



# Premier & Cabinet

The Hon. Jenny Gardiner MLC  
Chair  
General Purpose Standing Committee No. 4  
Legislative Council  
Parliament House, Macquarie Street  
SYDNEY NSW 2000

Dear Ms Gardiner

I refer to the interim report of General Purpose Standing Committee No. 4 tabled on 20 November 2009 entitled 'Badgerys Creek land dealings and planning decisions'. Enclosed is a copy of the Government's response.

Yours sincerely

Paul Miller  
**A/Deputy Director General (General Counsel)**



## **RESPONSE TO THE INTERIM REPORT OF THE GENERAL PURPOSE STANDING COMMITTEE NO. 4 – BADGERYS CREEK LAND DEALINGS AND PLANNING DECISIONS**

The Government has considered the interim report, 'Badgerys Creek land dealings and planning decisions', tabled on 20 November 2009 by the General Purpose Standing Committee No. 4 (the "Committee").

The Government has also considered the second and final report of the Committee tabled in February 2010. It is noted that a Government response to this report was not requested.

The Government is pleased to provide the following response to the Committee's interim report.

### **BACKGROUND**

On 20 November 2010, the Committee published an interim report on its inquiry into Badgerys Creek land dealings and planning decisions. The report contained 11 recommendations.

A final report was released by the Committee on 25 February 2010. No further recommendations were made in the final report.

Importantly, the Committee concluded in its reports that "...there is no clear evidence that the meetings or communications between planning officials and proponents and representatives of the Badgerys Creek Consortium influenced planning decisions regarding the Medich site".<sup>1</sup>

This is consistent with the findings of the Independent Commission Against Corruption (the "ICAC") following its investigation into allegations of corruption made by or attributed to Michael McGurk.

The central purpose of the ICAC's investigation was to determine whether there was any improper relationship of influence between Mr Medich and others, on the one hand, and Department of Planning officials, Members of the Government, Ministers and local councillors on the other.

In the course of its investigation, the ICAC obtained documents and information, took statements from relevant persons, obtained and executed search warrants on various premises to locate recordings allegedly made by Mr McGurk, and conducted 27 private examinations.

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<sup>1</sup> General Purpose Standing Committee No. 4, Parliament of NSW, *Badgerys Creek land dealings and planning decisions* (2009) page 36.

The ICAC also held public hearings so as to open to public scrutiny the nature of the ICAC's investigation into the allegations.

The ICAC found that the allegations were without substance, and no findings of corrupt conduct were made.

Both the Committee's and the ICAC's findings reaffirm the integrity of the NSW planning system. The Committee observed, however, that there remains a public perception that planning decisions may be unduly influenced by proponents, professional lobbyists and major political donors. The Committee's recommendations are therefore aimed at addressing this public perception by strengthening the systems that regulate contact between planning officials, proponents and their representatives.

## **RECOMMENDATIONS IMPLEMENTED BY THE GOVERNMENT**

**Recommendation 1** of the Committee's interim report refers to the inquiry conducted by the Legislative Council Standing Committee on State Development into the NSW planning framework.

The Committee recommends that "...upon the tabling of the report of the NSW Legislative Council Standing Committee on State Development on the NSW planning framework, the NSW Government should respond quickly to any recommendations made in the report, in particular any recommendations designed to reform the NSW planning framework".

The report of the Legislative Council Standing Committee on State Development was tabled on 10 December 2009 and the Government's response is due in June 2010.

The Department of Planning is undertaking an analysis of the report and a response to each of its recommendations will be provided in due course.

**Recommendation 2** of the Committee's interim report is that "the NSW Government ensure that the State's planning framework is amended to incorporate principles to guide the integration of planning decision-making with infrastructure planning and economic development priorities". This will be considered as part of the Government's response to the report of the Legislative Council Standing Committee on State Development (see Recommendation 1 above).

**Recommendations 3 and 4** of the Committee's interim report relate to the procedures that apply to meetings between officers of the Department of Planning, development proponents and their representatives.

The Committee recommends that "the Minister for Planning establish protocols to be applied to all meetings between Departmental officers with development proponents and their representatives. At a minimum, the meeting protocols should contain guidelines regarding venues, properly recorded minutes and the requirement for the third party presence of at least two Departmental officers". The Committee also suggests that "the Minister for Planning establish record-keeping guidelines to be applied to all telephone conversations between Departmental officers and development proponents and their representatives".

Consistent with Recommendations 3 and 4, the Department of Planning has implemented the *Meeting and Telephone Communications – Code of Practice* to guide staff in their interactions with development proponents, lobbyists, community groups and opponents of any planning or development matter.

On 24 November 2009, the Minister for Planning wrote to the ICAC inviting its comments on a draft version of the Code of Practice and a number of the suggestions made by the ICAC were adopted in the final version of the Code of Practice.

The Code of Practice commenced on 1 December 2009 and applies to all meetings between Departmental officers, development proponents and their representatives. The Code of Practice also applies to all telephone conversations as recommended by the Committee.

Among other things, the Code of Practice prescribes where meetings may be held, requires properly recorded minutes to be prepared and filed, and requires at least two Departmental officers to be present at all meetings.

The Code of Practice also provides that the Department of Planning will disclose all meeting or telephone interactions with registered lobbyists (including names of the individuals and organisations they represent and the number of meetings or telephone calls) in relation to any specific planning or development proposals in an attachment to the relevant reports prepared by the Department on the proposals, which are routinely published online.

**Recommendation 5** provides that “the Minister for Planning ensure that the Department of Planning’s procurement procedures are publicly available, and that where there are circumstances under which it is justifiable that procurement procedures are not adhered to, that these should also be made public. Disclosures relating to procurements and consultancies should appear in the Department of Planning’s annual report”.

In recognition of the need to update its procurement practices, the Department of Planning developed and issued a new Procurement Policy in November 2009. The new Procurement Policy complies with the NSW Government’s *Code of Practice for Procurement and Procurement Guidelines*, which covers all Government procurement and outlines the obligations and standards of behaviour applicable to all parties involved in the procurement process.

In addition, a dedicated Contracts Team has been established to assist officers of the Department of Planning with procurement activities and to help ensure that the process for awarding contracts meets the highest standards of probity. Any instances where the Procurement Policy is not followed will be reported to the Planning Board for consideration and necessary action. The Department will also continue to comply with existing annual reporting requirements in relation to the engagement of consultants.

**Recommendation 6** provides that the Minister for Planning ensure that development proponents are provided with regular and timely updates on the progress of their proposals.

In accordance with the Committee's recommendation, the Department of Planning has established an online major development tracking system that enables development proponents and the public to monitor the progress of all major development proposals. This provides proponents with information on the 'real time' status of a proposal, and how it is progressing through the various assessment phases.

## **OTHER RECOMMENDATIONS**

Recommendations 7 to 10 relate to the *NSW Government Lobbyist Code of Conduct* (the "Code"), which was introduced by the Government in February 2009 to promote transparency in relation to lobbying activity in New South Wales.

The Code provides that Ministers, Parliamentary Secretaries, Ministerial staff and persons working in public sector agencies must not permit lobbying by 'Lobbyists' who do not appear on the Government's Register of Lobbyists, which is published on the Department of Premier and Cabinet's website.

A 'Lobbyist' is defined in clause 3 of the Code. The key feature of being a lobbyist is that the person or organisation's business includes being contracted or engaged to represent the interests of a *third party* to a Government representative.

The Code has application through the Codes of Conduct that apply to Ministers, Ministerial staff, senior public servants and public sector staff. In addition, all Government Members of Parliament are required to comply with the Code, and the Government has called on the Leader of the Opposition to ensure that non-Government Members of Parliament comply with the Code.

The Code does not apply to religious or charitable organisations, organisations formed to represent the interests of their members, or professionals such as lawyers, doctors and accountants.

The Code has been operating successfully for over 12 months, providing the public with information about who is lobbying Government and the third parties that lobbyists represent.

In its interim report, the Committee makes the following recommendations which would require the amendments to the Code:

- that the Premier require that each Minister is informed at regular intervals of contact between Government representatives and registered lobbyists (**Recommendation 7**);
- that the Premier publish a report on the internet at regular intervals detailing contact between government representatives and registered lobbyists, including the name of the lobbyist, date of contact, meeting attendees (if applicable) and issues discussed (**Recommendation 8**);
- that the Premier establish protocols to be applied to all meetings between Government representatives and registered lobbyists. At a minimum, the meeting protocols should contain guidelines regarding venues, properly

recorded minutes and the requirement for the third party presence of at least one Government representative (**Recommendation 9**);

- that the Premier direct the Minister for Planning, in developing a new NSW Lobbyist Code of Conduct, to review Lobbyist Codes of Conduct in other Australian jurisdictions. The Planning Minister should consider whether any of the provisions contained in these Codes should be incorporated into the NSW Lobbyist Code of Conduct, and report to Parliament on the outcomes of that review and changes the Premier proposes to make to the Code (**Recommendation 10**).

The ICAC has recently commenced an investigation into the nature and management of lobbying in New South Wales. The ICAC's investigation will, among other things, examine whether changes need to be made to the current regulatory system to promote transparency, accountability and fairness in order to reduce the likelihood of corrupt conduct. Given that the Code has now been in force for over 12 months, the ICAC's review is timely and appropriate.

On 18 May 2010, the ICAC published a comprehensive issues paper seeking public comment on a range of questions that it is considering as part of its review, including:

- What should be the guiding principles of any regulatory scheme?
- What are the current regulatory systems in other States and the Commonwealth?
- How do regulatory systems operate in other countries?
- What information should be disclosed by lobbyists?
- What information should be disclosed by those lobbied?

The Government welcomes the ICAC's review of lobbying in New South Wales and looks forward to working co-operatively with the ICAC during this important process. The Government intends to await the outcome of the ICAC's review before considering any amendments to the Code.

Finally, **Recommendation 11** of the Committee's report relates to the issue of political donations.

In its report, the Committee advocates "wide-ranging reform of the NSW election funding scheme, and in particular, tighter regulation of political donations. The Committee believes that election finance reform is urgently needed to restore confidence in the integrity of the planning process, and the political process as a whole. To achieve this end, the Committee supports the model proposed by the NSW Legislative Council Select Committee on Electoral and Political Party Funding in New South Wales in its report of June 2008".

One of the recommendations made by the Select Committee on Electoral and Political Party Funding in New South Wales in its report of June 2008 was that the Premier consult to determine a reasonable increase in public funding for election campaigns with a view to introducing bans and caps on political donations.

In accordance with the recommendations of the Select Committee, in December 2009 the Government asked the Joint Standing Committee on Electoral Matters to inquire into a public funding model for political parties and candidates to apply at the State and local government levels.

The terms of reference required the Joint Standing Committee on Electoral Matters to consider a range of issues, including:

- the criteria and thresholds that should apply for eligibility to receive public funding;
- the manner in which public funding should be calculated and allocated;
- any caps that should apply;
- any relevant reports and recommendations previously made by the Select Committee on Electoral and Political Party Funding; and
- any other related matters.

The report of the Joint Standing Committee on Electoral Matters was tabled on 26 March 2010. The Government is in the process of considering the Joint Standing Committee's 51 recommendations for reform and will respond to the Committee's report in due course.

