



Mr Philip Reed
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Dear Mr Reed

Thank you for your correspondence of 24 March 2021.

As required by section 111E of the *Independent Commission Against Corruption Act 1988*, attached is the Department of Planning, Industry and Environment's (the Department) plan of action in response to the Commission's recommendations 1-2, 4-6, 8, 10-20 and 22 in its report on Operation Dasha.

The measures in this plan, which have been approved by the Premier under delegation, should, in concert, address the risks identified by the Commission in its report in relation to Operation Dasha and ensure that our respective portfolios remain fit for purpose and robust against corruption.

I note that the Department of Premier and Cabinet will respond separately in relation to the recommendations for which it is responsible for.

If you would like to meet with us to discuss our plan, please contact Ms Teresa Hislop, Acting Director, State and Regional Economy at the Department on 9274 6210 or teresa.hislop@dpie.nsw.gov.au.

Yours sincerely

Jim Betts
Secretary

Encl: DPIE's Response and Action Plan – ICAC Operation Dasha Recommendations

DIPIE RESPONSE AND ACTION PLAN - ICAC OPERATION DASHA RECOMMENDATIONS

ICAC Recommendation	Action(s) to be taken	Further comments and reason for action if different to ICAC recommendation
<p>Recommendation 1 That the DIPIE 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>	<p>Implement the recommendation as described in the report</p> <p>DIPIE will, in consultation with the parties to the <i>Local Government (State) Award</i>, update 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.</p> <p>As part of the review of the Guidelines, additional guidance will be provided that councils should include performance indicators in performance agreements relating to the promotion of an ethical culture (eg through staff surveys and activities to promote the <i>Public Interest Disclosures Act 1994</i> and information on how to report wrongdoing).</p> <p>Timeframe: 30 June 2022</p> <p><i>DIPIE lead - Office of Local Government</i></p>	<p>The Office of Local Government (OLG) has established an Employment Matters Reference (EMR) Group whose membership comprises of the parties to the <i>Local Government (State) Award</i>. These include Local Government NSW (the employer representative) and the three local government unions, (the United Services Union, the Local Government Engineers Association and the Development and Environmental Professionals' Association). The Group is designed to advise OLG of emerging employment issues in the local government sector that may warrant a policy response by government and to facilitate consultation on policy development impacting on councils' employment practices.</p> <p>OLG is currently reviewing the standard contracts of employment for general managers and senior staff in consultation with the EMR group and their memberships.</p>
<p>Recommendation 2 That the DIPIE 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>	<p>Implement the recommendation as described in the report</p> <p>DIPIE will, in consultation with the parties to the Local Government (State) Award, review the "no reason" termination provisions in the standard contracts for general managers and senior staff of councils.</p> <p>OLG has commenced a review of the general managers' and senior staff contracts in consultation with the Employment Matters Reference Group and their memberships.</p> <p>Timeframe: 30 June 2022</p>	

	<p><i>DPIE lead - Office of Local Government</i></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 s 337 of the LGA. The clarification should:</p> <ul style="list-style-type: none"> • detail acceptable consultation processes and procedures • in the absence of compelling reasons to the contrary, recommend restricting or, preferably, prohibiting councillor-dominated interview panels. 	<p>Implement the recommendation as described in the report</p> <p>DPIE will prepare supplementary guidance on what constitutes “consultation” with councils by general managers for the purpose of the appointment and dismissal of senior staff as required by s 337 of the <i>Local Government Act 1993</i>.</p> <p>The revised guidance will also be incorporated into new Guidelines on the Appointment and Oversight of Senior Staff to be developed in consultation with the parties to the <i>Local Government (State) Award</i> (see recommendation 5).</p> <p>Timeframe: 30 June 2021 (circular) and 30 June 2022 (new Guidelines on the Appointment and Oversight of Senior Staff).</p> <p><i>DPIE lead - Office of Local Government</i></p>	<p>OLG has already taken steps to address this issue. In 2019, Circular No. 19-17 was published. The circular advises:</p> <p><i>“Under section 337 of the Act, general managers are also required to consult with the council before appointing or dismissing the holders of “senior staff” positions. While this need not necessarily occur at a formal council meeting, where consultation occurs outside of a council meeting, the requirement to consult with the “council” under section 337 necessarily requires that this be undertaken in a way that ensures that all members of the governing body are informed of the proposed decision and have the opportunity to provide comment. When consulting the council in making a decision to appoint or dismiss a senior staff member, the general manager should consider the views of councillors. However, the ultimate decision to appoint or dismiss senior staff rests with the general manager and not the governing body. It is therefore not open to the governing body of the council to direct the general manager on the appointment or dismissal of senior (and any other) staff.”</i></p>
<p>Recommendation 5 That the DPIE introduces guidelines under s 23A 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 	<p>Implement the recommendation as described in the report</p> <p>DPIE will develop new Guidelines for the Appointment and Oversight of Senior Staff in consultation with the parties to the <i>Local Government (State) Award</i>.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead - Office of Local Government</i></p>	

<ul style="list-style-type: none"> • 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. 		
<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>	<p>Implement the recommendation as described in the report</p> <p>There is an existing robust regime for the disclosure and management of conflicts of interest, prescribed under the <i>Model Code of Conduct for Local Councils in NSW</i>, the current version of which was prescribed in 2020 (the Code of Conduct has been in place since 2005).</p> <p>DPIE will amend 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> <p>Timeframe: 31 July 2021</p> <p><i>DPIE lead - Office of Local Government</i></p>	<p>The <i>Local Government Act 1993</i> was amended in 2016 to introduce a requirement for a prescribed oath or affirmation for councillors to be made at the first meeting of the council after the councillors are elected. The purpose of the oath is to reinforce to councillors the serious nature of their role. This oath or affirmation is given once in the four-year term that a councillor is elected to office.</p> <p>The proposed amendment to the Model Code of Meeting Practice can provide corruption prevention measures as identified by ICAC because:</p> <ol style="list-style-type: none"> 1. it reminds councillors of the conduct expected of them and helps them to make the right decisions 2. it may provide honest councillors with the moral authority to encourage their peers to comply with the requirements for disclosure, and 3. it helps ensure councillors cannot claim ignorance regarding the rules that govern their conduct.
<p>Recommendation 8 That the DPIE, following a reasonable period of consultation, issues guidelines under s</p>	<p>Implement the recommendation as described in the report</p>	

<p>23A 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>DPIE will, in consultation with the local government sector, issue guidelines under s 23A of the <i>Local Government Act 1993</i> to enhance transparency around the lobbying of councillors and a non-mandatory model policy on lobbying of councillors for adoption by councils to support the implementation of the guidelines.</p> <p>OLG has commenced the process of developing a suite of model policies to address areas that consistently pose challenges to councils as a way of promoting better governance practice in councils.</p> <p>In developing the policies, OLG has sought examples of councils' existing policies to identify best practice in the sector and to reflect this in each of the model policies. The policies are designed to be flexible so that they can be adapted by councils to suit their operating environments.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead - Office of Local Government</i></p>	
<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>	<p>Implement the intent of the recommendation in an alternative way</p> <p>Local and Regional Planning panels will continue to provide expert and merit-based decisions in the determination of development applications involving certain variations to development standards.</p> <p>DPIE will work with stakeholders to develop a new risk-based monitoring framework using data from the NSW</p>	<p>A number of changes have been implemented in recent years to strengthen integrity and oversight of decision making in the planning system. The proposed actions are in addition to the measures already undertaken.</p> <p>DPIE has reviewed the current structure of delegations and assumed concurrence as part of the broader framework for concurrences under clause 4.6(4)(b). DPIE considers that an</p>

	<p>Planning Portal which will further reduce the risk of corruption by ensuring misuse is more easily detected. It is proposed the new framework will include the following:</p> <ul style="list-style-type: none"> • Collection of variation data for all councils through ePlanning including reasons for decisions • Publication and maintenance of a comprehensive register of all variation data • Data monitoring and investigation of procedural, and decision making issues • These actions will provide improved accountability and oversight in the variations system. <p>Timeframe: 31 December 2021</p> <p><i>DPIE lead - Planning and Assessment</i></p>	<p>appropriate level of oversight, and improved transparency for all stakeholders, can be achieved more effectively through a monitoring and reporting framework utilising data obtained through the NSW Planning Portal.</p> <p>The Explanation of Intended Effect “Varying Development Standards – A Case for Change” was exhibited from 31 March to 12 May 2021. The EIE sought feedback on a proposed revised Clause 4.6; strengthened reporting requirements to improve transparency and accountability when varying development standards.</p> <p>The EIE proposed that the requirement for the Secretary’s concurrence to be obtained/granted prior to the determination of a variation request should be removed for the following reasons:</p> <ul style="list-style-type: none"> • the Department’s role in determining variations has been substantially reduced over time; • the delegated authority to assume the Secretary’s concurrence now predominantly sits with local councils and Local and Regional Planning Panels. According to NSW Planning Portal data, the Department has only received 18 concurrence applications to date in 2021 and 32 in 2020 representing 2.9% and 7.5% of all variation requests made through the NSW Planning Portal respectively. • LPPs are responsible for reviewing and determining development applications involving departures from development standards (greater than 10% in most LGAs where LPPs are constituted). Expert and merit-based decision making will be maintained for more significant variation requests through the ongoing role of the independent planning panels;
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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. 	<p>Implement the intent of the recommendation in an alternative way</p> <p>As above (see response to Recommendation 10).</p> <p>Timeframe: 31 December 2021</p> <p><i>DPIE lead - Planning and Assessment</i></p>	<p>It is proposed to remove the requirement for the Secretary's concurrence to be obtained prior to the determination of a variation request as this is not fulfilling the role of mitigating corruption. This will consequently remove the need for assumed concurrences.</p> <p>As discussed in respect of Recommendation 10, the role of the concurrence mechanism has changed substantially since its introduction and it is considered its oversight intent can be achieved more effectively through the implementation of a monitoring and reporting framework utilising data obtained through the NSW Planning Portal supported by continued decision making by independent panels.</p> <p>Additional benefits of the proposed approach include:</p> <ul style="list-style-type: none"> Increased reliance on expert and merit-based decision making from independent planning panels Improved transparency of how consent authorities are using Clause 4.6 by making data

		<p>more readily available to all stakeholders including the community</p> <ul style="list-style-type: none"> • Less work for councils by removing the need to maintain, report and upload individual registers of variation information • Removal of duplication and complexity in the variation system, and in development assessment more generally • Improved DA processing times • Comprehensive oversight through monitoring and investigation <p>Clearer and more thorough tests to vary a development standard supported by a guideline will enable consistency of application and reduce potential scope for misuse.</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>	<p>Implement the recommendation as described in the report</p> <p>DPIE will prepare guidance material to support implementation of clause 4.6. Regular reviews will be undertaken to ensure that the guidance material remains current.</p> <p>The Explanation of Intended Effect “Varying Development Standards – A Case for Change” sought feedback on proposed criteria for assessing variations under clause 4.6 and matters that should be covered in guidance material.</p> <p>Timeframe: 31 December 2021</p> <p><i>DPIE lead - Planning and Assessment</i></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</p>	<p>Implement the recommendation as described in the report</p> <p>As above (see response to Recommendation 12). Regular reviews will be undertaken and any required updates will be</p>	

<p>changes arising from decisions of the NSW courts.</p>	<p>made to the Guidance material to ensure that it remains current.</p> <p>Timeframe: 31 December 2021</p> <p><i>DPIE lead - Planning and Assessment</i></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 4.6, including the circumstances for conducting any special audits • 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>Implement the recommendation as described in the report</p> <p>DPIE will work with stakeholders to develop a new risk-based monitoring framework using data from the NSW Planning Portal which will further reduce the risk of corruption by ensuring misuse is more easily detected. It is proposed the new framework will include the following:</p> <ul style="list-style-type: none"> • Collection of variation data for all councils through ePlanning including reasons for decisions • Publication and maintenance of a comprehensive register of all variation data • Data monitoring and investigation of procedural, and decision making issues. <p>These actions will provide improved accountability and oversight in the variations system.</p> <p>The new framework will be developed to encourage better oversight by the audit and risk committees of councils. ePlanning variations data collected as part of the Online DA services process through the NSW Planning Portal will be instrumental in designing thresholds to trigger investigations by DPIE staff as part of the new framework.</p> <p>The details for the implementation of this recommendation have not been finalised at this stage but will be implemented as part of the Department's review of clause 4.6.</p> <p>Timeframe: 31 December 2021</p>	

	<i>DPIE lead - Planning and Assessment</i>	
<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>	<p>Implement the recommendation as described in the report</p> <p>As above (see response to Recommendation 14).</p> <p>Timeframe: 31 December 2021</p> <p><i>DPIE lead - Planning and Assessment</i></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. 	<p>Implement the recommendation as described in the report</p> <p>DPIE will prepare updated guidance on height and floor space ratio development standards.</p> <p>The existing LEP practice note (PN08-001) establishes a strong recommendation that both maximum height of building and maximum floor spare ratio development standards should apply in strategic centres, in smaller centres where increased densities are planned and in other sensitive locations.</p> <p>DPIE will also continue to work with councils on the review of local environmental plans to ensure development standards are aligned to strategic plans and fit for purpose.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead - Planning and Assessment and PDPS</i></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 drafting of Gateway Determinations authorising councils to make LEPs 	<p>Implement the recommendation as described in the report</p> <p>DPIE will establish a program of auditing of compliance with Gateway Determination conditions. This will be undertaken with the work on Recommendation 14.</p>	<p>In circumstances when the Minister (or delegate) is the Local Plan Making Authority (LPMA), DPIE verifies that the planning proposal has complied with the Gateway determination when finalising the planning proposal.</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). 	<p>Any perceived corruption risks by DPIE teams are reported the Commission. DPIE will continue to work with the Commission to determine how corruption prevention measures can be best incorporated into the plan making process.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead – Planning and Assessment</i></p>	
<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. 	<p>Implement the recommendation as described in the report</p> <p>DPIE will examine opportunities for alternative methodologies to calculate fees associated with local development applications.</p> <p>This review will consider methodologies utilised in other jurisdictions to better understand any opportunities and constraints of various fee calculation methods from an operational and governance perspective. The type of guidance and support provided to enable easy verification of fees by consent authorities will also be reviewed.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead – Planning and Assessment</i></p>	
<p>Recommendation 19 That the DPIE considers a clear, robust and verifiable alternative to capital investment value as a jurisdictional threshold for planning panels.</p>	<p>Implement the recommendation as described in the report</p> <p>DPIE will examine the appropriateness of capital investment value as a metric for planning applications and pathways and possible clear, robust and verifiable alternatives.</p>	<p>The value trigger for referral of DAs to the District and Regional Planning Panel remains the CIV, however as a consequence of the 2018 reforms to the EP&A Act, local planning panels are mandatory for all councils in Greater Sydney, Wollongong and the Central Coast.</p>

	<p>This work will be undertaken with the work on Recommendation 18.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead – Planning and Assessment</i></p>	<p>The Minister has the power to direct which development applications are referred to local planning panels for determination. The Local Planning Panels Direction dated 23 February 2018 provides that development applications are to be determined by local planning panels where they involve a conflict of interest, more than a specified number of objections, a breach of a development standard by more than 10% or a non-numerical standard, or sensitive development (defined to include apartments to which SEPP 65 applies).</p>
<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>	<p>Implement the recommendation as described in the report</p> <p>DPIE agrees that single and comprehensive assessment is the better approach. However, the planning legislation allows proponents to determine the development proposals that are lodged. Provided all the statutory requirements are met planning authorities are required to assess and determine them as lodged.</p> <p>Within the current legislative framework, DPIE will work with the Commission to develop guidance for consent authorities to:</p> <ul style="list-style-type: none"> • encourage proponents to bring forward single and comprehensive assessment • ensure consent authorities are wary of unusual circumstances where the split of a proposed development changes the role of the consent authority • ensure corruption prevention measures are considered. <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead – Planning and Assessment</i></p>	
<p>Recommendation 22 That the DPIE issues a practice note, or other similar guidance, on the topic of local</p>	<p>Implement the recommendation as described in the report</p>	<p>The existing guidelines for local plan making are split into two guides: Local Environmental Plans – a guide to preparing local environmental plans and</p>

<p>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>DPIE will prepare guidance for councils in relation to obtaining specialist advice in relation to plan making and development assessment.</p> <p>Timeframe: 30 June 2022</p> <p><i>DPIE lead – Planning and Assessment and PDPS</i></p>	<p>Planning Proposals – a guide to preparing planning proposals. The Department is remodelling these guidelines into one concise document. The new Local Plan-Making Guideline will be a guide and clarify the Gateway and plan-making process, circumstances for review, roles and functions for stakeholders, and requirements for preparing a planning proposal.</p> <p>The OLG Model Code of Conduct for Councils also provides that council officers are not to act in a way that may give rise to a reasonable suspicion of partial performance of their duties nor take advantage of their position to obtain a private benefit, and are required to comply with their council's procurement policy.</p>
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