

**Department of Planning & Environment plan of action in  
response to recommendations made in:**

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

**PART A: The Department's response to corruption prevention recommendations**

Please indicate the response to be taken for each recommendation made.

## Recommendation 1

That the Department 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.

***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 the Department 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.***

Update and strengthen the guidance on councillors' overseas travel provided in the Office of Local Government's *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW*.

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

The Office of Local Government's *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW* (Guidelines) already contains guidance on overseas travel by councillors. The Guidelines state:

- Councils should avoid international visits unless direct and tangible benefits can be established for the council and the local community.
- Detailed proposals for overseas travel should be developed, including nomination of the councillor/s undertaking the trip, purpose of the trip and expected benefits. The duration, itinerary and approximate total costs of each proposed visit should also be provided.
- Overseas travel must be approved by a meeting of the full council prior to a councillor undertaking the trip. Travel must be approved on an individual trip basis. Councils should not allow the retrospective reimbursement of overseas travel expenses unless prior authorisation of the travel has been obtained.
- Travel proposals should be included in the council business papers. The use of a mayoral minute to obtain council approval for travel is not appropriate as it is not consistent with

principles of openness and transparency.

- After returning from overseas, councillors, or an accompanying member of council staff, should provide a detailed written report to council on the aspects of the trip relevant to council business and/or the local community. Councillors are also strongly encouraged to report back on their overseas travel to a full meeting of the council.

Section 252(5) of the *Local Government Act 1993* (Act) states that councils' councillor expenses and facilities policies adopted under section 252 of the Act, must comply with the Office of Local Government's Guidelines. To assist councils to comply, the Office of Local Government has issued a best practice model councillor expenses and facilities policy which reflects the guidance in the Guidelines.

The Office of Local Government will be undertaking a review of the Guidelines in 2024 in consultation with the local government sector. The Office of Local Government will consider the need to update and strengthen the guidance on councillors' overseas travel provided in the Guidelines as part of that review.

**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.

***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 the Department 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.***

Not applicable.

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

Not applicable.

**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.

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

- Implement the recommendation as described in the report
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***If the action the Department 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.***

Not applicable.

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

Not applicable.

**Recommendation 4**

That the Department 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.

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

- Implement the recommendation as described in the report
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***If the action the Department 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.***

Not applicable.

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

Not applicable.

**Recommendation 5**

That the Department 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.

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

- Implement the recommendation as described in the report
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Not applicable.

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

Not applicable.

**Recommendation 6**

That the Department seeks amendment of the Environmental Planning and 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.

***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 the Department 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.***

Embed the principles and acceptability test within the Environmental Planning and Assessment Regulation 2021, rather than reference to the Planning Agreements Practice Note (which can change from time to time).

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

By embedding the principles and acceptability test in regulations there is greater certainty and clarity around the expectation, instead of it being part of a non-regulatory document.



**Recommendation 7**

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

***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
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***If the action the Department 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.***

Not applicable.

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

Not applicable.

**Recommendation 8**

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

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

- Implement the recommendation as described in the report
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***If the action the Department 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.***

Not applicable.

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

Not applicable.

**Recommendation 9**

That the Department:

- 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.

***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 the Department 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.***

Not applicable.

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

Not applicable.

**Recommendation 10**

That the Department seeks amendment of section 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.

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

- Implement the recommendation as described in the report
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- Not implement the recommendation

***If the action the Department 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.***

Not applicable.

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

Not applicable.

**Recommendation 11**

That the Department 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.

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

- Implement the recommendation as described in the report
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***If the action the Department 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.***

Not applicable.

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

Not applicable.

**PART B: The Department's plan of action**

In this section, please provide details of Department's 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 recognizes a single template may not suit every agency or investigation. In view of this, the Department 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.

If the Department prefers to adhere to an established format, the following may be used as a guide.

**Plan of action**

Each specific recommendation or proposed action
Action to be taken describing activities, allocating responsibility, measures to be used

## Plan of action

### Recommendation 1

That the Department 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.

### Action

The Office of Local Government's *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW* (Guidelines) already contains guidance on overseas travel by councillors. The Office of Local Government will be undertaking a review of the Guidelines in 2024 in consultation with the local government sector. The Office of Local Government will consider the need to update and strengthen the guidance on councillors' overseas travel provided in the Guidelines as part of that review.

### 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.

### Action

The *Model Code of Conduct for Local Councils in NSW* (Model Code of Conduct) already prohibits the acceptance of all gifts, hospitality, and contributions to travel with a value of more than \$100. The Model Code of Conduct will be amended to prohibit the acceptance of all gifts and benefits from property developers as defined under Division 7 of Part 3 of the *Electoral Funding Act 2018* and close associates of property developers as defined under section 53 of the *Electoral Funding Act 2018*, regardless of value.

There are existing exemptions in the Model Code of Conduct of the type referred to in Recommendation 2. Clause 6.2(e) of the Model Code of Conduct provides that attendance by a council official at a work-related event or function for the purposes of performing their official duties does not constitute a gift or benefit for the purposes of the Model Code of Conduct.

### **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.

#### **Action**

The Office of Local Government will develop guidelines on the use of informal councillor working groups, workshops, and committees in consultation with the local government sector providing the guidance referred to in Recommendation 3.

### **Recommendation 4**

That the Department 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.

#### **Action**

The proposed guidelines on the use of informal councillor working groups, workshops, and committees referred to in the response to



Recommendation 3 will also provide guidance on when it is appropriate or inappropriate to establish informal working groups, workshops, and committees.

#### **Recommendation 5**

That the Department 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.

#### **Action**

The Office of Local Government will amend 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. The Model Meeting Code defines a “planning decision” as a decision made in the exercise of a function of a council under the *Environmental Planning and Assessment Act 1979* (Act) including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act. That definition will be amended to include Voluntary Planning Agreements (see response to Recommendation 10).

#### **Recommendation 6**

That the Department seeks amendment of the Environmental Planning and 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.

**Action**

The Department will investigate drafting to amend the Environmental Planning and Assessment Regulation 2021 to require councils and planning authorities demonstrate consideration of the planning agreement principles and acceptability test, the methodology and structure that was used to determine the reasonableness and value of the proposed planning agreement and the public interest (noting that the Planning Agreement Practice Note 2021 will be amended from time to time).

Additionally, the Department will develop detailed practice note guidance outlining how councils and planning authorities should demonstrate that the requirements have been considered.

**Recommendation 7**

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

**Action**

The Department will develop guidance material on councilors' decision-making roles in respect of planning agreements, investigate training opportunities and delivery methods and develop a plan of action to deliver training to councillors and council staff.

**Recommendation 8**

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

**Action**

The Department will investigate appropriate essential information that should accompany a planning agreement, to support transparency and accountability of planning agreement decisions. The Department will also develop guidance material to empower councils to request this

information. This new guidance will form part of the Planning Agreements Practice Note, which councils must consider when negotiating planning agreements.

### **Recommendation 9**

That the Department:

- 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.

### **Action**

The Department will investigate opportunities for regular risk-based audits of council planning agreements and develop guidelines for conducting risk-based audits.

The Department will also develop a process for analyzing audit outcomes and using the data to improve practice note guidance and council capacity around planning agreement negotiations.

### **Recommendation 10**

That the Department seeks amendment of section 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.

### **Action**

The definition of “planning decision” in section 375A of the *Local Government Act 1993* already includes Voluntary Planning Agreements by implication. The definition of “planning decision” contained in section 375A includes the exercise of any function of a council under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and only expressly excludes the making of an order under Division 2A of Part 6 of

that Act. However, 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 next time the Government seeks to amend the *Local Government Act 1993*. An amendment will also be made to the definition of “planning decision” in the *Model Code of Meeting Practice for Local Councils in NSW* to include Voluntary Planning Agreements. This may also be achieved through consequential amendments as part of a bill to amend the EP&A Act.

#### **Recommendation 11**

That the Department 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.

#### **Action**

The Department will prepare and issue advice for consent authorities about the need to consider draft environmental planning instruments, such as draft LEPs, when determining a development application.

This advice will address the matters specified in the Recommendation to provide greater clarity and transparency for consent authorities and applicants alike.