



Operation Eclipse: Lobbying, Access and Influence in NSW - Submission

Penrith City Council Submission to the Independent
Commission Against Corruption

Introduction

Penrith City Council would like to thank the Independent Commission Against Corruption for the opportunity to submit comments and suggestions to the Commission's investigation on Regulation of lobbying, access and influence in NSW. This submission is prepared on behalf of the Council's General Manager.

The Interim Paper raises important points through 37 questions and propositions surrounding measures to improve transparency, integrity, fairness, freedom and compliance & enforcement. Many of the issues raised in the paper do not directly relate to local government, however this submission will respond to those questions and issues which are relevant. As a general comment, the view that lobbying is a legitimate practice when carried out ethically and transparently is supported.

It is noted that some of the recommendations made by the ICAC in 2010 through Operation Halifax sought to introduce a number of measures related specifically to the type of lobbying in local government but that these recommendations have not been adopted. This submission contends that those recommendations should be revisited as an alternative to extending the LOGO Act to include council officials or broadening the definition of who is a lobbyist.

Developing a regulatory framework

- *Is the present regulatory regime under the Lobbying of Government Officials Act 2011 in need of revision and change? If so, in what aspects?*

The regulation of lobbying at the local government level should not be subject to the same regulatory regime as State government, particularly considering the legislative changes that have taken place since the introduction of the LOGO Act that have removed development assessment powers from councillors. The nature of lobbying at the local government level is different to State government in that it is rare to have a paid professional lobbyist (as regulated by the LOGO Act) engaged by a small to medium developer. In recognising the difference of lobbying at the State and local level, the Halifax report recommendations included some simple and inexpensive procedures to manage corruption risks resulting from inappropriate contact.

Council officials are subject to the *Model Code of Conduct for Local Councils in NSW* which is considered to be comprehensive enough to regulate the potential impact of lobbying activity at the local level, as distinct from the Code of Conduct for Members (of NSW Parliament) which is far less comprehensive at only two pages. However, it is acknowledged that there may be justification for some minor amendments to the Code of Conduct for Local Councils to better capture the evolving nature of lobbying.

Should the LOGO Act be changed to include provisions which relate to council officials there would need to be significant revisions and clarity provided around the different circumstances which apply to local government. In particular, regard should be given to the exhaustive regulation already required to be complied with by council officials in addition to acknowledging the lack of resources and the part-time nature of councillor roles.

- *If change is needed and justified, should it be limited to those areas where there is a recognised or an unacceptable risk of corruption or undue influence? If so, which areas or which lobbying practices carry recognised or unacceptable risks of corruption or undue influence?*
 - *In what circumstances can it be said that there exists a recognised or unacceptable risk of corruption or undue influence?*

Council staff support a risk-based approach as being the most practical approach to managing corruption. Areas of particular risk have typically focussed on planning matters and legislative matters, however, in a local government context there are other matters which may pose a high-risk including tendering and procurement along with matters of regulation or requiring approval.

- *What measures need to be taken to avoid or minimise the risk of corruption or undue influence in lobbying in those areas attendant with such risks of corrupt conduct or undue influence?*
- *In such areas, should regulatory provisions place the primary responsibility on public officials (elected or appointed) for adopting and implementing appropriate transparency and accountability measures?*

Broadening the definition of lobbyists to include any person who may have a significant relationship a council official. Operation Halifax introduced the term 'affiliate' which should be considered in a local government context.

There are already many obligations placed on council officials in the local government context with respect to conflicts of interest under the existing Code. Council staff believe there is value in putting dual responsibility and requiring anyone who is interacting with a council official, especially through a formal process, to declare any affiliation they may have with a council official. This process is largely in place when making development applications already, however, mandatory declarations across all types of applications has merit.

- *Whether standards of transparency and accountability of public officials in the conduct of lobbying activities in respect of specified classes should be codified in the legislation.*

There is value in considering whether there is an opportunity to further codify Councillor responsibilities in the Code of Conduct for Local Councils that has regard to the existing obligations already placed on council officials and the lack of resources available.

Disclosure of lobbying activity

- *The practical measures that can be implemented in order to bring the Premier's statement into effect ("The NSW community has a right to know who their politicians are meeting with, and why" - 2019).*
 - Council officials already have significant declaration obligations under the Code with respect to conflicts of interests. It is not practical for council officials, particularly councillors, to keep diaries in the same way state and federal politicians do. There may be value in requiring Councillors to make records of meetings that are high risk and meet certain criteria: i.e. meeting with a developer or applicant of pending applications or with tenderers in the process of seeking contracts from Council. An example of where this process has been adopted is the City of Bayswater, Western Australian. In March 2018 the City of Bayswater adopted the *Elected Members Contact with Developers Policy*, which can be found at this link: <https://www.bayswater.wa.gov.au/online-services/forms-and-publications/policies/2018/elected-members-contact-with-developers-policy>. Councillors email through a record of their contact through to the council's Governance team within 10 days of the contact occurring. The team then

update the register and it is published on the council's website, which can be found here: <https://www.bayswater.wa.gov.au/online-services/forms-and-publications/registers/2019/elected-members-contact-with-developers-register>

- Any additional obligations required of Councillors must recognise that Councillor roles are part-time and do not enjoy the same level of resources of their state and federal counterparts. Practical measures that may assist could include providing easy to use templates or online forms to record meetings and submit to General Managers.
- *Whether some aspects of transparency and accountability models operating in Queensland, Ireland, Scotland and Canada (where the onus for disclosure of lobbying activities is on lobbyists) ought to be considered and possibly adopted in NSW*
 - As outlined previously, lobbying in local government is different from state government and does not often involve professional lobbyists. Having said that, Council supports an approach where any person interacting with council officials in a formal process is required to declare any affiliation they have with a council official. This combined with the already stringent disclosure requirements of council officials provides an additional layer of transparency that may help manage any real or perceived conflicts.
- *Whether adequate transparency could be achieved by improving the current system of published ministerial diaries, such as by requiring a greater level of information to be divulged.*
- *Whether other public officials, in addition to ministers of the Crown, should be compelled to maintain and, if necessary, disclose relevant diary information – Whether an oversight body, such as the NSW Electoral Commission, should be able to obtain and publish information about lobbying activities*
 - Publishing of diaries for local government officials is not supported. The preferred approach is to maintain a register, in limited circumstances, for council officials who declare meetings in situations that meet specific criteria.

The NSW Lobbyists Code of Conduct

- *Amending the Code to create obligations for public officials who deal with lobbying proposals*
- *Enhancements to the Code that proscribe conduct by lobbyists such as offering gifts or hospitality*
- *Amendments to the Code of Conduct (Clauses 6.14 & 6.15) widening the undue influence section to include lobbying and if possible, disclosures by councillors.*
- *Enhancements to the Code that make it easier for improper practices to be identified and for the watchlist to be used as intended*
 - Any additional measures prescribed for council officials must acknowledge the obligations that already exist in the Code of Conduct for Local Councils.
 - There is merit in prescribing and making any affiliates (if this term is adopted from Operation Halifax recommendations) aware that gifts or hospitality are not appropriate.

The revolving door

- *Extending the length of the cooling off period and/or broadening it to other classes of public official*
- *Strengthening the Code to prohibit or limit lobbying activity that would place a public official in a conflict of interest (as is the case in Canada)*
- *Strengthening or expanding the role of the parliamentary ethics adviser, for instance, by requiring ministerial/electorate staff to seek advice in relevant situations*
- *Creating a separate register of lobbyists who are former public officials, or otherwise identifying former public officials who are lobbyists*
- *Placing additional obligations on public officials to disclose and manage lobbying activities made by former “insiders”*
 - Many of these questions do not relate specifically to the local government context. There is merit however in further consideration of points 3 and 4 which could help all levels of government better manage conflicts.

The oversight model

- *Whether the powers, functions and resources of the Electoral Commission should be enhanced. In particular, whether the Electoral Commission should have a mandate that goes beyond registration and administration issues concerning the regulation of lobbyists and include a role in exposing improper or unethical conduct by lobbyists or public officials*
- *Whether oversight of the LOGO Act and the publication of diary summaries should be transferred to a different body, such as a standalone lobbying commissioner or other body*
 - The body responsible for the administration of the LOGO Act should be delegated the resources and authority to perform their role effectively. With respect to the Office of Local Government which administers the obligations placed on council officials through its Code of Conduct, Council has long advocated for the Office of Local Government to be better resourced.

Lobbying and influencing

Commission is interested in any other enhancements that make public decision-making resistant to undue influence; for example:

- *Improvements to relevant education and training programs to ensure the duties of public officials are understood*
- *Changes to the way the government consults with the public about key policy and legislative decisions.*
- *Co-designing government policy with relevant interested parties.*
 - Mandatory induction and ongoing professional development for councillors has been introduced to support councillors in performing their official functions and any regime which promotes increased professional development for public officials is supported.

For any further information regarding this submission please do not hesitate to contact Glenn McCarthy, Governance Manager on [REDACTED]