

Our Ref: R20/0002#09 Out-34435

26 May 2022

Mr Michael Cassel
Secretary
Department of Planning & Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Via: NSW Planning Portal

Dear Mr Cassel

LGNSW Draft Submission - Council Conflict of Interest Policy

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 make a submission regarding the Department of Planning and Environment's (DPE) consultation on the proposal to introduce a new legislated conflict of interest policy for councils in NSW. LGNSW notes this is in response to concerns identified in [*An inherent conflict of interest councils as developer and regulator*](#) (December 2020).

This is a draft submission awaiting review by the LGNSW Board. Any amendments will be forwarded in due course.

LGNSW has engaged with DPE since early 2021 in working towards an appropriate response to the Ombudsman's recommendations. The genesis of the Ombudsman's report was an investigation into a remote council, which allegedly did not enforce compliance on one of its own buildings under construction, and as noted by the DPE in its response to the Ombudsman, the Office of Local Government has since worked with the council in question to put in place appropriate probity measures.

Under the proposed approach currently on exhibition, new requirements will be introduced into the Environmental Planning and Assessment Regulation 2021 for councils to prepare and publicise a policy that sets out how they propose to manage potential conflicts of interest. Councils will also have to publicly communicate via the NSW Planning Portal the management approaches they propose to implement (if any) for each development subject to the policy.

LGNSW considers that the context and the content of the proposed draft legislated policy do not directly correlate with the original Ombudsman's investigation or recommendations of the December 2020 report. Further, a range of risk-based measures currently operate within the planning system to manage councils' potential conflicts of interest, particularly where a

council is both proponent and decision maker. As noted by the DPE, these include independent regional panels and local planning panels. The Office of Local Government also provides clear directions, protocols and requirements around council conduct, consistent with the *Local Government Act 1993*. Within this framework, the vast majority of councils already have their own systems and policies that address potential conflict of interest matters as a risk-based response to assessing and determining council initiated development applications.

Nonetheless, LGNSW certainly appreciates the importance of having strong mechanisms in place to deal with potential conflicts of interest that arise when councils have concurrent roles as both development proponent and consent authority, and/or as both development proponent and regulator.

LGNSW would therefore support having a public-facing policy that is adopted by the council, based on template guidelines provided by the DPE. However, these requirements should be designed so as not to create an administrative burden for councils. It is impractical and unnecessary to require councils to publicly communicate on the NSW Planning Portal the management approaches they propose to implement (if any) for each development that is subject to this policy. Rather than having a requirement that councils navigate complex portal systems on an application-by-application basis, it should be sufficient for councils to publish their council-approved policy via their own websites.

In relation to the intention to amend the Environmental Planning and Assessment Regulation 2021 (the Regulations), LGNSW requests the opportunity to view and comment prior to finalising any draft proposed amendment to the Regulations, should this proceed.

In conclusion, the overwhelming majority of council processes already embed measures to ensure that the types of conflicts referred to by the Ombudsman do not occur. LGNSW acknowledges the DPE's efforts to respond to the Ombudsman's recommendations by proposing to provide additional policy guidelines to help councils manage potential conflicts of interests for their own developments. However, LGNSW does not support the proposal to require councils to publish their individual management approaches for these developments. Finally, should DPE pursue these additional governance arrangements, LGNSW recommends that councils be permitted to augment or adjust their existing policies and procedures to allow for tailored and appropriate responses that suit individual council needs.

To discuss this submission in more detail, please contact LGNSW Strategy Manager Planning Jane Partridge at jane.partridge@lgnsw.org.au or on 02 9242 4093.

Yours sincerely



Scott Phillips
Chief Executive