

Department of Planning Housing & Infrastructure report on implementation of plan of action.

Investigation into the conduct of three former councillors of former Hurstville City Council, now part of Georges River Council, and others (Operation Galley)

Please indicate which applies:

- This is an interim report; a further report will be provided in twelve months

As previously advised, the scope and scale of recommendations made in investigation reports varies considerably, as do the plans of action public authorities develop in response.

The Commission recognises a single template may not be effective for reporting on the implementation of all action plans. In view of this, the Department of Planning Housing & Infrastructure is invited to use a reporting format that best illustrates the comprehensiveness of the implementation of the plan of action.

The Commission asks that proposed report formats are discussed with the ICAC's corruption prevention representative named in the cover letter. The ICAC corruption prevention representative will advise if the report format has the Commission's endorsement.

However, if the Department of Planning Housing & Infrastructure prefers to adhere to an established format, the following may be used as a guide.

Report (interim)

Recommendation 1

That the Department of Planning and Environment ("the DPE") issues guidelines under s 23A of the Local Government Act 1993 addressing:

- approval and reporting requirements for overseas travel by councillors in an official capacity
- governance and probity guidance about councillors travelling overseas in an official council capacity, including related funding arrangements.

Status: Completed

Action taken:

ICAC has developed guidelines on overseas travel by councillors. These are now available on the OLG and ICAC websites. The guideline has been issued under section 23A of the *Local Government Act 1993* meaning councils are required to consider it when exercising their functions.

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Recommendation 2

That the Department amends the Model Code of Conduct to prohibit council officials, including councillors, from accepting gifts and benefits (including hospitality and contributions to travel) from property developers. An exemption should be considered for situations where the receipt of hospitality is in connection with a councillor's attendance at industry briefing, educational, professional development and training events – such as workshops, conferences, seminars, symposiums – that are provided, organised or sponsored by a property developer.

Status: Yet to be completed

Action taken:

The framework for regulating councillor conduct is currently under review. A discussion paper closed for consultation on 29 November 2024. The reforms arising from the review are expected to be made in 2025. They are likely to see fundamental changes to the way councillor conduct is regulated. Recommendation 2 will be implemented as part of the new framework.

Recommendation 3

That the Department provides guidelines for councils stating that, when they propose to form an informal committee consisting of councillors, they should establish:

- (i) clear terms of reference and objectives for the group, including its role**
- (ii) governance arrangements, accountability and transparency measures (including proper record-keeping requirements and ensuring the group cannot direct staff)**
- (iii) an obligation to report in a timely manner on the deliberations of the group to other councillors**
- (iv) that the group does not have a decision-making function normally carried out through other council processes or activities.**

Status: Yet to be completed

Action taken:

At the request of the Minister for Local Government, reforms are proposed to prevent councils from considering and discussing information outside of the context of council or committee meetings. A discussion paper and consultation draft of the new Model Code of Meeting Practice for Local Councils in NSW is expected to be issued for comment in late 2024 or early 2025.

Recommendation 4

That the DPE also provides guidelines for councils in relation to when it is appropriate or inappropriate to establish informal working groups. For example, whether they should be convened to deal with statutory and administrative decisions including planning and other regulatory and procurement matters

Status: Yet to be completed

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Action taken:

At the request of the Minister for Local Government, reforms are proposed to prevent councils from considering and discussing information outside of the context of council or committee meetings. A discussion paper and consultation draft of the new Model Code of Meeting Practice for Local Councils in NSW is expected to be issued for comment in late 2024 or early 2025.

Recommendation 5

That the DPE amends the Model Code of Meeting Practice for Local Councils in NSW to require a council's governing body to provide reasons for approving or rejecting development applications, planning proposals and planning agreements where decisions depart from the recommendations of staff. These reasons should refer to the relevant merits criteria and explain why the decision is more meritorious than the recommended outcome.

Status: Yet to be completed

Action taken:

The Office of Local Government will be amending the Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code) to require councils and committees of councils to provide reasons for "planning decisions" (as defined under the Model Meeting Code), where they depart from the recommendations of staff.

A discussion paper and consultation draft of the new Model Code of Meeting Practice for Local Councils in NSW (including the proposed amendment) is expected to be issued for comment in late 2024 or early 2025.

Recommendation 6

That the DPE seeks amendment of the Environmental Planning & Assessment Regulation 2021 to require councils and other planning authorities to demonstrate that the following have been considered before entering into a planning agreement:

- the fundamental principles (2.1) in the Planning Agreements Practice Note 2021
- the acceptability test (2.5) in the Planning Agreements Practice Note 2021
- the methodology or structure that was used to determine the reasonableness of the proposed contribution and its real value
- the public interest.

Status: Yet to be completed

Action taken:

The Department has drafted support material, including detailed practice note guidance and a template, to assist councils to demonstrate that the requirements have been considered. Subject to approval this is proposed to be publicly exhibited in 2025.

The Department is currently investigating an appropriate Regulation amendment to progress in 2025.

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Recommendation 7

That the DPE produces guidelines and provides training to assist councillors regarding the proper exercise of their decision-making role in respect of planning agreements

Status: Yet to be completed

Action taken:

The Department has drafted guidance and training material on the responsibilities of councillors regarding their decision-making role in planning agreements.

In the first instance this guidance will be available to be delivered as part of the *Hit the Ground Running* training for newly elected councillors.

The Department is also investigating ways to continue delivering this training and materials in an ongoing manner.

Recommendation 8

That the DPE develops guidance on the essential information that must be submitted with an offer of a planning agreement to a council or other planning authority.

Status: Yet to be completed

Action taken:

The Department is developing draft guidance material on the essential information that must be submitted with an offer of a planning agreement as well as supporting templates, to empower councils to require this information before entering into planning agreement negotiations.

Subject to approval this is proposed to be publicly exhibited in 2025.

Recommendation 9

That the DPE:

- **conducts regular risk-based audits of planning agreements negotiated by councils**
- **establishes guidelines for conducting risk-based audits**
- **publishes audit outcomes**
- **uses the outcomes from audits to improve the processes and procedures governing negotiation and execution of planning agreements.**

Status: Yet to be completed

Action taken:

The Department is working in collaboration with stakeholders to develop a framework for conducting regular risk-based audit of council planning agreements.

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This includes working with councils to undertake a detailed risk assessment of council planning agreements, to identify fraud and corruption risks in the planning agreement process and the controls that should be in place to mitigate these risks.

Subject to approval this is proposed to be publicly exhibited in 2025.

Recommendation 10

That the DPE seeks amendment of s 375A of the Local Government Act 1993 to include planning agreements in the definition of planning decisions that require a register of votes to be kept.

Status: Yet to be completed

Action taken:

An amendment will be sought to the list of items referred to in paragraph (a) of subsection (1) of section 375A to include Voluntary Planning Agreements for clarity when the Government legislates the new councillor conduct framework in 2025.

An amendment is also being made to the definition of “planning decision” in the Model Code of Meeting Practice for Local Councils in NSW to include Voluntary Planning Agreements. A discussion paper and consultation draft of the new Model Code of Meeting Practice for Local Councils in NSW (including the proposed amendment) is expected to be issued for comment in late 2024 or early 2025.

Recommendation 11

That the DPE issues advice to councils and other planning authorities about the need to consider any proposed instrument, including any draft local environmental plan (LEP), when determining a development application. The advice should address the:

- case law and principles established by the courts
- weight to attribute to a draft LEP, with particular regard to its imminence and certainty.

Status: Yet to be completed

Action taken: DPHI will publish a planning circular to councils regarding the need to consider proposed EPIs when determining a development application. It is due to be released before the end of the first quarter of 2025.

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