

DPE Final Report on Operation Dasha Recommendations (November 2023)

ICAC Recommendation	Update on Response Measures	Timeframe
<p>Recommendation 1 That the DPIE amends the <i>Guidelines for the Appointment and Oversight of General Managers</i> to recommend that the performance agreements of general managers include performance indicators related to ethical culture. Specific measures that could be promoted include the conduct and measurement of outcomes from staff surveys and the promotion of whistleblowing procedures.</p>	<ul style="list-style-type: none"> The Guidelines for the Appointment and Oversight of General Managers have been updated to include guidance that councils should include performance indicators in their general managers' performance agreements relating to the promotion of an ethical culture (e.g. through staff surveys and activities to promote the <i>Public Interest Disclosures Act 1994</i> and information on how to report wrongdoing). 	<p>Completed August 2022</p>
<p>Recommendation 2 That the DPIE conducts a review into the no "reason" termination provision in the Standard Contract, which should canvass options such as requiring a two-thirds majority vote of a council, an absolute majority vote or the availability of mediation.</p>	<ul style="list-style-type: none"> The "no fault" termination provisions in the standard contract of employment for general managers of councils have been reviewed in consultation with the parties to the <i>Local Government (State) Award</i>. The contract has been amended to strengthen access to mediation and to require reasons to be given for "no fault" terminations where they are requested. The new standard contract (shown on the Office of Local Government's website) has been updated and issued. The circular showing consultation on senior staff employment arrangements can be found on the Office of Local Government's website. At the request of the parties to the Award, the Office of Local Government will also be undertaking consultation with the local government sector on whether amendments should be made to the <i>Local Government Act 1993</i> to remove the option for councils to employ senior staff other than the general manager under fixed term contracts. Under the proposed amendments, all staff other than the general manager would be employed under the <i>Local Government (State) Award</i>. Amendments to the current standard contract of employment for senior staff have been deferred pending the outcome of that consultation. 	<p>Completed August 2022</p>
<p>Recommendation 4 That the DPIE clarifies what constitutes "consultation" with council by the general manager for the purpose of appointment and dismissal of senior staff as required by s337 of the LGA. The clarification should:</p>	<ul style="list-style-type: none"> A circular to councils (Circular 21-22) has been issued providing detailed guidance on what constitutes "consultation" with councils by the general manager on the appointment and dismissal of senior staff as required by s337 of the <i>Local Government Act 1993</i>. This guidance has been incorporated into new Guidelines for the Appointment and Oversight of Senior Council Executive (see Recommendation 5). 	<p>Completed August 2021</p>

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<ul style="list-style-type: none"> detail acceptable consultation processes and procedures in the absence of compelling reasons to the contrary, 		
<p>Recommendation 5 That the DPIE introduces guidelines under s23A of the LGA concerning the appointment of senior staff. The guidelines should address the following:</p> <ul style="list-style-type: none"> that a senior human resources manager, or external recruitment consultant, be involved in recruitment processes, and have a role in verifying that council processes and procedures were followed in the appointment of senior staff the inclusion of subject matter experts on interview panels for the appointment of senior staff, especially for high-risk positions that require specialised technical knowledge the provision of independent assurance through the involvement of internal audit in conducting periodic reviews into senior staff recruitment processes the appropriate avenues for reporting concerns about process or complaints about suspected corrupt conduct. 	<ul style="list-style-type: none"> Guidelines for the Appointment and Oversight of Senior Council Executive have been developed in consultation with the parties to the <i>Local Government (State) Award</i>. The guidelines were issued in October 2022. 	<p>Completed October 2022</p>
<p>Recommendation 6 That the DPIE amends the <i>Model Code of Meeting Practice for Local Councils in NSW</i> to require that council business and briefing papers include a reminder to councillors of their oath or affirmation, and their conflict of interest disclosure obligations.</p>	<ul style="list-style-type: none"> The Model Code of Meeting Practice for Local Councils in NSW has been amended to require that council business and briefing papers include a reminder to councillors of their oath or affirmation, and their conflict of interest disclosure obligations (see clause 3.23). 	<p>Completed November 2021</p>
<p>Recommendation 8 That the DPIE, following a reasonable period of consultation, issues guidelines under s23A</p>	<ul style="list-style-type: none"> Guidelines under s23A of the <i>Local Government Act 1993</i> will be issued following consultation with the local government sector to enhance transparency around the lobbying of councillors and a non-mandatory 	<p>30 June 2024</p>

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<p>of the LGA to introduce measures to enhance transparency around the lobbying of councillors. The guidelines should require that:</p> <ul style="list-style-type: none"> • councils provide meeting facilities to councillors (where practical) so that they may meet in a formal setting with parties who have an interest in a development matter • councils make available a member of council staff to be present at such a meeting and to prepare an official file note of that meeting to be kept on the council's files (any additional notes made by the member of council staff and/or the councillor should also be kept as part of the council's records) • all councillors be invited when a council conducts formal onsite meetings for controversial re-zonings and developments • council officers disclose in writing to the general manager any attempts by councillors to influence them over the contents or recommendations contained in any report to council and/or relating to planning and development in the local government area. 	<p>model policy on lobbying of councillors for adoption by councils to support the implementation of the guidelines.</p> <ul style="list-style-type: none"> • The circular showing the first round of consultation on the development of the lobbying guidelines can be found on the Office of Local Government's website. • At the request of the Department of Premier and Cabinet (DPC), consultation on the proposed guidelines was deferred to accommodate the Government's proposed response to ICAC's separate operation, Operation Eclipse. DPC requested that the consultation on the proposed guidelines include consultation on ICAC's recommendation that the <i>Lobbying of Government Officials Act 2011</i> (the LOGO Act) be extended to local government. • The Government has now responded to Operation Eclipse. Consultation has been undertaken with the local government sector on the development of the proposed lobbying guidelines and on whether the LOGO Act should be extended to local government. This consultation includes the further recommendations made by ICAC in a separate investigation, Operation Witney, on the content of the proposed guidelines. • A draft of the proposed guidelines has been prepared and is being reviewed. 	
<p>Recommendation 10 That the DPIE reviews the concept of "assumed concurrence", including the avenues that exist for clause 4.6 in each council's LEP, to be used as a de facto plan-making device when concurrence is assumed.</p>	<ul style="list-style-type: none"> • DPE has removed the Secretary's concurrence requirements for all clause 4.6 variations and replaced them with a comprehensive monitoring and reporting framework which commenced on 1 November 2023. • DPE has developed a new, comprehensive monitoring and reporting framework, comprising: <ul style="list-style-type: none"> ○ Centralised online variations register ○ Regular DPE variations report ○ Risk based monitoring and auditing 	<p>Completed November 2023</p>

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<p>Recommendation 11 That the DPIE identifies the circumstances and establishes criteria to determine when the secretary’s assumed concurrence will be granted and when it will be withdrawn from councils, which takes into account:</p> <ul style="list-style-type: none"> the potential for clause 4.6 to be used as a de facto plan-making device that the risk of the improper use of clause 4.6 extends to all local government areas in NSW. 	<ul style="list-style-type: none"> Same response as Recommendation 10. 	<p>Completed November 2023</p>
<p>Recommendation 12 That the DPIE prepares and, following a period of public consultation, makes public new guidelines on varying development standards for councils that consider the criteria for assessing variations to development standards that are applicable to clause 4.6.</p>	<ul style="list-style-type: none"> A new Guide to varying development standards has been published to provide information to councils and applicants on: <ul style="list-style-type: none"> Changes to clause 4.6 of the Standard Instrument LEP Background on development standards Clarifying where clause 4.6 does and does not apply Making an application to vary a development standard and matters to be addressed Assessment guidance for consent authorities Application of clause 4.6 to various application types Information on the monitoring and reporting framework Written application template 	<p>Completed November 2023</p>
<p>Recommendation 13 That the DPIE establishes a clear process to ensure that guidelines for councils on varying development standards are subject to regular review and can accommodate advice or changes arising from decisions of the NSW courts.</p>	<ul style="list-style-type: none"> Guideline in Recommendation 12 will be subject to regular review. 	<p>Completed November 2023</p>
<p>Recommendation 14 That the DPIE prepares and publicises guidelines that establish a framework for conducting risk-based audits on the use of clause 4.6 by consent authorities. These guidelines should include:</p> <ul style="list-style-type: none"> the scope and frequency of audits conducted to monitor the use of clause 	<ul style="list-style-type: none"> DPE has developed a new, comprehensive monitoring and reporting framework that includes the objectives and process for conducting risk-based audits. The monitoring and reporting framework includes both an internal guide document to assist department staff on the monitoring and auditing process and responsibilities and a publicly available framework that is part B of the Guide to varying development standards. 	<p>Completed November 2023</p>

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<p>4.6, including the circumstances for conducting any special audits</p> <ul style="list-style-type: none"> • a requirement that the matters to be examined in an audit reinforce the objectives of conducting the audit • an outline of the audit methodology • clear instructions for the staff undertaking the audit • a requirement to publish ongoing records of the audits and their results, observations and recommendations the necessary skills required by staff conducting the audits. 		
<p>Recommendation 15 That the DPIE provides advice to councils regarding the inclusion of clause 4.6 in the cycle of audits conducted by the audit and risk committees of councils.</p>	<ul style="list-style-type: none"> • Same response as Recommendation 14. 	<p>Completed November 2023</p>
<p>Recommendation 16 That the DPIE:</p> <ul style="list-style-type: none"> • considers the circumstances in which the application of both maximum height of building development standards and maximum floor space ratio (FSR) development standards should be mandatory in LEPs • establishes clear, robust and objective criteria to determine when it is impractical to pair maximum height of building development standards with maximum FSR development standards in LEPs. 	<ul style="list-style-type: none"> • DPE will publish guidance (an update of Practice Note 08-001) on the application of paired Maximum Height of Building and FSR controls in LEPs. 	<p>February 2024</p>
<p>Recommendation 17 That the DPIE:</p> <ul style="list-style-type: none"> • applies a risk-based assessment that considers corruption risks prior to the 	<ul style="list-style-type: none"> • In 2021, DPE implemented a Risk Based Assessment (RBA) tool that is now applied by teams assessing planning proposals for Gateway determination. It includes a section for potential conflicts of interests that councils may have. 	<p>Completed 2021; update to be implemented 30 June 2024</p>

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<p>drafting of Gateway Determinations authorising councils to make LEPs</p> <ul style="list-style-type: none"> takes measures to verify that councils have complied with Gateway Determination conditions establishes a program of regular risk-based auditing of council processes relating to the making of LEP amendments to help provide assurance over systems and to establish whether gateway conditions were met (the outcome of audits should inform future Gateway Determinations authorising councils to make LEPs). 	<ul style="list-style-type: none"> In 2021, DPE also updated the finalisation reporting to ensure that staff evaluate how each planning proposal has addressed Gateway Determination conditions. In 2023, DPE reported that it has been continuously monitoring the way that councils are progressing and assessing planning proposals. In September 2021, it was proposed to establish a program of regular risk-based auditing of council processes regarding LEP amendments in conjunction with auditing occurring as part of Recommendation 14 (related to clause 4.6). DPE has not yet adopted a formal auditing program for compliance with Gateway conditions. Instead DPE at present actively checks compliance with Gateway conditions when finalising planning proposals and discusses any issues through formal governance arrangements for the active management of planning proposals. This process is highly effective and an efficient use of DPE and council resources. In addition, recommendation 14 is now instead being delivered through a new, comprehensive, monitoring and reporting framework. Based on recent feedback from ICAC on the department's response to this recommendation, DPE will further refine the risk-based assessment and approach instead of delivering the proposed audit process. DPE will revise its guidance on what circumstances are suitable for councils to be granted the local plan-making authority (LPMA) role. 	
<p>Recommendation 18 That the method for calculating fees associated with local development applications be reviewed by the DPIE with the aim that estimated cost of works is no longer relied on. Instead fees should be:</p> <ul style="list-style-type: none"> determined by criteria that are clear, robust and objective capable of easy verification by consent authorities. 	<ul style="list-style-type: none"> DPE reviewed and analysed suitable alternatives to the calculation of development application fees and identified measures within the existing system that will strengthen the system against corruption. DPE has devised a new singularised definition for the cost of development, known as “estimated development cost” (EDC), which will be used across the planning system. This includes how fees payable will be calculated for local, regional, and state-significant development, and how planning approval pathways will be determined. The updates are outlined on the department's website. The amendments to the <i>Environmental Planning and Assessment Regulation 2023</i> for estimated cost of development has been made and will commence on 4 March 2024. 	<p>Completed September 2023, commencement March 2024</p>
<p>Recommendation 19 That the DPIE considers a clear, robust and verifiable alternative to capital investment</p>	<ul style="list-style-type: none"> Same response as Recommendation 18 EDC is a singular definition that will replace “cost of development” and “capital investment value” and will be used as a jurisdictional threshold. 	<p>Completed September 2023, commencement March 2024</p>

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value as a jurisdictional threshold for planning panels.	The new EDC definition is clear on its scope, making it simpler to apply and easier to verify than capital investment value	
<p>Recommendation 20 That the DPIE strengthens guidance for councils and planning panels to help ensure development applications are not split by development proponents into multiple applications to avoid referrals to planning panels.</p>	<ul style="list-style-type: none"> • DPE has investigated ways to issue appropriate guidance addressing the splitting of development applications to avoid referrals to planning panels. • The conclusion is that no additional guidance is needed following planning reforms in recent years (e.g. the introduction of local planning panels, the referral triggers to Sydney District and Regional Planning Panels and existing council governance arrangements). 	Completed November 2023
<p>Recommendation 22 That the DPIE issues a practice note, or other similar guidance, on the topic of local councils obtaining specialist advice about planning matters, including obtaining urban design studies. The practice note should address:</p> <ul style="list-style-type: none"> • what constitutes proper interactions between councils and consultants engaged to provide advice • when specialist advice, independent of a development proponent, should be requested and relied on. 	<p>Completed and addressed through:</p> <ul style="list-style-type: none"> • <i>Local Environmental Plan Making Guideline 2021</i> • Office of Local Government's <i>Model Code of Conduct for Local Councils in NSW 2020</i> (see clauses 3.13 and 3.14) <p>Note: the Department is not providing similar guidance for obtaining advice in relation to development assessment. This is because after further consideration the general guidance in the <i>Model Code of Conduct</i> noted above is sufficient to cover these interactions.</p>	Completed December 2021