

Submission
No 1

**INQUIRY INTO ALLEGATIONS OF IMPROPRIETY
AGAINST AGENTS OF THE CITY OF CANTERBURY
BANKSTOWN COUNCIL**

Name: Name suppressed
Date Received: 14 December 2022

Partially
Confidential

12 December 2022

The Director
Standing Committee on State Development
Parliament House
Macquarie Street
Sydney NSW 2000

re: Allegations of impropriety against agents of the City of Canterbury Bankstown Council

Dear Director

Thank you for the opportunity to contribute to the NSW Legislative Council Inquiry into Allegations of impropriety against agents of the City of Canterbury Bankstown Council .

I am a freelance journalist and an active member in the Canterbury-Bankstown community, but not a member of any political party.

This submission focuses on the City of Canterbury Bankstown Council culture of a lack of transparency and apprehension to open government as demonstrated through applications of the Government Information (Public Access) Act 2009 (GIPA Act).

I request that this written submission (including any appendix items) should it be published by the Standing Committee on State Development, that my personal information (including name, contact information) and that of my legal representatives (name, business name, contact information) be redacted for confidentiality and personal safety reasons.

Please do not hesitate to contact me further to discuss the content of this submission.

Kind regards,

Contents

Non-Publication of Written Returns of Interest of Councillors, Designated Persons, and Delegates	3
Blank GIPA Disclosure Log	5
Appendix 1: NSW Information Commissioner investigation report into Canterbury Bankstown Council’s non-publication of the Written Returns of Interest of Councillors, Designated Persons, and Delegates (19 September 2022)	9
Appendix 2: NSW Information Commissioner investigation report into Canterbury Bankstown Council’s non-inclusion of any Government Information (Public Access) Act 2009 (GIPA Act) applications on Council’s Disclosure Log (1 December 2022)	10
Appendix 3: GIPA 24-23 Canterbury Bankstown Council Improper Waste Management (20 September 2022).....	11
Appendix 4: GIPA 34-20 Canterbury Bankstown Council communications with Locals for Metro Southwest (3 June 2020)	12
Appendix 5: OFFICE OF PREMIER OF NSW GIPA: Diary entry of a meeting between advisers of the Office of the Premier and Locals for Southwest Metro (7 December 2020)	13
Appendix 6: GIPA 63-21 Canterbury Bankstown Council meetings with property developers behind Locals for Metro Southwest, and regarding The Canterbury Foundation Masterplan (28 April 2021)	14
Appendix 7: NSW DEPARTMENT OF PLANNING & ENVIRONMENT GIPA 21-1619: Belmore/Canterbury Foundation meeting records and Sydenham to Bankstown register (8 July 2021).....	15
Appendix 8: GIPA 6-21 Canterbury Bankstown Council submission to Sydney Metro Southwest EIS and submission to Bankstown to Liverpool Metro Extension (8 September 2020)	16
Appendix 9: SYDNEY METRO GIPA 20M-0027: 2016 Sydney Metro Southwest extension study: Bankstown to Liverpool (22 June 2020)	17

Non-Publication of Written Returns of Interest of Councillors, Designated Persons, and Delegates

Canterbury Bankstown Council was found to be in breach of the Government Information (Public Access) Act 2009 (GIPA Act) by the NSW Information Commissioner on 19 September 2022.

Canterbury Bankstown Council is non-compliant with section 6 of the GIPA Act in not making available as open access information, the returns of interests of councillors, designated persons, and delegates, as defined in sections 18(g) of the GIPA Act and clause 1(2)(a) of schedule 1 of the [Government Information \(Public Access\) Regulation 2018 \(NSW\)](#) (**GIPA Regulation**).

Canterbury Bankstown Council is also non-compliant with the NSW Government's Office of Local Government (**OLG**) [Circular 19-21 – Release of IPC Guideline 1 Returns of Interests](#) and the [Information Commissioner's Information Access Guideline 1](#).

The NSW Information Commissioner found Canterbury Bankstown Council in breach of the GIPA Act for requiring an Open Access Application/Informal Access Application form to be completed to request access to the Written Returns of Interest of Councillors, Designated Persons, and Delegates.

Canterbury Bankstown Council was also in breach of the GIPA Act for limiting access to the Written Returns of Interest of Councillors, Designated Persons, and Delegates by only permitting viewing of the documents in-person at Council administration offices during business hours.

Since 2019, local Councils have been required by legislation to publish online the Written Returns of Interest of Councillors, Designated Persons, and Delegates – however Canterbury Bankstown Council has never published the relevant disclosure documents in 2019, 2020, 2021.

The Written Returns of Interest of Councillors, Designated Persons, and Delegates for the current year in 2022 have only recently been published as a partial response the Information Commissioner finding that Canterbury Bankstown Council was non-compliant with the GIPA Act.

Canterbury Bankstown Council in its submission to the NSW Information Commissioner investigation into non-compliance with the GIPA Act stated that ALL years' disclosures would be published online after the October 2022 meeting of Council but to date this has not occurred.

Canterbury Bankstown Council remains in breach of the GIPA Act by requesting an Open Access Application/Informal Access Application form to be completed in order to access the previous years' Written Returns of Interest of Councillors, Designated Persons, and Delegates.

[ABC News](#) on 9 August 2020 reported that Canterbury Bankstown Council was in breach of the GIPA for non-publication of Written Returns of Interest of Councillors, Designated Persons, and Delegates¹, but Council failed to act in response to this story.

Additionally, [The Australian](#) on 15 November 2022 reported that Canterbury Bankstown Council Mayor Khal Asfour and his wife Sally are the sole shareholders of Melbourne Grande².

Mayor Asfour did not include Melbourne Grande in his 2021-22 council pecuniary interest returns, either as a source of income or as an interest or position held in the company.

Canterbury Bankstown Council also received a [public request made through the Right to Know website](#) on 6 December 2022 (subsequently revised on 8 December 2022) for the Written Returns of Interest of Councillors, Designated Persons, and Delegates from 2019 to 2022³.

On 8 December 2022, Canterbury Bankstown Council responded again indicating that an Open Access Application/Informal Access Application form would be required to access the Written Returns of Interest of Councillors, Designated Persons, and Delegates.

Canterbury Bankstown Council continues to refuse to publish the Written Returns of Interest of Councillors, Designated Persons, and Delegates from 2019 onwards as required by legislation and continues to request members of the public lodge a written request to access such disclosures hence remaining in breach of the GIPA requirements.

Please refer to Appendix 1 for a copy of the NSW Information Commissioner investigation report into Canterbury Bankstown Council's non-publication of the Written Returns of Interest of Councillors, Designated Persons, and Delegates (dated 19 September 2022).

¹ Josh Bavas, *NSW Government concerned by Sydney councils failing to comply with transparency rules*, ABC News (9 August 2020) <https://www.abc.net.au/news/2020-08-09/nsw-government-concerned-about-sydney-councils-transparency/12531550> (accessed 12 December 2022)

² Max Maddison, *NSW ALP candidate Khal Asfour's 'secret directorship' probed*, The Australian (15 November 2022) <https://www.theaustralian.com.au/nation/politics/nsw-alp-candidate-khal-asfours-secret-directorship-probed/news-story/7ad7689d31dcf72ffa52cfa7244d3078> (accessed 12 December 2022)

³ Canterbury Bankstown Council, *Returns of Interest of Councillors, Designated Persons, and Delegates from 2010 to 2022*, Right to Know (8 December 2022) https://www.righttoknow.org.au/request/returns_of_interest_of_councillo (accessed 12 December 2022)

Blank GIPA Disclosure Log

Canterbury Bankstown Council has been subject of multiple investigations undertaken by the NSW Information Commissioner into the non-inclusion of any Government Information (Public Access) Act 2009 (GIPA Act) applications on Council's Disclosure Log.

[Division 4, Section 25 and 26 of the GIPA Act](#) outlines the requirements for agencies to maintain a Disclosure Log and the required information to be included within the disclosure log.

Canterbury Bankstown Council was reminded by the NSW Information Commissioner of its legislative obligations for a [GIPA Disclosure Log](#) in 2020, and hence uploaded a blank document in September 2020 claiming that there are no disclosures in the public interest from May 2016 (the formation of Canterbury Bankstown Council) to current date.

In a recent NSW Information Commissioner investigation report dated 1 December 2022, a complaint that Canterbury Bankstown Council has not complied with the GIPA Act regarding the Disclosure Log was found to be partially justified.

The complainant's request for anonymity was cited by the NSW Information Commissioner's inability to further investigate Canterbury Bankstown Council's non-compliance regarding the matter.

[The Australian](#) reported on 9 October 2022 that it had obtained under GIPA Act documents from Canterbury Bankstown Council regarding the expense claims of Mayor Khal Asfour which resulted in the story that Council is paying for the current Mayor's university degree⁴.

Bankstown City Council has deemed a GIPA application into the expenses of then Mayor Tania Mihailuk to be in the public interest but now Canterbury Bankstown Council has deemed a GIPA application into the expenses of current Mayor Khal Asfour as not of the public interest worthy of inclusion in the GIPA Disclosure Log.

Per the former Bankstown City Council GIPA Disclosure Log Item 23/13 dated 21 June 2013 that the nature material released appears to concern that of then Mayor Tania Mihailuk in a similar manner as The Australian's recent GIPA in 2022 relates to current Mayor Khal Asfour.

⁴ Max Maddison, *Questions raised after mayor charged ratepayers for business course*, The Australian (9 October 2022) <https://www.theaustralian.com.au/nation/questions-raised-after-mayor-charged-ratepayers-for-business-course/news-story/1a057bd5ff954ec3404859de087259c7> (accessed 12 December 2022)

Discrepancy exists between the former Bankstown City Council with the current Canterbury Bankstown Council approach to the GIPA Disclosure Log is evident with the following disclosure.

Extract from Bankstown City Council GIPA Disclosure Log⁵

21/06/2013	23/13	The number and nature of expense claims by the Mayor for the period between 30/6/2008 to 20/09/2012, copy of the Internal Audit Report and full review of the Financial Delegations which commenced in July 2011	Yes
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Please also see below examples of GIPA applications submitted to Canterbury Bankstown Council which have been deemed not to be in the public interest (hence not included in the Council Disclosure Log), despite other NSW Government agencies deeming such to be in the public interest (and subsequently including such in the respective agency's Disclosure Log).

The below 4 GIPA applications lodged with Canterbury Bankstown Council were without any objection to inclusion on the Disclosure Log yet were not published.

Canterbury Bankstown Council (Not Disclosed)	Why Public Interest	GIPA Disclosure Log
GIPA 24-23 Canterbury Bankstown Council Improper Waste Management (20 September 2022)	Mainstream Media Interest, Council Media Release https://www.smh.com.au/national/nsw/council-s-trucks-have-mixed-recycling-with-rubbish-for-more-than-a-decade-20220727-p5b4xz.html https://www.cbcity.nsw.gov.au/media/news/canterbury-bankstown-council-takes-action-on-waste-review	Nil Disclosure by Canterbury Bankstown Council

⁵ Bankstown City Council, *GIPA Disclosure Log*, Canterbury Bankstown Council <https://webdocs.bankstown.nsw.gov.au/api/publish?documentPath=aHR0cDovL2lzaGFyZS9zaXRlc9Hb3Zlcm5hbmNIL1NoYXJlZCBEb2N1bWVudHMvRGlzY2xvc3VyZSBMb2cgMjAxNS5wZGY=&title=> (accessed 12 December 2022)

<p>GIPA 34-20 Canterbury Bankstown Council communications with Locals for Metro Southwest (3 June 2020)</p>	<p>Happy to provide further information, but premise is that Office of Premier deems interactions with Locals for Metro Southwest as of public interest to be disclosed</p>	<p>OFFICE OF PREMIER OF NSW Diary entry of a meeting between advisers of the Office of the Premier and Locals for Southwest Metro (7 December 2020)</p> <p>https://www.dpc.nsw.gov.au/publications/office-of-the-premier-disclosure-log/</p>
<p>GIPA 63-21 Canterbury Bankstown Council meetings with property developers behind Locals for Metro Southwest, and regarding The Canterbury Foundation Masterplan (28 April 2021)</p>	<p>Happy to provide further information, but premise is that DPIE deems interactions with the property developers behind Locals for Metro Southwest and The Canterbury/Belmore Foundation) especially regarding the masterplans as of public interest to be disclosed</p>	<p>NSW DEPARTMENT OF PLANNING & ENVIRONMENT 21-1619 Belmore/Canterbury Foundation meeting records and Sydenham to Bankstown register (8 July 2021)</p> <p>https://www.dpie.nsw.gov.au/about-us/access-to-information/agency-guide/disclosure-log</p>
<p>GIPA 6-21 Canterbury Bankstown Council submission to Sydney Metro Southwest EIS and submission to Bankstown to Liverpool Metro Extension (8 September 2020)</p>	<p>Metro Southwest EIS Submission on DPIE Planning Portal and Council website</p> <p>https://www.cbccity.nsw.gov.au/council/planning-for-the-city/sydenham-to-bankstown-corridor/sydenham-to-bankstown-metro-upgrade-project</p>	<p>SYDNEY METRO 20M-0027 2016 Sydney Metro Southwest extension study: Bankstown to Liverpool (22 June 2020)</p> <p>https://www.sydneymetro.info/sites/default/files/2021-09/SM-Disclosure-Log-May2021.pdf</p>

Canterbury Bankstown Council cannot hide behind its unverified self-claim (made to the NSW Information Commissioner as part of the investigation into this matter) that 99% of GIPA applicants object to a GIPA application not being disclosed.

Per the GIPA Act, government agencies have the power to include a GIPA application on a Disclosure Log based on a determination of public interest and not just on the GIPA applicant's views.

While the GIPA Act does not provide a definition of what “public interest” for a GIPA application is to be included in the Disclosure Log, from the above examples of GIPA applications - it is clear that the Canterbury Bankstown Council approach does not pass the pub test.

Canterbury Bankstown Council was forced to issue media statements and rollout new technology for its waste management services in August 2022 after mainstream media reported that general rubbish and recycling bins were being emptied into the same garbage truck.

Even after the Council media statements and new technology, a GIPA into the number of addresses affected by the improper collection of general rubbish and recycling bins was deemed not to be in the public interest worthy of inclusion in Council’s Disclosure Log.

The Office of Premier (aware of the political and potentially criminal implications of the then Premier Gladys Berejiklian’s relationship with property developers being exposed) determined on multiple occasions that GIPA applications regarding “Locals for Metro Southwest” (a property developer lobby group)⁶ are in the public interest hence have published such GIPA applications⁷.

The fact that a matter is in the public interest as per working definition of the Office of the Premier of NSW but not in the public interest as per Canterbury Bankstown Council is cause for questions into the Council’s governance and transparency.

Canterbury Bankstown Council (despite the denials to the NSW Information Commissioner) appears to have at the very least an unwritten policy in the Council Governance Team for the non-inclusion of all GIPA applications for Council’s Disclosure Log (regardless of the subject matter and the political implications).

Please refer to Appendix 2 for a copy of the NSW Information Commissioner investigation report into Canterbury Bankstown Council’s non-inclusion of any Government Information (Public Access) Act 2009 (GIPA Act) applications on Council’s Disclosure Log (dated 1 December 2022).

⁶ Greg Miskelly, *Grassroots volunteer group Locals for Metro South-West financially backed by Sydney developer*, ABC News (13 July 2020) <https://www.abc.net.au/news/2020-07-13/volunteer-group-lms-has-financial-backing-of-developer/12421120> (accessed 12 December 2022)

⁷ Office of Premier of NSW, *Office of Premier GIPA Disclosure Log: Mr Roydon Ng's application of 6 March 2022*, Department of Premier and Cabinet (8 April 2022) https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/gipa/Scan_2022-04-11_14-06-15-623.pdf (accessed 12 December 2022)