

The Commission has made 11 recommendations to help the Department of Planning and Environment (“the DPE”) prevent the conduct identified in the investigation from recurring.

Recommendation 1

That the DPE issues guidelines under s 23A of the *Local Government Act 1993* addressing:

- approval and reporting requirements for overseas travel by councillors in an official capacity
- governance and probity guidance about councillors travelling overseas in an official council capacity, including related funding arrangements.

Recommendation 2

That the Department amends the Model Code of Conduct to prohibit council officials, including councillors, from accepting gifts and benefits (including hospitality and contributions to travel) from property developers. An exemption should be considered for situations where the receipt of hospitality is in connection with a councillor’s attendance at industry briefing, educational, professional development and training events – such as workshops, conferences, seminars, symposiums – that are provided, organised or sponsored by a property developer.

Recommendation 3

That the Department provides guidelines for councils stating that, when they propose to form an informal committee consisting of councillors, they should establish:

- (i) clear terms of reference and objectives for the group, including its role
- (ii) governance arrangements, accountability and transparency measures (including proper record-keeping requirements and ensuring the group cannot direct staff)
- (iii) an obligation to report in a timely manner on the deliberations of the group to other councillors
- (iv) that the group does not have a decision-making function normally carried out through other council processes or activities.

Recommendation 4

That the DPE also provides guidelines for councils in relation to when it is appropriate or inappropriate to establish informal working groups. For example, whether they should be convened to deal with statutory and administrative decisions including planning and other regulatory and procurement matters.

Recommendation 5

That the DPE amends the *Model Code of Meeting Practice for Local Councils in NSW* to require a council’s governing body to provide reasons for approving or rejecting development applications, planning proposals and planning agreements where decisions depart from the recommendations of staff. These reasons should refer to the relevant merits criteria and explain why the decision is more meritorious than the recommended outcome.



Recommendation 6

That the DPE seeks amendment of the Environmental Planning & Assessment Regulation 2021 to require councils and other planning authorities to demonstrate that the following have been considered before entering into a planning agreement:

- the fundamental principles (2.1) in the *Planning Agreements Practice Note 2021*
- the acceptability test (2.5) in the *Planning Agreements Practice Note 2021*
- the methodology or structure that was used to determine the reasonableness of the proposed contribution and its real value
- the public interest.

Recommendation 7

That the DPE produces guidelines and provides training to assist councillors regarding the proper exercise of their decision-making role in respect of planning agreements.

Recommendation 8

That the DPE develops guidance on the essential information that must be submitted with an offer of a planning agreement to a council or other planning authority.

Recommendation 9

That the DPE:

- conducts regular risk-based audits of planning agreements negotiated by councils
- establishes guidelines for conducting risk-based audits
- publishes audit outcomes
- uses the outcomes from audits to improve the processes and procedures governing negotiation and execution of planning agreements.

Recommendation 10

That the DPE seeks amendment of section 375A of the *Local Government Act 1993* to include planning agreements in the definition of planning decisions that require a register of votes to be kept.

Recommendation 11

That the DPE issues advice to councils and other planning authorities about the need to consider any proposed instrument, including any draft local environmental plan (LEP), when determining a development application. The advice should address the:

- case law and principles established by the courts
- weight to attribute to a draft LEP, with particular regard to its imminence and certainty.

