

**GENERAL PURPOSE STANDING COMMITTEE No 3**

**Portfolio Area: Local Government**

**Tuesday 14 October 2008**

**Responses to Questions on Notice**

**Question from the Hon DON HARWIN  
(page 5)**

**The Hon. DON HARWIN:** Have you attended any fundraisers with property developers since your appointment as Minister for Local Government?

**Mrs BARBARA PERRY:** No, I have not.

**The Hon. DON HARWIN:** Minister, are you aware of a closed meeting at Fairfield council in July this year -

**Mrs BARBARA PERRY:** Sorry, I have.

**CHAIR:** Minister, if you are not sure you can take the last question on notice.

**Mrs BARBARA PERRY:** I might take that last question on notice. I really need to check my diary to confirm that.

**ANSWER**

No.

**Question from the Hon DON HARWIN  
(page 5)**

**The Hon. DON HARWIN:** Minister, have you, your predecessor, or the department had any complaints about Fairfield council? If so, will you table that correspondence?

**Mr PAYNE:** I am not sure whether or not we have had any complaints, but I am happy to take that question on notice and check the records.

**The Hon. DON HARWIN:** Have you, your predecessor, or the department made any investigations into Fairfield council? If so, what was the verdict?

**Mr PAYNE:** I am not sure of that. I will check the situation relating to Fairfield council and that issue.

**The Hon. DON HARWIN:** Mr Payne, have you provided any advice to Minister Perry on the situation at Fairfield council, which has been extensively reported in the local media in the last couple of weeks?

**Mr PAYNE:** From memory, no. I am not sure whether we received a complaint. As you know, we receive many complaints over the period of a year. There may well be something. I am not sure but I will check it.

## **ANSWER**

The Department received 8 complaints in the last 12 months.

The Department has not undertaken any investigations, however, preliminary enquiries were conducted in regard to 4 matters in the last 12 months.

The Department has not provided the Minister with a briefing on Fairfield City Council.

## **Question from the Hon DON HARWIN (page 17)**

**The Hon. DON HARWIN:** Could I just continue the questions I asked earlier in relation to Fairfield City Council? You discussed in response to a Government member's question Promoting Better Practice reviews. You noted that your department welcomes requests from councils to undertake a review of a council. I think I heard you say that a number of councils have taken advantage of that. At any time in the past four years since the program has been in operation has Fairfield council requested a Promoting Better Practice review?

**Mrs BARBARA PERRY:** I think we will have to take that on notice.

**The Hon. DON HARWIN:** Certainly none has occurred. We have looked at the website. My question is: Have they requested one?

**Mr PAYNE:** We can check the records and take it on notice.

## **ANSWER**

No Promoting Better Practice Review has been conducted of Fairfield City Council. The Department has not received a request from Council to conduct a review.

In July 2008, Fairfield City Council advised that it had conducted a self-audit with Sutherland Shire Council using the Internal Audit Bureau to assist them in this project. Self-audits use the same tools as developed for the Promoting Better Practice Reviews.

**Question from Ms SYLVIA HALE  
(page 21)**

**Ms SYLVIA HALE:** Will you get back to the Committee about council's obligations to meet those legal costs, how much they have amounted to and how much it is anticipated they will amount to in the future?

**Mrs BARBARA PERRY:** The Committee's life ends today except for the further 28 days in regard to questions on notice, is that right?

**CHAIR:** It is up to the Committee to determine if it wants to have supplementary hearings, at which only departmental officials are obliged to attend.

**Mrs BARBARA PERRY:** Okay.

**Mr PAYNE:** The administrators are merely playing the role of the council.

**Ms SYLVIA HALE:** That is right.

**Mr PAYNE:** They are one and the same thing. That is quite a legitimate thing for council to decide. What we are saying is that we will take it on notice and find out what the position is, but we have no rights to intervene.

**Ms SYLVIA HALE:** But it would be quite feasible, for example, for a council to require to be made available to it a report on the obligations to meet those legal expenses? Similarly, it would be within the powers of the administrators to request the officers of the council to provide a report and then for you, I would think, to ask those administrators to provide any such report to you so that the details may be made public?

**Mr PAYNE:** We can seek information.

**ANSWER**

This information is held by the Council, not the Department of Local Government. However, the Department contacted Wollongong City Council, which advised that all former councillors and current/former staff involved with the ICAC hearing are covered by Council's insurance policy. It is up to the Insurer to decide whose costs will be reimbursed and by how much.

**Question from Ms SYLVIA HALE  
(page 22)**

**Ms SYLVIA HALE:** Minister, my question relates to advice to councils on the need to declare non-pecuniary interests and to give consideration to refraining from voting on matters where there may be a pecuniary or non-pecuniary interest. Are you aware that at a recent Lane Cove Council development meeting a newly elected community Independent, Pam Palmer, was instructed by Lane Cove's general manager to leave the room when a development application was being considered? The grounds for requesting Ms Palmer to leave were that the person who was number two, or possibly number three, on her voting ticket at the recent elections was one of over 40 people who wrote a letter in April 2008 about a large development in her ward, about which that person was a community activist. The newly elected councillor was required by the general manager to remove herself because of this tenuous connection. However, the general manager also said that she had a pecuniary interest because of her council salary – presumably on being elected she became entitled to a salary but, obviously, that is wrong because it is a stipend. Therefore, there is this web of connection, which resulted in her excluding herself from the meeting. Will you investigate the circumstances of this? Will you be issuing more explicit directions to councillors as to whether they are obliged to consider excluding themselves from meetings?

**Mrs BARBARA PERRY:** Firstly, the matter of pecuniary or non-pecuniary interest ultimately is a matter for the council's conscience. Secondly, general managers can give some general advice, but it is my understanding that ultimately it is a matter for the council. Thirdly, we have issued guidelines recently in relation to the model code of conduct, which I believe are very explicit about matters around pecuniary and non-pecuniary interests, and give good guidance to council and staff generally about those matters.

**Ms SYLVIA HALE:** It seems to me that we had an instance here of a new councillor, possibly attending her first development committee meeting, being told by the general manager that she should excuse herself from consideration of that issue. Will you look into it?

**Mr PAYNE:** I am happy to ask the question of the general manager of Lane Cove council because, as the Minister said, I think the guidelines are very explicit and clear. I will just make sure why the general manager does not feel they are because at the end of the day, as the Minister said, it is up to the individual councillor to decide whether there is a pecuniary interest or a conflict of interest. Nobody else can decide that other than the councillor.

**Ms SYLVIA HALE:** Okay. The other issue that arises is whether councillors have a significant non-pecuniary interest when someone who has worked for a councillor and on their behalf on a booth during the election is also a person who has lodged an objection to a proposal that later comes before the council. This is clearly causing some consternation among the ranks of councillors. Would you take steps to clarify the position?

**Mrs BARBARA PERRY:** Mr Payne has already indicated he is prepared to make some inquiries.

**ANSWER**

Clr Palmer contacted the Department on 8 October 2008 raising her concerns about the General Manager's advice regarding a potential pecuniary interest.

Clr Palmer was advised of the relevant provisions of the Model Code of Conduct as they relate to pecuniary and non-pecuniary conflicts of interests. In particular, the Model Code is very clear that the onus is on the individual to identify a conflict of interest and take the appropriate action to manage the conflict in favour of the individual's public duty.

**Question from Ms SYLVIA HALE  
(page 32)**

**Ms SYLVIA HALE:** Mr Payne, are you aware the Government has a fleet policy with regard to government departments achieving a goal or a level of environmentally responsible behaviour and adopting actions that contribute to that?

**Mr PAYNE:** I certainly do. I am very aware of it and I thank you for the question. The target is an average fleet environment score of 12 out of 20 and we meet the Government's target of 11.

**Ms SYLVIA HALE:** How do you meet that if you do not have hybrids and whatever?

**Mr PAYNE:** That is what I am told.

**Ms SYLVIA HALE:** Would you mind taking it on notice and inform the committee what measures you undertake to meet that goal?

**Mr PAYNE:** Yes, I can do that. I assume there is a formula for it.

**ANSWER**

All Departmental pool vehicles, including SES and senior officers' vehicles, are obtained through State Fleet. All State Fleet vehicles are assigned an environmental performance score, which is based on a combination of a greenhouse score and a noxious pollutants score. The Cleaner NSW Government Fleet policy requires all agency fleets to achieve a specific average environmental performance. The average specified was 12 out of 20 by the end of the 2007/08 financial year. The Department of Local Government fleet achieved an average environmental performance score of 12.1.

When selecting vehicles for the fleet, wherever possible, the Department ensures vehicles selected have a high environmental performance score.

**BUDGET ESTIMATES 2008–2009**

**QUESTIONS ON NOTICE**

**General Purpose Standing Committee No 3**

**Questions relating to the portfolio of Local Government**

**14 October 2008, 9.15am – 11.45am**

**Questions from Mr Ajaka**

**Burwood Council**

- 1. Minister, were you aware that the former Burwood Council, especially the former Labor Mayor, John Faker, have been subject to considerable media concerning their property activities?**

No.

- 2. What inquiries have you made or has your Department made into the former Burwood Council and into John Faker?**

I am advised that in 2005 the Independent Commission Against Corruption (ICAC) had previously investigated concerns about Clr John Faker and former Clr David Weiley in relation to overseas travel and some development matters before Burwood Council. Former Minister Hickey tabled the ICAC report on 9 May 2006.

The ICAC report on the matter made no findings of corrupt conduct, but did raise some issues for further action by the previous Minister and for the Department of Local Government. The report raised questions over Council's decision to reimburse the cost of the councillors' trip to Lebanon in light of doubts about whether the trip concerned the business of Council.

The Department's preliminary enquiries did not find sufficient evidence to support the allegations that the councillors did not properly comply with their pecuniary interest obligations. I am advised that Clr Faker did repay the cost of a business class airfare to Lebanon and back, which had earlier been reimbursed by the Council.

- 3. Has your Department received any complaints about Burwood Council? If so, will you table them?**

Since 1 October 2007 there have been two complaints received about Burwood Council. One was referred by the ICAC concerning employment practices. The other was about the misuse of Council resources.

I am not prepared to table them, as they may contain personal and confidential information.

**4. What correspondence have you or predecessor received from your Department in relation to Burwood council? Will you table them?**

I have received no correspondence from the Department in relation to Burwood Council. I am advised that my predecessors received five in total, being four briefing papers and a special variation application summary advice regarding Burwood Council.

I am not prepared to table them, as they may contain personal and confidential information.

**5. Were you aware that John Faker had to absent himself from 17 planning decisions at Burwood Council because of conflict of interest?**

No.

**6. Does this ring any warning bells?**

No, I encourage councillors to disclose conflicts of interest in accordance with the Model Code of Conduct, which provides clear guidance to councillors and council staff in managing conflicts of interest.

**7. Were you aware that the former Minister for Planning, Frank Sartor, in July this year asked for an independent panel to assess all major planning decisions in Burwood?**

I am advised that on 20 July 2007 the Burwood Town Centre Planning Panel was established pursuant to sections 118 and 118A of the *Environmental Planning and Assessment Act 1979*.

The Panel was established with the agreement of Burwood Council pursuant to section 118(1)(c) of the Act and with the concurrence of the former Minister for Local Government.

The reasons for appointment of the Panel were:

- Burwood Town Centre has been identified as the Major Centre for the Inner West subregion under the *Metropolitan Strategy: City of Cities*, making it a place of particular planning importance to the State;
- Council has agreed to the appointment of Panel in recognition of Burwood Town Centre's significance in achieving State planning objectives and to assist councillors who may have conflicts of interests in dealing with planning matters in the area; and
- the appointment of the Panel will facilitate the progression of the *Draft Burwood Town Centre Local Environmental Plan* and will ensure the plan is consistent with the planning outcomes identified in the *Metropolitan Strategy: City of Cities*.

**8. What action are you taking about it?**

None. This is a matter for the Minister for Planning.

**9. Are you aware of Members of Parliament through their families having a major interest in property development in the Burwood Council area?**

No.

**10. What action will you take to ensure that these Members of Parliament do not seek to improperly influence Burwood Council?**

The recently revised Model Code of Conduct was strengthened to place a greater onus on councillors, council staff and delegates in managing conflicts of interest. Additionally, the Department of Local Government is currently holding statewide councillor information sessions in an effort to better inform councillors on their obligations as public officials.

**Wollongong City Council**

**11. Minister, in all history of Local Government in this state, Wollongong City Council, a Labor Council, stands out as one of the most disgraceful episodes as revealed in the ICAC report and the list of recommended prosecutions.**

**a. What complaints did your Department receive prior to the ICAC inquiry?**

I am advised that in the year prior to the commencement on 18 February 2008 of the public hearings held by ICAC into Wollongong City Council, the Department received 70 complaints concerning Wollongong City Council. Complaints received by the Department related to the following matters:

Public Land Management - 1  
Social Community Services - 9  
Misconduct by Councils - 24  
Land Use Planning - 14  
Access to NSW Parliament - 1  
Mismanagement - 1  
Financial Management - 2  
Council Governance - 12  
Customer Service - 1  
Enforcement – 3

I am advised that of the complaints alleging corrupt conduct, the Department referred 3 to ICAC under section 11 of the *Independent Commission Against Corruption Act 1988* on the grounds that the complaint disclosed matters that the Department suspected on reasonable grounds concerned or may have concerned corrupt conduct. The remainder were not referred to the ICAC on



the basis that the matters disclosed in the complaints did not require referral under section 11. However, in such cases, the Department advised the complainant of the option to raise their concerns directly with ICAC themselves.

**b. Will you table them?**

I am not prepared to table them, as they may contain personal and confidential information.

**c. What correspondence did you or your predecessor receive from your Department in relation to Wollongong City Council? Will you table them?**

The Department kept my predecessor and I informed of developments in regard to Wollongong City Council via regular briefings.

**d. What investigations did your Department make before the ICAC inquiry? If none, why not? Will you table them?**

I am advised that the Department did not undertake any formal investigations of Wollongong City Council under section 430 of the *Local Government Act 1993* prior to the ICAC inquiry. The Department has no role in investigating corrupt conduct and all such matters are required to be referred to ICAC under section 11 of the *Independent Commission Against Corruption Act 1988*.

While not an investigation, in May 2006, the Department commenced a Promoting Better Practice Review of the Council.

I am advised that the review was undertaken in consultation with a number of other agencies, including ICAC, the NSW Ombudsman and the Department of Planning.

The Department's Promoting Better Practice review report in relation to Wollongong City Council is available on its website.

**e. How could the whole Wollongong saga have escaped the attention of your Department?**

As explained above, the Department has no role in relation to the investigation of corrupt conduct. Where the Department became aware of matters that, on its assessment, concerned corrupt conduct, it referred them to ICAC under section 11 of the *Independent Commission Against Corruption Act 1988*.

I note that the ICAC investigation uncovered systemic corruption in Council's Planning area that was spread across all levels within the organisation. This was a significant compromise of the internal firewalls that are meant to prevent and detect corrupt conduct.

The fact of the matter is that the corrupt conduct was detected and investigated by the ICAC. This demonstrates that the Government's anti-corruption systems do work and any council that participates in corrupt conduct will not go unnoticed.

**f. Did your Department refer it to ICAC?**

As described above, I am advised that in the period between 1 January 2007 and 18 February 2008 when ICAC commenced its public hearings, the Department made 3 referrals to ICAC under section 11 of the *Independent Commission Against Corruption Act 1988*.

**g. Will you table a list of Councils and Councillors that your Department has referred to ICAC since 2007?**

I am advised that it would be inappropriate to publicly disclose details of referrals to ICAC under section 11 of the *Independent Commission Against Corruption Act 1988* on the grounds that it may compromise the integrity of ICAC's operations. However, I am advised that in the 2007/08 financial year, the Department made 21 referrals to ICAC in relation to 12 different councils.

**h. In relation to the Labor councillors against whom charges have been recommended by ICAC, have there been previous complaints about them to your Department?**

I am advised that a search of the Department's document management system indicates that the Department received no complaints specifically relating to the four councillors ICAC made findings of corrupt conduct against.

**i. What does your Department know about them?**

Nothing.

**j. Are there any actions your Department is taking to prevent another Wollongong Council happening in NSW? If so, what? If not, why not?**

Yes. I am advised that the Department has taken a number of actions to ensure that councils and individual council officials perform their functions appropriately, to minimise the risk of corruption and assist in the early detection of corrupt conduct. These include, among other things, the following:

- The development and implementation of the Model Code of Conduct for Local Councils in NSW to regulate the conduct of council officials and to ensure appropriate standards of conduct are met in local councils. The Model Code was developed in consultation with other oversight agencies such as ICAC and the NSW Ombudsman. The Model Code has recently been revised. The Department has issued guidelines and a facilitators' kit

to assist councils in educating councillors and staff on their obligations as council officials and on appropriate standards of conduct.

- The Department is conducting a series of Councillor Information Sessions across 40 different metropolitan and regional locations in NSW. The sessions are designed to assist councillors elected at the recent local government elections in exercising their official functions and to comply with their ethical obligations. The seminars focus on three broad topic areas of roles, responsibilities and relationships, the code of conduct and ethical decision-making and meetings practice.
- The Department has recently issued Internal Audit Guidelines for Councils that propose the oversight of council systems and processes through an audit committee.
- Continue undertaking Promoting Better Practice Reviews of all local councils in NSW. The reviews are conducted in consultation with other external agencies such as ICAC and the NSW Ombudsman. As of last financial year, the Department had undertaken 78 promoting better practice reviews, 65 of these are fully completed and 13 are partially completed. The Department has planned to conduct 12 reviews for the 2008-09 period.
- The Department is working with the Department of Planning in preparing a response to recommendation 27 of the ICAC Report that requires all councils across NSW to revise their adopted code of conduct to prohibit binding caucus votes on planning matters.

**k. What part did your Department play in the ICAC investigations?**

The Department played no direct role in the ICAC investigations.

I am advised that the Department furnished certain information and documents in response to requests made by ICAC in connection with its investigation.

**The Minister's predecessor – Paul Lynch**

**12. How much was the total expenditure on the Ministers office from April 2007 to the date Paul Lynch was replaced by you?**

I am advised:

All ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*. Services for ministerial offices are also provided by the Department of Premier and Cabinet.

I refer you to the Premier as the Minister responsible for the Department of Premier and Cabinet

**13. How much did Paul Lynch expend on the Departmental credit card from April 2007 until you replaced him?**

I am advised:

All ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*. Services for ministerial offices are also provided by the Department of Premier and Cabinet.

I refer you to the Premier as the Minister responsible for the Department of Premier and Cabinet.

**14. How many staff did Paul Lynch have in his Ministerial office?**

I am advised:

All ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*. Services for ministerial offices are also provided by the Department of Premier and Cabinet.

I refer you to the Premier as the Minister responsible for the Department of Premier and Cabinet.

**15. What was the wage bill?**

I am advised:

All ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*. Services for ministerial offices are also provided by the Department of Premier and Cabinet.

I refer you to the Premier as the Minister responsible for the Department of Premier and Cabinet.

**16. What was the entertainment bill?**

I am advised:

All ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*. Services for ministerial offices are also provided by the Department of Premier and Cabinet.

I refer you to the Premier as the Minister responsible for the Department of Premier and Cabinet.

**17. What was the travel bill?**

I am advised:

All ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*. Services for ministerial offices are also provided by the Department of Premier and Cabinet.

I refer you to the Premier as the Minister responsible for the Department of Premier and Cabinet.

**Budget Papers – 16.3 – Agency Results Indicators**

**18. In the Budget Papers it is indicated that you foresee 2 or more councils being investigated in 2008-09 for ‘alleged council conduct seriously impacting on the community’.**

**a Which Council’s are these?**

The figure in Budget Paper No 3 is an estimate only based on prior years. It is possible that there will be no investigations conducted under section 430 of the *Local Government Act 1993* during 2008/09.

**19. How much money has been set aside for inquiries into NSW Councils?**

The Department has not budgeted for any public inquiries in the 2008/09 financial year. New South Wales Treasury has advised that it will consider funding public inquiries on a case-by-case basis.

**20. How many councils have been investigated by your Department over the past 12 months?**

The Department undertook two formal investigations under section 430 of the Act into Auburn Council and Cessnock City Council.

**a. At what cost?**

The cost for the formal investigations primarily involves the salaries of Departmental officers at Clerk Grade 9/10 level, whose role includes undertaking such investigations.

**b. Has your Department received complaints about the actions of**

**a Burwood Council? If so, how many?**

The Department received 2 complaints about Burwood Council. The complaints related to the following matters:

Employment Practice – 1

Misuse of Council Resources - 1

**b Canada Bay Council? If so, how many?**

The Department received 10 complaints about Canada Bay City Council. The complaints related to the following matters:

Land-use planning – 4  
Rates – 1  
Enforcement – 3  
Noise – 1  
Code of conduct – 1.

**c Strathfield Council? If so, how many?**

The Department received 9 complaints about Strathfield Municipal Council. The complaints related to the following matters:

Leases – 5  
Enforcement – 1  
Misconduct – 1  
Terrorist Rally – 1  
Pecuniary interest – 1.

**d Fairfield Council? If so, how many?**

The Department received 2 complaints about Fairfield City Council. The complaints related to the following matters:

Complaints Handling – 1  
Customer Service/Enforcement – 1.

- 21. Minister, given your Department has an allowance to investigate councils for, 'alleged council conduct seriously impacting on the community' and 'maladministration or corruption', why is it that you and your Department continually decline to investigate allegations of council misconduct and defer allegations to the accuser to present to the ICAC?**

The Department has three statutory complaint handling roles. First, the Department examines complaints for breaches of the pecuniary interest provisions of the *Local Government Act 1993*. Second, the Department examines protected disclosures made to the Director General alleging serious and substantial waste of council money under the *Protected Disclosures Act 1994*. Third, the Director General can investigate councillors for misbehaviour.

The Department has no jurisdiction to investigate allegations of corrupt conduct. This is the role of the Independent Commission Against Corruption. Like all NSW Government agencies, the Department must refer any matter that on reasonable grounds concerns or may concern corrupt conduct, including misconduct, to ICAC.

Where there is no initial evidence of corruption, but the complainant asserts that corruption has occurred, the Department advises the complainant to take the matters up with the ICAC directly.

**22. Why does your Department have an allowance to investigate council maladministration?**

Pursuant to the *Local Government Act 1993*, the Department has a role in assessing and investigating complaints and allegations about the conduct and activities of councils, elected members and council staff.

The Department also conducts special investigations into councils, makes enquiries on pecuniary interest matters, identifies areas of local government administration that need more effective control procedures, supports the Pecuniary Interest and Disciplinary Tribunal, provides 'best practice' advice and educational information for elected members and staff on a range of matters related to complaints and probity and liaises with the ICAC and the Ombudsman's Office in relation to the Department's investigative function.

**23. Minister is it at your direction or is it Departmental policy to defer any allegations of maladministration of NSW Councils to the ICAC?**

The Department, the NSW Ombudsman and the Independent Commission Against Corruption all exercise powers to investigate and report on the actions of local councils. The community is free to raise concerns about councils with these agencies.

The investigative powers of the NSW Ombudsman and the ICAC are limited to examining certain types of defined conduct. For the Ombudsman, this is maladministration. For the ICAC, it is corrupt conduct. Those agencies, and the Department of Local Government, use policies to guide their respective discretion to investigate particular matters. Investigative agencies also use complaint assessment policies to guide their discretion to determine what matters to investigate.

Pursuant to section 11 of the *Independent Commission Against Corruption Act 1988*, the Department is required to report to ICAC any matter that on reasonable grounds concerns or may concern corrupt conduct.

**24. Minister, what is the Departments definition of 'maladministration' as opposed to 'corruption' when related to councils?**

The Department relies on the definition of corrupt conduct under sections 7 and 8 of the *Independent Commission Against Corruption Act 1988*. In broad terms, corrupt conduct by a public official involves a breach of public trust and leads to inequality, wasted resources and wasted public money. Corruption commonly involves the dishonest or preferential use of power or position and

has the result of one person or agency being advantaged over another. Corrupt conduct could involve:

- the dishonest or partial exercise of official functions, or
- a breach of public trust, or
- the misuse of information or material acquired in the course of official functions.

The Department relies on the definition of maladministration under section 11(2) of the *Protected Disclosures Act 1994*. This involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.

**25. Minister, how does your Department differentiate between allegations of maladministration as opposed to corruption or are all allegations treated the same?**

Refer to answer to question 24.

**26. Minister, when the ICAC investigates a council and does not find true any allegations of corruption, does that constitute no finding of maladministration? If not, why not?**

This question should be directed to ICAC, as the Department of Local Government has no role in investigating corrupt conduct.

**27. If the ICAC does not find true any allegations of corruption, why does your Department fail to investigate those councils for maladministration?**

Refer to answer to question 26.

**28. How many councils has your Department investigated after an ICAC inquiry? If none, why none?**

Refer to answer to question 26.

**29. How many councils has your Department referred to the ICAC? If none, why none?**

In the 2007/08 financial year, the Department made 21 referrals to the ICAC in relation to 12 different councils.

**30. What procedure is followed by your Department when allegations of corruption are made which concern a Council?**

As previously advised, under section 11 of the *Independent Commission Against Corruption Act 1988*, the Department is required to report to ICAC any matter that on reasonable grounds concerns or may concern corrupt conduct. The Department does this by referring copies of correspondence to ICAC.



## Canada Bay Council

- 31. It was announced by your predecessor that the Department of Local Government was going to conduct a Promoting Better Practice review of Canada Bay City Council in 2008, including a review of matters relating to the planning processes of Council. Has this occurred? If yes, what was the result of that review? If not, why not and when?**

The Department of Local Government is currently undertaking a Promoting Better Practice review of the Council of the City of Canada Bay. The review has involved staff of the Department of Local Government and the Department of Planning. Staff conducting the review have considered information provided by the Council and have conducted the on-site component of the review. The review report is currently being drafted. Once Council has had an opportunity to comment on the draft report it will be made public.

- 32. Should councils sell public land to developers without public tender? If councils sell public land below market value to developers is it fair and accountable? Should councils hold closed meetings to discuss land sales to developers?**

Councils are able to sell “operational” land. Councils are not able to sell “community” land. Operational land may be sold to any buyer, whether a developer or otherwise. Councils operate under a charter that is contained in section 8 of the *Local Government Act 1993*. In carrying out their functions, councils must operate within the charter. The Local Government Act establishes councils as autonomous bodies. The charter gives wide powers to councils. It is for individual councils to consider whether the sale of land for less than the market value is in the best interests of their community. In making any decision, councils must be open and transparent in their dealings and accountable to their communities.

Councils have limited powers to close parts of their meetings. Section 10A of the *Local Government Act 1993* prescribes the grounds on which part of a meeting may be closed. These grounds include instances where commercial information of a confidential nature is to be dealt with, provided that such information would, if disclosed, either prejudice the commercial position of the person who supplied it, or confer a commercial advantage on a competitor or reveal a trade secret. Individual councils must determine whether they should discuss any land sale, whether to a developer or otherwise, in closed session.

- 33. Given accusations have been made about Canada Bay Council about heritage land being sold to developers and the involvement of one particular developer named Antoine Bechara and the now public corrupt relationships between some Labor councillors and developers at other councils, will you investigate the allegations made against Canada Bay Council as recommended by the Heritage Office and asked for by many local residents? If not, why not?**

Neither I nor the Department of Local Government is aware of any recommendation by the Heritage Office that the Department investigate issues involving the sale of heritage land involving the Council of the City of Canada Bay. Both the Department of Local Government and I would consider any such request, if made.

- 34. Has Canada Bay Council complied with the Department of Local Government's request that all NSW councils obtain an assessment of the fair value of all operational land in their possession by 30 June 2008? If not, why not? If yes, will you table their submission?**

The City of Canada Bay Council has advised that it has had all operational land revalued at fair value by an independent valuer.

The valuations will be included in Council's annual financial statements for the 2007/08 financial year. The financial statements will be available on Council's website in the near future.

#### **Fiscal Star Report**

- 35. What criteria does the Department of Local Government use to assess the financial sustainability of NSW Councils?**

- a. What is the difference in criteria used to assess a council's financial sustainability by the Fiscal Star and the Department of Local Government?**

It is understood that the FiscalStar financial sustainability assessment framework uses two ratio measures. One of those measures, the Broad Liabilities ratio, is based on Special Schedule No 7 "Conditions of Public Works". This is an unaudited schedule. The methodology is basically a "worst case" measure of council sustainability. This is not the approach taken by council auditors or the Department of Local Government.

The Department undertakes a comprehensive assessment of all councils. This assessment is based on operating results and trends, liquidity and cash position, debt leverage, debt collection and infrastructure and asset management.

- b. What Councils have been identified as being financially unsatisfactory by the Department of Local Government?**

NSW councils are required to submit their audited financial reports to the Department by early November each year. The Department has a broader focus on monitoring every council in the State. Some councils are monitored more closely than others due to financial concerns of varying degrees.

- c. What is being done to assist those Councils by the Department of Local Government?**

Once a council at financial risk has been identified, either a desk review or on-site financial review is conducted. Councils are also required to provide details of proposed strategies for improvement and may be required to provide regular updates of their financial position.

## **Allan Report**

### **36. What do you intend to do to prevent the impact of cost shifting by your Government on NSW Councils?**

The NSW Government has committed to the Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters (IGA). It was signed by a former Minister for Local Government at the Local Government and Planning Ministers' Council on 12 April 2006.

A fundamental principle of this agreement is that where local government is asked or required by the Commonwealth or a State government to provide a service or function, any consequential financial impact is to be considered within the context of the capacity of local government.

Further, any agreement will be accompanied by a clear statement on financial arrangements and accountability obligations of the parties to the agreement.

### **37. What financial assistance will you offer to Councils not coping with cost shifting?**

The Government acknowledges that the Local Government and Shires Associations have a clear position in relation to this matter, and this will be subject to ongoing negotiations in the development of a NSW inter-governmental agreement.

In particular, the NSW Government ensures changes to existing programs and the implementation of new programs are consistent with the principles contained in the IGA.

The Government is implementing a range of reforms that are aimed at improving the long-term sustainability of the NSW local government sector (see question 38).

Funding for local government continues to be raised as an issue with the new Commonwealth Government and with the Local Government and Planning Ministers' Council. In particular, the NSW Government is doing all that it can to ensure that NSW councils receive a fair share of the recently announced Commonwealth fast tracked infrastructure funding for local infrastructure projects.

**38. Exactly what has the Department of Local Government done in response to the Allan Report?**

On 19 October 2005 the Local Government and Shires Associations of NSW (LGSA) announced the establishment of an Independent Inquiry into the Financial Sustainability of NSW Local Government.

The report was completed in May 2006. The report made 49 recommendations and indicated that many of these need to be implemented in concert, as they are either interdependent or insufficient on their own to underpin council sustainability.

The LGSA established the Strengthening Local Government Taskforce to consider the recommendations. The Taskforce deliberated for more than a year before finalising its position on the recommendations on 5 July 2007. The LGSA then wrote to the former Minister for Local Government, the Hon Paul Lynch MP, on 17 July 2007 advising that it had finalised its position on the recommendations from the Inquiry. The LGSA's priorities were largely consistent with the NSW Government's local government reform program. These priorities were:

- Intergovernmental relations
- Integrated planning and reporting
- Asset management
- Resource sharing
- Rate pegging and financial assistance
- Reform assistance.

The NSW Government has been focussed on delivering these reforms, aimed at strengthening the sustainability of NSW councils. These reforms include:

- The Integrated Planning and Reporting project, which includes long-term asset management and financial planning reforms, which is in its final stages of development. Legislation will be introduced to Parliament in the Budget session 2009. This project has included extensive consultation with the local government sector and many councils are already moving towards the new system.
- The NSW Government continues to implement initiatives to encourage councils to enter into strategic alliances or other forms of collaborative arrangements. The Department continues to work with the LGSA, the Local Government Managers Australia and the Strategic Alliance Network to develop ways to share information, build relevant skills, and promote further council collaboration. Current projects include the development of a benefits realisation framework, a workforce relations guide for collaborative partnerships and guidance on the key elements of a successful partnership.
- The NSW Government has established an inquiry by the Independent Pricing and Regulatory Tribunal to investigate and make recommendations on an appropriate inter-governmental and regulatory

framework for setting rates and charges that facilitates the effective and efficient provision of local government services. It will also consider whether IPART should have a role in setting rates and charges in future years.

It must be pointed out that the current legislation provides councils with the opportunity to apply for special variations to their general income to enable them to increase their revenue base. Very few applications have been rejected in recent years.

The Department of Local Government continues to work closely with local government industry groups including the LGSA, Local Government Managers Australia, Institute of Public Works Engineers Australia and the Planning Institute Australia to develop ongoing reforms to the sector to improve outcomes for the community.

**39. Has the Department started preparing a response for the Allan Report? If so when did they start preparing that? Will you table their work so far?**

The Department commenced work on the whole of Government response following receipt of the letter from the LGSA advising its response to the recommendations from the Inquiry. Consultation with all relevant Ministers on both the original recommendations and the LGSA's response has been undertaken.

The whole of Government response to the Local Government Inquiry has been drafted and it is intended that it will be considered by Cabinet at the earliest opportunity. However, it should be noted that, as outlined, major local government reforms are underway that substantially address the recommendations. The LGSA has actively participated in the development of these reforms. These projects reflect the substantial agreement between the Government and the LGSA about the priorities to be addressed.

When endorsed by Cabinet, I will discuss the whole of Government response with the Presidents of the LGSA prior to making the response publicly available.

**40. What representations have you made to Premiers Department and the Attorney Generals Department in relation to the Allan Report and their preparations for the whole of Government response? If so, when were those representations made? Will you table them?**

None.

**41. Did your predecessor, Paul Lynch, make representations to Premiers Department and the Attorney Generals Department in relation to the Allan Report and their preparations for the whole of Government response? If so, when were those representations made? Will you table them?**

On 22 September 2007 Minister Lynch wrote to the former Premier, the Treasurer, the Minister for Roads and the Minister for Planning providing a copy of the Inquiry's recommendations and the LGSA's response. The former Premier endorsed the preparation of a whole of Government response in a letter to the former Minister for Local Government dated 9 November 2007. The Minister's letter also sought advice on recommendations that related to the portfolio responsibilities of those Ministers to enable the preparation of a whole of Government response. Comments received have been included in the draft whole of Government response that will be considered by Cabinet. It should be noted that the recommendations do not specifically relate to the responsibilities of the Attorney General.

- 42. What representations has your Department made to Premiers Department and the Attorney Generals Department in relation to the Allan Report and their preparations for the whole of Government response? If so, when were those representations made? Will you table them?**

None.

- 43. What representations has the Department made to you about the Allan Report and the Department's advised position for you? Will you table that correspondence?**

The Department has provided me with two briefing notes on the Allan Report. I will not be tabling them. It is appropriate to wait for the whole of Government response to the Report.

#### **Local Government Planning**

- 44. Minister, you are aware of the concerns of councils and the local government association about the denial of community rights brought about by part 3A of the Environmental Planning and Assessment Act?**

This is a matter for the Minister for Planning.

- 45. What action have you taken to restore to communities their rights to have a say in development in their areas?**

This is a matter for the Minister for Planning.

- 46. Have you or your predecessor made a submission to the planning minister? If not, why not? If so, will you table that correspondence?**

Yes. The submission will not be tabled, as it is cabinet-in-confidence.

## **Appointment of Dick Persson**

- 47. Is Mr Dick Persson employed by or under contract to the Department of Local Government, the Ministers Office or the Premiers Department? If so, which?**

Mr Dick Persson is not employed by or under contract to the Department of Local Government or the Minister's Office. I am not aware of the current employment arrangements of the Premier's Department.

- 48. What is his title?**

This question should be directed to the Department of Premier and Cabinet.

- 49. What are the terms of his employment?**

This question should be directed to the Department of Premier and Cabinet.

- 50. How much is he paid? Is it a pro rata rate per Council?**

I do not know the terms of Mr Persson's salary, other than he is paid an amount determined by the Governor (currently \$138,360) per annum inclusive of GST, together with reasonable travel and out-of-pocket expenses incurred in connection with his office as Administrator of Port Macquarie-Hastings Council, which is paid from the Consolidated Fund of the Port Macquarie-Hastings Council, as are the fees payable to councillors when they hold civic office.

- 51. What is his background?**

Chief Executive, Department of Public Works and Services (DPWS) NSW  
Chief Executive, Health Department, Queensland  
Chief Executive, Department of Housing, Local Government and Planning, Queensland  
Director, National Housing Policy Review  
Deputy Chief Executive, Department of Housing, NSW  
General Manager, Resources, Department of Housing, NSW  
Director, Housing Policy Unit, NSW

Fellow, Australian Institute of Management (FAIM)  
Fellow, Australian Property Institute (FAPI)  
Chair, Australian Procurement & Construction Council (APCC)  
Board Member, Sydney University Women's College  
Board Member, Industry Capability Network NSW (formerly ISO)  
NSW Government Asset Management Committee  
NSW Government E-Business Committee  
NSW Government Infrastructure Council

**52. Who is responsible for choosing Mr Persson?**

Mr Persson's appointment as Administrator was made by the Governor on the recommendation of the Executive Council, based on a recommendation made by the former Minister for Local Government.

**53. Were applications for his position advertised? If not, why not?**

The position of Administrator of a council is not a job and is not advertised. It is a Gubernatorial appointment.

**54. How many others were considered for his position?**

The position of Administrator is not a job. It is a Gubernatorial appointment.

**55. Does Mr Persson's employment/contract fall under the Code of Conduct and Ethics for Public Service Executives?**

This question should be directed to the Department of Premier and Cabinet. The Code of Conduct and Ethics for Public Service Executives does not apply to Administrators of councils. However, the revised Model Code of Conduct for Local Councils in NSW would apply.

**56. If so, sections 10.1 and 10.2 preclude the use of public office or involvement in the political process, yet Mr Persson published a column in the Manly Daily called 'Warringah Update' in July and on Council's website on 12 July 2008 attempting to influence voters about which councillors they should vote for or return to Warringah Council. Will you investigate Mr Persson's actions?**

As Minister for Local Government, I have no authority to investigate allegations of breaches of the Code of Conduct and Ethics for Public Service Executives.

**57. Is it correct that the Director General of the Department of Local Government, Mr Garry Payne, advised the Manly Daily that Mr Persson's actions were permissible?**

This question was answered in my response to Question on Notice LC 2103.

**58. Is it correct that Mr Persson is a friend of Mr Garry Payne and that both have had lunch at Parliament House and other places?**

**a. If so, do Mr Payne's involvement in this matter constitute a conflict of interest?**

This question was answered in my response to Question on Notice LC 2103.



59. **Is it correct that your predecessor advised the Manly Daily in response to a complaint from Mrs S Colvin that Mr Persson is “not a public servant” and therefore able to make the comments he did?**

This question was answered in my response to Question on Notice LC 2103.

60. **In view of the above, and Mr Persson writing to complainants that all complaints should be referred to the Minister for Local Government, what will you do to address Mr Persson’s continued misconduct?**

This question was answered in my response to Question on Notice LC 2103.

61. **Given Mr Persson’s conduct, do you think it suitable that he now investigate Gosford Council, the third council now assigned to him?**

Mr Persson is not investigating Gosford Council. I acted on the Deputy Coroner’s recommendation to *“consider the commissioning of an independent review of the GCC dealing with the development and implementation of its assets management and records management systems with particular reference to the need to implement an effective inspection regime for road assets, the identification of risks associated with such assets, the timely response to risks that are identified and the effective managerial oversight of such systems”* and appointed Mr Persson to conduct an independent review of Gosford City Council's assets and record management systems to ensure effective inspection and risk management programmes are put in place. The review is not a public inquiry or investigation, but a review of Council's systems.

Considering my answer to question 51 above, I am satisfied with Mr Persson’s appointment to conduct the review.

### **Staffing Levels – Minister and Department**

62. **How many employees does the Department of Local Government have?**

69

- a. **How many staff at Dept of Local Government are on SES level?**

2

- b. **Please list the number and the levels.**

SES level 7 – 1

SES level 4 – 1

- c. **How many staff are supplied by Dept of Local Government to the Minister’s office?**

None.

**d. What is their grading?**

N/A/

**e. Are staff supplied by Dept of Local Government to any other Minister's office?**

No.

**f. If so, what is their grading?**

N/A.

**63. What was the total 2007/08 catering bill for Dept of Local Government?**

\$9,910.27 (includes \$5,696.25 for the Women in Local Government Awards function)

**64. How many corporate credit cards are in your department?**

19

**a. Is that more or less from last year?**

No change.

**b. What was the total bill for those cards in 2007 and so far this year in 2008?**

Total expenditure for 2007/08 was \$48,969.66.  
Expenditure to 30 September was \$14,324.38.

**65. How many Ministerial staff do you have?**

I am advised:

All Ministerial staff are employed by the Department of Premier and Cabinet under the *Public Sector Employment and Management Act 2002*.

Staffing of Ministers' offices follow a two-tier model of 8 and 12 staff. My office complies with the model.

**a. Is that more or less than the previous Minister?**

As I am not in receipt of information concerning the number of staff of the former Minister, this question should be referred to the Department of Premier and Cabinet, which is responsible for maintaining such information in regard to the operation of Ministerial offices.

## **Indigenous Staff**

**66. How many indigenous staff are employed by your Department?**

No staff have identified as being from Aboriginal or Torres Strait Islander descent.

**67. What percentage does this represent of your overall departmental staffing?**

N/A.

**68. Have you met your benchmarks for the employment of Indigenous staff levels for your Department?**

No, the Government's benchmark is 2%.

## **People with Disabilities**

**69. How many people with disabilities does your Department employ?**

Three.

**70. What percentage does this represent of your overall departmental staffing?**

4%.

**71. Have you met your benchmarks for the employment of people with disabilities for your Department?**

No, the Government's benchmark is 12%.

## **Rod Oxley**

**72. Minister do you have a copy of Rod Oxley's letter of resignation from Wollongong City Council; under S12 Local Government Act? And if yes, please provide a copy to this committee.**

Neither I nor the Department have a copy of Mr Oxley's letter of resignation.

**73. If in a separate document, I request a copy of Oxley's "deal" or "agreement" that if he left before the end of his Contract he would not be prosecuted by ICAC; under S12 Local Government Act; and whether that included full payout of his golden handshake?**

A request for a copy of this letter would be required to be made directly with Council under the provisions of section 12 of the *Local Government Act 1993*.