained that this would result in trucks passing along the transport route every 11-22 minutes, depending on the type of vehicle used.
74. Regarding the suitability of existing roads, the 2020 Assessment Report explained that the majority of the island's road network is managed by the Kangaroo Island Council. Many of the roads in question were likely to be unsuitable for sustained use by a high number of heavy vehicles, and:
- In overall terms the increased dust impacts, physical impacts on the roads and the volume of traffic resulting from the transportation of timber 24/7 would result in significant safety impact on other road users, significant amenity and lifestyle impact on adjacent land users, and increased fauna strike along the preferred route or open road network. This is not considered reasonable nor acceptable. Upgrading the road surface would assist to mitigate some of these impacts...<sup>29</sup>
75. The EIS had proposed that routine maintenance and upgrades would be undertaken by DIT and/or the Kangaroo Island Council, but according to the 2020 Assessment Report, neither were supportive of this position and would not make funding available for this purpose. On this issue, the 2020 Assessment Report concluded that:
- use of KIPT's preferred route was supported, based on advice from DIT. To facilitate salvage operations however, the open network route would be acceptable during a defined period of time
  - as KIPT was to be the main beneficiary of the development, and road upgrades would not otherwise be required, the cost of such upgrades was to be borne by the proponent
  - 24/7 haulage had not been sufficiently justified. Limiting haulage during evening hours to reduce the rate of fauna strike, and limit the impact of noise and dust on local amenity, could be further explored in the finalisation of a road and traffic management plan.
76. Finally, in regard to the social impact of the Smith Bay application on the island and its community, the 2020 Assessment Report explained that the proposal was likely to lead to a positive change for the island, 'with the capacity to reinvigorate the Island's services and community groups and lead to the establishment of new infrastructure and services.'<sup>30</sup>

---

<sup>29</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 159.

<sup>30</sup> Department for Infrastructure and Transport, *Deep Water Port Facility – Smith Bay, Proponent: Kangaroo Island Plantation Timbers, Kangaroo Island Assessment Report September 2020*, (September 2020) 162-3.

77. The 2020 Assessment Report concluded that:

...on balance, the proposal is worthy of approval subject to additional requirements and conditions... Consistent with other major developments, it is recommended that the approval provide for a substantial commencement timeframe of two years and a maximum five-year period for material completion of the development.

78. 37 conditions were recommended, if Ms Chapman was inclined to grant approval. 10 matters were reserved for further assessment.

79. The September 2020 Minute summarised the history of the Smith Bay application, the preparation of the 2020 Assessment Report, key issues raised, and assessment conclusions. The minute also included the following, under the heading 'Decision Making':

I have been advised that you may be considering delegating the decision, and that your colleague, the Hon. Michelle Lensink, Minister for Human Services, may be appointed as Acting Minister for Planning and Local Government.

It is noted that you have not formed this view, and any subsequent delegation would be handled directly by your Office. Given this, the Minute (which includes relevant attachments) has been drafted on the basis that the decision making remains with you. Should the situation change a short draft covering Minute to the Minister for Human Services has also been included in the package for administrative convenience and to avoid delay in transmittal...

Accordingly it is now a matter for you as the Minister for Planning and Local Government to decide whether the anticipated effects are acceptable and whether to approve or refuse the development.<sup>31</sup>

80. The September 2020 minute concluded with the following recommendations:

1. Determine a decision on the proposal taking into consideration the EIS, Addendum to the EIS, public and agency submissions, the proponent's Response Document..., and Assessment Report...

**NOTED/APPROVED/NOT APPROVED**

2. If you approve the proposal, consider the draft Decision Notice... and draft Delegation Notice... and provide to the Government Gazette office for publishing.

**NOTED/APPROVED/NOT APPROVED**

3. If you approve the proposal, consider the draft Cabinet Note... informing Cabinet of your decision and provide to the Cabinet Office prior to publication of your decision in the Government Gazette.

**NOTED/APPROVED/NOT APPROVED**

4. If you do not approve the proposal, provide advice to the Attorney-General's Department, noting that a new draft Gazette notice will be subsequently provided to you.

---

<sup>31</sup> Minute from Tony Braxton-Smith and Sally Smith to Vickie Chapman, 25 September 2020.

NOTED/APPROVED/NOT APPROVED

5. Note that following your decision, staff from the Planning and Land Use Services Division will provide a copy of the decision Gazette Notice to the proponent and the Kangaroo Island Council and arrange for the decision to be made publically [sic] on the SA Planning Portal.

## Ms Chapman's decision and subsequent events

81. In a minute dated 1 October 2020 (**the October 2020 minute**), Ms Chapman advised Ms Smith and Mr Braxton-Smith that she had not made a decision on the Smith Bay application due to limited resolution of 'marine pest management, air quality and dust management, and road traffic management associated with the proposal'.<sup>32</sup>

Ms Chapman did not indicate that she had taken any particular view in regard to the proposal. Ms Chapman invited Mr Braxton-Smith to 'complete the presentation of reports, documents and/or agreements to deal with these 'reserved matters'', and sought clarification on the need to secure funding pursuant to the road and traffic management plans. Ms Chapman then stated:

Finally, I confirm that I have considered the question of any potential conflict of interest and, if so, whether a decision on this application will be delegated to another Minister.

There is no conflict and accordingly no delegation will follow.<sup>33</sup>

82. In October 2020, Mr Braxton-Smith indicated to the SPC that he was no longer in a position to exercise his delegation in the preparation of any subsequent assessment reports as transport matters had become an integral part of the assessment.<sup>34</sup> The SPC's delegation was then revoked<sup>35</sup> and responsibility for preparation of an assessment report returned to the SPC.
83. On 30 October 2020, the former chair of the SPC, Mr Michael Lennon, wrote to KIPT to inform the proponent of Ms Chapman's decision and invite the proponent to submit further information.
84. On 22 December 2020, KIPT provided a response to the request for further information and, in doing so, amended the EIS further (**the Second Addendum**). The Second Addendum was subject to further public consultation between 14 January and 12 February 2021. Around 64 submissions were received during that round of public consultation.<sup>36</sup> KIPT released a response to these submissions on 12 March 2021.
85. On 30 April 2021, Ms Shauna Black, and the then managing director, KIPT, Mr Keith Lamb, appeared before the Select Committee on Matters relating to the Timber Industry in the Limestone Coast (**the Timber Industry Select Committee**).

---

<sup>32</sup> Minute from Vickie Chapman to Sally Smith and Tony Braxton-Smith, 1 October 2020.

<sup>33</sup> Minute from Vickie Chapman to Sally Smith and Tony Braxton-Smith, 1 October 2020.

<sup>34</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 10 November 2021, 188 [551], Michael Lennon.

<sup>35</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 10 November 2021, 221 [623], Tony Braxton-Smith.

<sup>36</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 184 [1117], Shauna Black.

86. In regard to KIPT's salvage operations on Kangaroo Island, Mr Lamb explained in his opening statement:

You would be aware, and we will talk about this today, of the projects that we are involved in, the leading one being the proposed seaport development at Smith Bay, which is subject to a major project pathway. While that plays out, we have commenced exporting from the island using the existing infrastructure, which is a historic ramp here at Kingscote and also the SeaLink passenger ferry out of Penneshaw.

You would be aware that the western part of Kangaroo Island was subject to a major wildfire event through the months of December and January 2019-20. ...

As a result of [the 2019/2020 bushfires], we have had to accelerate our commercialisation program because we are now working with a resource that, prior to the fires, was growing at a rate of about \$100,000 a day—that is, the daily growth rate in dollar terms was equivalent to about \$100,000 a day. Now, as a result of the fires, we believe or we estimate that it is decreasing at about \$75,000 a day. That indicates that the longer we wait to get the trees off the less value we expect to achieve from that.<sup>37</sup>

87. The Chairperson, the Hon Clare Scriven MLC, queried:

...in terms of time frames involved in trying to use existing facilities to get the timber off the island, what sort of time frame would people be looking at if Smith Bay doesn't go ahead?<sup>38</sup>

88. Mr Lamb replied:

There are two ways of looking at it. You would be aware that we did our first barge load out last month. It took us 10 hours to load and dispatch 200m<sup>3</sup>. If we operated at that rate, it would take us 63 years to get the timber off the island.<sup>39</sup>

89. Ms Black then clarified:

We wouldn't operate that way. It was a proof of concept for the bid. There would be some inefficiencies, but we're still looking at a timeline that would be well beyond the life span of the timber now that it's damaged.<sup>40</sup>

90. After Mr Lamb and Ms Black recounted the history of the Smith Bay application to that point, the following exchange occurred between a member of the Timber Industry Select Committee, the Hon Russell Wortley MLC, and Ms Black:

The Hon. R.P. WORTLEY: I just want to ask a question now, and you might not want to answer it. Any business with major project status would expect there is a process to go through and you accept the decision regardless. You do all the work; you accept the decision that comes out of it. I declare my interest in Kingscote. I also understand it's important that a fair process is undertaken.

---

<sup>37</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 173 [1058], Keith Lamb.

<sup>38</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 177 [1076] Clare Scriven.

<sup>39</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 177 [1076-77], Keith Lamb.

<sup>40</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 177 [1077], Shauna Black.

The minister in charge at the moment is a property owner on Kangaroo Island, who has made it quite clear or known that she opposes Smith Bay development. Do you think this minister should actually excuse themselves from this process and give it to someone else?

Ms BLACK: First of all, I need to say that I don't think that the Minister has made it clear that she opposes Smith Bay. She has not said anything in public that would lead us to believe that she opposes Smith Bay. The minister is a smart woman, and she is a woman who understands the law. I don't want to impugn her reputation here because I think that's not fair.

I agree with you that obviously it's common knowledge that Ms Chapman owns property here on Kangaroo Island. As such, you could be led to believe that she understands the politics here on Kangaroo Island. We have put our faith in a scientific assessment and a process, and we would hope that politics would not be playing a part.<sup>41</sup>

91. Later, another Timber Industry Select Committee member, the Hon Frank Pangallo MLC, stated:

Like the Hon. Mr Wortley, I will declare my interest in property here, and would also say that I am quite uncomfortable that the ultimate decision for this wharf actually is in the hands of a person with a significant interest in the property. It would be my view that the minister would perhaps recuse herself of this significant decision. We are not talking about some minor planning issue here, this is quite a significant matter and also one that impacts on the economy of this place. I will put that on record: it's my view that the minister should probably recuse herself.<sup>42</sup>

92. In her evidence to the Select Committee on the conduct of Ms Chapman, Ms Black expressed a different view to the one she gave to the Timber Industry Select Committee. Ms Black stated that a reasonable person could only conclude that Ms Chapman had a perceived conflict of interest, at the very least. Ms Black explained that this was based on:

- Ms Chapman's property interests and its close proximity to a timber plantation
- her relationship with Mayor Pengilly
- her belonging to the Kangaroo Island farming community 'who have conflated their long-held resentment of plantation forestry with the matter of the Smith Bay port.'<sup>43</sup>

---

<sup>41</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 184 [1116], Russell Wortley and Shauna Black.

<sup>42</sup> Evidence to the Select Committee on Matters relating to the Timber Industry in the Limestone Coast, Legislative Council, Kingscote, South Australia, 30 April 2021, 185 [1119], Frank Pangallo.

<sup>43</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 134 [293], Shauna Black.

93. When asked whether she held a different opinion than the one she had expressed to the Timber Industry Select Committee, Ms Black clarified:

I don't think I had a different opinion. I think I have always had the same opinion. I think I chose my words wisely in April because the future of the company and the forestry industry on Kangaroo Island depended on Ms Chapman's decision. I do believe that there could be a perceived conflict of interest from Ms Chapman because of not just the landholdings and the fact that trucks will go past her property—that can be said of almost every landholder on the western end of Kangaroo Island—but because of the generational and deeply-entrenched views on farming that she and other farmers hold about Kangaroo Island.<sup>44</sup>

94. When asked whether her thinking had changed because of the outcome of the Smith Bay application, Ms Black stated, 'I wouldn't say my thinking has shifted. I think I have expressed my thinking now. I thought the same in April; I didn't say it.'<sup>45</sup>

95. KIPT did not advise Ms Chapman of this view before her decision to reject the Smith Bay application in August 2021.

96. In his evidence to the Select Committee, Mr Peter Lockett, former approvals manager at KIPT, described a meeting on 12 May 2021 between KIPT, the Hon David Ridgway (then Minister for Trade and Investment), Mr Nick McBride MP, member for MacKillop, and Mr Knoll. According to Mr Lockett:

The conclusions from that meeting was that someone—not KIPT but a political person—needed to go and raise the issue with the Premier. I understood the outcome of that meeting was that David Ridgway was going to go and raise the issue with the Premier.<sup>46</sup>

97. Later, Mr Lockett noted KIPT's understanding that the then treasurer, the Hon Robert Lucas, would also raise the matter with the then Premier.<sup>47</sup> Although he was of the opinion that Ms Chapman had a conflict of interest, Mr Lockett explained to the Select Committee that KIPT were not well placed to raise this issue;

...you can just appreciate, from our point of view, that the last thing the company is ever going to do is front up to anybody and say, 'We think the minister's got a conflict of interest and we think it's in our interests that she doesn't,' because it's so patently self-interested and it's going to blow up in your face. That's why I said in my submission that this issue was raised by other people and not by us. We were acutely sensitive to the issue and particularly careful never to lead the issue.<sup>48</sup>

98. On 23 May 2021, an article titled 'Chapman 'too close' on wharf decision' appeared in the Sunday Mail. The article stated that:

Deputy Premier Vickie Chapman has been urged to stand aside from the decision-making process around a proposed deep-sea wharf on Kangaroo Island because of her close ties to the district.<sup>49</sup>

---

<sup>44</sup> Ibid, 140 [294].

<sup>45</sup> Ibid, [295].

<sup>46</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 160 [403], Peter Lockett.

<sup>47</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 163 [420], Peter Lockett.

<sup>48</sup> Evidence to the Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 160 [403], Peter Lockett.

<sup>49</sup> Paul Ashden, 'Chapman 'too close on wharf decision'', *Sunday Mail*, 23 May 2021.

99. The article concluded:

A spokeswoman said Ms Chapman had no pecuniary interest in any property or industry associated with, or impacted by, the wharf and was waiting for a recommendation from the independent State Planning Commission before she could hand down a decision about the wharf.<sup>50</sup>

100. On 26 May 2021, in response to statements by members of the Timber Industry Select Committee and the Sunday Mail article, Ms Chapman made a Ministerial Statement in the House of Assembly. After detailing the progress of the Smith Bay application at that point in time, Ms Chapman stated:

As provided to the journalist prior to the publishing of the story, while I was born on the island and have significant family history there, I have no conflict of interest in relation to this matter. I have no pecuniary interest in the affected property or the business of KIPT, nor any property or industry associated with or potentially impacted by the proposed wharf.

For completeness, I advise the house that as planning minister I have also had a decision-making role in another major project on Kangaroo Island, namely, the Southern Ocean Lodge. I can report to the house that at no time have I received any request to recuse myself from this project by Mr Pangallo, Mr Wortley or anyone else.

...

Our government is committed to the ongoing recovery and success of Kangaroo Island, and every minister at the Marshall cabinet table shares this vision. Nonetheless, the roles and responsibilities of a minister are of incredible importance, and adherence to the Ministerial Code of Conduct is something I take very seriously.

I am one of 40 per cent of Kangaroo Island ratepayers who do not live on Kangaroo Island. To hear both Mr Wortley and Mr Pangello [sic], both of whom also... have an interest on properties on Kangaroo Island—not to mention the member for Torrens—assert that I have a conflict of interest in assessing this matter when they are making recommendations on the same subject matter beggars belief.

...

The assessment for the proposed port at Smith Bay is an important one, and I know that there is significant interest by people on the island about the outcome of KIPT's proposal.

Having determined that I do not have conflict of interest in this matter, I share Ms Black's faith in the assessment process and I await the Planning Commission's report with interest. ...<sup>51</sup>

---

<sup>50</sup> Ibid.

<sup>51</sup> South Australia, *Parliamentary Debates*, House of Assembly, 26 May 2021, 5615, (Vickie Chapman, Attorney-General).

## The 2021 Assessment Report

101. On 23 July 2021, Ms Helen Dyer, then chair of the SPC, wrote to Ms Chapman and provided a new assessment report (**the 2021 Assessment Report**). In her letter, Ms Dyer wrote:

The commission has concluded, based upon the information presented and the advice received, that the proposal should be granted provisional development authorisation subject to a detailed suite of conditions. A number of important matters are also recommended to be reserved for further assessment and decision.<sup>52</sup>

102. Ms Dyer's letter and the 2021 Assessment Report were provided to Ms Chapman alongside a minute dated 26 July 2021 (**the July 2021 Minute**).

103. Like the 2020 Assessment Report, the 2021 Assessment Report identified the most significant impacts of the proposal to be on neighbouring aquaculture and tourism, traffic and transport, and the Island's character, overall dynamics and social fabric.

104. Details and consideration of the first issue - that is, the impact on Yumbah and Molly's Run - did not differ significantly from the 2020 Assessment report. Although Yumbah maintained its objection to the proposed wharf in response to further public consultation, the report again concluded that the majority of impact on the business could be managed. Regarding Molly's Run, the 2021 Assessment Report noted that a new proposed transport route would have a greater impact on the business, and concluded that 'the visitor experience at this established business is likely to be diminished'.<sup>53</sup>

105. The 2021 Assessment Report was more circumspect than the 2020 Assessment Report in its assessment of the ongoing effect on tourism, and concluded that

... the proposal may have minimal, short-term impacts on tourism operators on Kangaroo Island as a potential result of tourism accommodation being used by staff until longer term arrangements can be made. This impact is expected to be short-term and reasonably insignificant.

The AR concludes that whilst the economic impacts of the proposal itself have been quantified the broader impacts on the Island's economy, in particular in relation to the tourism industry, have not been fully explored<sup>54</sup>

106. Like the 2020 Assessment Report, the 2021 Assessment Report did not identify any particular tourism operators other than Molly's Run, and noted that the proposal 'may have a neutral impact from an economic point of view for the individual accommodation providers'.<sup>55</sup>

---

<sup>52</sup> Letter from Helen Dyer to Vickie Chapman, 23 July 2021.

<sup>53</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation* Timbers, (July 2021), 7.

<sup>54</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation* Timbers, (July 2021), 140.

<sup>55</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation* Timbers, (July 2021), 140.

107. The 2021 Assessment Report's conclusions about the social impact of the port-facility did not differ from that of the 2020 Assessment Report. Each noted that the development would likely have a positive impact.
108. Of the issues above, traffic and transportation issues differed the most between the two Assessment Reports. Firstly, the 2021 Assessment Report provided considerably more detail about the five year salvage operations planned by KIPT. Salvage operations planned for the third year are of particular relevance, given the proximity of Ms Chapman's property in Western River. The 2021 Assessment Report provided the following map for the third year salvage operations. The approximate location of Ms Chapman's property is marked by a red star, but this was not included in the 2021 Assessment Report or its accompanying documents.

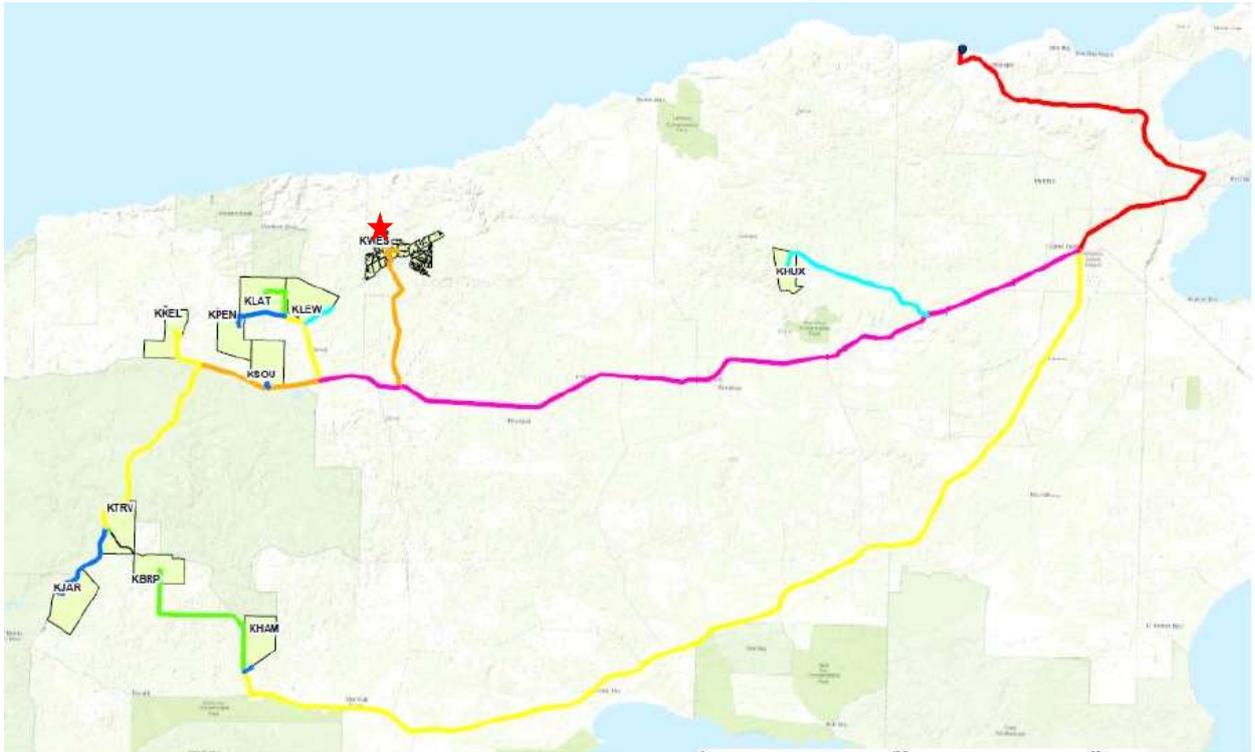


Figure 4: 2021 Assessment Report third year salvage operation<sup>56</sup>

109. The report did not include a key for the routes shown above, but this information was included in the 2<sup>nd</sup> Addendum and indicated that between 135,001 and 280,000 tonne of timber would be felled and hauled away from the plantation area near Ms Chapman's property. The 2021 Assessment noted that:

The 2<sup>nd</sup> Addendum did not identify details regarding transportation of timber beyond the fire salvage operation which will last 5 years. It is assumed that the identified routes will continue to be used as required to haul timber product to port.<sup>57</sup>

<sup>56</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation Timbers*, (July 2021), 148.

<sup>57</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation Timbers*, (July 2021), 150.

110. While not very clear in figure four, it appears that the proposed route did not involve transportation using Western River Road. The proximity of the plantation area and salvage route to Ms Chapman's property is more clearly shown below. This level of detail was not provided in the 2021 Assessment Report or any of the accompanying documents.



Figure 5: Third year salvage operations at Western River<sup>58</sup>

111. A new preferred route was also introduced in the 2021 Assessment Report. According to the 2021 Assessment Report:

Following the proposed route amendments identified in the 2<sup>nd</sup> Addendum and based upon concerns regarding the proposed use of South Coast Road, which has a high tourist usage, the Department for Infrastructure and Transport undertook an assessment of potential transport routes and consequently identified its preferred route which utilises Playford Highway and a portion of North Coast Road as the key route to the subject site, an consolidates heavy vehicle movements away from South Coast Road...

112. The new preferred route is shown below. The approximate location of Ms Chapman's property is marked with a red star. This did not appear in the 2021 Assessment Report.

<sup>58</sup> Google My Maps, (Web Page) <<https://www.google.com.au/maps/about/mymaps/>>.



Figure 6: 2021 Assessment Report preferred route<sup>59</sup>

113. Finally, the 2021 Assessment Report noted the following broader changes to traffic and road management:

- proposed haulage was limited to Monday to Friday from 6am to 6pm, with the option of 6am to 12 noon on Saturdays. This would result in truck movement along the route every 3.5-6 minutes
- KIPT had committed to fund upgrades and maintenance to all plantation feeder roads.

114. In its executive summary, the 2021 Assessment report provided:

Having considered these matters, along with the advice obtained, it is considered that the impacts and potential risks associated with the Smith Bay proposal can be managed through a strict suite of management plans, and licensing where required. On this basis, whilst finely balanced, it is concluded that the proposal should be granted provisional development authorisation, subject to conditions.<sup>60</sup>

<sup>59</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation Timbers*, (July 2021), 153.

<sup>60</sup> South Australian State Planning Commission, *Assessment Report: Deep Water Port Facility – Smith Bay, Kangaroo Island, Kangaroo Island Plantation Timbers*, (July 2021), 8.

115. 39 conditions were recommended, if Ms Chapman was inclined to grant provisional approval. 17 matters were reserved for further assessment. The July 2021 minute provided the following recommendations:
1. Note the Assessment Report provided by the State Planning Commission under section 26B(9) of the *Development Act 1993* and Regulation 11(3) of the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*.
  2. Provide direction to the Department to prepare the necessary documentation for a decision under section 48 of the *Development Act 1993*.

## Ms Chapman's decision

116. On 3 August 2021, in response to the July 2021 minute, Ms Chapman elected to note recommendation one and wrote 'Retained for final consideration'. In response to recommendation two, Ms Chapman elected to agree, and requested further information on a matter unrelated to the issue of conflict of interest. Ms Chapman also included an additional point: 'Note meeting Commissioner & PLUS CE on 3.8.21'
117. In early August 2021, Ms Chapman held two internal meetings to discuss the 2021 Assessment Report. On 9 August 2021, by way of a minute prepared by Ms Smith, the former Attorney-General indicated her decision to refuse the Smith Bay application. In a media release the same day, the former Attorney-General announced that she had decided to refuse the application, and that the 'the impact on surrounding businesses, the marine environment, as well as biosecurity risks to neighbouring tourism and aquaculture businesses' were key issues in her decision.<sup>61</sup>
118. On 11 August 2021, KIPT announced that it would remove its remaining timber stock and convert its plantation and other land for agricultural use.<sup>62</sup> On 12 August 2021, the former Attorney-General's decision was gazetted.<sup>63</sup> On 27 October 2021, KIPT changed its name to Kiland. The company continues under that name.<sup>64</sup> On 30 March 2022, Kiland announced that it would begin remediation of its properties and prepare the land for sheep grazing from July 2022.<sup>65</sup>

---

<sup>61</sup> Vickie Chapman, 'Decision on KI Port' (Media Release, Government of South Australia, 9 August 2021) 1.  
<sup>62</sup> Victoria Allinson, Kangaroo Island Plantation Timbers, *Minister declines Smith Bay and new agricultural strategy*, (11 August 2021) < [www.asx.com.au/asxpdf/20210811/pdf/44z6bf2cpcdjg0.pdf](http://www.asx.com.au/asxpdf/20210811/pdf/44z6bf2cpcdjg0.pdf)>.  
<sup>63</sup> South Australia, *The South Australian Government Gazette*, No 53, 12 August 2021, 3072-3.  
<sup>64</sup> Victoria Allinson, Kiland Limited, *Change of Company name and ASX code*, (27 October 2021) < [www.asx.com.au/asxpdf/20211027/pdf/45251gyfkn4rxm.pdf](http://www.asx.com.au/asxpdf/20211027/pdf/45251gyfkn4rxm.pdf)>.  
<sup>65</sup> Andrew Spence, 'Tree change as KI firm reveals 'global' sheep plan', *In Daily*, (Adelaide) 30 March 2022, <<https://indaily.com.au/news/business/2022/03/30/tree-change-as-ki-firm-reveals-global-sheep-plan/>>.

## The Select Committee

119. On 12 October 2021, the House of Assembly established the Select Committee. On 18 November 2021, the Select Committee concluded by majority that:
- Ms Chapman misled Parliament on three occasions in 2021; in a Ministerial Statement on 26 May 2021, during question time on 25 August 2021, and once to the Estimates Committee on 2 August 2021
  - Ms Chapman was in a position of perceived and actual conflict of interest when she considered the 2020 and 2021 Assessment Reports
  - media reports and concerns raised in Parliament in 2021 should have given rise to doubt in Ms Chapman's mind as to whether or not she was in a position of conflict
  - pursuant to the Ministerial Code of Conduct, Ms Chapman should have reported the matter to the then Premier, or at the very least, sought advice.
120. That day, the House of Assembly passed a vote of no confidence in Ms Chapman. On 30 November 2021, the House of Assembly:
- found Ms Chapman guilty of contempt for deliberately misleading the house on three occasions in 2021
  - found that Ms Chapman had acted in a position of actual and perceived conflict, had breached the Ministerial Code of Conduct, and was guilty of contempt
  - suspended Ms Chapman from the service of the House for six days.

# Relevant definitions

121. Section 3 of the Ombudsman Act defines public administration as follows:

**public administration** – without limiting the acts that may comprise public administration, an administrative act will be taken to be carried out in the course of public administration;

122. An administrative act is defined as:

- (a) an act relating to a matter of public administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency; or
- (b) an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this Act applies,

but does not include

- (c) an act done in the discharge of a judicial authority; or
- (d) an act done by a person in the capacity of legal adviser to the Crown or an agency to which this Act applies; or
- (e) an act of a class declared by the regulations not to be an administrative act for the purposes of this definition.

123. Section 4 of the Ombudsman Act defines misconduct and maladministration respectively as follows:

(1) **Misconduct in public administration** means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against that officer.

(2) **Maladministration in public administration** –

- (a) means–
  - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in a an irregular and unauthorized use of public money or substantial mismanagement of public resources; or
  - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

124. In regard to misconduct in public administration, I accept that the Ministerial Code of Conduct would satisfy the requirement of a code of conduct for the purpose of the definition. However, a breach of a code does not automatically satisfy the definition, which requires the contravention of the code to be both 'intentional and serious'. This is a very high threshold and would rule out inadvertent and careless, even reckless, breaches of the code. That means that a public officer could commit a very serious breach of a code of conduct without committing misconduct in public administration. I suspect that this may be one reason why the Select Committee avoided mentioning misconduct in public administration in the referral to me.
125. Section 4(2) requires that any question of maladministration is assessed having regard to 'relevant statutory provisions and administrative instructions and directions'. I consider that the following are relevant in my investigation:
- the Ministerial Code of Conduct
  - the Development Act, the Planning, Development and Infrastructure Act and the Planning, Development and Infrastructure (Transitional Provisions) Regulations
  - the *Public Sector Act 2009*
  - the Code of Ethics for the South Australian Public Sector.
126. While some of the above ordinarily arise when considering whether misconduct has occurred (such as through a breach of a code of conduct), these remain relevant to my consideration of the official functions of Ms Chapman, Mr Marshall, and other public officers.

## Maladministration and 'substantial mismanagement'

127. The referral does not raise an issue of maladministration within the meaning of section 4(2)(a)(i) - that is, conduct that results in irregular or unauthorised use of public money or substantial mismanagement of public resources. My consideration is instead focused on the conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions.
128. There is no specific test under the Ombudsman Act (nor was there in the *Independent Commissioner Against Corruption Act 2012* when the definition was located in that Act), as to what 'substantial mismanagement' involves.
129. Maladministration in public administration is separate from my jurisdiction to investigate administrative acts. At this point I make the general comment that 'substantial mismanagement' suggests that the conduct entails something that is more serious than an administrative error. A finding of administrative error may be available where there is mismanagement that has not been 'substantial'. However, mismanagement in the performance of official functions has to be substantial for it to be categorised as maladministration.

## Conflicts of interest

130. The Ministerial Code of Conduct refers to three types of conflict of interest. These are:
- actual conflicts of interest - where the private interests of Minister, their spouse, domestic partner, or children, conflicts with the Minister's public duty
  - potential conflicts of interest - where the private interests of a Minister, their spouse, domestic partner, or children, *may* conflict with the Minister's public duty
  - perceived conflict of interest - where the private interests of a Minister, their spouse, domestic partner or children, *appear* to conflict with the Minister's public duty.

131. The Ministerial Code of Conduct does not provide any guidance on how a perceived conflict of interest is to be identified. I must therefore consider the following: from whose perspective is a conflict of interest perceived? How suspicious is the fictional observer, and what information are they expected to possess?

132. In *Identify, Disclose and Manage: Conflicts of Interest in Public Administration*, the Independent Commissioner Against Corruption, the Hon Ann Vanstone QC stated:

A public officer has a conflict of interest when a 'fair and reasonable' person could perceive them as having one.

If a reasonable and fair-minded observer might perceive that a public officer's personal interest could be favoured by exercising their duties and responsibilities, then a conflict of interest exists. Perception is an important consideration when identifying conflicts of interest, and the reasonable person test should always be considered when seeking to identify the existence of conflicts of interest.<sup>66</sup>

133. I agree with Commissioner Vanstone. My starting point, then, is the perspective of a reasonable and fair-minded person.

134. I turn to consider what information this fictional observer possesses. Almost all Australian jurisdictions include perceived or apparent conflicts of interest in their ministerial codes of conduct. However, only Tasmania offers guidance on this question. The Tasmanian Code of Conduct provides that:

A material conflict of interest is one that is significant or important or one which a reasonable person would think is important to the Minister's official duties or to a decision to be made by the Minister. A Minister must think about and declare any facts or interests that a reasonable person in the same or similar circumstances would be expected to know to be relevant to the issues at hand or to a decision to be made.<sup>67</sup>

---

<sup>66</sup> Independent Commissioner Against Corruption (SA), *Identify, Disclose and Manage: Conflicts of Interest in Public Administration* (June 2021) 6.

<sup>67</sup> 'Code of Conduct for Ministers, May 2021', *Tasmanian Government*, (Web Page) <[https://www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0016/53503/Code\\_of\\_Conduct\\_for\\_Ministers\\_-\\_May\\_2021.pdf](https://www.dpac.tas.gov.au/__data/assets/pdf_file/0016/53503/Code_of_Conduct_for_Ministers_-_May_2021.pdf)>.

135. A code of conduct for ministers was first set out in writing in South Australia in 1988, although very little guidance was provided to determine how a perceived conflict of interest might be identified. In 1993, a Cabinet Handbook (**the 1993 Handbook**) was adopted to provide more specific guidance to ministers. The 1993 Handbook provided that:
- A conflict will arise whenever a reasonable person, who knows what the Minister knows, would believe there is a substantial and unjustifiable risk of conflict between the public duties of the Minister and the Minister's personal interests.
  - One of the tests for conflict is that of appearance: does the appearance look, to the reasonable person, to be the sort of interest that may influence.
  - A Minister is taken to know the facts which the Minister would have found out had he or she made such further inquiry as the facts in his or her possession clearly required.<sup>68</sup>
136. In forming their perception, the reasonable person imagined by the 1993 Handbook was afforded a great deal of information; their gaze extended beyond what is publicly available, and even what is directly before the Minister.
137. This example of the reasonable person was short-lived. In 1994, the Cabinet Handbook was amended and a ministerial code of conduct was provided in its appendices (**the 1994 Handbook**). The 1994 Handbook and the corresponding code of conduct provided substantially less guidance on conflicts of interest, and only referred to actual and potential conflicts.
138. In 2002, the current Ministerial Code of Conduct was adopted. While it extends upon the requirements of the 1994 Handbook, it does not reach the high-water mark set by the 1993 Handbook. I am reluctant to conclude that the reasonable observer imagined in the 1993 Handbook is the appropriate test in this matter, given that a similar standard is not replicated elsewhere.
139. In all of the circumstances, I consider that a perceived conflict of interest ought to be identified from the perspective of an observer who:
- is reasonable and fair-minded
  - understands and appreciates the importance of the relevant interest and the decision at hand
  - possesses knowledge of the facts, interests and issues that they would reasonably be expected to know in the circumstances.
140. In assessing whether a conflict of interests existed, it is necessary for me to identify the relevant public duty the Minister was required to perform in making a decision, as well as the nature of their private interests that may come into conflict with that public duty. Whether there is an actual conflict will depend on the facts associated with the decision and the impact the decision would have had on the private interests. In assessing whether there was a perceived conflict of interest, the facts associated with the decision are taken to be those that a reasonable, fair minded person would reasonably be expected to know. This may not include everything that the decision maker knows.

---

<sup>68</sup> Department of the Premier and Cabinet (SA), *Cabinet Handbook 1993* (May 1993) 58-59.

## Conflict of interest and bias

141. It should be noted that conflict of interest is conceptually separate, albeit closely related to, bias or the apprehension of bias.
142. This is an important point to clarify, as a number of the authorities referred to and relied upon in the course of the Select Committee's inquiry concern bias and not conflict of interest. To this end, I refer to the following guidance offered by NSW Ombudsman in *Good Conduct and administrative practice for state and local government*.

It is also important to distinguish between a conflict of interests and bias. While both concepts are well known in public administration, the common law has tended to focus much more on bias than conflicts of interests. Bias essentially refers to a failure to bring an impartial mind to the making of a decision. The legal term 'reasonable apprehension of bias' refers to circumstances where a hypothetical fair-minded person, properly informed as to the nature of the proceedings or process, might reasonably decide that a decision-maker was biased. While bias and conflicts of interests both relate to decision-making and conduct related to decision-making, they approach the issue from different directions. Bias focuses on the effect of a set of circumstances on the conduct of the decision-maker, while a conflict of interests relates to causes of a particular effect (i.e the interests of the decision-maker). Bias can be the outcome or effect of a conflict of interests, but a conflict of interests is just one possible cause of bias. A conflict of interests is not necessarily misconduct - that depends on how it is managed and dealt with. On the other hand, bias in the performance of a public function is a form of misconduct.<sup>69</sup>

143. My focus, like that of the Select Committee, has in part been on whether Ms Chapman had an interest that conflicted, or could have been perceived to have conflicted, with her public duty as the Minister for Planning and Local Government. If a conflict of interests existed it needed to be declared and managed regardless of whether it caused her to be biased. On the other hand, if no conflict of interests existed but those who would be impacted by the decision had an apprehension of bias that they never raised with the Minister in her decision making role and she could not have anticipated, there has been no failure on the part of the Minister in determining the matter.

---

<sup>69</sup> NSW Ombudsman, *Good conduct and administrative practice: Guidelines for state and local government*, (2017) 3<sup>rd</sup> ed, 23. This distinction was also drawn and discussed by Chief Justice Spiegelman in *McGovern v Ku-Ring-Gai Council* [2008] NSWCA 209 at [25-30].

# The Ministerial Code of Conduct

144. The Ministerial Code of Conduct is provided in full as an annexure to this report. Relevant sections are as follows:

## 3. CONFLICTS OF INTEREST

### 3.1.1 Obligation

Ministers should avoid situations in which their private interests conflict, have the potential to conflict or *appear* to conflict with their public duty

[original emphasis]

### 3.1.2 Nature of Conflicts of Interest

A conflict of interest may exist when a Minister is influenced or appears to be influenced by private interests. Private interests include not only a Minister's financial or other interests but the financial or other interests of the Minister's spouse, domestic partner or children.

There are many circumstances in the context of the Minister's position in which conflicts of interest may arise. For example, a conflict may arise where a Minister:

- has a significant financial interest in a company with whom the government is contracting;
- has a personal interest in the outcome of a process; or
- receives a right or commission in return for the provision of a benefit.

### 3.1.3 Disclosure of Actual, Potential or Apparent Conflicts of Interest

Ministers are under an obligation to advise the Premier (or in the case of the Premier, Cabinet) in writing as soon as possible after becoming aware of any conflict of interest between their public duty and private interests.

The advice to the Premier (or in the case of the Premier, Cabinet) should contain sufficient detail of the conflict of interest in order to enable the Premier (or Cabinet) to consider and determine the most appropriate course of action to be taken in the circumstances.

Where the circumstances change after an initial disclosure has been made, so that new or additional facts become material, the Minister must promptly disclose the further information.

This obligation is additional to a Minister's obligations to notify the Cabinet Office of their private interests under the *Members of Parliament (Register of Interests) Act 1983*.

The fact that a Minister has raised an actual, potential or perceived conflict of interest with the Premier will be recorded on the Cabinet Register. This record is available for scrutiny by the Auditor-General.

If a Minister has any doubt as to whether or not an interest is likely to a conflict of interest, the Minister should promptly consult the Premier (or in the case of the Premier, Cabinet).

### 3.6 Consideration of Disclosures

In considering how to deal with a conflict of interest, the Premier (or in the case of the Premier, Cabinet) must consider how the conflicting interest will interfere with or affect the performance of the Minister's public duty (if at all) and how the public will perceive the propriety of the Minister's participation in a matter.

Conflicts of interest relating to portfolio matters will generally be dealt with by the Premier. Conflicts that are very serious or which involve the Premier or which relate to Cabinet, will be referred to in Cabinet for discussion and determination as to what action should be taken.

Following the disclosure of a conflict, the Premier (or in the case of the Premier, Cabinet) may in his or her discretion take a number of different course of action, including, for example:

- approving the conduct and allowing the Minister to continue his or her involvement in the matter;
- requiring the Minister to divest him or herself of the relevant private interest;
- asking the Minister to publicly apologise, stand aside or resign. (If a Minister refuses to resign, the Premier can require a Minister's commission to be withdrawn);
- requiring that the Minister not take part in the determination relating to the conflict. This may involve requiring the Minister to leave the Cabinet or to delegate certain powers and duties to another Minister.

The nature of some conflicts may be so serious that Ministers should not wait until the Premier or Cabinet has considered the matter. In appropriate cases Ministers should immediately relinquish their private interests or offer their resignation.

### 3.7 Consequences of a Failure to Disclose a Conflict

If a Minister does not disclose a conflict of interest that is later found to exist, the Premier (or in the case of the Premier, Cabinet) may, among other things, in his or discretion:

- require the Minister to apologise publicly;
- require the Minister to stand aside or resign;
- refer the matter to an appropriate authority for investigation and require the Minister to stand down during the investigation
- discuss the matter with the Minister and then seek the view of Cabinet before making a determination as to how the conduct of the Minister should be dealt with.

# Evidence

## The evidence of Ms Vickie Chapman

145. In the course of my investigation, I sought and obtained information from Ms Chapman and her representatives by letter and I interviewed her under oath on 16 March 2022. Ms Chapman gave her evidence in a manner that was helpful and informative, without defensiveness or evasiveness. During that interview and in all of her submissions, Ms Chapman was cooperative and forthcoming. I regard her evidence and the information she provided to me to be reliable and trustworthy.

### Ms Chapman's property in Western River, Kangaroo Island

146. Ms Chapman's family has owned property in Western River since the 1940s. This includes:
- a house, shearers' quarters, a shearing shed and other farming equipment at 48 Western River Road<sup>70</sup>
  - pastoral land to the north and west of these buildings.
147. At times, the buildings and land have collectively been referred to as 'Gum Valley'. For the sake of clarity, I shall only refer to the property at 48 Western River Road as Gum Valley.
148. Between birth and the age of 16, Ms Chapman lived at Gum Valley with her family. Since 1974 she has lived in Adelaide. In 2001, Ms Chapman became the owner of Gum Valley. Following her brother's death in 2017, Ms Chapman expected to receive another parcel of land north of Gum Valley.<sup>71</sup> Ms Chapman advised me that, since her brother's passing, she uses the house at Gum Valley as a holiday home a couple of times a year.<sup>72</sup>
149. In August 2010, Ms Chapman attempted to sell the Gum Valley property but was not successful. In May 2011, the property was advertised for lease. In 2013, Ms Chapman's son, Will Chapman, set up a Facebook page for the property. In her interview, Ms Chapman explained that this was 'to keep as a presence for future sale and also to be a contact number. So during that time, there are no rentals. There is purely a Facebook page.'<sup>73</sup> In January 2019, the Gum Valley property was leased to a family.<sup>74</sup> Adjacent pastoral land was also agisted for sheep stock. The lease of Gum Valley continued until early 2020, following the 2019/2020 bushfires.

<sup>70</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>71</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>72</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 10 February 2022.

<sup>73</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>74</sup> Periodic – residential tenancy agreement, 9 January 2019, provided by letter to the Ombudsman from Nicholas Iles on behalf of Vickie Chapman, 5 April 2022.

150. In early 2020, a charity, All Hearts and Hands, arranged for volunteers to stay in the shearers' quarters at Gum Valley. At the time, All Hearts and Hands intended to assist recovery efforts on Kangaroo Island following the 2019/2020 bushfires.<sup>75</sup> According to Ms Chapman, All Hearts and Hands required the Gum Valley property to be listed on AirBnB for the extended stay that the charity had planned.<sup>76</sup> The property was then listed on AirBnB and a booking was made for March 2020.<sup>77</sup> However, as a result of the COVID-19 pandemic, the booking did not eventuate. All Hearts and Hands has since cancelled its planned activities on Kangaroo Island.<sup>78</sup>
151. Ms Chapman explained to me that, in the months following the 2019/2020 bushfires, she arranged for her son to manage and maintain the Gum Valley property. This included managing any accommodation at the house and shearers' quarters.<sup>79</sup>
152. The AirBnB listing remained active for some time after All Hearts and Hands cancelled its booking. Between July 2020 and January 2021, four private short term accommodation bookings (**short stays**) were made at Gum Valley via the AirBnB listing.<sup>80</sup> One further short stay occurred in April 2021 but the booking was made separate to the AirBnB listing.<sup>81</sup> The five short stays generated a little more than \$15,000.
153. Ms Chapman submitted to me that while she was aware of her son's management of the short stay arrangements in 2020 and 2021, she had no particular knowledge of, or interest in, those arrangements.<sup>82</sup> In any event, Ms Chapman did not consider that the short stay arrangements at Gum Valley amounted to a tourism operation. In her interview, Ms Chapman stated, 'we had a place where people came to stay' and 'I didn't have some lovely little cottage there of some seclusion where people have romantic walks.'<sup>83</sup>
154. The Facebook page and AirBnB listings for property are no longer active or publicly accessible. A listing for short stays at Gum Valley remains on a website named Hotelo Meta.<sup>84</sup> The listing includes a number of photographs of the Gum Valley property and people staying there, as well as an inactive link to the AirBnB listing. In her interview, Ms Chapman advised that the people shown in those photos are her family. Some of the photos also appear in the 2010 advertisement for the sale of the property,<sup>85</sup> and Will Chapman's instructions for advertising a lease of the property in 2011.<sup>86</sup>

---

<sup>75</sup> 'Australia Bushfire Relief', *All Hearts and Hands* (Web Page) <<https://www.allhandsandhearts.org/programs/australia-bushfire-relief/>>.

<sup>76</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>77</sup> AirBnB booking summary, letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>78</sup> 'Australia Bushfire Relief', *All Hearts and Hands* (Web Page) <<https://www.allhandsandhearts.org/programs/australia-bushfire-relief/>>.

<sup>79</sup> Vickie Chapman, 'Statement of VA Chapman', 16 March 2022.

<sup>80</sup> AirBnB booking summary, provided by letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>81</sup> Email from Will Chapman and A.K, 27 January 2021.

<sup>82</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>83</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, (16 March 2022).

<sup>84</sup> 'Gum Valley', *Hotelo Meta* (Web Page) <<https://www.hotelometa.com/XX/Unknown/485038668176032/Gum-Valley%2C-Kangaroo-Island>>.

<sup>85</sup> 'All the best of highs and lows', *The Islander* (Kingscote, South Australia) 9 December 2010, 14.

<sup>86</sup> Email from Will Chapman to D, 31 May 2011.

155. Between February and June 2021, a local hospitality business owner leased the house at Gum Valley to accommodate 15-20 of their employees.<sup>87</sup> In July 2021, the business owner leased the shearers' quarters for the same purpose.<sup>88</sup> The lease of the shearers' quarters covers a two year period and continues today. Ms Chapman has advised that some agistment of the property continues, and that the house is not currently leased.<sup>89</sup>
156. Ms Chapman submitted to me that, while she was aware of the lease with a local business owner when she considered the 2021 Assessment Report, she was not aware of the particulars of this arrangement.<sup>90</sup>

### The timber plantation in Western River, Kangaroo Island

157. Ms Chapman's knowledge of the timber plantations near Gum Valley when she considered the Assessment Reports is particularly relevant in my investigation.
158. In her interview, Ms Chapman explained that she was aware of the plantation closest to Gum Valley, but did not know the owner or the extent of the plantation. Ms Chapman explained that this was partly because only a portion of the plantation area is visible from Gum Valley, and the majority is obscured by a heritage scrub area that has been present her entire life. According to Ms Chapman, she understood that the timber in the plantation near Gum Valley had been planted in the 1980s or 1990s. From time to time when she visited Gum Valley, she had seen some work being undertaken in the plantations, but only observed maintenance and fencing work. Ms Chapman had not witnessed machinery or trucks travelling along Western River Road to access the plantations, except when the fences were being installed.
159. While Ms Chapman was accustomed to some heavy vehicle traffic along Western River Road, she expressed the view that it was unlikely that timber would be removed from the plantation along that road, given the proximity of North Coast Road as a main arterial road. Ms Chapman explained her expectation that when the trees were eventually felled, the plantations would be accessed from further south, along North Coast Road, and that timber would be removed in a southerly direction, rather than north and past Gum Valley. In the map below, Western River Rd is marked by a red line. North Coast Road is marked by a blue line. Gum Valley appears as a red marker. The dark grey/green areas are the heritage scrub.

---

<sup>87</sup> Invoice #240221, 29 June 2021, provided by letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>88</sup> Commercial lease agreement, 1 July 2021, provided by letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>89</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.

<sup>90</sup> Vickie Chapman, 'Statement of VA Chapman', 16 March 2022; Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 5 April 2022.



Figure 7: Gum Valley and the nearby plantation<sup>91</sup>

160. Ms Chapman advised that prior to the inquiries of the Select Committee, she was not aware of any contractual relationship or understanding between the owner of the plantations and KIPT.

### Briefings and discussions about the Smith Bay application and a conflict of interest

161. Further to her evidence to the Select Committee, Ms Chapman provided a copy of the ministerial briefing she received about the Smith Bay application when she assumed the Planning portfolio in July 2021.<sup>92</sup> Neither the briefing, nor Ms Chapman's handwritten notes of meetings she had at the time,<sup>93</sup> mention a conflict of interest issue or a possible delegation. Ms Chapman explained that she is not in possession or aware of any documents pertaining to this issue at the time, nor did she have any recollection of the issue being raised prior to her receipt of the 2020 Assessment Report. Nevertheless, Ms Chapman explained, she was conscious of her responsibility to identify and declare any conflicts of interest, and she did so in regard to two other development matters when she took responsibility for the portfolio.<sup>94</sup>

<sup>91</sup> *Google My Maps*, (Web Page) <<https://www.google.com.au/maps/about/mymaps/>>.

<sup>92</sup> 'Incoming Minister Briefing, Title: Kangaroo Island Plantation Timbers (KIPT)', 31 July 2020, provided by letter to the Ombudsman from Nicholas Iles on behalf of Vickie Chapman, 10 February 2022.

<sup>93</sup> Vickie Chapman, handwritten notes, 30 July 2020; Vickie Chapman, handwritten notes, 31 July 2020, provided by letter to the Ombudsman from Nicholas Iles on behalf of Vickie Chapman, 10 February 2022.

<sup>94</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 10 February 2022.

162. Although she was not present for discussions between Mr Luckhurst-Smith, Ms Mealor and Ms Carney in September 2020, Ms Chapman's representative stated:

Their evidence appears to be clear that they wished to make contingency for the possibility that my client might choose to delegate her decision making given her long association with Kangaroo Island. The draft delegation was precautionary, in the sense that the officers in question wished to be ready to action a delegation quickly, if that were my client's decision.<sup>95</sup>

163. Ms Chapman could not recall any discussion or advice about a conflict of interest or delegation when she met with department officers on 1 October 2020.<sup>96</sup>

164. In her interview, Ms Chapman explained that, in order to determine whether she has a conflict of interest, she considers whether she, or her family, would enjoy a benefit or suffer a detriment as a result of her decisions.<sup>97</sup> I understand the Ms Chapman concluded that neither would be the case because:

- the impact on Kangaroo Island roads would be experienced by the whole community
- she does not live on the island, but is nevertheless accustomed to heavy transport vehicles near Gum Valley
- the plantations near Gum Valley had been present for a long time and been felled in the past
- the transport routes for the proposal were not a settled matter.<sup>98</sup>

165. When determining whether she has a perceived conflict of interest, Ms Chapman explained that she considers the perspective of the reasonable person, and whether anyone has raised the issue.<sup>99</sup>

166. After the 2020 Assessment Report, Ms Chapman had no recollection of the issue being raised prior to Mr Pangallo's and Mr Wortley's statements at the Timber Industry Select Committee and the subsequent Sunday Mail article. Ms Chapman explained that, when she prepared her Ministerial Statement in response to this commentary, she considered again whether she had a conflict of interest and concluded that she did not. Ms Chapman explained to me that Ms Black's statement to the Timber Industry Committee was a relevant consideration at the time, and she did not consider it necessary to probe the issue further with KIPT in light of that statement.<sup>100</sup>

167. Furthermore, Ms Chapman confirmed that she had not made any public statement expressing a view about the Smith Bay application prior to announcing her decision on 9 August 2021.<sup>101</sup>

---

<sup>95</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 10 February 2022.

<sup>96</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 10 February 2022.

<sup>97</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>98</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 10 February 2022, referring to Frances Nelson, Submission to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, (2021).

<sup>99</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>100</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>101</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

168. Ms Chapman explained that internal discussions she had when she prepared her Ministerial Statement did not concern a question of whether she had conflict of interest. Instead, she sought to confirm whether she was able to make a Ministerial Statement about the matter, given the status of the application at the time.<sup>102</sup>
169. During the interview, I queried whether additional information provided in the 2021 Assessment Report caused Ms Chapman to question whether the proposal would impact her property. In response, Ms Chapman explained that while the report alerted her to the salvage operations planned by KIPT, the information did not give rise to any concern about her property as the salvaged timber would travel south from nearby plantations and away from Gum Valley. In any event, in her view, there was not a material difference in the Assessment Reports to suggest that she may have a conflict of interest.<sup>103</sup>
170. Regarding whether she considered she had an obligation to seek the then Premier's advice at that time, Ms Chapman explained that she was confident in her conclusion that she did not have a conflict of interest in any form, and therefore did not consider it necessary to discuss the matter with Mr Marshall.<sup>104</sup>

## The evidence of Mr Stephen Stone and Kiland

171. The timber plantation near Gum Valley, and the relationship between the owner of that plantation and KIPT, was an important issue for the Select Committee and is equally relevant in my investigation. With this in mind, I sought information from representatives of Mr Stephen Stone, the owner of the plantation, and Kiland, formerly KIPT. I thank both parties for their assistance.

### Mr Stephen Stone

172. Mr Stone's representatives confirmed that entities controlled by Mr Stone hold the timber plantation in Western River shown in the third year salvage operation map of the 2021 Assessment Report. These plantations are referred to as 'Westmore Park', and were planted in the 1990s.<sup>105</sup>
173. Mr Stone's representatives explained that there are numerous existing access points for the plantations, but that future access points could be located elsewhere. Both existing and possible future access points include Western River Road.<sup>106</sup>

---

<sup>102</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>103</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, 16 March 2022).

<sup>104</sup> Letter from Nicholas Iles on behalf of Vickie Chapman to the Ombudsman, 10 February 2022.

<sup>105</sup> Letter from Vivienne Pitman per Stephen Watts, Tilbrook Rasheed Pty Ltd, on behalf of Stephen Stone to the Wayne Lines, 30 March 2022.

<sup>106</sup> Letter from Vivienne Pitman per Stephen Watts, Tilbrook Rasheed Pty Ltd, on behalf of Stephen Stone to the Wayne Lines, 30 March 2022; Email from Vivienne Pitman to Ombudsman SA, 30 March 2022.

174. Regarding a possible business relationship with KIPT, Mr Stone's representatives explained:

There was a potential business relationship because we were of the understanding that KIPT would be establishing a port and we would need that port to move our timber.

In terms of an actual business relationship, Mr Stone and [his representative] Mr Watts were in constant discussions with KIPT. We had a Memorandum of Understanding "MOU" with other growers, however there were no contractual relationships whatsoever.<sup>107</sup>

175. Mr Stone's representatives provided an unsigned copy of the Memorandum of Understanding between Mr Stone, as an independent timber grower on Kangaroo Island, and KIPT (**the MOU**). In preparation for the Smith Bay port, the MOU included, but was not limited to, the following:

- independent timber growers agreed to, in principle, cooperate with KIPT for the harvest and export of timber from their plantations
- KIPT agreed to make available the capacities of its contractors to deal with the timber using modes of harvesting and haulage that it used for its own plantations
- KIPT agreed, in principle, to deal with the independent growers on an 'open book' basis whereby it would deploy its contractors and marketing agent for the independent growers and pass through the revenues and costs of doing so.

### Kiland, formerly KIPT

176. Separately, Kiland confirmed that the MOU was signed by Mr Stone's son on 17 April 2019,<sup>108</sup> as well as eight other independent timber growers that day and in the weeks following.<sup>109</sup> According to Kiland, 'if a port and subsequent market opportunities arose, then Kiland would work with the Stones on market access for their timber.'

177. Regarding the proposed salvage operations, Kiland explained:

Following the bushfires and as part of Kiland's marketing research for salvage operations, Kiland investigated plantation inventory of Westmore Part... Approximately 50 tons [sic] of logs were harvested from the Stones plantation and hauled by KILAND [sic]...

If only fire affected timber was to be salvaged, this may have only taken a couple of months whilst a complete Westmore Park harvest may take up to 18 months to complete.

The topography is such that logs could be carted through the plantation to adjacent public roads such as Barker rd, North Coast Rd and Johncock rd.<sup>110</sup>

178. Further, Westmore Park 'was partly burnt and as such the burnt parts would have been slated for harvest in 2023, had the port proceeded.'<sup>111</sup>

<sup>107</sup> Letter from Vivienne Pitman per Stephen Watts, Tilbrook Rasheed Pty Ltd, on behalf of Stephen Stone to Wayne Lines, 30 March 2022

<sup>108</sup> Letter from Kiland Ltd to Wayne Lines, 28 March 2022.

<sup>109</sup> Statutory declaration of Shauna Black, 4 April 2022.

<sup>110</sup> Letter from Kiland Ltd to Wayne Lines, 28 March 2022.

<sup>111</sup> Email from Vicky Allinson, Kiland Ltd to Ombudsman SA, 7 April 2022.

179. In the map below, North Coast Rd is marked with a blue line, Johncock Rd is marked with a purple line, and Barker Rd is marked with an orange line. Gum Valley appears as a red marker.



Figure 8: Westmore Park, North Coast Rd, Johncock Rd and Barker Rd<sup>112</sup>

## The evidence of the former Premier, the Hon Steven Marshall MP

180. Mr Marshall did not appear before the Select Committee. Pursuant to the terms of the referral, it was therefore crucial for me to seek a response from Mr Marshall about his involvement in this matter.
181. In response to my enquiries, Mr Marshall explained that:

Based on a Ministerial Statement Ms Chapman made to the House of Assembly on 26 May 2021, I was confident that she had addressed the conflict of interest issue in accordance with her obligations under the Ministerial Code of Conduct without having to raise it with me.<sup>113</sup>

182. Mr Marshall also concluded that Ms Chapman had considered her obligations under the Ministerial Code of Conduct because her Ministerial Statement made reference to it. Mr Marshall explained that he was also aware that Ms Chapman had identified and disclosed potential conflicts of interest in relation to other matters when she assumed responsibility for the Planning portfolio.

<sup>112</sup> *Google My Maps*, (Web Page) <<https://www.google.com.au/maps/about/mymaps/>>.

<sup>113</sup> Letter from Steven Marshall to Wayne Lines, 28 January 2022.

183. Following comments in the Timber Industry Committee and in the media in May 2021, Mr Marshall did not discuss the issue of a conflict of interest with Ms Chapman as he was not aware of the matter until she made her Ministerial Statement.<sup>114</sup>
184. He also advised that he had no discussions with any other Minister expressing a concern about Ms Chapman having a conflict of interest.

## The evidence of the Hon David Ridgway and the Hon Robert Lucas

185. In light of Mr Peter Lockett's evidence and submissions to the Select Committee, I enquired with the Hon David Ridgway and the Hon Robert Lucas as to whether either had raised the issues of a conflict of interest with the then Premier.

### The Hon David Ridgway

186. Mr Ridgway confirmed that he, Mr Knoll and Mr McBride MP met with KIPT representatives on 12 May 2021. His recollection was that the meeting concerned:

...the extremely long and slow decision-making process and a general discussion of why that was the case. The risk of a conflict of interest may have been raised but I do not have any notes etc. that could confirm that issue was specifically raised.<sup>115</sup>

187. Nevertheless, Mr Ridgway explained:

I suggested I might raise their concerns with the Premier, however I was unable to get a meeting with the Premier given his extremely busy schedule before I resigned from the South Australian Parliament on 30<sup>th</sup> June 2021.<sup>116</sup>

188. Mr Ridgway confirmed that while he did have informal conversations 'with various MP's mostly in the corridors of Parliament House'<sup>117</sup> about the Smith Bay application, the conversations concerned delay. Mr Ridgway advised that he had no formal meetings with the Premier or any parliamentary colleagues regarding the issue of a conflict of interest.

---

<sup>114</sup> Letter from Steven Marshall to Wayne Lines, 28 January 2022.

<sup>115</sup> Letter from David Ridgway to Wayne Lines, 4 March 2022.

<sup>116</sup> Letter from David Ridgway to Wayne Lines, 4 March 2022.

<sup>117</sup> Letter from David Ridgway to Wayne Lines, 4 March 2022.

## The Hon Robert Lucas

189. In direct response to Mr Locket's submissions to the Select Committee, Mr Lucas explained that he did not advise the Premier:

- that Ms Chapman had a conflict of interest
- that it would be better for the government if Cabinet made the decision about the Smith Bay application
- of a concern about Mayor Pengilly and his association with Ms Chapman's family
- that Mayor Pengilly's behavior was unhelpful to the government.<sup>118</sup>

190. Mr Lucas continued:

I can confirm that Iain Evans as a lobbyist for KIPT did on a number of occasions raise issues with me on behalf of KIPT.

Whilst Mr Evans and KIPT did raise their concerns that Ms Chapman came from Kangaroo Island and had an association with Mr Pengilly the major concern Mr Evans raised with me was their claim that Ms Chapman had already publicly expressed her opposition to this project.

Mr Evans indicated that there was an old press clipping that indicated Ms Chapman had already publicly indicated her opposition to the project.

Mr Evans indicated he would provide me with a copy of the press clipping but my recollection is that it was never provided.

I did indicate to Mr Evans that I would raise their concern that Ms Chapman already publicly expressed her opposition to the project with the Premier and I did so.

Over many months I would have discussed this project with a number of colleagues and others on a significant number of occasions. However, I have no notes or records of any conversations as those conversations were generally informal discussions rather than meetings specifically to discuss the project.<sup>119</sup>

191. I observe that there appears to be no evidence of Ms Chapman making a public statement for or against the Smith Bay application prior to her decision to refuse the application.

## Observations from my visit to Kangaroo Island

192. In early March 2022, I travelled to Kangaroo Island in order to gain a clearer understanding of the key points of interest in this matter. I was not accompanied by, nor did I meet with, anyone involved in this matter or their representatives.

---

<sup>118</sup> Letter from Robert Lucas to Wayne Lines, 4 March 2022.

<sup>119</sup> Letter from Robert Lucas to Wayne Lines, 4 March 2022.

193. I first travelled along a portion of the preferred route from the 2021 Assessment report, specifically between Kingscote and Smith Bay. That portion of North Coast Road, like much of the remainder of North Coast Road that I observed, is of mixed quality. It is an unsealed gravel road. At times, there is some corrugation and uneven surface. This includes portions near the home of Mayor Pengilly, which is set approximately 230 metres away from the road. I consider that the majority of North Coast Road that I observed would accommodate two opposing lanes of traffic, including use by heavy transport, although it is narrower at times and opposing traffic may need to pull to one side. At certain points along the portion of North Coast Road that I travelled, there are signs warning of heavy vehicle use in the area.
194. Except for the Yumbah facility, Smith Bay is pastoral, quiet and undeveloped. When I was present, just prior to midday on a week day, there was very little activity in the area. I then travelled along a portion of the preferred route from the 2020 Assessment Report. Except for Playford Highway, my observations as to the quality of the road are consistent with what I have described above.
195. I approached Gum Valley along the route proposed for the third year salvage operations. When I turned off of Playford Highway, I observed an old road sign for 'Gum Valley Retreat'. Two other similar road signs appeared along the remainder of the route to Gum Valley.



Figure 9: Sign for Gum Valley Retreat, Playford Highway, 1 March 2022

196. I asked about the history and purpose of these signs in my interview with Ms Chapman and was advised that the signs were organised by a fitness company that leased Gum Valley in the 1980s and 1990s to run fitness retreats. Ms Chapman did not know why the signs remained.<sup>120</sup>

<sup>120</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, (16 March 2022).

197. I observed Gum Valley and the plantation closest to that property. There is a long driveway between the buildings at Gum Valley and Western River Road. The driveway is marked with a large sign for 'Gum Valley, 48 Western River Road'. In her interview, Ms Chapman explained that a sign has been present for decades. At times, this served to notify visitors of the business of Ms Chapman's father. Ms Chapman explained that, in 2012, her sons purchased a new sign as a Christmas present to her, replacing a sign that had been used by the fitness company.<sup>121</sup>



Figure 10: Sign at Gum Valley, 1 March 2022

198. The buildings at Gum Valley are approximately 100 metres from the edge of the nearest plantation on the other side of Western River Road. The red roofs of the shearers' quarters and shearing shed appear on the left of the photo below. The pine trees of the plantation are visible on the right. The pine trees are distinct from other trees in the photo because of their straight grey trunks.

---

<sup>121</sup> Interview with Vickie Chapman (Wayne Lines, Ombudsman SA Office, (16 March 2022).



**Figure 11:** View of Gum Valley and the nearby plantation along Western River Road, 1 March 2022

199. The house and shearers' quarters at Gum Valley do not overlook the plantation. The outlook of those buildings is to the valley to the east, and ocean to the north. The red roof of the shearers' quarters is visible in the photo below. The house has a darker roof and appears further to the right of the photo.



**Figure 12:** View of Gum Valley from North Coast Road, 1 March 2022

200. Finally, I travelled to Kingscote along Playford Highway, representing the remainder of the 2021 preferred route.

# Consideration

1. **Whether the Hon Vickie Chapman MP, the former Attorney-General, committed maladministration by:**
  - 1.1. **failing to avoid a situation in which her private interests conflicted, had the potential to conflict, or appeared to conflict, with her public duty, contrary to clause 3.1 of the Ministerial Code of Conduct**
  - 1.2. **failing to advise the former Premier of South Australia, the Hon Steven Marshall MP, in writing as soon as possible after becoming aware of a conflict of interest, contrary to clause 3.3 of the Ministerial Code of Conduct.**
201. This issue requires me to firstly determine whether the Ms Chapman had a conflict between her private interests and her public duty.
202. Simply stated her public duty was to decide whether to approve or refuse the Smith Bay application on its merits, free of bias or partiality.
203. As Ms Chapman did not live on Kangaroo Island and had no concrete plan to reside there, the potential impacts of the Smith Bay application on Kangaroo Island generally is not sufficient to enliven a conflict of interest consideration. Her only relevant private interest is her ownership of the Gum Valley property at 48 Western River Road. The Gum Valley property itself or the way Ms Chapman used it or planned to use it had to be affected by the Smith Bay application in some way for the ownership of it to potentially create a conflict of interest. That private interest of her property ownership could come into conflict with her public duty if the details of the Smith Bay application indicated that, if implemented, there would be either a benefit or detriment to the value, amenity, enjoyment or any commercial operation of the Gum Valley property.
204. The facts relating to the property that I consider relevant to this question are these:
  - Ms Chapman did not reside at the Gum Valley property, but after 2017 she would stay there for short visits each year; her interest in the property was primarily as a landlord, not as a resident
  - the Gum Valley property was not a tourist destination and was not a tourist venture and she did not have plans to operate the property as a tourist facility
  - between July 2020 and June 2021, it had been used for a few short term stays by people employed on Kangaroo Island
  - from July 2021, the Gum Valley property had been leased to a business owner for accommodating employees working in his business at Snellings Beach
  - the property was, from time to time and at the time she considered the Assessment Reports, agisted for sheep

- although the timber plantation on Western River Road, opposite the Gum Valley property, could be accessed via Western River Road, the topography of the area is such that logs would be more likely carted through the plantation to North Coast Road one or two kilometers further south.

205. My observations of the Assessment Reports that Ms Chapman considered in her decision are that:

- while the open network route proposed (but not preferred) in the 2020 Assessment Report would have allowed for transport along North Coast Road, neither the first nor second Assessment Report suggested that haulage trucks would be using Western River Road to either access the plantation opposite the Gum Valley property or as a haulage route to Smith Bay
- the Assessment Reports indicated that there were timber plantations in the vicinity of the Gum Valley property but not that they were KIPT assets; rather it was identified that they were independently owned
- there is no indication that it was likely that those particular timber plantations would be harvested by KIPT, there being no detail offered as to whether the owners of those plantations had any contractual obligation to have their plantations harvested by KIPT. At this point I note that, at the time of her consideration of the Assessment Reports, Ms Chapman was unaware of any contract between the owner of the plantation on Western River Road opposite the Gum Valley property and KIPT, and my investigation has been able to verify that, in fact, there was none
- both Assessment Reports indicate that if the plantations in the vicinity of the Gum Valley property are harvested, haulage trucks will travel in a southerly direction away from the Gum Valley property so as to connect with Playford Highway (that is, they would not pass by her property)
- both Assessment Reports are inconclusive about the effect the Smith Bay application will have on Kangaroo Island tourism generally, but importantly, they state that the impact on individual accommodation providers from an economic point of view is neutral. Further, there is no reference to the impact on tourism in the immediate vicinity of the Gum Valley property
- in any event, the Assessment Reports do not identify the Gum Valley property as a tourist facility
- neither Assessment Report suggest that the value of property in the vicinity of the Gum Valley property would be impacted
- neither Assessment Report suggest that access to the Gum Valley property would be impacted
- neither Assessment Report suggest that the capacity to agist stock on property such as the Gum Valley property would be impacted

- neither Assessment Report detailed any assessment of noise levels in the vicinity of her Gum Valley property or suggested that there may be increased noise levels in the vicinity of the property.
206. Having visited the Gum Valley property myself in the course of this investigation, I can confirm that access to the buildings on the property is from Western River Road about 400 metres from the intersection with North Coast Road, the buildings on the property do not overlook the plantation on the other side of Western River Road and are situated around 100 metres from the fence line of the plantation so that anyone staying at the property would not be impacted visually or by increased noise levels due to the harvesting of the plantation.
207. I also accept that at the time Ms Chapman considered the Assessment Reports, it was generally known that:
- timber had been harvested from plantations on Kangaroo Island and either used locally on the Island or exported using current wharf facilities
  - the timber plantations in the vicinity of the Gum Valley property would be harvested or cleared at some future stage whether by the owners, KIPT or some other enterprise and this would occur regardless of whether the Smith Bay application was approved; indeed, KIPT was already salvaging timber from its plantations and either storing it on Kangaroo Island or exporting it via the Kingscote and Penneshaw wharfs
  - heavy vehicles travel on Western River Road past the Gum Valley property for a variety of reasons
  - the Gum Valley property is around 50 kilometres from Smith Bay and would not be impacted by the construction and development of a wharf and timber operation at that site.
208. On the basis of the above information I conclude that at the time of considering the Assessment Reports, Ms Chapman was entitled to hold the view that:
- the Smith Bay application (if approved) would not impact her personal way of life as she does not live on Kangaroo Island and her ability to stay for short visits at her Gum Valley property would be unaffected (subject to any lease she had entered into over the property)
  - while the Smith Bay application outlined increased heavy vehicle traffic on various roads, this did not impact her because she does not live on Kangaroo Island
  - the Smith Bay application would not impact the value of her Gum Valley property, either by increasing or reducing its value
  - the Smith Bay application would not affect either her or a lessee's enjoyment of the property, whether by disrupting its outlook or accessibility or by increased noise levels

- it could be expected that the timber plantation opposite her property would be harvested at some stage regardless of whether the Smith Bay application was approved and for that reason the Smith Bay application was irrelevant to her use of and interest in the Gum Valley property; the Smith Bay application would not affect her ability to agist stock on the property, lease it or sell it.
209. Consequently, I am of the opinion that Ms Chapman had good reason to believe that she did not have an actual or potential conflict between her interest in the Gum Valley property and her public duty to impartially consider the Smith Bay application on its merits.
210. I have also considered whether there was an appearance of a conflict between her private interest and public duty, that is, a perceived conflict of interest. Such a conflict may arise even if there is no actual or potential conflict. This is because a perceived conflict is assessed from the point of view of a reasonable and fair-minded observer, who can be taken to be reasonably well-informed but not necessarily privy to all the information possessed by the decision maker.
211. In this case, I am of the view that nearly all of Ms Chapman's knowledge about the Smith Bay application and its relationship to her property interest could be attributed to the reasonable and fair-minded observer. Information about the property that may not have been available to a reasonable observer is that the property was used for short stays or longer term accommodation by people who work on Kangaroo Island, not tourists. Due to the property being promoted on an Airbnb website in early 2020, a reasonable observer would be entitled to assume that the property was either providing tourist accommodation or seeking to do so.
212. Although Ms Chapman has given a reasonable explanation as to how that came about and maintains that the property was not a tourist business at the time she considered the Smith Bay application, the way it is promoted on the Airbnb website in early 2020 gives the impression that it was. However, as I have observed already, both Assessment Reports suggest that the economic impact on accommodation providers will be neutral. Furthermore, neither Assessment Report suggest that the accessibility, amenity and enjoyment of the property would be impacted by the proposal. In my view, even if I accept a reasonable observer may assume that the Gum Valley property provided tourist accommodation, there is no evidence on which to base an inference that the Smith Bay application would impact that type of business at that location either for better or worse. Such an inference would be pure speculation besides being inconsistent with everything else that is generally known about the property, the timber plantation on Western River Road, the Smith Bay application and KIPT's current timber salvaging operations. It is not an inference that could be attributed to a reasonable, fair-minded observer. In my view a reasonable, fair-minded observer would conclude that as the timber on the plantation opposite the property would be harvested regardless of whether the Smith Bay application is approved, the Smith Bay application is irrelevant to the way Ms Chapman uses her property.
213. Consequently, I am of the view that Ms Chapman was not even in the position of a perceived conflict of interest when she considered the Smith Bay application.

214. For completeness, I have also considered whether an actual or perceived conflict of interest might have arisen due to Ms Chapman's:

- (a) involvement in a discussion with KIPT directors about the proposal for a Smith Bay port in 2017, or
- (b) her friendship with Mayor Pengilly.

215. I note that these matters were of interest to the Select Committee and influential to their findings.

216. In regard to the meeting in 2017, I note that:

- Ms Chapman attended while a member of the shadow ministry, not as a decision maker
- while expressing a view, perhaps even a firm view, that Smith Bay would not be a suitable site for a port, the discussion took place at least three years before she first assessed the Smith Bay application in September 2020 and at a time when it was still being developed, with no EIS having yet been undertaken
- Ms Chapman was not stating opposition to the concept of an additional port being built on Kangaroo Island to facilitate the export of timber products; rather she was contributing to a discussion about how KIPT's proposal could be advanced by considering alternative locations for a port
- Ms Chapman never committed publicly to opposing or advocating for the proposal at any time between the meeting and her appointment as Minister for Planning and Local Government
- when she was Attorney-General and Minister for Planning and Local Government, Ms Chapman's communications with the department and in her Ministerial Statement can only be construed as displaying an open mind as to the merits of the Smith Bay application.

217. It should be obvious that, without more, Ms Chapman's involvement in the 2017 meeting did not create a private interest that could then be in conflict with her public duty. Without a relevant private interest, neither an actual nor perceived conflict of interest can arise. I accept that if following the meeting she had stated publicly (e.g. in Parliament or in the media) that she either supported or opposed the proposal, it could be argued that she then had an interest in achieving an outcome consistent with her public statement. This might be seen as a private interest that could conflict with her public duty. However, as there is no evidence that she made such a public statement, the issue does not arise.

218. If anything, her involvement in the meeting could have given rise to those parties with an interest in the outcome of the proposal having an apprehension of bias. However, as I have previously stated, the concepts of an apprehension of bias and conflict of interest are distinct. An apprehension of bias can exist without there being a conflict of interest, e.g. in the case of a decision maker having past commercial dealings with, but no current contractual obligations towards or other relationship with, an opponent of a development application. On the other hand, a decision maker may have a conflict of interest, but because it is properly managed and declared, no apprehension of bias is held by the interested parties.
219. While it is common and good practice for a decision maker to declare their connections to a matter under consideration to the interested parties so that they can weigh up whether they wish to ask the decision maker to excuse themselves from determining the matter, that is only essential when those connections are unknown to the interested parties. In this case, Ms Chapman's Kangaroo Island property interest and involvement in the discussions with KIPT's representatives in 2017 were well known to KIPT's executives and directors.
220. I also note that on 30 April 2021, Ms Shauna Black, in giving evidence to the Timber Industry Select Committee, was asked whether she thought Ms Chapman should excuse herself from deciding the proposal, and her reply was she did not. Ms Black confirmed that Ms Chapman had not made any public statement opposing the proposal. She was aware that Ms Chapman owned property on Kangaroo Island but did not think that should disqualify her from making a decision on the proposal. Mr Keith Lamb also gave evidence jointly with Ms Black at the same Inquiry, but did not seek to correct Ms Black's response to the question about whether Ms Chapman should excuse herself from the development application process. Ms Chapman had familiarised herself with Ms Black's evidence and made reference to it in her Ministerial Statement. With knowledge of Ms Black's evidence (with Mr Lamb's acquiescence), Ms Chapman could rightly conclude that KIPT was aware of her connections to the matter both in terms of her Kangaroo Island property interest and discussions with the directors in 2017, but held no apprehension of bias. In light of this, she did not need to disclose those connections to KIPT nor offer to excuse herself from determining the proposal.
221. After the decision to refuse the application had been made and in evidence before the Select Committee, Ms Black advised that she did have concerns about Ms Chapman's bias but confirmed that she did not express these to her before the decision. Likewise, Mr Peter Lockett, the former approvals manager of KIPT, advised the Select Committee that he held similar concerns which he raised with other senior members of the government but not with Ms Chapman. The only statement that Ms Chapman had available to her about KIPT's attitude to her being the decision maker on their application, is the evidence Ms Black gave to the Timber Industry Select Committee. If Ms Black's evidence to that Committee was not a true representation of her views, Ms Chapman cannot be expected to have known that. Ms Chapman cannot be criticised for not anticipating that Ms Black and the other KIPT directors and executives held a view about her suitability to decide the Smith Bay application that was different to Ms Black's public statement if they chose not to tell her.
222. If KIPT's executives and directors did not raise an apprehension of bias when they had opportunity to do so, it is not for me to now, in retrospect, find that they did have such an apprehension.

223. The key point is that I am satisfied that Ms Chapman's involvement in the 2017 meeting did not give rise to a conflict of interest. As the terms of the referral are limited to whether Ms Chapman was in a position of conflict between her private interests and private duty, I need not dwell on this issue any further.
224. Turning to whether Ms Chapman's friendship with Mayor Pengilly gave rise to either a perceived or actual conflict of interest, I note that Ms Chapman described the relationship to the Select Committee in these terms:
- although they both grew up on Kangaroo Island, they attended different schools and there was no overlap in either their schooling or their sporting activities
  - she knew him as a colleague in parliament and as Kangaroo Island Council mayor
  - he is a family friend.
225. Mayor Pengilly's council was opposed to the Smith Bay application and made submissions to that effect in the consultation on the EIS for both Assessment Reports. Mayor Pengilly was also vocal in Parliament (when he was the Member for Finnis) about his opposition to the Smith Bay application. However, at no point during or between her consideration of each Assessment Report did Ms Chapman align herself with the Mayor's views. The question is then, could Ms Chapman have a conflict of interest simply because a long standing, family friend is a vocal opponent of the proposal? I do not think so. There would need to be evidence of some kind of emotional, social or financial bond between them to suggest that she was under some kind of obligation to him for me to conclude that the relationship may give rise to a personal interest that could come into conflict with her public duty. There is no evidence of any such bond in this instance.
226. Consequently, I am satisfied that no relevant, personal interest arose due to Ms Chapman's friendship with Mayor Pengilly. It follows that Ms Chapman could have no conflict of interest, either actual or perceived, as a result of this friendship.
227. Ms Chapman's relationship with Mayor Pengilly is more relevant to the question of an apprehension of bias, which as I have already stated, is a distinct concept to conflict of interest. It appears to me that Ms Chapman's connection to Mayor Pengilly as a friend of the family, having both grown up on Kangaroo Island and owning property on the Island, and as a former parliamentary colleague, was generally known. Despite Mayor Pengilly's public opposition to the Smith Bay application and Ms Chapman's relationship with Mayor Pengilly being generally known, KIPT never raised the issue of bias with Ms Chapman when she considered the Assessment Reports. In this context, I can see no breach of the Ministerial Code of Conduct, no misconduct, no maladministration and no failure in public administration on Ms Chapman's part for a theoretical failure to deal with an apprehension of bias that was never raised with her by KIPT.
228. If KIPT was not prepared to raise it at the time, it is not for me to now find that they did have reason for an apprehension of bias. As with the 2017 meeting with KIPT directors, if the matter does not raise a question of a conflict of interest, the terms of the referral do not require me to delve into this any further.

229. Both Ms Chapman and the former Premier have confirmed that she never raised the issue of a conflict of interest directly with him. In my view, Ms Chapman did not have a conflict of interest, whether actual, potential or perceived that had to be raised with the former Premier.
230. In answer to the question of whether Ms Chapman committed maladministration by failing to avoid a situation in which her private interests conflicted, had the potential to conflict, or appeared to conflict, with her public duty, contrary to clause 3.1 of the Ministerial Code of Conduct, I conclude that, because her private interests did not actually or potentially conflict with her public duty nor did they have the appearance of conflicting with her public duty, there is no conduct on her part that could give rise to maladministration.
231. It follows, that she was not required by the Ministerial Code of Conduct to advise the former Premier of any conflict at the time she considered the Smith Bay application and she did not breach the Ministerial Code of Conduct by not raising the issue with the former Premier.

2. Whether the Hon Mr Steven Marshall MP, the former Premier of South Australia, committed maladministration by:

2.1. failing to make any enquiry to ascertain whether there was substance to concerns raised in the media and Parliament about the former Attorney-General being in a position of conflict, and ensure compliance with the Ministerial Code of Conduct.

232. It is clear from the Ministerial Code of Conduct that the Premier has responsibility for his or her Ministers and for ensuring their compliance with the Code. The former Premier has advised me that he was aware that Ms Chapman had declared potential conflicts of interest and delegated decisions regarding certain planning/development matters located within her electorate. Although not expressly stated by him, I infer from this that he took comfort from this in that it indicated that Ms Chapman was cognisant of her responsibilities in regard to declaring conflicts of interest and could be relied upon to delegate decisions where she may be in a position of conflict.

233. The former Premier also advised me that, although he was aware of the report in the Sunday Mail on 23 May 2021, he believed Ms Chapman addressed the concerns satisfactorily in her Ministerial Statement in Parliament on 26 May 2021. The Ministerial Statement also satisfied him that she was aware of her obligations under the Ministerial Code of Conduct and took her responsibilities seriously. The former Premier noted that no new questions were raised about Ms Chapman having a conflict of interest either in the media or in Parliament until after her decision on the Smith Bay application in August 2021. In this context he did not see that he needed to take any further action to ensure compliance with the Ministerial Code of Conduct.

234. In my view, these are all fair points. The former Premier's decision to take no action in response to the media report on 23 May 2021 is justified. As there were no new assertions or questions raised in Parliament after Ms Chapman's Ministerial Statement, the former Premier was entitled to assume that the issue had been satisfactorily addressed and did not require him to take action.

235. In his written submissions to the Select Committee, Mr Peter Lockett, the former approvals manager of KIPT, expressed his understanding that;

... at least two senior members of the Marshall government discussed with the Premier the risk that others might perceive the Minister had a conflict of interest or was biased. I understand they were concerned about [Mr Michael] Pengilly's leading role as an opponent of the project, his obvious conflict (denied and not addressed by him), and the long-standing association between [Mr] Pengilly and the Chapman family. I understand they were of the view that Pengilly's behaviour was unhelpful to government, and it would be better for the government if Cabinet made the decision about the Smith Bay development.<sup>122</sup>

---

<sup>122</sup> Mr Peter Lockett, Submission 12 to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, (2021) 5.

236. In his evidence to the Select Committee, Mr Lockett clarified that he identified the Hon Robert Lucas and the Hon David Ridgway to be the senior members referred to.<sup>123</sup> However, in my investigation I corresponded with both of them and they both deny that they had any such discussion with the former Premier. The former Premier has also confirmed with me that he did not have discussions with anyone about whether Ms Chapman may have a conflict of interest in regard to the Smith Bay application.
237. Bearing in mind that I have already concluded that Ms Chapman did not have a conflict of interest and did not commit maladministration in regard to her involvement in considering the Smith Bay application, it is difficult to see how the former Premier could have committed maladministration in regard to ensuring compliance with the Ministerial Code of Conduct when no breach of the Code had occurred or was about to occur. Even if I were to conclude that a prudent course of action would be to make specific enquiries with Ms Chapman following the concerns raised in the media, no maladministration has occurred in this instance by not making those enquiries.
238. It follows that my answer to this question is that the former Premier did not commit maladministration by failing to make any enquiry about the former Attorney-General being in a position of conflict and ensure compliance with the Ministerial Code of Conduct.

---

<sup>123</sup> Evidence to Select Committee on the Conduct of the Hon Vickie Chapman regarding Kangaroo Island Port Application, House of Assembly, Adelaide, 9 November 2021, 163 [420] Mr Peter Lockett.

3. Whether any other public officer committed maladministration in connection with the former Attorney-General's determination of the Smith Bay application.
239. This part of the referral is predicated on the assumption that the former Attorney-General had a conflict of interest which she failed to declare and that her determination of the Smith Bay application was a failure of public administration. As I have formed the view that the former Attorney-General did not have a conflict of interest to declare when she decided the application and did not commit maladministration, it is difficult for me to see that any other public officer committed maladministration in connection with that decision.
240. I accept that there is a collective ethical responsibility on all public officers working with a Minister to ensure that the Minister is acting both lawfully and ethically.
241. All governments in Australia act in accordance with the Westminster system, which refers to the conventions and administrative practices that shape the way public officers interact with Ministers and the government of the day.<sup>124</sup> The elected Government sets policy agenda and priorities. The role of the Minister is to direct their department to implement these policies and objectives. Public officers, however, play a major role in protecting the public interest through administrative oversight, which ensures the integrity of government processes, including compliance with the law and fair and impartial decision-making processes.<sup>125</sup>
242. Proper decision-making reflects the core principles of public administration, which is outlined within the States' codes of conduct for public sector employees. In South Australia, the conduct of public officers is governed by the Public Sector Act and the Code of Ethics for the South Australian Public Sector (**the Code of Ethics**). The relationship between public officers and Ministers exists within this framework, and is also governed by fundamental principles of accountability and good governance. In order to promote good governance and accountability, public officers must accept their duty to operate within a framework of Ministerial responsibility to the government.<sup>126</sup>
243. Public officers are responsible for the day-to-day operations of the department. In carrying out this obligation, public officers under the Public Sector Act have a specific duty to 'implement the Government's policies in a timely manner and regardless of the political party forming Government' and to 'provide accurate, timely and comprehensive advice.'<sup>127</sup>
244. No doubt public officers' compliance with the Public Sector Act and Code of Ethics greatly assists Ministers, in their role of overseeing the administration of a department, to lawfully carry out their duties to the public and act in accordance with sound administrative practice.

---

<sup>124</sup> Richard Mulgan, *Where have all the Ministers gone?* (2010) 69 AJPA 289; Bruce DeBelle AO QC, Report of Independent Education Inquiry (June 2013) 126.

<sup>125</sup> Australian Public Service Commission, *State of the Service Report 2002-03* (2003) 37; Australian Public Service Commission, 'Supporting Ministers - upholding the values - Part One: Building effective relationships - basic requirements, roles and responsibilities', APSC (30 March 2022) <<https://legacy.apsc.gov.au/supporting-ministers-upholding-values>>.

<sup>126</sup> Australia Public Sector Commission, *Supporting Ministers - Upholding the Values* (Online guidelines) <<https://legacy.apsc.gov.au/supporting-ministers-upholding-values>>; Roger Beale, 'Ministerial Responsibility for Administrative Actions: Some Observations of a Public Service Practitioner' (2002) 9(4) *Agenda* 297.

<sup>127</sup> *Public Sector Act 2009* (SA) s 5.

245. While the principle underlying this duty is well entrenched in our system of government, there is very little case law that provides guidance on the scope of the duty. Justice Finn in *McManus v Scott-Charlton*<sup>128</sup> noted the need for a high-standard of the obligations on public servants within public service legislation, which are designed to protect public confidence in the integrity of the public service and of public servants.
246. One of the most important obligations of the department, particularly of the Chief Executive, is to keep their Minister fully informed. The provision of comprehensive and frank advice allows lawful and ethical decisions to be made. A focus on this issue has surged following South Australian and interstate inquiries into systemic issues and lack of departmental action.<sup>129</sup>
247. The general duties of the Chief Executive of a department are outlined in the Public Sector Act and relate to the effective management of the department and general conduct of its employees.<sup>130</sup> A department's Chief Executive is also required to ensure that the objects of the Public Sector Act and the public sector principles and code of conduct are observed in the management of their unit.<sup>131</sup>
248. Commentaries of former department heads have also been useful in outlining the extent of a public officer's obligations to advise Ministers. Roger Beale has commented on the importance of departmental heads in upholding the principles of Ministerial Responsibility and government accountability. According to Beale, the heads of a department are held directly and personally responsible for the performance of their departments to their Minister, in that their pay and position are at risk if they fail to live up to expectations.<sup>132</sup> This provides an additional mechanism for Ministers to meet their responsibilities to the Parliament as they are able to address issues of systemic importance in the administration of government policy and programs.
249. Unlike other jurisdictions, South Australia does not have specific guidelines regarding the Chief Executive's responsibilities in informing and advising ministers. The Victorian guidelines, however, are useful in outlining this responsibility.<sup>133</sup>
250. The guidelines do not impose a specific set of rules as to what matters heads of departments need to inform their Minister in order to fulfil their statutory obligations. Notably, the matters for consideration relate to the Minister's ability to oversee, administer and account for their portfolios.

---

<sup>128</sup> (1996) 70 FCR 16, 25.

<sup>129</sup> Bruce DeBelle AO QC, Report of Independent Education Inquiry (June 2013); Victorian Board of Inquiry, Final Report and recommendations into Covid-19 Hotel Quarantine (December 2020).

<sup>130</sup> *Public Sector Act 2009* (SA) s 31.

<sup>131</sup> *Public Sector Act 2009* (SA) s 32.

<sup>132</sup> Roger Beale, 'Ministerial Responsibility for Administrative Actions: Some Observations of a Public Service Practitioner' (2002) 9(4) *Agenda* 297.

<sup>133</sup> Victoria Public Sector Commission, *Informing and advising Ministers: guidance to Secretaries about their responsibilities* (Online guidelines, 29 October 2021) <<https://vpssc.vic.gov.au/html-resources/informing-and-advising-ministers-guidance-to-secretaries-about-their-responsibilities/?msclkid=069571afb0b311ecae01bcd22f5d108>>.

251. A key piece of advice offered by the Victorian guidelines is that department heads should proactively brief their Ministers on all matters of significance, using their judgement and experience to determine what the Minister needs to know to administer their portfolio and account to Parliament. There may be an argument that as the purpose of the South Australian Ministerial Code of Conduct is to ensure a Minister's accountability to Parliament, compliance with these obligations should therefore fall within a department head's advisory function. However, the Ministerial Code of Conduct has been drafted with an emphasis on specific obligations on Ministers. Notably, the obligations within the Ministerial Code of Conduct relate to behaviours that can only be carried out personally by the Minister, as opposed to the department as a whole. The responsibility for complying with the Ministerial Code of Conduct clearly lies with the Minister personally. As such, a public officer's obligation to inform a Minister of the Ministerial Code of Conduct and a potential breach of it is likely to only apply if the Minister's failure to comply has the potential to impact the making of an administratively sound decision.
252. In my view, the action that needs to be taken by a public officer in any given situation will depend on the circumstances. The more obvious the potential for an ethical breach that will result in an unsound decision, the more direct and robust the action would be expected of those public officers working with the Minister.
253. In this case, there was a potential for an ethical issue to arise due to Ms Chapman's connections to Kangaroo Island but it would not have been obvious that she likely had a conflict of interest. To ascertain whether the former Attorney-General had a conflict of interest requires a full appreciation of the details of the Smith Bay application as well as the nature of her interest in and use of the Gum Valley property. In my view, Ms Chapman was in the best position to assess whether or not she was in a position of conflict of interest in respect of the Smith Bay application. I do not believe any public officer involved in advising Ms Chapman on the Smith Bay application nor any of her Cabinet colleagues were possessed of sufficient information to form the view that she likely had a conflict of interest, whether actual or perceived. They were entitled to defer to Ms Chapman's judgment on the matter. I, therefore, would not expect her staff and advisers to do anything more than occurred in this case; that is, raising with her the option of a delegation to another Minister if she determined that she had a conflict of interest. Being aware that Ms Chapman had turned her mind to that possibility and she having expressed the view that she did not have a conflict of interest, her staff and advisers did not have responsibility to do anything further. In my opinion, no public officer working with the Minister at the time of her consideration of the Smith Bay application failed in their duty. I would come to this view even if I had formed the opinion, after an in-depth analysis of the evidence, that she in fact did have a conflict of interest that needed to be declared.
254. I come to this view taking into account the following:
- Ms Chapman could not be regarded as a fledgling Minister: she had been the Attorney-General since March 2018 and was the first legal officer of the State. In addition, she is legally trained and has many years of experience as the shadow Attorney-General and as a member of the independent bar; her staff, advisers and Ministerial colleagues would understandably expect her to have the necessary legal acumen, ethical integrity and experience to identify conflict of interest issues as they arose and to appropriately deal with them

- upon her appointment as Minister for Planning and Local Government on 29 July 2020, she was briefed on current major projects, recognised her potential conflict of interest in regard to two of them and delegated decisions about them; she thereby demonstrated an awareness of conflict of interest issues and an ability to respond appropriately such that those advising her on this particular proposal were entitled to accept that she had discounted the possibility of a conflict of interest in regard to the Smith Bay application on a sound basis
- the responsibility for identifying a conflict of interest and declaring it, if it existed, lay primarily with Ms Chapman as the decision maker; her staff, legal advisers and Cabinet colleagues could expect her to be aware of and compliant with the Code that deals with this ethical issue
- in this instance, the question of whether there was a conflict of interest issue does not have an obvious answer, but requires a full appreciation of the myriad of issues covered by the Assessment Reports and an in-depth knowledge of Ms Chapman's property interest, including her past, present and future use of the property; Ms Chapman's access to all of the relevant information was superior to any of her advisers and staff
- in the lead up to Ms Chapman's determination of the Smith Bay application, she did not say or do anything that would suggest she was considering it on anything other than its merits; her staff and legal advisers had no cause for concern that the decision making process might be influenced by a conflict of interest.

255. Therefore, my answer to the question of whether any other public officer committed maladministration in connection with the former Attorney-General's determination of the Smith Bay application is that they did not.

# Final views

In summary, my final view is that:

1. The Hon Vickie Chapman MP, the former Attorney-General:
  - 1.1. did not have a conflict of interest, whether actual, potential or perceived, when she decided the Smith Bay application
  - 1.2. did not breach the Ministerial Code of Conduct by not advising the former Premier of South Australia, the Hon Steven Marshall MP, of having a conflict of interest, and
  - 1.3. did not commit maladministration in deciding the Smith Bay application
2. The Hon Steven Marshall MP, the former Premier of South Australia, did not commit maladministration by not making any enquiry to ascertain whether there was substance to concerns raised in the media and Parliament about the former Attorney-General being in a position of conflict, and ensure compliance with the Ministerial Code of Conduct
3. No other public officer committed maladministration in connection with the former Attorney-General's determination of the Smith Bay application.

I shall now provide a copy of this report to the Speaker of the House of Assembly as required by section 14(2)(b) of the *Ombudsman Act 1972*.



Wayne Lines  
SA OMBUDSMAN

2 May 2022

# Annexures

## Appendix 1: Letter from Ms Andrea Michaels MP

SELECT COMMITTEE ON CONDUCT OF  
HON. VICKIE CHAPMAN MP REGARDING  
KANGAROO ISLAND PORT APPLICATION  
Parliament of South Australia



Parliament House  
North Terrace  
ADELAIDE 5000

Mr Wayne Lines  
Ombudsman SA  
PO Box 3651 Rundle Mall  
Adelaide SA 5000

By email: [Ombudsman@ombudsman.sa.gov.au](mailto:Ombudsman@ombudsman.sa.gov.au)

18 November 2021

Dear Mr Lines

#### Referral of matter

On Tuesday 12 October, the House of Assembly established a Select Committee to inquire into the conduct of the Deputy Premier, Attorney-General and Minister for Planning and Local Government, Hon. Vickie Chapman MP, in relation to her assessment of the application by Kangaroo Island Plantation Timbers to build a deep-water port facility at Smith Bay, Kangaroo Island.

The Committee tabled its Final Report today Thursday 18 November 2021 which made a series of findings and recommendations. I attach the Final Report for your consideration.

Whilst the Committee did not make any adverse finding of maladministration against any public officer or the Premier, significant factual matters concerning proper governance practices were raised during this Inquiry which warrant referral to you for investigation

Consequently, the Committee resolved that the following matters be referred to the Ombudsman pursuant to section 14(1) of the *Ombudsman Act 1972*:

- a) any matter relevant to whether or not the Attorney-General had a conflict of interest in determining the Smith Bay application;
- b) any breach of the Ministerial Code of Conduct; and
- c) the role that any other public officer undertook relevant to the Attorney-General's decision, including the role and responsibility of the Premier, Chief Executives and other public officers, including Crown Law Officers.

For further information, please have your office contact the Committee's Parliamentary Officer via telephone [REDACTED], or email [REDACTED].

Thank you for your consideration.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrea Michaels'.

Andrea Michaels MP  
**Chairperson**  
**Member for Enfield**

Correspondence to: GPO Box 572 Adelaide 5001 (DX 56506 North Terrace)  
Phone: (61-8) 8237 9206 Fax: (61-8) 8231 9130  
Email: [sckiport.assembly@parliament.sa.gov.au](mailto:sckiport.assembly@parliament.sa.gov.au)

## Appendix 2: The Ministerial Code of Conduct

**SOUTH AUSTRALIA**

**MINISTERIAL CODE OF CONDUCT**

CONTENTS

1. INTRODUCTION.....1

    1.1 Background.....1

    1.2 Aim of this Code .....1

    1.3 Status .....1

    1.4 Enforcement of Code .....2

2. GENERAL STANDARDS OF CONDUCT.....2

    2.1 Compliance with Codes, Laws and Orders .....2

    2.2 Responsibility for Conduct.....2

    2.3 Reputation .....2

    2.4 Honesty.....3

    2.5 Fairness and Diligence in Decision Making.....3

    2.6 Accountability .....3

    2.7 Financial Accountability .....3

    2.8 Cabinet Collective responsibility .....4

    2.9 Cabinet Confidentiality .....4

3. CONFLICTS OF INTEREST .....4

    3.1 Obligation .....4

    3.2 Nature of Conflicts of Interest .....5

    3.3 Disclosure of Actual, Potential or Apparent Conflicts of Interest.....5

    3.4 Cabinet Register for Declaration by Ministers .....6

    3.5 Cabinet Deliberations .....6

    3.6 Consideration of Disclosures .....7

    3.7 Consequences of Failure to Disclose a Conflict.....7

4. DEALING WITH DIFFERENT TYPES OF CONFLICTS OF INTEREST.....8

    4.1 Business Interests .....8

    4.2 Public Appointments .....8

    4.3 Non-public Bodies .....8

    4.4 Trade Unions and Professional Associations.....8

    4.5 Product Endorsement.....9

    4.6 Shares and Financial Interests.....9

    4.7 Directorships .....10

    4.8 Employment of Relatives.....10

    4.9 Gifts and Benefits.....11

5. USE OF INFORMATION OBTAINED IN THE COURSE OF OFFICIAL DUTIES .....11

6. USE OF PUBLIC PROPERTY .....11

<b>7. CONTINUING OBLIGATIONS.....</b>	<b>12</b>
<b>7.1 Employment.....</b>	<b>12</b>
<b>7.2 Use of Information .....</b>	<b>12</b>
<b>8. RELATIONS WITH THE PUBLIC SERVICE .....</b>	<b>13</b>
<b>9. CARETAKER CONVENTIONS .....</b>	<b>13</b>
<b>APPENDIX 1: RELEVANT LEGISLATION .....</b>	<b>14</b>
<b>APPENDIX 2: STANDING ORDERS RELEVANT TO CONDUCT.....</b>	<b>21</b>
<b>APPENDIX 3: DECLARATION OF INTEREST BY MINISTERS.....</b>	<b>23</b>

## CODE OF CONDUCT FOR MINISTERS OF THE GOVERNMENT OF SOUTH AUSTRALIA

### 1. INTRODUCTION

#### 1.1 Background

Ministers of the Crown are in a position of trust bestowed by the people of South Australia. Ministers have a great deal of discretionary power, being responsible for decisions which can markedly affect an individual, groups of individuals, organizations, companies, local communities or all South Australians.

For these reasons, Ministers must accept standards of conduct of the highest order.

Ministers are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties.

They must act honestly and diligently and with propriety in the performance of their public functions and duties and ensure that their conduct does not bring discredit upon the Government or the State.

Ministers are personally responsible for deciding how to act and conduct themselves and for justifying their actions and conduct in Parliament. The Premier must take responsibility for his or her Ministers and deal with their conduct in a manner that retains the confidence of the public. The Premier and the Ministry will ultimately be judged by the public at a general election.

#### 1.2 Aim of this Code

Cabinet has approved this Code of Conduct to provide guidance to Ministers on how they should act and arrange their affairs in order to uphold the highest standards and avoid conflicts of interest.

#### 1.3 Status

This Code will take effect from July 1 2002. It is not intended to override the obligations of Ministers to comply with any State or Commonwealth laws.

Ministers should be aware that in addition to laws that apply to South Australians generally, there are some laws that apply specifically to Ministers. These laws (as they exist as at the date of this document) are listed in *Appendix I*. Ministers should familiarize themselves and at all times comply with these laws.

#### **1.4 Enforcement of Code**

If a Minister engages in conduct which prima facie constitutes a breach of this Code, or a Minister is charged with an offence, the Premier shall decide, in his or her discretion, the course or action that should be taken. A Minister may, among other things, be asked to apologize, be reprimanded or be asked to stand aside or resign.

Before making a decision, the Premier may refer the matter to an appropriate independent authority for investigation and/or advice.

## **2. GENERAL STANDARDS OF CONDUCT**

### **2.1 Compliance with Code, Laws and Orders**

In carrying out their duties, Ministers must ensure that their conduct in office is, in fact and in appearance, in accordance with this Code of Conduct.

Ministers must promote the observance of this Code by leadership and example in the public bodies for which they are responsible and must ensure that they comply with and uphold all applicable laws.

In parliamentary proceedings, Ministers must ensure they conduct themselves strictly in accordance with the Standing Orders of Parliament. An outline of the Standing Orders relevant to Ministers is contained in *Appendix 2*.

### **2.2 Responsibility for Conduct**

Ministers must ensure that their personal conduct is consistent with the dignity, reputation and integrity of Parliament. Ministers must not engage in sexual harassment or in other forms of discriminatory behaviour (defined as discrimination based on one of the protected attributes in the Equal Opportunity Act 1984; that is, age, race, disability, sex, gender identity, sexual orientation, or caring responsibilities). Ministers are responsible to Parliament for their actions and the actions of the departments and agencies within their portfolio.

Ministers are required to ensure that their decisions, directions and conduct in office do not encourage or induce other public officials, including public servants, to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.

Ministers are also expected to ensure that reasonable measures are put in place in the departments and agencies for which they are responsible, to discourage and prevent corruption by officials.

### **2.3 Reputation**

In the discharge of his or her public duties, a Minister shall not dishonestly or wantonly and recklessly attack the reputation of any other person.

#### 2.4 Honesty

Ministers are expected to act honestly, diligently and with propriety in the performance of their public duties and functions. Ministers must ensure they do not deliberately mislead the public or the Parliament on any matter of significance arising from their functions.

It is a Minister's personal responsibility to ensure that any inadvertent error or misconception in relation to a matter is corrected or clarified, as soon as possible and in a manner appropriate to the issues and interests involved.

#### 2.5 Fairness and Diligence in Decision Making

Ministers should not make an official decision without first giving due consideration to the merits of the matter at hand and the impact the decision is likely to have on the rights and interests of the people involved and the citizens of South Australia.

A Minister must use all reasonable endeavors to obtain all relevant information and facts before making a decision on a particular issue and should consult, as appropriate, in relation to the matter at issue.

Decisions made by Ministers in or in connection with their official capacity, should be made in the interests of advancing the interests of the citizens of South Australia.

#### 2.6 Accountability

Ministers must provide information to the Parliament when requested to do so.

Ministers, their departments and agencies carry out work on behalf of the public. It is, therefore, important for information about portfolios to be made available to the public and to Parliament. A Minister has an obligation to be "open and transparent".

However Ministers are not required to disclose information that they are prevented by law from disclosing or which is not in the interests of the public. They are also not required to disclose information that is *genuinely* confidential in a commercial context.

Ministers must cooperate fully with the Auditor-General in any enquiry made of Ministers generally or of a particular Minister.

#### 2.7 Financial Accountability

Ministers have an obligation to account to Parliament fully and effectively for all monies they have authorized be spent, invested or borrowed. Ministers are obliged to give Parliament full, accurate, and timely accounts of all public money over which Parliament has given them authority.

It follows that Ministers must keep appropriate records and ensure that the officers of their departments and agencies regularly account for the expenditure and allocation of resources under their control.

The public has a right to know that monies provided to government by way of taxes and charges are being spent in accordance with the law and for the purposes for which they have been appropriated; and that the standard of community services reflects value for money from the level of taxes and charges imposed.

## 2.8 Cabinet Collective Responsibility

Ministers are responsible, with all other Ministers, for the decisions of Cabinet.

The ethical and effective working of Executive Government in South Australia depends on Ministers having the trust and confidence of all ministerial colleagues in their official dealings and in the manner in which they discharge their official responsibilities.

The collective decisions of Cabinet are binding on all Ministers individually. If a Minister is unable to support a Cabinet decision publicly, the Minister should resign from Cabinet. This convention is based on the proceedings of Cabinet ordinarily being secret and Ministers providing to their colleagues adequate notice of matters to be raised in Cabinet.

## 2.9 Cabinet Confidentiality

A Minister must maintain the confidence of Cabinet decisions, documents and deliberations.

The principle of collective responsibility for the decisions that are taken in Cabinet is fundamental to effective Cabinet government. From this principle flows the convention that what is discussed in Cabinet and in particular, the views of individual Ministers on issues before the Cabinet, are to remain entirely within the confidence of the members of Cabinet.

Similarly, the papers considered by Cabinet and any record of the outcome of Cabinet's deliberations are confidential to the government of the day. Separate procedures apply to the handling of Cabinet documents. The convention has been adopted by successive governments that the Cabinet papers (and deliberative documents generally) of a government are not available to its successors.

It follows that Ministers and their ministerial staff may not disclose to anyone else what is discussed in Cabinet, the views of individual Ministers expressed in Cabinet, votes taken in Cabinet, or anything about material provided to Cabinet in Cabinet submissions.

A Minister who deliberately or recklessly breaches Cabinet confidentiality, should resign from the Ministry. The Premier may ask a Minister to resign in any case.

## 3. CONFLICTS OF INTEREST

### 3.1 Obligation

Ministers should avoid situations in which their private interests conflict, have the potential to conflict or *appear* to conflict with their public duty.

### 3.2 Nature of Conflicts of Interest

A conflict of interest may exist when a Minister is influenced or appears to be influenced by private interests. Private interests include not only a Minister's financial or other interests but the financial or other interests of the Minister's spouse, domestic partner or children.

There are many circumstances in the context of the Minister's position in which conflicts of interest may arise. For example, a conflict may arise where a Minister:

- has a significant financial interest in a company with whom the Government is contracting;
- has a personal interest in the outcome of a process; or
- receives a right or commission in return for the provision of a benefit.

A conflict of interest does not only encompass actual or direct conflicts of interest between a Minister's public duty and private interests. A potential or perceived conflict of interest may also constitute a conflict of interest.

### 3.3 Disclosure of Actual, Potential or Apparent Conflicts of Interest

Ministers are under an obligation to advise the Premier (or in the case of the Premier, Cabinet) in writing as soon as possible after becoming aware of any conflict of interest between their public duty and private interests.

The advice to the Premier (or in the case of the Premier, Cabinet) should contain sufficient detail of the conflict of interest in order to enable the Premier (or Cabinet) to consider and determine the most appropriate course of action to be taken in the circumstances.

Where circumstances change after an initial disclosure has been made, so that new or additional facts become material, the Minister must promptly disclose the further information.

This obligation is additional to a Minister's obligations to notify the Cabinet Office of their private interests under the *Members of Parliament (Register of Interests) Act 1983*.

The fact that the Minister has raised an actual, potential or perceived conflict of interest with the Premier will be recorded on the Cabinet Register. This record is available for scrutiny by the Auditor-General.

If a Minister has any doubt as to whether or not an interest is likely to constitute a conflict of interest, the Minister should promptly consult the Premier (or in the case of the Premier, Cabinet).

### 3.4 Cabinet Register for Declaration by Ministers

Ministers must, within 14 days of the commencement of this Code (or following commencement of this Code, within 14 days of taking up office), notify the Cabinet Office of all private interests disclosed to Parliament pursuant to the *Member of Parliament (Register of Interests) Act 1983*.

In addition, Ministers must, within 14 days of the commencement of this Code (or, following the Commencement of this Code, within 14 days of taking up office), disclose to the Cabinet Office any private interests of their spouse, domestic partner, children or business associates that might conflict with their duty as a Minister, as explained in this Code. This includes details of the individual components of any family trusts in which Ministers have an interest.

These details, and any information provided by Ministers under their ongoing obligation of disclosure or information amending it in the statements tabled after the receipt of annual ordinary returns in accordance with the *Member of Parliament (Register of Interests) Act*, will be recorded in the Cabinet Register maintained by Cabinet Office.

The Register will be available for scrutiny by the Auditor-General.

### 3.5 Cabinet Deliberations

It is the responsibility of all Ministers to bring conflicts of interest to the attention of Cabinet, even if the conflict arises out of an interest already recorded in the Cabinet Register.

All proposals intended to go before Cabinet must contain a written statement by submitting Ministers as to whether they have an actual or potential conflict of interest in relation to the proposal under consideration. This statement must be included on all Cabinet submission Cover Sheets. If a Minister indicates the existence of a conflict, details of the conflict must be disclosed in the Appendix to the Cabinet submission using the form set out in *Appendix 3* to this Code.

Ministers should also use the form set out in Appendix 3 to declare their interest in any matters brought to Cabinet. The form should be tendered to the Premier or acting Cabinet Chair for consideration before Cabinet's deliberation on the relevant matter. The form should be used to record the attitude of Cabinet to the issues and the action taken in response to them. The Premier will sign all forms and copies will be filed in the Cabinet Register.

A Minister must not participate in any deliberations on a matter in respect of which a conflict of interest has validly been disclosed by that Minister and must withdraw from the Cabinet room during those deliberations.

### 3.6 Consideration of Disclosures

In considering how to deal with a conflict of interest, the Premier (or in the case of the Premier, Cabinet) must consider how the conflicting interest will interfere with or affect the performance of the Minister's public duty (if at all) and how the public will perceive the propriety of the Minister's continued participation in a matter.

Conflicts of interest relating to portfolio matters will generally be dealt with by the Premier. Conflicts that are very serious or which involve the Premier or which relate to Cabinet matters, will be referred to Cabinet for discussion and determination as to what action should be taken.

Following the disclosure of a conflict, the Premier (or in the case of the Premier, Cabinet) may in his or her discretion take a number of different courses of action, including, for example:

- approving the conduct and allowing the Minister to continue his or her involvement in the matter;
- requiring the Minister to divest him or herself of the relevant private interest;
- asking the Minister to publicly apologise, stand aside or resign. (If a Minister refuses to resign, the Premier can require a Minister's commission to be withdrawn);
- requiring that the Minister not take part in the determinations relating to the conflict. This may involve requiring the Minister to leave the Cabinet room or to delegate certain powers and duties to another Minister.

The nature of some conflicts may be so serious that Ministers should not wait until the Premier or Cabinet has considered the matter. In appropriate cases Ministers should immediately relinquish their private interests or offer their resignation.

### 3.7 Consequences of Failure to Disclose a Conflict

If a Minister does not disclose a conflict of interest that is later found to exist, the Premier (or in the case of the Premier, Cabinet) may, among other things, in his or her discretion:

- require the Minister to apologise publicly;
- require the Minister to stand aside or resign;
- refer the matter to an appropriate authority for investigation and require the Minister to stand down during the investigation;
- discuss the matter with the Minister and then seek the view of Cabinet before making a determination as to how the conduct of the Minister should be dealt with.

#### **4. DEALING WITH DIFFERENT TYPES OF CONFLICTS OF INTEREST**

The following paragraphs set out in more detail particular measures that should be taken based on experience obtained from observing the actions of previous governments.

##### **4.1 Business Interests**

Ministers should not act as consultants to any company, business, association or other organization or provide assistance to any such body, except as may be appropriate in their official capacity as Minister. (This requirement does not apply where a Minister has the Premier's permission to continue an involvement in a family company).

Ministers are expected to devote the whole of their time and talent to carrying out their official business, both as members of the executive and as Members of Parliament. Holding office is regarded as a full-time occupation and is remunerated as such. Ministers must not accept retainers or income from personal exertion other than their remuneration as Ministers and Parliamentarians.

Ministers must cease to be actively involved in the day to day conduct of any professional practice or in any business in which they were engaged before assuming office.

##### **4.2 Public Appointments**

When taking up office Ministers should give up public appointments that give rise to a conflict of interest with their Ministerial duties and portfolio responsibilities.

In the case of any doubt, Ministers should consult the Premier (or, in the case of the Premier, Cabinet).

##### **4.3 Non-public Bodies**

Ministers should declare their involvement in pressure groups and other non-public organizations whose objectives may conflict with Government policy (other than local community, charitable, voluntary and sporting organizations).

##### **4.4 Trade Unions and Professional Associations**

Ministers should arrange their affairs so as to avoid any suggestion that a union or professional association of which they are a member has any undue influence.

Ministers should give up any paid office they may hold in a union or professional association and receive no remuneration from a union or professional association.

Nothing in this section precludes a Minister from retaining a right to vote as a member of a union or professional association.

#### 4.5 Product Endorsement

Ministers must not endorse any products or services or associate themselves with the marketing of any products or services for any personal financial reward or benefit.

By lending their name to the marketing of a product or service Ministers may give an appearance of partnership that is in odds with their role as a member of government serving the interests of the public.

This obligation does not prevent Ministers from endorsing any product or service promoting economic development or local employment or when appearing in party political advertisements or political public service type advertisements or announcements (for example, advertisements promoting the commercialisation of water) where no fee would be expected.

#### 4.6 Shares and Financial Interests

Within 14 days of the commencement of this Code (or after commencement of this Code, within 14 days of taking up office) Ministers must actively take steps to divest themselves completely of all shareholdings and other forms of equitable interest held in their private capacity in companies (both public and private) that may create a conflict of interest as a result of their public responsibilities other than those allowed by this Code or approved by the Premier in accordance with this Code.

Subject to this Code, Ministers must not in their private capacity acquire shareholdings or other financial interests in any public or private companies during their term as Minister.

Ministers are entitled to retain any shares or interests held before the commencement of this Code or their appointment as a Minister, provided this does not conflict with their public responsibilities and provided they do not trade in any or sell those shares during the term of their appointment. These shareholdings and interests are required to be disclosed in the Cabinet Register.

These requirements arise from the practical consideration that it is likely that the private business interests of any individual member of Cabinet could otherwise give rise to a real or perceived conflict of interests affecting the Cabinet as a whole.

Members of a Minister's immediate family (in this context, a Minister's spouse, domestic partner, and/or dependent children) are not required to divest themselves of any interests and are not prevented from acquiring any shares or other financial interests in their own name. However, Ministers have an obligation to report immediate family members' investments on the Members' Register of Interests and their interests will be disclosed on the Cabinet Register.

The transfer of shares and interests to an immediate family member is not an acceptable form of divestment of shares or financial interests for the purpose of this Code.

Ministers may transfer control of their interests to an outside professional nominee or trust provided the Minister or family member exercises no control over the operation of the nominee or trust. Ministers should obtain professional advice to arrange for the divestment of their interests in order to comply with this Code.

The Premier may approve, on a case-by-case basis:

- investment by Ministers in managed funds or managed trust arrangements (provided that the portfolio of investment is broadly diversified and at "arm's length" from the Ministers' control);
- investment by Ministers in superannuation investment funds;
- the receipt and divestment by Ministers of shares and interests pursuant to a will or as a result of the demutualisation of a company or other exceptional circumstances.

In each such case, the Premier shall first consider and be satisfied there is no reasonable basis for a conflict of interest to arise and the Minister must disclose the investment.

Nothing in this Code prevents Ministers from holding a share in a credit union where the holding of a share is a condition of membership of the union.

#### 4.7 Directorships

Ministers must resign from and decline directorships of public companies upon taking up office as a Minister (or upon commencement of this Code). Ministers must not provide advice or assistance to such companies other than as may be required in their official capacity as a Minister.

Ministers may retain directorships in private companies or associations only with the express approval of the Premier, and only in cases where the Premier considers them unlikely to give rise to a conflict of interest with a Minister's portfolio responsibilities. The offer of any directorships must be disclosed to the Premier before being accepted so that an immediate assessment of their impact on a Minister's portfolio can be made.

#### 4.8 Employment of Relatives

Ministers should not appoint close business associates or relatives to positions in their own offices.

A Minister's spouse, domestic partner and/or children should not be appointed to any position in an agency within the Minister's own portfolio unless the appointment is first approved by the Premier or Cabinet.

Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another.

#### 4.9 Gifts and Benefits

Gifts and benefits received by Ministers are covered by the Premier's Guideline on Gifts Received by Ministers and Their Staff and Families. The guideline is available from the Department of the Premier and Cabinet website, [www.dpc.sa.gov.au](http://www.dpc.sa.gov.au).

### 5. USE OF INFORMATION OBTAINED IN THE COURSE OF OFFICIAL DUTIES

Ministers must not use information obtained in the course of official duties to gain a direct or indirect financial advantage for themselves or any other person.

In particular, Ministers shall scrupulously avoid investments and transactions about which they have obtained confidential information as a Minister that may result in an advantage that is unreasonable or improper.

Some of the information that comes to Ministers may be commercially sensitive or sensitive in some other way. Its wrongful disclosure may have an adverse impact on individuals, private commercial entities, or the State, but its use to benefit Ministers' private interests may place them in an untenable position of conflict. Even the appearance of benefit or of avoidance of loss to a Minister's private interests, without any actual effect, may bring accusations of conflict and bring individual Ministers and the Government into disrepute.

It is very important for Ministers not only to maintain strict confidentiality about this information, but to take care not to use the special knowledge they have gained in such a way as to give even the appearance of benefiting or avoiding loss to their private financial interests.

### 6. USE OF PUBLIC PROPERTY

Ministers and their staff are provided with resources and facilities at public expense for the effective conduct of public business. These resources must not be wasted or used extravagantly. Rather, they should be used economically at all times.

Ministers must be scrupulous in their use of public property, services and facilities, and must use reasonable endeavors to prevent misuse by other persons.

Ministers and ministerial staff must use all reasonable endeavors to avoid, and to avoid giving any public appearance of, using government departmental offices for private purposes or party political purposes. Party political lunches or functions or events should not be paid for out of departmental funds, and neither should anything connected with an election campaign.

Careful use and oversight of ministerial credit cards is essential. (*Treasurer's Instruction 13*, issued under the authority of the *Public Finance and Audit Act* contains detailed rules in relation to expenditure incurred by Ministers and Ministerial staff, including the use of credit cards).

## 7. CONTINUING OBLIGATIONS

### 7.1 Employment

Ministers shall, within 14 days of the commencement of this Code (or within 14 days of taking up office ) provide a written undertaking to the Premier (or in the case of the Premier, Cabinet) that they will not, for a two year period after ceasing to be a Minister, take employment with, accept a directorship of or act as a consultant to any company, business or organization:

- a) with which they had official dealings as Minister in their last 12 months in office; and
- b) which:
  - is in or in the process of negotiating a contractual relationship with the Government; or
  - is in receipt of subsidies or benefits from the Government not received by a section of the community or the public; or
  - has a government entity as a shareholder; or
  - is in receipt of government loans, guarantees or other forms of capital assistance; or
  - engages in conduct directly inconsistent with the policies and activities of the Minister,

without the prior written consent of the Commissioner for Public Employment in consultation with the Premier of the day.

This restriction does not apply to an unpaid appointment in a non-commercial organization or appointment in the gift of the Government.

If the Commissioner for Public Employment decides following consultation with the Premier, that an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the company or organization concerned, or that an employer could make improper use of official information to which a former Minister has had access, the Commissioner may withhold his or her consent or recommend that the former Minister stand aside from participating in certain activities of the employer for a two year period.

### 7.2 Use of Information

Ministers must within 14 days of the commencement of this Code (or within 14 days of taking up office) provide a written undertaking to the Premier (or in the case of the Premier, Cabinet) that after leaving office, they will not disclose to any person any information to which they had access as a Minister, where that information is not generally available to the public ("Confidential Information"). Ministers must further undertake that they will not use any Confidential Information after leaving office in order to obtain a personal advantage or benefit that is not enjoyed by the general public.

Ministers shall not be required to keep confidential any information to the extent that it is required to be disclosed by law or is in the public domain, other than as a result of a breach of the Minister's undertaking. In addition, Ministers shall not be prevented from using general skills and knowledge acquired by them in the course of and during the period of their office.

## 8. RELATIONS WITH THE PUBLIC SERVICE

Ministers must regard the skills and abilities of public servants as a public resource. Ministers are expected to ensure that public servants are deployed for the maximum benefit of the people of South Australia and that their abilities are made available for the purposes of good government and public administration. Ministers must disregard the political and other personal interests of career public servants unless those interests pose a conflict of interests or give rise to a breach of established conventions of Public Service neutrality.

Public servants should not be asked to work on party political matters. They should not be asked to specifically prepare material for Ministers to use in the election when the government is in caretaker mode after an election has been called.

Ministers have broad responsibility for the operations and performance of their departments and agencies. Ministers should exercise leadership in their Ministerial portfolios by:

- setting broad priorities
- setting and endorsing basic directions
- outlining the major requirements of budget programs
- setting key performance targets
- taking key strategic decisions
- ensuring a continuing assessment of performance by their departments and agencies.

Ministers should establish, with their senior departmental and agency managers, a mutual understanding of their respective roles and relationships, agree on priorities, directions, targets and expected levels of performance and evaluation of performance.

The conditions of appointment of a Chief Executive shall be made in accordance with the Public Sector Management Act 1995. A Chief Executive of an administrative unit shall be responsible to a Minister in accordance with that Act.

Ministers should encourage Chief Executive Officers to delegate responsibilities to appropriate levels of management within their departments and agencies.

## 9. CARETAKER CONVENTIONS

All Ministers are required to accept certain caretaker conventions during the period leading up to an election.

[Separate Guidelines on the Caretaker Conventions are available from the Premier  
*\*\*Note: Separate Guidelines are being developed*]

## APPENDIX 1

### RELEVANT LEGISLATION

This appendix contains legislation applying to the conduct of

- all Members of Parliament, including Ministers (in Part A); and
- Ministers only (in Part B).

#### Part A

---

##### Legislation applying to the conduct of all Members of Parliament

#### CRIMINAL LAW CONSOLIDATION ACT 1935

##### General offences

Members of Parliament are subject to the general criminal law and so can be guilty of offences such as dishonesty, fraud and theft etc. These are the kinds of offences used to investigate/prosecute allegations of travel rorts and other misuses of public funds.

##### Offences of a public nature - Part 7 Divisions 1 and 4

Certain kinds of conduct, if undertaken by people who hold public office ('public officers'), constitute criminal offences. A Member of Parliament is a public officer (s237). The offences are:

##### *Acting improperly (s 238) (interpretation)*

A public officer acts improperly, or a person acts improperly in relation to a public officer or public office, if the officer or person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind, or by others in relation to public officers or public offices of the relevant kind. A person will not be taken to have acted improperly unless the person's act was such that in the circumstances of the case the imposition of a criminal sanction is warranted.

##### *Bribery or corruption of public officers (s 249)*

A public officer who improperly seeks, accepts or agrees to accept a benefit from another person as a reward or inducement for-

- an act done, or omission made in his or her official capacity; or
- the exercise of power or influence that the public officer has or had is guilty of an offence.

***Abuse of public office (s251)***

A public officer who improperly:

- exercises power or influence;
- refuses or fails to discharge or perform duty; or
- uses information gained by virtue of his or her office
- with intention of securing benefit or causing injury or detriment to another
- is guilty of an offence

***Offences relating to appointment of public office (s 253)***

A person who improperly

- gives, offers or agrees to give a benefit to another in connection with the appointment or possible appointment of a person to a public office or
- seeks accepts or agrees to accept a benefit on account of an act done with regard to the appointment

is guilty of an offence.

**SECRET COMMISSIONS PROHIBITION ACT 1920**

The Act prohibits the offering or taking of secret commissions and prevents fraud. The offences are particularly relevant to people in positions of power or authority, like Members of Parliament. They relate to:

- the receipt or solicitation of secret commission by an agent
- secret gifts received by a parent, wife, child or partner of an agent
- false or misleading receipts or account
- secret commissions or offers of secret commissions for advice given or offered.

**CONSTITUTION ACT 1934**

Section 45 prohibits Members of Parliament from accepting paid employment or other benefit from the Crown.

***Disqualification of Members holding offices of profit***

45. (1) If any Member of the Parliament accepts any office of profit or pension from the Crown, during pleasure, excepting those offices which are required by or under this Act or any other Act to be held by Members of Parliament, his seat shall be thereupon and is hereby declared to be vacant.

(1a) Subsection (1) does not prevent a Member of Parliament from accepting office as a Minister of the Crown or as Parliamentary Secretary to the Premier, or a Minister of the Crown from accepting an appointment to act in the office of another Minister.

(2) If a candidate for election as a Member of Parliament holds an office of profit from the Crown he shall, unless he resigns that office before the date of the declaration of poll, be incapable of being elected.

#### **ELECTORAL ACT 1985**

Part 13 of the *Electoral Act* creates offences for certain kinds of conduct which affect the fairness and integrity of elections. It applies to anyone standing for election, new candidates as well as sitting Members.

The offences concern

- bribery, undue influence, interference with political liberty (Division 1)
- electoral advertisements, commentaries and other material (Division 2)
- offences related to the conduct of an election (Division 3)

#### **EQUAL OPPORTUNITY ACT 1984**

Among other things, the *Equal Opportunity Act* prohibits sexual harassment by employers, and in doing so makes special reference to Members of Parliament in s87(6c) and (6d). Section 87(11) defines sexual harassment.

**87. (6c)** It is unlawful for a Member of Parliament to subject to sexual harassment-

- (a) a member of his or her staff; or
- (b) a member of the staff of another Member of Parliament; or
- (c) an officer or member of the staff of the Parliament; or
- (d) any other person who in the course of employment performs duties at Parliament House.

(6d) Subsection (6c) does not apply in relation to anything said or done by a Member of Parliament in the course of parliamentary proceedings.

\*\*\*

(11) For the purposes of this section, a person subjects another person to sexual harassment if he or she does any of the following acts in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated:

- (a) he or she subjects the other to an unsolicited and intentional act of physical intimacy;
- (b) he or she demands or requests (directly or by implication) sexual favours from the other;

- (c) he or she makes, on more than one occasion, a remark with sexual connotations relating to the other,  
and it is reasonable in all the circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

### **MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1983**

The Act establishes a Register of certain interests of Members of Parliament. Members are required to lodge a primary return within 30 days of taking the oath of office, and within 60 days of 30 June each year, to lodge an ordinary return. Key parts of the Act are reproduced below.

#### ***Interests which must be disclosed***

A **primary return** must contain the following information (section 4(1)) -

- (a) a statement of any income source that the Member required to submit the return or a person related to the Member has or expects to have in the period of twelve months after the date of the primary return; and
- (b) the name of any company or other body, corporate or unincorporated, in which the Member or a member of his family holds any office whether as director or otherwise, and
- (c) the information required by subsection 4(3).

An **ordinary return** must contain the following information (section 4(2)):

- (a) where the Member required to submit the return or a person related to the Member received, or was entitled to receive, a financial benefit during any part of the return period-the income source of the financial benefit; and
- (b) where the Member or a member of his family held an office whether as director or otherwise in any company or other body, corporate or unincorporated, during the return period-the name of the company or other body; and
- (c) the source of any contribution made in cash or in kind of or above the amount or value of \$750 (other than any contribution by the State or any public statutory corporation constituted under the law of the State, by an employer or by a person related by blood or marriage) for or towards the cost of any travel beyond the limits of South Australia undertaken by the Member or a member of his family during the return period and for the purposes of this paragraph "cost of travel" includes accommodation costs and other costs and expenses associated with the travel; and
- (d) particulars (including the name of the donor) of any gift of or above the amount or value of \$750 received by the Member or a person related to the Member during the return period from a person other than a person related by blood or marriage to the Member or to a member of the Member's family; and

- (e) where the Member or a person related to the Member has been a party to a transaction under which the Member or person related to the Member has had the use of property of the other person during the return period and-
  - (i) the use of the property was not acquired for adequate consideration or through an ordinary commercial transaction or in the ordinary course of business; and
  - (ii) the market price for acquiring a right to such use of the property would be \$750 or more; and
  - (iii) the person granting the use of the property was not related by blood or marriage to the Member or to a member of the Member's family -  
the name and address of that person
- (ea) particulars of any contract made during the return period between the Member or a person related to the Member and the Crown in right of the State where any monetary consideration payable by a party to the contract equals or exceeds \$7500; and
- (f) the information required by subsection 4(3).

A **primary and ordinary return** must contain the following information (section 4(3)) -

- (a) the name or description of any company, partnership, association or other body in which the Member required to submit the return or a person related to the Member is an investor; and
- (b) the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which the Member is a member; and
- (c) a concise description of any trust (other than a testamentary trust) of which the Member or a person related to the Member is a beneficiary or trustee (including the name and address of each trustee); and
- (d) the address or description of any land in which the Member or a person related to the Member has any beneficial interest other than by way of security for any debt; and
- (e) any fund in which the Member or a person related to the member has an actual or prospective interest to which contributions are made by a person other than the Member or a person related to the Member; and
- (f) where the Member or a person related to the Member is indebted to another person (not being related by blood or marriage to the Member or to a member of the Member's family) in an amount of or exceeding \$7,500 - the name and address of that other person; and
- (fa) where the Member or a person related to the Member is owed money by a natural person (not being related to the Member or a member of the Member's family by blood or marriage) in an amount of or exceeding \$10,000-the name and address of that person; and

- (g) any other substantial interest whether of a pecuniary nature or not of the Member or of a person related to the Member of which the Member is aware and which he considers might appear to raise a material conflict between his private interest and the public duty that he has or may subsequently have as a Member.

***Failure to comply with the Act***

Any person who wilfully contravenes or fails to comply with any provisions of this Act (other than s6) is guilty of an offence (section 7).

**WHISTLEBLOWERS PROTECTION ACT 1993**

This Act facilitates the disclosure, in the public interest, of maladministration and waste in the public sector and of corrupt or illegal conduct generally, and protects those who make such disclosures. It concerns all Members of Parliament as public officers whose activities may be the subject of such disclosures, and also designates Ministers as an 'appropriate authority' to whom the disclosure of public interest information may be made (s5(4)).

## **Part B**

### **Legislation applying to Ministers, as distinct from ordinary Members**

#### **OATHS ACT**

Section 6 of the Oaths Act sets out the oaths to be taken by Cabinet Ministers immediately after accepting office as a member of Executive Council. Section 6A sets out the oaths to be taken by Ministers who are not members of the Executive Council.

#### **PUBLIC SECTOR MANAGEMENT ACT 1995**

Section 69 of the *Public Sector Management Act* regulates the appointment of ministerial staff, who are not regarded as employees in the public service.

##### *Appointment of Ministerial staff*

69. (1) The Premier may appoint a person as a member of a Minister's personal staff on conditions determined by the Premier.
- (2) A person appointed under this section is not an employee in the Public Service.
  - (3) Appointments may not be made under this section so that at any time the number of persons so employed exceeds one per cent of all employees in the Public Service.
  - (4) An appointment to a Minister's personal staff continues while the Minister continues to be a Minister (whether or not in the same Ministerial office) unless it sooner expires or is terminated under the conditions of appointment.
  - (5) The Premier must cause a report to be prepared not less frequently than once every 12 months setting out with respect to each Minister-
    - (a) details of all appointments made to the Minister's personal staff under this section (other than those described in previous reports under this section); and
    - (b) the number of persons for the time being employed on the Minister's personal staff under this section; and
    - (c) the remuneration and other conditions of appointment of each person for the time being employed on the Minister's personal staff under this section.
  - (6) A report under subsection (5) must-
    - (a) be published in the Gazette next issued after preparation of the report; and
    - (b) be laid before each House of Parliament within six sitting days after preparation of the report.

## APPENDIX 2

### STANDING ORDERS RELEVANT TO CONDUCT

Relevant standing orders are reproduced below.

Legislative Council orders are prefixed by the letters *LC*, and House of Assembly orders by the letters *HA*, followed by the number of the order.

#### *Pecuniary interests*

**LC:** No Member shall be entitled to vote upon any question in which he or she has a direct pecuniary interest and the vote may, on motion, be disallowed (225)

**HA:** A Member may not vote in any division in which the Member has a direct pecuniary interest and the vote of the Member who has such an interest is disallowed (170)

#### *Pecuniarily interested Member not to sit on Committee*

**LC:** No Member shall sit on a Committee who has a direct pecuniary interest in the inquiry before the Committee (379)

**HA:** A Member may not sit on a committee if that Member has a direct pecuniary interest in the inquiry before that Committee (321)

#### *Noise when others speaking*

**LC:** Loud conversation and repeated interjections not allowed No Member shall converse aloud or make repeated interjections whilst any other Member is orderly debating (181)

**HA:** While a Member is speaking, no other Member may make a noise or disturbance or converse aloud or speak so as to interrupt the Member (142)

#### *Member not to be interrupted*

**LC:** No Member shall interrupt another Member whilst speaking (except as set out in the Order) (182)

**HA:** A Member may not interrupt another Member who is speaking ( except as set out in the Order (131)

#### *Objectionable words etc*

**LC:** The use of objectionable or offensive words shall be considered highly disorderly and no injurious reflections shall be permitted upon the Governor or the Parliament of the State or Commonwealth nor judges or courts (193)

**HA:** These orders provide that Members may not use offensive words against either House, use unparliamentary language, use offensive words against a Member or reflect on other Members (122, 124,125,127)

***Obstruction/Disorderly conduct***

**LC:** If any Member persistently and wilfully obstructs the business of the Council; or refuses to conform to any Standing or other order or to regard the authority of the chair or if any Member having used objectionable words refuses to either explain them or withdraw them and apologise for their use; the President shall name the Member and report his offence to the Council (128)

**HA:** If any Member persistently or wilfully obstructs the business of the House; or persistently or wilfully refuses to conform to any Standing Order of the House, or refuses to accept the authority of the Chair or having used unparliamentary language refuses to either explain them or withdraw them and if necessary apologise for their use; the Speaker names the Member and reports the Member's offence to the House (137)

If any Member misbehaves in the House or interrupts the orderly conduct of business, the House may direct the Serjeant- at Arms to take the Member into custody (74)

***Orders disobeyed***

**LC:** If any Member shall wilfully disobey any Order of the Council, he or she may be ordered to attend in his or her place or if he or she be under suspension, at the Bar, to answer for his or her conduct and in default or if the excuses be deemed unsatisfactory, the Member may be suspended or otherwise dealt with at the pleasure of the Council (215)

**HA:** If any Member wilfully disobeys any lawful order of the House, the Member may be ordered to attend in his/her place to answer for the conduct. Unless the excuses are deemed unsatisfactory, the House may direct the Serjeant-at-Arms to take the Member into custody (74)

***Quarrels***

**LC:** The Council shall interfere to prevent the prosecution of any quarrel between Members arising out of Debates or proceedings of the Council or a Committee thereof (218)

**HA:** The House interferes to prevent quarrels between Members that arise out of debates or proceedings of the House or of any committee of the House (141)

***Order to be maintained***

**LC:** Order shall be maintained in the Council by the President (199)

**HA:** The Speaker is responsible for the orderly conduct of proceedings of the House and for maintaining its decorum and dignity (144)

**APPENDIX 3**

**DECLARATION OF INTEREST BY MINISTERS**

I, ...[name].....,

Minister for ...[Ministerial title].....,

**declare the following interest with regard to the Cabinet submission dealing with the matter of ...[Purpose of submission: from Cover Sheet]....:**

.....  
.....  
.....  
.....  
.....

**Cabinet resolved on this matter that:**

.....  
.....  
.....  
.....

**The Minister took the following action:**

.....  
.....  
.....  
.....

**The Agenda item was considered with / without the participation of the Minister**

**PREMIER**

**Date:**

**This submission was Item Number \* of the Cabinet Agenda of \*/\*/0\* .**

**[\*details to be inserted by Cabinet Office and a completed copy filed on the Cabinet Register]**