

DRAFT LGNSW SUBMISSION

The Development of Guidelines and a Model Policy on the Lobbying of Councillors

SEPT 2022

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.



OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs more than **55,000 people**



Local government in NSW looks after more than **\$136 billion of community assets**



Local government in NSW spends more than **\$1.9 billion each year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna**



NSW has 450 council-run libraries that attract more than **34.8 million visits each year**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



NSW councils manage an estimated **3.5 million tonnes of waste each year**



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**

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1. Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to respond to the development of guidelines and a model policy on the lobbying of councillors and to provide a view on whether the *Lobbying of Government Officials Act 2011* (the LOGO Act) should apply to local government.

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

2. General Comments

In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives.

Section 232(1) of the *Local Government Act 1993* (LG Act) makes it clear that councillors have a representative role in considering the views of constituents and communicating with them. This section relevantly provides that the role of a councillor includes:

- (b) to make considered and well-informed decisions as a member of the governing body,
- (d) to represent the collective interests of the residents, ratepayers and the local community
- (e) to facilitate communication between the local community and the council.

To this end the lobbying guidelines and the model policy must be very clear about the difference between lobbying that is sanctioned as being part of the role of a councillor and lobbying that is improper.

Improper lobbying is simpler to identify as it usually involves a pecuniary conflict of interest or a significant non-pecuniary conflict of interest as defined in the “Model Code of Conduct for Local Councils in NSW” (the Code of Conduct).

3. ICAC’s Recommendations on the Content of the Proposed Guidelines and Policy

Following several investigations that involved the lobbying of councillors, the Independent Commission Against Corruption (ICAC) recommended the development of lobbying guidelines and a model policy. These submissions address the following requests for views and suggestions to action ICAC’s recommendations:

- The views of councils and suggestions on ICAC’s recommendations on the content of the proposed guidelines
- Suggestions on what issues, behaviours and risks need to be addressed in the guidelines and model policy

The following are the recommendations made by ICAC:

Operation Dasha

Recommendation 8

That the Department of Planning and Environment (DPE), following a reasonable period of consultation, issues guidelines under section 23A of the *Local Government Act 1993* (LGA) to introduce measures to enhance transparency around the lobbying of councillors. The guidelines should require that:

- 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, and
- 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.

Transparency and accountability are fundamental to building community confidence in local government decision making. However, the implementation of any measures such as the provision of meeting rooms and note takers, needs to consider the impact on the staff and financial resources of councils.

The guidelines need to take into account that councillors receive much less administrative and financial support than State and Federal counterparts. Additionally, the measures to be introduced need to consider the voluntary and part-time nature of the office of a councillor and that many councillors are in full time employment in addition to being elected representatives. This impacts the ability of all councillors to attend meetings that are in addition to the ordinary and committee meetings of council or to commit to other obligations.

4. Suggestions for the Guidelines

A councillor could be required by the guideline to make a declaration regarding any meetings the councillor has had with developers, third party lobbyists or persons seeking to tender with the council (and these terms must be clearly defined). These declarations could either be tendered at the next ordinary meeting of council at the start of the meeting or sent by email to the governance team of the council, within a certain period of time. The declaration should also be kept in a publicly available register on the council's website.

In addition, the Government Information (Public Access) Regulation 2018 should be amended to include the declaration on the list of records prescribed as open access information.

Just as the Code of Conduct provides template forms for the declaration of interests, the lobbying guideline could provide a template form for the declaration.

LGNSW does support staff reporting any attempts by councillors to influence them being reported in writing to the General Manager of the council. Currently the Code of Conduct sets out the obligations that arise from relationships between council staff and councillors. It includes prohibiting councillors from directing staff; attempting to direct or influence staff or contacting staff otherwise than in accordance with the council's policies.

However, it does not put an obligation on staff to disclose attempts by councillors to influence them in their decision making.

The *Councillor and Staff Interaction Policy* (the Interaction Policy) issued by the Office of Local Government as best practice provides at clause 6.1 that a councillor must not take advantage of their official position to improperly influence other councillors or members of staff in the performance of their civic or professional duties for the purposes of securing a private benefit for themselves or for another person. It goes on to state that if it occurs it should be immediately reported to the General Manager or Mayor in the first instance, or alternatively to the Office of Local Government, NSW Ombudsman, or the NSW Independent Commission Against Corruption.

LGNSW supports the guidelines including a requirement similar to *clause 6.1 of the Interaction Policy*.

Operation Witney
<p><u>Recommendation 9</u></p> <p>That DPE ensures any guidelines issued pursuant to section 23A of the LGA regarding the lobbying of councillors (see Operation Dasha recommendation 8 above) include advice about:</p> <ul style="list-style-type: none"> • 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, and • the lobbying of councillors by interested parties with whom they have a pre-existing relationship. <p><u>Recommendation 10</u></p> <p>That DPE 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.</p>

LGNSW does support the advice in recommendation 9 being provided to council officials, whether it is by way of a new lobbying policy or by amending the Code of Conduct to address this advice.

The advice should include information that will assist staff, councillors, and council delegates to be fully aware of the circumstances that could render conduct associated with lobbying activity as corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* (ICAC Act). It should also include a clear explanation of the difference between improper lobbying and community engagement. It would also be useful to include examples of both proper and improper lobbying.

LGNSW supports recommendation 10.

5. Extension of the Lobbying of Government Officials Act 2001 (LOGO Act) to Local Government

Operation Dasha

Recommendation 7

That the NSW Government amends the LOGO Act to ensure all provisions apply to local government.

Operation Eclipse

Key Finding 5

The local government sector faces considerable risk of undue influence and should be regulated by the LOGO Act.

Investigations conducted by ICAC and interstate anti-corruption commissions indicate that local councils are often the target of improper lobbying. However, local government officials are not “government officials” as defined by, and for the purposes of, the LOGO Act.

The Model Code of Conduct for Local Councils in NSW does not explicitly refer to lobbying; however, it does contain general obligations in relation to ethical and honest conduct, as well as more detailed material covering:

- improper and undue influence
- inappropriate interactions
- use and security of confidential information
- recordkeeping.

Extending the provisions of the LOGO Act to local government would, among other matters, allow the lobbying regulator to provide guidance about the appropriate policies and procedures that would best suit the circumstances of local councils, particularly regarding matters about planning, land use, the environment and community amenities.

LGNSW does not oppose the LOGO Act being extended to local government provided, that as for the lobbying guidelines and model policy, consideration is given to:

- (a) the unique local government context, the representative role of councillors and the importance of community consultation at a local level; and
- (b) the existing and extensive regulation of local government under mechanisms other than the LOGO Act, in order to avoid duplicative or unnecessary regulation.

There is already a widespread appreciation in the local government sector of the corruption risk associated with planning and development, but also acknowledgment (as outlined in further detail below) that much of this risk has shifted to planning panels with the transfer of planning powers to these bodies.

As referenced in Operation Eclipse’s Key finding 5 (above), the LG Act and in particular Chapter 14 of the LG Act, already contains an extensive framework for regulating conduct, honesty, disclosure of interests, misconduct, corruption and for the making and investigating of complaints. Contained within this framework is the Code of Conduct, which is prescribed under the Local Government (General) Regulation 2021 and which all councils must adopt.

It is important that any new guidelines or policy, avoid unnecessarily duplicating obligations already imposed on council officers.

LGNSW welcomes any assistance being provided to councils by the lobbying regulator on the appropriate policies and procedures suited to local councils, particularly regarding matters about planning, land use, the environment and community amenities.

6. Extension of the LOGO Act and the NSW Lobbyists Code of Conduct to Local Planning Panels

The conduct in Operation Dasha occurred between 2013 and 2016 and the conduct in Operation Whitney occurred between 2013 and 2016. Since then, mandatory Local Planning Panels (LPPs) are now in place for all councils in Sydney, Wollongong City Council and the Central Coast. In addition to LPPs there are also Sydney Planning Panels (SPP) and Regional Planning Panels (RPP).

LGNSW is opposed to the mandatory application of LPPs, as they erode community and local government planning powers. It is essential that communities have a say in the future of their communities through a planning process led by democratically elected representatives.

However, in considering extending the LOGO Act to local government, it should be borne in mind that LPPs are not subject to the direction or control of the council, except on matters relating to procedures of the panel or the time within which it is to deal with a matter.

The referral criteria for matters to be determined by LPPs were developed with two key objectives in mind, one of which was:

- ensuring LPPs focus on contentious and complex development applications and applications with the greatest corruption risk, while council staff continue to determine routine applications.

Due consideration should therefore be given to the considerable authority (and any associated lobbying risk) that has been transferred to LPPs in relation to development applications and planning proposals.

However, whilst all planning panels have Codes of Conduct only the SPP and RPP requires panel members to comply with the NSW Lobbyists Code of Conduct.

It is the view of LGNSW that panel members of LPPs should also be required to comply with the NSW Lobbyists Code of Conduct and with the LOGO Act.