

[REDACTED]

Independent Commission Against Corruption
Level 7, 255 Elizabeth Street
SYDNEY NSW 2000

Via email [REDACTED]

Subject: Operation Witney – DPHI’s 24-month implementation report

[REDACTED]

Thank you for your letter of 9 August 2024 seeking a further report from the Department of Planning, Housing and Infrastructure (DPHI) on its progress in implementing its action plan for recommendations 9, 10, 13 and 14 arising from Operation Witney.

Please find attached DPHI’s 24-month progress report.

Implementation of the recommendations has been overtaken by the NSW Government’s broader reform agenda for the regulation of councillor conduct.

The Office of Local Government (OLG) has issued a discussion paper on the Government’s proposed reforms which is available on its website at www.olg.nsw.gov.au. Submissions are due to be provided by 15 November 2024.

The recommendations may not be implemented in precisely the form originally contemplated by the then Department of Planning and Environment’s plan of action for implementing the recommendations. However, I am confident that the corruption risks identified in Operation Witney that informed the recommendations will be addressed through the measures contemplated by the Government as part of its reform agenda. More information about these measures is provided in DPHI’s 24-month progress report.

Should you wish to discuss implementation of DPHI's plan of action, please contact [REDACTED]

Yours sincerely,

[REDACTED]

Brett Whitworth
Deputy Secretary
Office of Local Government

Encl. 24-month implementation report

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Department of Planning, Housing and Infrastructure's report on the implementation of the plan of action in response to recommendations made in the Commission's *Investigation into the conduct of the local member for Drummoyne* (July 2022)

Please indicate which applies:

- This is a final report; the plan of action is fully implemented
- This is an interim report; a further report will be provided in twelve months

The Commission notes that the previous NSW Department of Planning and Environment was split into two departments, including the Department of Planning, Housing and Infrastructure (DPHI).

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 DPHI 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 its corruption prevention representative named in the cover letter. The corruption prevention representative will advise if the report format has the Commission's endorsement.

However, if the DPHI prefers to adhere to an established format, the following may be used as a guide.

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Report (interim)

Recommendation 9:

That the NSW Department of Planning and Environment ensures any guidelines issued pursuant to s 23A of the *Local Government Act 1993* regarding the lobbying of councillors include advice about:

- **the nature and frequency of meetings between councillors and interested parties, including the need to ensure transparency around these interactions**
- **how and where to report concerns about lobbying practices**
- **the receipt of submissions outside of formal processes, including the transmission of material to specific councillors in a way that excludes other councillors and staff**
- **councillors' attendance at staff meetings with parties interested in an outcome**
- **councillor representations to staff arising from lobbying interactions**
- **the lobbying of councillors by interested parties with whom they have a pre-existing relationship.**

Lobbying guidelines for councils and a model lobbying policy are being developed and will be issued for public consultation. The model lobbying policy will:

- address how professional lobbyists are identified and councils' and councillors' obligations when meeting with a professional lobbyist,
- set out inappropriate behaviours when being lobbied,
- identify steps to be taken to ensure transparency,
- require council officials to report inappropriate or corrupt lobbying behaviours to the council's general manager.

Recommendation 10:

That the NSW Department of Planning and Environment updates the Model Code of Conduct for Local Councils in NSW to refer to any councillor lobbying guidelines and to reflect the substantive advice contained in the guidelines

The Government is proposing to move to a streamlined, aspirational code of conduct for councillors which may no longer operate as an appropriate vehicle for prescribing compliance with lobbying guidelines.

Instead, it is proposed prescribe a requirement under the Local Government (General) Regulation 2021 for councils to adopt a lobbying policy. The model lobbying policy will be issued under section 23A of the *Local Government Act 1993*, meaning that councils will be required to consider the model policy when adopting a lobbying policy.

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Recommendation 13:

That the Department of Planning and Environment amends the Model Code of Conduct for Local Councils in NSW to generally prohibit councillors' involvement in matters where they have a pecuniary or significant non-pecuniary conflict of interest, beyond exercising the general rights afforded to a member of the public. An exception should be made in circumstances where a councillor reallocates or delegates their duties, refers interested parties to the appropriate way of making a representation or makes a complaint due to becoming aware of improper conduct.

The Government is proposing to move to a streamlined, aspirational code of conduct for councillors. Requirements relating to the disclosure and management of pecuniary conflicts of interest will no longer be prescribed under the Model Code of Conduct and will instead be regulated under the Act and Regulation.

It is proposed to maintain an absolute prohibition on a councillor being involved in any matter before council where a pecuniary conflict of interest exists, unless otherwise determined via regulation.

Recommendation 14:

That the Department of Planning and Environment amends the Model Code of Conduct for Local Councils in NSW to include provisions about the appropriate role of council workshops. In particular, it should be made clear that workshops cannot be used to transact council business.

At the request of the Minister, amendments are being made to the Model Code of Meeting Practice for Local Councils in NSW to restrict the receipt of information and the consideration of council business outside of formal council and committee meetings.

Councils will be required to establish mechanisms to ensure Councillors do not receive briefings from staff outside formal council or committee meetings. Councillors will not be permitted to use briefings to debate or make decisions on items of business they are being briefed on. Any debate and decision-making must be left to the council or committee meeting at which the item of business is to be considered.

Because the briefings will occur during council or committee meetings, it must meet in the presence of the public, unless grounds exist under section 10A of the *Local Government Act 1993* to close the meeting to the public to consider confidential business.

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