

Our ref: A830958
Your ref: E19/1452/02

The Hon John Hatzistergos AM
Chief Commissioner
Independent Commission Against Corruption
icac@icac.nsw.gov.au, [REDACTED]

Subject: Report of the investigation into the conduct of the Local Member for Drummoyne

Dear Mr Hatzistergos

I am writing in response to your predecessor's correspondence of 28 July 2021.

As required by section 111E of the *Independent Commission Against Corruption Act 1988*, please find attached the Department of Planning and Environment's (DPE) plan of action in response to the Commission's recommendations 9, 10, 13 and 14 in its report on Operation Witney.

I am pleased to advise that the Department accepts these recommendations and has commenced work on implementation of recommendation 9. Recommendations 10, 13 and 14, which require amendments to the *Model Code of Conduct for Local Councils in NSW*, will be implemented as part of the implementation of the outcomes of the independent review of the framework for dealing with councillor misconduct currently being undertaken by Mr Gary Kellar PSM.

Should you wish to discuss any aspect of DPE's plan of action or its implementation, please do not hesitate to contact [REDACTED] in the Office of Local Government's on [REDACTED] or by email at olg@olg.nsw.gov.au.

Yours sincerely

[REDACTED]

Mick Cassel
Secretary

Encl: DPE Plan of action – Operation Witney

The Department of Planning and Environment plan of action in response to recommendations made in the *Investigation into the conduct of the local member for Drummoyne (Operation Witney)*

PART A: The Department of Planning and Environment's response to corruption prevention recommendations

Firstly please indicate the response to be taken for each recommendation made.

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.

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 of Planning and Environment 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.

N/A

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

N/A

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.

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 of Planning and Environment 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.

N/A

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

N/A

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.

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 of Planning and Environment 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.

N/A

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

N/A

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.

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 of Planning and Environment 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.

N/A

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

N/A

PART B: The Department of Planning and Environment's plan of action

In this section, please provide details of the Department of Planning and Environment'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 recognises a single template may not suit every agency or investigation. In view of this, the Department of Planning and Environment 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.

However if the Department of Planning and Environment prefers to adhere to an established format, the following may be used as a guide.

Plan of action

Recommendation 9 – Implement the action as recommended in the report

The recommended guidance will be included in the guidelines on the lobbying of councillors currently being prepared by the Office of Local Government in response to Operation Dasha corruption prevention recommendation 8. The Guidelines will be issued under section 23A of the *Local Government Act 1993*.

Timeframe 30 June 2023

DPE lead – Office of Local Government

Recommendation 10 – Implement the action as recommended in the report

The *Model Code of Conduct for Local Councils in NSW* (Model Code of Conduct) will be amended to require councillors to comply with any policy adopted by the council in relation to the lobbying of councillors and any guidelines issued by the Office of Local Government (the proposed guidelines will contain a model policy).

The amendments to the Model Code of Conduct will be made as part of the implementation of the outcomes of the review of the councillor misconduct framework currently being undertaken by Mr Gary Kellar PSM.

Timeframe 31 December 2023

DPE lead – Office of Local Government

Recommendation 13 – Implement the action as recommended in the report

The Model Code of Conduct will be amended to expand the scope of the application of the pecuniary interest provisions beyond council and committee meetings to include all situations in which councillors exercise their official functions. The non-pecuniary conflict of interest provisions of the Model Code of Conduct already apply to all situations in which councillors exercise their official functions.

The amendments to the Model Code of Conduct will be made as part of the implementation of the outcomes of the review of the councillor misconduct framework currently being undertaken by Mr Gary Kellar PSM.

Timeframe 31 December 2023

DPE lead – Office of Local Government

Recommendation 14 - Implement the action as recommended in the report

The Model Code of Conduct will be amended to make it clear that workshops must not be used to transact business and that councillors and others must disclose and appropriately manage conflicts of interest they may have in matters discussed at workshops.

Consideration will also be given to the need for corresponding amendments to the *Model Code of Meeting Practice for Local Councils in NSW* (Model Meeting Code) to promote the appropriate use of workshops and to increase public visibility of the matters discussed at them. There are existing provisions in the Model Meeting Code governing appropriate practice at pre-meeting councillor briefings.

The amendments to the Model Code of Conduct and the Model Meeting Code will be made as part of the implementation of the outcomes of the review of the councillor misconduct framework currently being undertaken by Mr Gary Kellar PSM.

Timeframe 31 December 2023

DPE lead – Office of Local Government