



**Office of
Local Government**

Sensitive

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SCANNED

The Hon. Peter Hall QC
Chief Commissioner
Independent Commission Against Corruption
GPO Box 500
SYDNEY NSW 2001



Attention: Mr Lewis Rangott
Executive Director, Corruption Prevention

Dear Chief Commissioner

Thank you for the Independent Commission Against Corruption's letter of 26 July 2017, regarding the Commission's report and recommendations arising from the investigation into the conduct of the former City of Botany Bay Council Chief Financial Officer and others.

In response to recommendation 9 made in the *Investigation into the conduct of the former City of Botany Bay Council chief financial officer and others*, please find attached the Office of Local Government's response and plan of action.

Should you wish to discuss anything contained in the Office's response or plan of action, please contact Mr John Davies, Manager, Council Governance on 02 4428 4139.

Yours sincerely

Tim Hurst
Acting Chief Executive
Office of Local Government

5/10/17

Strengthening local government



Office of Local Government's plan of action in response to recommendations made in the *Investigation into the conduct of the former City of Botany Bay Council chief financial officer and others*

PART A: Office of Local Government's (OLG) response to corruption prevention recommendations

Firstly please indicate the response to be taken for each recommendation made.

Recommendation 9: That the NSW Government considers adopting a model of local council oversight that is comparable to that applicable to state government agencies. This model could include:

- mandatory administration and governance directives similar to those that apply to state government agencies
- requirements concerning the composition and operation of audit committees that are similar to those that apply to state government agencies
- the requirement for council general managers to attest that audit committees are operating in accordance with requirements.

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation**
- Not implement the recommendation

If the action OLG intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

Mandatory administration and governance directives for councils

It is OLG's view, based on advice by the Parliamentary Counsel's Office, that mandatory requirements for councils should be prescribed by way of regulations or statutory instruments prescribed by regulation that are disallowable by the NSW Parliament. For this reason, while OLG supports the use of regulations and statutory instruments such as codes prescribed by regulation to impose mandatory requirements, OLG considers that guidelines should only be used for the purposes of providing non-mandatory better practice guidance.

The Government has already taken steps to apply the same standards of governance and extend the same external oversight mechanisms that apply to State Government agencies to councils.

Amendments made to the *Local Government Act 1993* (the Act) last year by the *Local Government Amendment (Governance and Planning) Act 2016* (the Phase 1 amendments) saw the following key reforms which commenced in October 2016:

- The Auditor-General has been appointed as the external auditor for all councils from the 2016-17 financial year
- The Auditor-General has been empowered to conduct performance audits of all or any activities of one or more councils to determine whether the councils are carrying out those activities effectively, economically and efficiently and in compliance with relevant laws.

Other reforms made by the Phase 1 amendments that are yet to commence include:

- The prescription of new requirements for the provision of, and reporting on, induction and ongoing professional development programs for mayors and councillors under the *Local Government (General) Regulation 2005*
- Incorporation of the pecuniary interest provisions of the Act into the *Model Code of Conduct for Local Councils in NSW* thereby consolidating the prescription of all ethical standards for councils into a single statutory instrument. Procedures for the management of code of conduct complaints will continue to be prescribed under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*
- Prescription of council meeting rules in a Model Code of Meeting Practice
- Prescription of a performance measurement framework for councils.

Work on the development of the codes, regulations and guidelines to support the commencement and implementation of the above reforms has begun and in some cases is well advanced. OLG anticipates that most of the reforms will have commenced by 1 July 2018.

Requirements for council audit committees to be similar to those that apply to state government agencies

One of the measures legislated by the Phase 1 amendments is the requirement for councils to appoint an audit, risk and improvement committee. Committees must keep under review the following aspects of councils' operations:

- compliance
- risk management
- fraud control
- financial management
- governance
- implementation of the strategic plan, delivery program and strategies
- service reviews
- collection of performance measurement data by the council
- any other matters prescribed by the regulations.

In addition to operating as an internal assurance mechanism, committees are also intended to operate as a business improvement tool. To this end, committees are also to provide information to the council for the purpose of

improving the council's performance.

Under the transitional provisions of the Phase 1 amendments, councils will not be required to appoint an audit, risk and improvement committee until six months after the first ordinary council election following commencement. This is likely to be March 2021. This is to accommodate the significant work involved in the design and implementation of the new framework. The expectation however is that councils will appoint committees and implement the new framework well ahead of this date.

Work has commenced on the design of the regulatory and policy framework that will support the implementation of mandatory internal audit in councils.

As contemplated by the Commission's recommendation, the regulatory and policy framework for internal audit for councils will be modelled on the one currently applying to state government agencies. It is important however that OLG consults closely with the local government sector on the design of the framework to ensure that it is achievable and affordable for all councils.

Please explain why the above action is proposed rather than the ICAC's published recommendation.

Mandatory administration and governance directives for councils

Section 23A of the Act currently allows the Chief Executive of OLG to prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions. Compliance with guidelines issued under section 23A is not mandatory. However, councils must take section 23A guidelines into consideration before exercising any of their functions.

OLG does not support the use of guidelines to mandate requirements for councils. It is OLG's view, based on advice by the Parliamentary Counsel's Office that mandatory requirements for councils should be prescribed by way of *regulations or statutory instruments prescribed by regulation that are disallowable* by the NSW Parliament. For this reason, OLG supports the use of regulations and statutory instruments such as codes prescribed by regulation to impose mandatory requirements on councils. However, OLG considers that guidelines should continue to be used only for the purposes of providing non-mandatory better practice guidance.

Requirements for council audit committees to be similar to those that apply to state government agencies

OLG has commenced work on the design of the regulatory and policy framework that will support the implementation of mandatory internal audit in councils.

As contemplated by the Commission's recommendation, the regulatory and policy framework for internal audit for councils will be modelled on the one that currently applies to state government agencies. It is important however that OLG consults closely with the local government sector on the design of the framework to ensure that it is achievable and affordable for all councils.

PART B: Office of Local Government's plan of action

In this section, please provide details of the Office of Local Government's (OLG) plan of action in relation to the recommendations and/or proposed actions described above.

The scope and scale of recommendations made in investigation reports varies considerably, and the Commission recognises a single template may not suit every agency or investigation. In view of this, OLG is invited to develop a format that is appropriate for the proposed plan of action and subsequent report(s).

The Commission asks that the plan of action and subsequent proposed report formats are developed in consultation with the ICAC's corruption prevention representative named in the cover letter. The ICAC corruption prevention representative will advise if the plan or report format has the Commission's endorsement.

However if OLG prefers to adhere to an established format, the following may be used as a guide.

Plan of action

Each specific recommendation or proposed action

Mandate internal audit for councils

Councils will be required to appoint an audit, risk and improvement committee by March 2021. The expectation however is that councils will appoint committees and implement the new framework well ahead of this date.

Work has commenced on the design of the regulatory and policy framework that will support the implementation of mandatory internal audit in councils.

As contemplated by the Commission's recommendation, the regulatory and policy framework for internal audit for councils will be modelled on the one that currently applies to state government agencies. It is important however that OLG consults closely with the local government sector on the design of the framework to ensure that it is achievable and affordable for all councils.

The first step in this is issuing a discussion paper setting out the proposed regulatory and policy framework with a view to inviting comment on it to identify and address any implementation issues. OLG is currently working on the discussion paper and is working towards putting this out before the end of the year.

OLG will be designing the regulatory framework and supporting guidelines in the first half of 2018 based on the input it receives from the discussion paper.

This will be followed by an implementation phase to support councils to put in place the systems to support the new requirement to appoint an audit, risk and improvement committee by March 2021 and to monitor compliance.