

## INDEPENDENT HEARING &amp; ASSESSMENT PANEL REPORT

2012

**Attachment 3:***Appeal No: 10785 of 1997***Annexure "A"****Conditions of development consent  
Lot 12, DP 226351, No. 24 Railway Street, Liverpool****Wendy Connelly****V.****Liverpool City Council**

The following conditions have been imposed to achieve the objectives of the relevant planning instruments and policies.

1. Development must be carried out generally in accordance with Development Application received 19 August 1997 and accompanying plan dated 3 August 1997, except where modified by the undermentioned conditions.
2. The premises are to be operated according to the following:-
  - a) The front entrance, car park and waiting area to be under video surveillance by the supervisors at all times the premises are open for business.
  - b) The Licensed security agent and operator of the premises shall maintain a policy of ensuring that the behaviour of employees and patrons of the premises does not result in the undue disturbance of the neighbourhood of the premises.
  - c) No intoxicated persons shall be admitted to the premises.
3. The brothel is to comply with the Health and Safety Code of Practice for Brothels prepared by the NSW Health Department and WorkCover.
4. A report shall be submitted to Council every twelve (12) months that demonstrates that the development is operating satisfactorily within the terms of the consent and not having an adverse impact upon the neighbourhood amenity. The report shall also provide confirmation from the NSW Police that the development is operating satisfactorily.

**EXTERNAL APPEARANCE**

The following conditions have been imposed to provide for a satisfactory appearance of the development.

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5. No advertising matter is to be erected, painted or displayed without the prior written approval of Council and no flashing, moving or intermittent lighting visible from any public place shall be installed on the premises or any external sign associated with the development.
6. No goods or signs are to be displayed or vehicles parked on the public footpath adjacent to the premises.
7. All materials, good and equipment are to be kept within the confines of the building at all times.
8. Waste bins must be stored in designated garbage/trade refuse areas. Bins must not be stored in parking areas.

**ADJOINING DEVELOPMENT**

The following conditions have been imposed to minimise any impact from the development on adjoining land or land in the locality.

9. Any alarm systems are to be of a silent "back-to base" type.
10. Use of the premises must not interfere with the amenity of adjoining premises.

**AMENITY**

The following conditions have been imposed to protect the amenity of the area.

11. Hours of operation are limited to 10.30 am until 9.00 pm, seven (7) days a week.
12. Amplified speech or music (including spruiking) is to be carried out in accordance with the following:-

Each loudspeaker system shall be placed in such a position that while it is in use, it remains:-

- (a) located entirely inside the premises;
- (b) situated not less than 3 m from any entrance to the premises;
- (c) directed in such a manner that the loud speaker or loudspeaker system while in use, does not point towards any wall which contains an external window or entrance to the shop, subject to the subparagraph; and
- (d) Subparagraph (c) shall not apply if the wall is more than 15 m from the loudspeaker or loudspeaker system.

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*Appeal No: 10785 of 1997***CARPARKING, DRIVEWAYS AND LOADING FACILITIES**

The following conditions have been imposed to ensure that the development makes adequate provision for carparking, vehicular manoeuvring and loading/unloading facilities.

13. The carparking spaces must be constructed of concrete or other approved hard surfaced materials. The spaces must be clear of obstructions and columns, permanently linemarked and provided with adequate manoeuvring facilities. The design of these spaces must comply with Council's Development Control Plan - Carparking.
14. The carparking spaces must not be used for manufacture, storage or display of goods, materials or equipment. The spaces must be available at all times for all cars associated with the development.
15. All goods must be delivered through the rear of the premises.
16. The carpark is to be well lit at night in a glare free manner.

**SERVICES**

The following conditions have been imposed to ensure that adequate services are provided for the development.

17. The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.
18. All waste products associated with the use of the building are to be placed in containers and stored within an approved garbage storage area within the confines of the building.

**ENVIRONMENT**

The following conditions have been imposed to protect the environment.

19. Use and occupation of the premises must be carried out at all times without nuisance and the use shall not interfere with the amenity of the area generally and in particular so as not to breach the provisions of either the Clean Waters Act, Clean Air Act and the Noise Control Act. The operation and use of any machinery, plant and/or equipment within, on or in connection with the operation and use of the premises to be carried out as not to cause.
  - (a) transmission of vibration to any place of different occupancy.
  - (b) 'Offensive Noise' as defined in the Noise Control Act, 1975.

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*Appeal No: 10785 of 1997***BUILDING**

The following conditions have been imposed to ensure the development meets building design and structural standards.

20. The stacking/storage of goods and the location of equipment must not impede access to fire egress points within the building.
21. All rooms must be mechanically ventilated in accordance with the requirements of AS 1668.
22. Required exist doors must not be deadlocked whilst the building is occupied.



G T Brown  
Conciliation and  
Technical Assessor  
sb

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## Attachment 4:

**In the Land and  
Environment Court  
of New South Wales**

**No. 10785 of 1997**

**Joseph Vassallo and  
Richard Lonza**

Applicant

**Liverpool City Council**

Respondent

**Order**

**The Court orders by consent that:**

1. The development consent granted by the Court on 9 April 1998 for a brothel at Unit 2, 24 Railway Street, Liverpool in the State of New South Wales is modified by deleting condition 11 of the said consent and inserting the following condition in its place:

"11. Hours of operation are limited to the following, seven (7) days per week, with operation outside of these hours being prohibited:

(a) 11am to 3pm;

(b) 3pm to 4pm provided that access to and egress from the premises between those hours for clients and staff is only via the rear laneway at the southern end of the premises and not via the door at the ground floor level in Railway Street;

(c) 8pm to 1am."

**Ordered: 19 May 2004**



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WEDNESDAY 31 OCTOBER 2012

<b>ITEM No:</b>	<b>2</b>
<b>APPLICATION NUMBER:</b>	<b>D/130/1998/B</b>
<b>SUBJECT:</b>	<b>Modification to Development Consent D/130/1998 pursuant to section 96AA of the Environmental Planning and Assessment Act 1979.</b> <b>The application seeks to amend Condition no. 11 of the consent to extend the hours of operation of an existing brothel</b>
<b>LOCATION:</b>	<b>Lot 2 SP 52064</b> <b>2/ 24 Railway Street, LIVERPOOL NSW 2170</b>
<b>OWNER:</b>	<b>Mr R M Lonza</b>
<b>APPLICANT:</b>	<b>Mr Q Vertigan</b>
<b>AUTHOR:</b>	<b>Peter Flynn</b>

**ISSUES RELATED TO THE APPLICATION**

The Panel has inspected the site and the surrounding locality.

There were no representations heard in relation to this item at the meeting.

The Panel notes that the brothel is operating under an existing development consent and the overall impacts of the development were considered largely at the time of the approval.

The Panel considers that the proposed extension of hours of operation will not increase or change these impacts, provided that pedestrian access to the brothel by clients and staff between the hours of 4:00 pm and 8:00 pm is maintained from Railway Serviceway.

**VOTING NUMBERS: 5-0**

**RECOMMENDATION OF PANEL:**

The Panel recommends that the application be approved subject to conditions as recommended by the Council officer in the planning report.

**LIVERPOOL CITY COUNCIL****INDEPENDENT HEARING AND ASSESSMENT REPORT****ORDINARY MEETING****28/11/2012**

<b>ITEM NO:</b>	<b>IHAP 05</b>	<b>FILE NO:</b>	<b>DA-919/2012</b>
<b>SUBJECT:</b>	<b>PRIVATE USE OF 12 KENNELS WITHIN AN EXISTING FARM SHED BUILDING</b>		

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<b>ITEM No:</b>	<b>2</b>
<b>APPLICATION NUMBER:</b>	<b>DA-919/2012</b>
<b>SUBJECT:</b>	<b>PRIVATE USE OF 12 KENNELS WITHIN AN EXISTING FARM SHED BUILDING</b>
<b>LOCATION:</b>	<b>LOT 11 DP 2650 NO. 27 GREENDALE ROAD, BRINGELLY NSW 2556</b>
<b>APPLICANT:</b>	<b>MR S MUSTAFA</b>
<b>OWNER:</b>	<b>MR S MUSTAFA AND MRS D MUSTAFA</b>
<b>COST OF WORK:</b>	<b>\$4,500</b>
<b>RECOMMENDATION:</b>	<b>APPROVAL WITH CONDITIONS</b>

**1. EXECUTIVE SUMMARY**

**1.1 Reasons for the Report**

Pursuant to the requirements of the endorsed IHAP Charter and Procedure, the proposal is referred to the Independent Hearing and Assessment as 11 written objections were received as a result of the public exhibition of the proposal.

**1.2. The proposal**

The development application seeks consent for the use of 12 existing kennels within an existing farm shed building for greyhound breeding.

**1.3 The site**

The subject site is identified as Lot 11 in DP 2650, being No. 27 Greendale Road Bringelly.

**1.4 The issues**

The main issues are identified as follows:

- Noise impacts associated with the operation of proposal and whether these can be mitigated;
- Potential for polluted runoff to occur;
- Odour; and
- Out of character with rural area.

**1.5 Exhibition of the proposal**

The application was advertised for 14 days in accordance with Liverpool Development Control Plan 2008. During the advertising period Council received 11 submissions, all objecting to the proposed development. The key issues raised in the submissions relate to noise impacts, and the potential for polluted runoff to occur from the site.

The statement accompanying the application outlines that the 12 kennels will not be used to house breeding dogs, however be used as transition accommodation for the breeding dogs progenies when they reach the mature age of twelve months.

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The site has approval for four existing kennels which will continue to be used. This will result in a total of 16 kennels on site and an overall maximum of 18 dogs to be kept on site at any one time.

### 1.6 Conclusion

This report finds that subject to appropriate conditions of approval including measures recommended by the submitted acoustic report, the proposed development is consistent and compatible with the adjoining rural and rural residential development and the objections do not warrant refusal of the application.

The development application has been assessed on its merits and against Council's DCP and is considered satisfactory subject to the implementation of noise mitigation measures.

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The site

The subject land comprises Lot 11 in Section 6 of DP 2650 and is known as 27 Greendale Road, Bringelly. The subject site is irregular in shape, with a 101.94m frontage to Greendale Road, an eastern side boundary of 176.385m, a western side boundary of 192.98m and a rear northern boundary of 100.58m. The site has a total area of 1.856 hectares.

An aerial photograph of the site is provided below.

The site is currently developed with an existing single storey dwelling house, in-ground swimming pool, gazebo, water tanks, other outbuildings and a large shed containing unauthorised dog kennels, located in the south western portion of the site.

There is an existing gated driveway entry from Greendale Road, located adjacent to the site's western side boundary. Located in the rear north-eastern area of the site is an existing earth dam with an approximate 1megalitre water storage capacity. A dense stand of existing trees is located adjacent to the site's rear northern boundary and other less dense tree groupings located along the site's front and eastern side boundaries.

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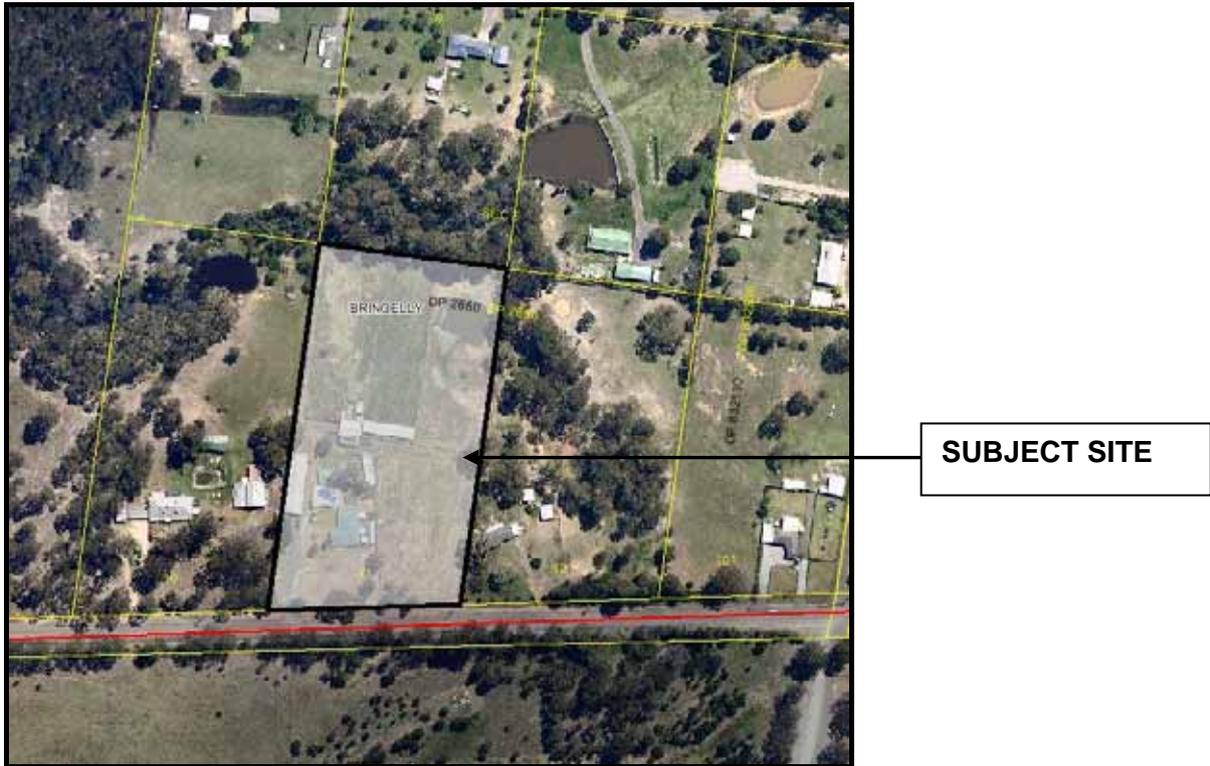


Figure 1. Aerial photograph of subject site

## 2.2 The Locality

The site is located on the northern side of Greendale Road, approximately 200m to the west of its intersection with Medway Road. The immediate surrounding locality is characterised by both small and larger rural allotment holdings, most of which are residentially occupied. An aerial photograph is provided below.



Figure 2: Aerial photograph of locality

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Adjoining to the east and west of the site at Nos. 25 and 29 Greendale Road are single storey dwelling houses with associated outbuildings on similar sized rural allotments. To the north of the site are smaller, residentially occupied rural allotments which address the western section of Medway Road.

Approximately 200m to the east of the site, opposite the Medway Road intersection with Greendale Road, is the entry road to the Boral Bricks site. The Boral Bricks site presents to Greendale Road as a large area of vacant rural land, tree lined along the road frontage. The Boral site is located within the Camden Local Government Area. A quarry and brick making manufacturing operation is currently operated on a portion of the land holding. The balance of the site is currently used for rural purposes. Further to the east along Greendale Road is Bringelly Park, Bringelly community centre and Bringelly Public School.

The immediate locality to the west of the site is characterised by large lot sizes (predominantly 10 hectares). While the area is primarily rural in character, it is noted that all sites which currently adjoin the site are not used for agricultural purposes. It is considered that the rural character of the locality is largely attributed to the openness as well as the area's scenic qualities which are attributed to the retention of large pockets of vegetation.

To the east of the site are lots which vary in size between 1.4 – 2 hectares. These lots predominantly support rural residential type development, often with no associated agricultural development. Although these lots predominantly contain dwellings and outbuildings, the adoption of large building setbacks provides effective separation from neighbouring properties and allows for the retention of extensive vegetation. This creates a sense of openness as well as contributing to the scenic qualities of the locality.

There are a number of groupings of existing, mostly native trees located along the site's boundaries, the existing denser stands of trees to the north and north-east of the site being identified as environmentally significant land. A veterinary hospital building has been approved on the site and is proposed to be located in an existing cleared area of land in the south front area of the site, adjacent to the existing dwelling on the site.

The site has a north-eastern fall to the rear of the site towards Thompsons Creek.

### 3. DETAILS OF THE PROPOSAL

The development application submitted to Council proposes the use of the 12 constructed but unauthorised kennels as a dog breeding facility. The kennels are within an existing farm shed which is bricked internally. The shed's concrete floor drains to an external detention pit.

The proposed operation utilising the existing approved kennels and associated facilities is for an 18 dog operation. An existing approval on the site permits 4 kennels and a maximum of 18 dogs. The operation will have four breeding bitches. Retired greyhounds will be housed in the four approved existing kennels. Whilst the intention is to manage the breeding program such that the eighteen dog limit is generally adhered to, there may be circumstances where it will be exceeded temporarily. The applicant proposes that excess pups will be sold at 12 weeks of age upon required vaccinations being given.

The applicant's personal two companion dogs are excluded from the calculation of the size of the development and are generally accommodated in the existing dwelling house and its curtilage. The business will be run by a husband and wife team who are the owners / occupiers of the property. A hardstand area located in front of the farm shed exists to meet the parking demands of the development.

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The dogs will spend the majority of the day within the internal kennels with individual time out in the exercise runs during daylight hours. External pens and yards adjoin the kennel area to permit the holding of dogs whilst the kennels are cleaned and maintained.

The five exercise runs are each approximately 5m x 87m in dimension and are located at the centre of the site running towards the rear of the site. Whilst dogs are being exercised in the runs they will be under constant supervision.

### 4. BACKGROUND

#### 4.1 History

The following background and history of other approvals granted for the site are outlined below:

- Development consent (DA 610/1987) was granted in 1987 for four kennels on the property for dog breeding purposes. In accordance with this approval, a maximum of 18 dogs including progeny, are permitted on the site.
- Development consent (DA 391/1987) was granted in 1988 for the construction of a farm storage shed. This shed housed 12 unauthorised kennels which, in 2009, were made the subject of DA-777/2009. The use of the 12 kennels as a boarding facility allegedly commenced late 2008 and was the subject of a complaint. The owner, upon direction from Council ceased use of the kennels and sought consent. DA-777/2009 sought permission for the use of the 12 kennels. A deferred commencement consent was issued for the usage, however, the applicant did not address the matters contained within the deferred commencement, and the development consent therefore lapsed.
- Development consent (DA-677/2011) was granted in 23 December 2010 for the construction of a single storey veterinary hospital on the eastern side of the property.

Copies of these previous consents are appended to this report.

### 5. STATUTORY CONSIDERATIONS

#### 5.1 Zoning

The subject site is zoned RU1 Primary Production under the provisions of Liverpool Local Environmental Plan 2008 (LLEP). The proposed development is defined as “*agriculture*” under the LLEP, which provides as follows:

***agriculture*** means any of the following:

- (a) animal boarding or training establishments,
- (b) aquaculture,
- (c) extensive agriculture,
- (d) farm forestry,
- (e) intensive livestock agriculture,
- (f) intensive plant agriculture.

“**animal boarding or training establishment**” means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary

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hospital.

The development satisfies the above definition, as the development is for the breeding and training of greyhound dogs. This falls within the definition of an “animal boarding or training establishment”.

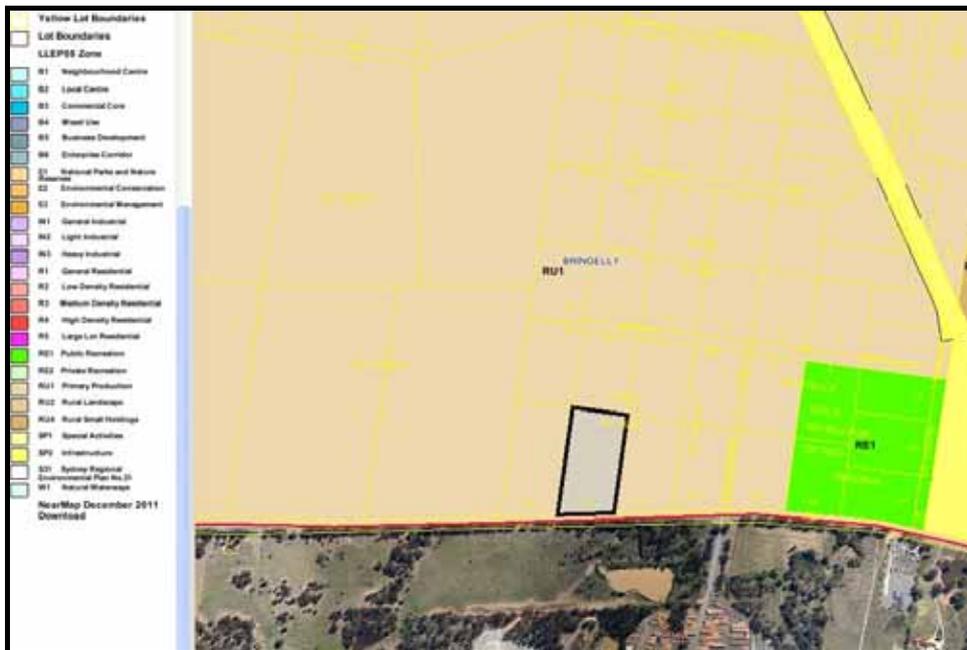


Figure 3: Extract of LLEP 2008 zoning map

## 5.2 Relevant matters for consideration

In addition to LLEP 2008, the following Environmental Planning Instruments (EPI's), Development Control Plan and Codes or Policies are relevant to this application:

1. State Environmental Planning Policy (Sydney Region Growth Centres) 2006
2. Sydney Regional Environmental Plan No 20 – Hawkesbury - Nepean River (No 2 - 1997)
3. Liverpool Local Environmental Plan 2008
4. Liverpool Development Control Plan 2008
5. Liverpool Contributions Plan 2009

An assessment of the proposed development under the planning controls is provided below:

## 6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 79C of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation as follows:

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**6.1 Section 79C(1)(a)(1) – Any Environmental Planning Instrument**

**(a) State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

The subject site falls within the Bringelly Precinct of the South West Growth Centre. Clause 7 of the Policy sets out the controls applying to precincts after finalisation of the precinct planning process. At this stage the Bringelly area has not been finalised and therefore, there are no current controls applicable to the site.

Clause 16(1) of the Policy sets out the following matters of consideration for applications in growth centres until the precinct planning for land is finalised:

- (a) *whether the proposed development will preclude the future urban and employment development land uses identified in the relevant growth centre structure plan.*

The release is very much in the early stages with no detailed planning to date having been undertaken. The scale of the veterinary hospital proposed is such that it would not be out of character in any number of possible residential zones nor is the usage incompatible with commercial or industrial uses.

The current zoning permits such development and the site's location off Greendale Road will not prejudice the future release of this area. Greendale Road will remain as a main collector running in an east west orientation.

The building has a setback of approximately 20 metres and is at a distance that should road widening occur, there is ample land available.

In consideration of the above, there is sufficient scope to incorporate the site in the master planning once that process begins. The siting of the building is unlikely to significantly prejudice the master planning of the site.

- (b) *whether the extent of the investment in, and the operational and economic life of the proposed development will result in the effective alienation of the land from those future land uses.*

The positioning of the building and the land size is such that the master planning will not be prejudiced. The use and buildings would not be in conflict.

- (c) *whether the proposed development will result in further fragmentation of land holdings.*

The proposal only occupies a small percentage of the site. The remaining lands could be developed as part of the overall master plan. Accordingly, it is considered that the proposal will not result in the fragmentation of the land holdings.

- (d) *whether the proposed development is incompatible with desired land uses in any draft environmental planning instrument that proposes to specify provisions in Appendix 1 or clause 7A.*

Although there are no provisions in Appendix 1 or Clause 7A of this policy, the use is consistent with the zoning of the Liverpool Local Environmental Plan 2008.

- (e) *whether the proposed development is consistent with the precinct planning strategies and principles set out in any publicly exhibited document that is relevant to*

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*the development*

There are no precinct planning strategies established at this time for the Austral area.

- (f) *whether the proposed development will hinder the orderly and coordinated provision of infrastructure that is planned for the growth centre.*

The proposed use and building, as detailed above, will not hinder the provision of any planned infrastructure.

- (g) *in the case of transitional land-whether (in addition) the proposed development will protect areas of aboriginal heritage, ecological diversity or biological diversity as well as protecting the scenic amenity of the land.*

The site is not shown as transitional land on the South West Growth Centre mapping.

Clause 19 of the Policy sets out heads of consideration for development on flood prone land. The proposed development is considered satisfactory as it is located above the 1% AEP flood line on the property. The development is located out of the floodway on the property and has a sufficiently high floor level.

The development will not adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties nor alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain.

The development will enable safe occupation of the flood prone land and major creeks land, and will not detrimentally affect the floodplain environment or cause avoidable erosion, siltation, salinity, destruction of riparian vegetation or a reduction in the stability of the watercourse.

The development is not likely to result in unsustainable social and economic costs to the flood affected community or general community, as a consequence of flooding.

The development is compatible with the flow conveyance function of the floodway and with the level of flood hazard.

- (b) Sydney Regional Environmental Plan No. 20 – Hawkesbury - Nepean River No. 2 - 1997**

It is considered that the proposal satisfies the provisions of the REP. Subject to appropriate sedimentation and erosion controls during any construction work, and the installation of an approved waste water management system the development will have minimal impact on the Nepean River Catchment. As such, the operation of the proposed development is unlikely to have any adverse impacts on stormwater runoff and water quality.

- (c) Liverpool Local Environmental Plan 2008**

**Permissibility**

The subject site is zoned RU1 under the provisions of Liverpool Local Environmental Plan 2008 (LLEP). The proposed development is defined as an “animal boarding or training establishment” under the LLEP, which provides as follows:

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*“animal boarding or training establishment” means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.*

***The development satisfies the above definition, as the development comprises 12 kennels for the keeping of greyhound dogs for breeding and training purposes.***

### Objectives

***The objectives of the RU1 zone are as follows:***

- *‘To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To ensure that development does not unreasonably increase the demand for public services or public facilities.*
- *To ensure that development does not hinder the development or operation of an airport on Commonwealth land in Badgerys Creek.*
- *To preserve bushland, wildlife corridors and natural habitat’.*

The proposed development will meet and satisfy the above stated objectives. Specifically, the development will result in more sustainable diverse primary industry in the area. It will, subject to conditions of approval relating to noise and runoff management and appropriate operational procedures, minimise conflict between neighbouring land uses. It will not unreasonably increase the demand for public services or facilities. The development will not hinder the development of an airport at Badgerys Creek or affect or impact upon any bushland or natural areas.

The proposal is considered to perform favourably in relation to the relevant above objectives in that the use is one of a range of permissible uses considered appropriate for the RUI Zone, and the proposal provides for the retention/preservation of the existing stands of trees and environmentally significant land within the site. The proposed development is of a low traffic generating type and is located in an area with the necessary existing facilities and infrastructure to support and service the proposed use.

### Environmentally significant land (Clause 7.6)

*Other LLEP 2008 provisions*

*(1) The objectives of this clause are as follows:*

- (a) to maintain bushland, wetlands and wildlife corridors of high conservation value,*
- (b) to identify areas of significance for revegetation to connect to or buffer bushland, wetlands and wildlife corridors,*
- (c) to protect rare and threatened native flora and native fauna,*
- (d) to ensure consideration of the significance of vegetation, the sensitivity of the land and the impact of development on the environment prior to the giving of any development consent.*

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(2) Before determining an application to carry out development on environmentally significant land, the consent authority must consider such of the following as are relevant:

- (a) the condition and significance of the vegetation on the land and whether it should be substantially retained in that location,
- (b) the importance of the vegetation in that particular location to native fauna,
- (c) the sensitivity of the land and the effect of clearing vegetation,
- (d) the relative stability of the bed and banks of any water body that may be affected by the development, whether on the site, upstream or downstream,
- (e) the effect of the development on water quality, stream flow and the functions of aquatic ecosystems (such as habitat and connectivity),
- (f) the effect of the development on public access to, and use of, any water body and its foreshore's.

The existing stand of trees comprising natural bushland to the rear and north-east of the site is identified as environmentally significant land in Council's Environmentally Significant Land Map. The proposed development will have no impact upon this land.

**(d) Liverpool Contributions Plan 2009**

Liverpool Contribution Plan 2009 is not applicable to the proposed development.

**6.2 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument**

No draft environmental planning instrument applies to the site.

**6.3 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan**

**Liverpool Development Control Plan 2008**

Parts 1.1, 1.2 and 5 of the Development Control Plan apply to the proposed development and prescribe standards and criteria relevant to the proposal.

The following compliance table outlines compliance with these controls.

<b>PART 1.1 – GENERAL CONTROLS FOR ALL DEVELOPMENT</b>		
<b>CONTROL</b>	<b>PROVIDED</b>	<b>COMPLIES?</b>
Clause 5 Bushfire risk	Whilst a substantial portion of the site is within a bushfire buffer area, no specific measures are provided or required.	Yes
Clause 8 Erosion and sediment control	A grass cover is to be maintained over dog runs.	Yes
Clause 9 Flooding	The kennel structures are located on a flood free portion of the property.	Yes

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Clause 10 Salinity-moderate	Low risk activities require no special treatment.	Yes
Clause 12 Acid sulphate soils	Not identified as acid sulphate soils.	Yes
Clause 15 On-site sewage disposal	Unapproved existing system of unknown effectiveness.	No
Clause 18 Notification of applications	Advertised for 14 days	Yes
<b>PART 1.2 – ADDITIONAL GENERAL CONTROLS FOR DEVELOPMENT</b>		
<b>CONTROL</b>	<b>PROVIDED</b>	<b>COMPLIES?</b>
Car parking	The site has hard stand areas able to amply accommodate the vehicles and dog trailers of the residents / operators of the kennels.	Yes
<b>PART 5 – Rural</b>		
<b>CONTROL</b>	<b>PROVIDED</b>	<b>COMPLIES?</b>
Clause 2 Minimum setbacks: front - 50 side - 2m rear - 10m Building	Front - 51m Side – 1.0m Rear – approx. 103m	Partial. See comments below
Clause 4 Building design – maintenance of existing streetscape and rural aesthetic of area	The kennels are within an existing farm shed. The existing shed is a single storey building and is of a scale and character typical of rural sheds in the area	Yes

**Comments:**

As demonstrated by the compliance table above, the development satisfies the requirements of Parts 1.1, 1.2 and 5 of Development Control Plan 2008 with the exception of standards relating to bushfire, sewage disposal and side setbacks. Commentary regarding the non-compliances is outlined below:

***Bushfire Assessment***

Whilst no specific measures have been identified for bushfire protection it is possible to

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condition any approval to incorporate ember protection measures and an evacuation plan for dogs in event of a bushfire event.

### ***Sewerage Management***

The existing dwelling is connected to an appropriate system however the kennels are connected to an unapproved system of unknown effectiveness. The preparation of a Wastewater Management Plan by an appropriately qualified consultant and its implementation will be a condition of any development consent that may be issued. An approval for the system under Section 68 of the Local Government Act 1993 will be required.

### ***Side Setback***

The development does not comply with the current side setback requirement for buildings however, as the development is within an existing approved shed the variation is considered justified.

### **(iia) Any Planning Agreement**

No planning agreement relates to the site or proposed development.

### **6.4 Section 79C(1)(a)(iv) – The Regulations**

There are no matters prescribed by the Regulations that apply to this development.

### **6.5 Section 79C(1)(b) – The Likely Impacts of the Development**

#### **(a) Natural and Built Environment**

The proposal minimises the noise impact of the development as dogs will be housed within an acoustically insulated shed and exercise yards. As the facilities are existing the visual impact is existing and known. The relatively small scale of the development together with appropriate operational and house keeping measures will result in minimal environmental impacts that are not incompatible with a rural environment

### **6.6 Section 79C(1)(c) – The Suitability of the Site for the Development**

The proposed use is best suited to a rural area and the site is suitably zoned for the proposed development. It is generally compliant with Council's requirements and is consistent and compatible with the adjoining existing and proposed rural development.

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**6.7 Section 79C(1)(d) – Any submissions made in relation to the Development**

**(a) Internal Referrals**

The following comments have been received from Council's Internal Departments:

<b>DEPARTMENT</b>	<b>COMMENTS</b>
<b>Building</b>	No objection subject to conditions of consent.
<b>Engineer</b>	No objection subject to conditions of consent.
<b>Health</b>	<p>A waste water management plan, reflecting water usage, drainage and waste disposal from the kennels is required.</p> <p>Environmental Health recommends that the application be refused as the Acoustic Report dated 3 July 2012 has identified that predicted noise levels are expected to exceed intrusive and amenity guidelines for the nearest sensitive receivers located to the east and west of the proposed development and has failed to demonstrate to Council detailed design and construction noise attenuation measures that should be implemented to appropriately mitigate noise.</p> <p>Council previously requested a statement from an appropriately qualified acoustic consultant that there will be no intrusive/offensive noise to nearby sensitive receivers. This has not been provided. Additionally, the Acoustic Report has shown that the proposed development will not comply with noise requirements outlined in Council's Animal Management Policy (i.e. that noise on the premises will not exceed five (5) dbA above the background noise measured on the boundary of the premises).</p> <p>Environmental Health recommends that the proposed development be refused as the proposal has not demonstrated that the development will comply with noise requirements outlined in Council's Animal Management Policy. Furthermore, the proposal has failed to demonstrate that the design and construction of the proposed structure will effectively mitigate noise to nearby sensitive receivers.</p>

**Comments:**

The findings of the applicant's acoustic report by Aargus Pty Ltd are summarised in the four tables below.

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**Table No.1 Recommended Amenity Criteria for Rural Settings**

Noise Amenity Area	Time of Day	Acceptable Noise (dBA)	Recommended Maximum Noise (dBA)
Rural	Day	50	55
	Evening	45	50
	Night	40	45

**Table No. 2 Summary of Ambient Background Noise Results**

	Day (LAeq 15min)	Day (LA90 15min)	Evening (LAeq 15min)	Evening (LA90 15min)	Night (LAeq 15min)	Night (LA90 15min)
<b>Locution 1 (North)</b>	49	44	44	41	41	38
<b>Location 2 (West)</b>	51	44	47	40	40	38
<b>Location 3 (East)</b>	50	43	46	42	41	38
<b>Average</b>	50 dBA	44 dBA	46 dBA	41 dBA	41 dBA	38 dBA

**Table No. 3 Summary of Predicted Noise Results**

	Distance from development	Sound Pressure level of source @ 7m	Predicted Noise Level at receiver (dBA)
<b>Northern Residence</b>	275	72	40
<b>Western Residence</b>	40	72	57
<b>Eastern Residence</b>	116	72	48

**Table No. 4 Summary of Site Specific Noise Results**

Time of Day	Intrusiveness Criteria LAeq 15min + 5dBA	Amenity Criteria
Day	55	50
Evening	51	45
Night	46	40

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Based on the measured background results, predicted noise results and the developed site specific criteria the acoustic consultant made the following comments:

- Predicted noise levels are expected to exceed the intrusive and amenity guidelines throughout the day for the residence approximately 40m to the west.
- Predicted noise levels are expected to exceed the intrusive guidelines during the night and the amenity guidelines throughout the evening and night for the residence approximately 116m to the east.
- Predicted noise levels are not expected to exceed the intrusive and amenity guidelines throughout the day, evening and night for the residence approximately 275m to the north.

It was also assessed that the noise levels will be greater than sleep disturbance criteria for the eastern and western properties.

The report however made the following recommendations to control the noise impacts from the site:

- Remove direct line of sight between the dogs and children or animals, as looking at other animals or children may provoke barking. Provide noise insulation for the kennel
- Access to kennels should be restricted solely to staff. Feeding of the dogs should be restricted to the daytime hours of 7 am - 6 pm.
- Exercise of the dogs may only be performed between the hours of 9 am and 5pm, that is, dogs are not kept overnight in the exercise runs.
- A responsible person must be available on site 24 hours per day
- Kennels should be constructed of such a material so as to provide an appropriate reduction in the emission of noise. Materials such as masonry and cement sheeting would provide a suitable structural basis. Design of the enclosure should be undertaken by a suitably qualified person.
- A constructed vegetation barrier bamboo (or other suitable species) around the kennel area in order to provide further sound insulation.
- If necessary, undertake post installation noise monitoring to determine noise levels in relation to the nearby receivers and effectiveness of control measures.

In respect of the previous and now lapsed approval on the site the following additional measures were proposed:

- All external walls of the kennels are insulated with 88mm thick Rockwool sound insulation with a density of 32kg/m and R2.5.
- A2.0 metre high and 100 mm thick gap free aerated concrete wall is installed around all kennels, runs and exercise areas.
- Minimisation of people and cars in the vicinity of the kennels.

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- Individual barking control is implemented for individual dogs that bark unreasonably, eg. Ultrasonic bark control collars and dog masks.

Subject to the implementation of the above and other appropriate acoustic measures it is considered that noise impact of the development can be minimised.

### **(b) External Referrals**

Nil required to be carried out.

### **(c) Community Consultation**

In accordance with Liverpool Development Control Plan 2008, the application was advertised for 14 days. During the advertising period, 11 written submissions were received objecting to the proposal.

The range of issues which were raised in the submissions, and a response to each, are summarised below:

#### **ISSUE 1: Noise nuisance from barking dogs particularly at night.**

##### **Response:**

Although the applicant has submitted an Acoustic Report that confirms a noise nuisance will occur if no amelioration measures are implemented, the report considers that mitigation measures can be implemented to address the concerns of the neighbours. The measures recommended include:

- Dogs not being kept overnight in the exercise runs.
- All external walls of the kennels are insulated with 88mm thick Rockwool sound insulation with a density of 32kg/m and R2.5.
- A 2.0 metre high and 100 mm thick gap free aerated concrete wall is installed around the yard area adjacent to the shed containing the 12 kennels.
- Minimisation of people and cars in the vicinity of the kennels.
- Individual barking control is implemented for individual dogs that bark unreasonably, eg. Ultrasonic bark control collars and dog masks.

The submission of detailed acoustic fence plans for Council approval will be a condition of development consent as will the preparation of a formal management plan for the implementation of operational type noise control measures.

Additionally the applicant proposes that dogs are exercised individually at a time in the exercise runs thus minimising the likelihood of dogs barking at each other.

The site is secured with a motorised front gate. It is recommended that an intercom system be installed at the gate to facilitate the entry of visitors without the need to sound horns thus minimising noise disturbances.

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**ISSUE 2: The required ventilation of the shed will negate any noise mitigation measures**

**Response:**

It is possible to mechanically ventilate the kennels and / or acoustically shield ventilation openings to maintain the acoustic integrity of the building.

**ISSUE 3: Cumulative acoustic impacts with approved veterinary hospital on eastern side of property.**

**Response:**

The veterinary hospital is not proposing to offer boarding facilities and this is reflected in the consent conditions. Animals that are required to be kept overnight for treatment purposes are to be housed in cage rooms within the building. Thus the veterinary hospital building itself will provide acoustic shielding.

The applicant submitted an Acoustic Report for the veterinary hospital that did not recommend any particular noise attenuation measures, apart from compliance with the provisions of the BCA and Australian Standards. The development consent however imposes requirements for the proposed cage rooms for dogs, cats and birds to incorporate specific noise-reducing construction techniques.

It is noted in the Acoustic Report accompanying this application did not take into consideration cumulative impacts.

**ISSUE 4: Odour generation**

**Response:**

The Odour report prepared by Aargus Pty Ltd and submitted with the application concludes that the proposed development is expected to have a low odour impact on the surrounding area.

The following mitigation measures are proposed for the development and are considered adequate:

- All areas will be cleaned daily.
- Waste is to be stored in a specialised waste disposal area and will be removed off site regularly by private contractors.
- Any stored waste is to be mixed with sawdust.

The maintenance and demonstration of the above best practice is not only important, it is the limit of what can be expected in terms of controlling the impacts. Ongoing maintenance to maintain standards and minimise possible odours will be required.

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**ISSUE 5: Polluted wash down water from the kennels and runoff contaminated with dog faeces and urine in the run areas will pollute Thompsons Creek at the rear of the northern adjoining property.**

**Response:**

Waste water from the kennel area currently drains to a grass covered gravel filled pit. This arrangement does not have approval and its buried status prevents a proper assessment of its design. It is proposed that any approval be conditioned such that a waste management plan for the kennels is prepared by a suitably qualified consultant and submitted to Council for approval.

The run areas are grass covered and relatively large at approximately 440m<sup>2</sup> each. A significant portion of the site also drains to an onsite dam. These characteristics when combined with regular collection of droppings will help to ensure that any contaminated runoff resulting from voiding by the dogs when outside the kennels will be contained on site.

All water used internally will be treated via an on-site wastewater treatment system. The regular collection of droppings will also be required as part of the management of odours and vermin and insects. A significant portion of site runoff flows to an existing on site dam.

**ISSUE 6: Vermin problems - rats, insects and flies will be attracted to the presence of dog food and faeces.**

**Response:**

The implementation of good management and good house keeping measures will minimise these potential impacts. Appropriate conditions can be imposed on any approval.

**ISSUE 7: Inadequate side setback of only 1metre to western boundary**

**Response:**

The development is setback 1metre and is not in accordance with Liverpool Development Control Plan 2008. The shed structure is an existing and approved development. Thus the status quo in terms of visual impact is not being altered by the proposed development.

**ISSUE 8: Out of character with the area**

**Response:**

It is considered appropriate that animal related businesses be located in rural areas. An animal breeding and training facility is a legitimate rural use.

**Section 79C(1)(e) The public interest**

The public interest is taken to be the development a sustainable diversity of primary industry in the area.

The issues raised in the objections made to this proposal have been adequately addressed throughout this report. It is considered that the proposed development is in the public interest, and is worthy of support.

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**7. CONCLUSION**

This report finds that subject to appropriate conditions of approval including measures recommended by the submitted acoustic report, the proposed development is consistent and compatible with the rural character of the area and the objections do not warrant refusal of the application.

The development application has been assessed on its merits and against Council's DCP and is considered satisfactory subject to the implementation of noise mitigation measures.

**8. RECOMMENDATION**

That:

1. Council approves Development Application DA-919/2012 proposing the use of 12 existing kennels within a farm shed building at Lot 11 DP 2650, 27 Greendale Road Bringelly, subject to the attached conditions of consent.
2. The persons who made a submission with regard to the proposed development are notified in writing of Council's decision.

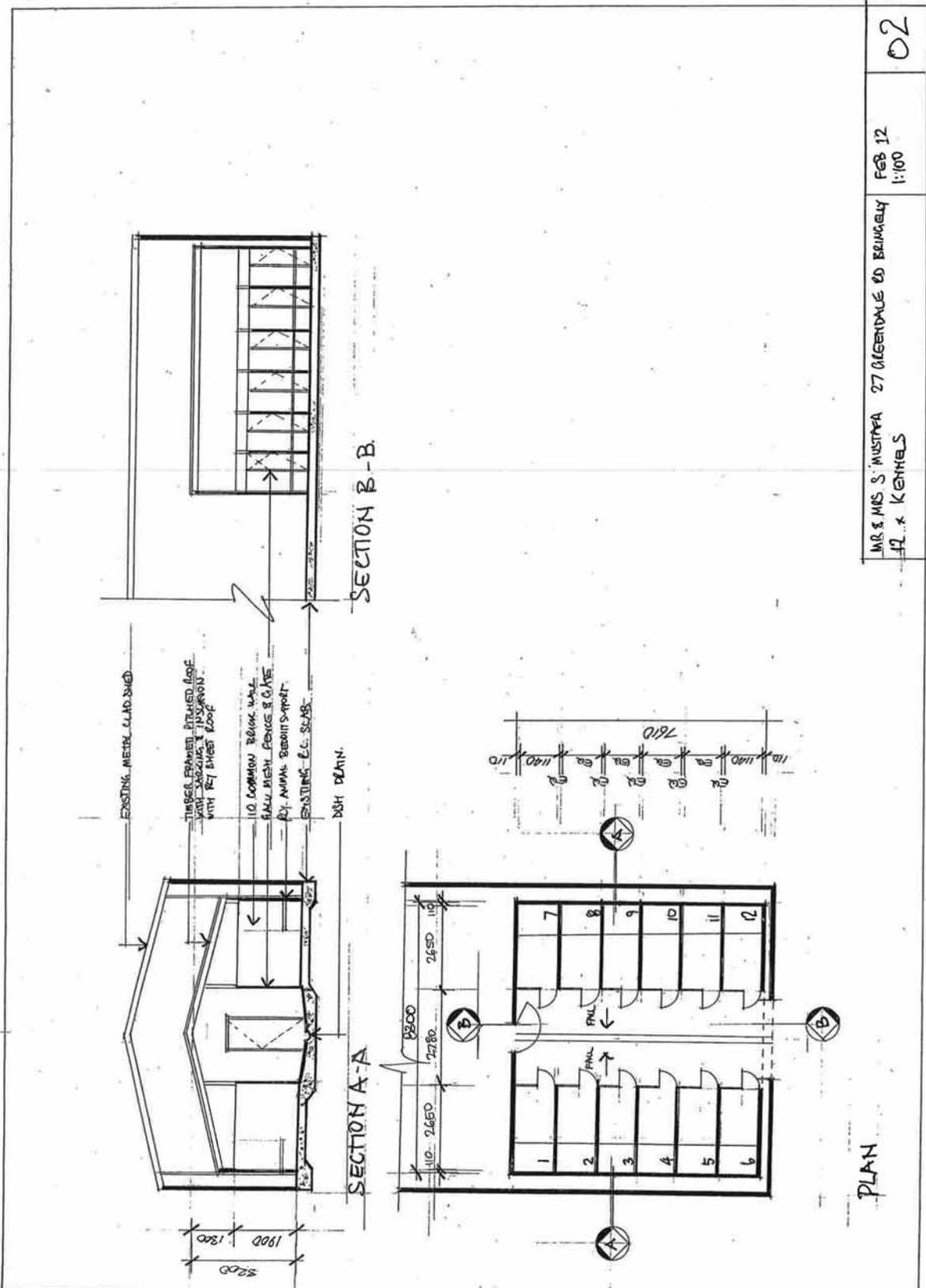
# **9. ATTACHMENTS**

- 9.1 Plans accompanying DA**
- 9.2 Recommended Conditions of Consent**



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MR & MRS S. MUSTAFA 27 ALGENTDALE RD BRIMLEY H. x. KENNELS	FEB 12 1:100	02
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**Attachment 2:**

**THE DEVELOPMENT**

**A. OPERATIONAL MATTERS**

**These conditions pertain to the use of the site and have been imposed to ensure that the development and its operations do not interfere with the amenity of the surrounding area.**

**THE DEVELOPMENT**

1. Development must be carried out generally in accordance with Development Application received 28 March 2012 and accompanying plans marked DA-919/2012, except where modified by the following conditions.

**GENERAL**

2. Excluding any companion dogs registered to the occupant of the property not more than 18 dogs may be kept, bred or trained on the property at any one time. Any numbers of pups in excess of this limit are to be sold at 12 weeks of age upon required vaccinations being given.

**COMPLIANCE WITH OTHER ACTS**

3. Use and occupation of the premises must be carried out at all times without nuisance and in particular so as not to breach the provisions of Protection of Environment Operations Act, 1997.

**SPECIAL INFRASTRUCTURE CONTRIBUTION**

4. The applicant is to make a special infrastructure contribution in accordance with any determination made by the Minister administering the Environmental Planning and Assessment Act 1979 under Section 94EE of that Act and is in force on the date of this consent, and must obtain a certificate to that effect from the Department of Planning and Infrastructure (Growth Centres Commission) before a CC, is issued in relation to any part of the development to which this consent relates.

**COMPLIANCE WITH APPROVED PLANS**

5. All aspects of the development shall comply with the approved plans and conditions.
6. All aspects of construction shall comply with the applicable Performance Requirements of the Building Code of Australia. Compliance with the Performance Requirements can only be achieved by-
  - (a) complying with the Deemed to Satisfy Provisions: or
  - (b) formulating an Alternative Solution which-
  - (c) complies with the Performance Requirements; or
  - (d) is shown to be at least equivalent to the Deemed to Satisfy Provision, or a

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combination of (a) and (b).

### OPERATIONAL MATTERS

7. Dogs are not to be kept overnight, between the hours of 7:00pm to 8:00am in the exercise runs.

### ACOUSTIC MEASURES

8. All external walls of the kennels are to be insulated with 88mm thick Rockwool sound insulation with a density of 32kg/m and R2.5.
9. A 2.0 metre high and 100 mm thick gap free aerated concrete wall shall be installed around the yard area outside the shed housing the 12 kennels. The finished colour of the fence is to be Colorbond © Mist Green or similar. Detailed acoustic fence plans are to be submitted and approved by Council, prior to issue of a Construction Certificate.
10. Any ventilation opening in the shed housing the kennels are to be acoustically screened.
11. The presence of people and cars in the vicinity of the kennels is to be minimised particularly at night.
12. Individual barking control is to be implemented for individual dogs that bark unreasonably, eg. Ultrasonic bark control collars and dog masks.
13. Dogs are to be exercised individually at a time in the exercise runs thus minimising the likelihood of dogs barking at each other.
14. A complaints register is to be kept and made available for Council inspection if required.
15. Any alarm to be installed on site shall be 'silent back to base' type.
16. An intercom system is to be installed at the gate to facilitate the entry of visitors without the need to sound horns thus minimising noise disturbances.
17. That the use of the premises including mechanical plant, music and other activities shall not give rise to any one or more of the following:
  - Transmission of vibration to any place of different occupancy greater than specified in AS 2670.
  - An indoor sound pressure level in any place of different occupancy (and/ or public place) greater than 3dB(A) above the L90 background level or greater than 5db(A) at the boundary of any affected property in any octave band from 31.5Hz to 8,000 Hz centre frequencies inclusive between the hours of 7.00am to midnight daily and 0dB(A) above the L90 background between 12 midnight and 7.00 a.m. the following morning. However, when the L90 background levels in frequencies below 63 Hz are equal to or below the threshold of hearing, as specified by the equal loudness contours for octave bands of noise, this subclause does not apply to any such frequencies.

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- During the period of 12 midnight to 7.00a.m. the use shall be inaudible in any habitable room of any residential premises.
- The emission of an "offensive noise" as defined under the Protection of the Environment Operations Act 1997.
- The method of measurement of vibration in (a) and sound levels in (b), (c) and (d) shall be carried out in accordance with AS 2973 for vibration measurements. AS 1055 for outdoor sound level measurements, and AS 2107 for indoor sound level measurements.

**ADVERTISING**

18. Advertising matter must not be erected, painted or displayed without the prior approval of Council.

**ENVIRONMENTAL**

19. Any water pump or fan heater used in conjunction with the proposed development is to be enclosed within a structure capable of maintaining an operating noise level of a maximum of 5dba above background noise levels at all times, when measured from the nearest adjoining residence.
20. All veterinary chemicals, disinfectants, flea rinses and the like are to be stored within a defined and bunded facility. In the event of pillage or accident / damage, no discharge of chemicals or pollutants from the facility is to occur.
21. The development, including construction, shall not result in any contamination or any increase in sediment deposition into any water body, wetland, bushland or environmentally significant land, or adjoining property.
22. No discharge of water from inside the kennels is to enter any receiving natural water course at any time.
23. Any contaminated storm water and waste waters generated on-site, shall be collected and treated in a separate on-site storage and treatment facility or management system. The contaminated waters shall be treated in such a manner so that no discharge to the receiving environmental systems occurs as prescribed under the Protection of the Environment Operations Act.
24. No pollutant or contaminated material is permitted to egress from the boundary of the premises.
25. The site is to be kept in a clean and tidy manner at all times. Grass adjoining property boundaries is to be maintained and mowed at regular intervals.
26. Offensive odours are not to be emitted from the property.
27. All waste produced on the site is to be disposed of immediately. In this regard the operator of the kennels is to ensure that satisfactory waste bins are provided on the site and regularly picked up by a licensed waste contractor.

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28. Alterations to the natural surface contours or absorption characteristics must not impede, increase or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

### LIGHTING

29. Any lighting on the site is to minimise glare and spillover light nuisance on adjacent properties and road users. All external lighting is to incorporate full cut of shielding.

### WASTE STORAGE AND DISPOSAL - GENERAL

30. All solid and liquid waste must be removed from the site by a registered waste contractor.
31. All solid waste stored on site must be covered at all times.
32. All waste materials generated as a result of the development must be disposed at a facility licensed to receive such waste.
33. Waste bins must be stored in designated garbage/ trade waste areas, which must be kept tidy at all times. Bins must not be stored or allowed to overflow in parking or landscaping areas or obstruct the exit/s of the building.

### BUSHFIRE

34. The farm shed containing the kennels is to be sealed so as to prevent the entry of embers.
35. The Kennel Management Plan is to contain an evacuation plan for the dogs in the event of bushfire.

## B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### WASTE WATER MANAGEMENT

36. A separate application for a permit to carry out works must be issued by Council for an on site waste water treatment system for kennel drainage and wash down water, pursuant to Section 68 of the Local Government Act, 1993. The application is to be Wastewater Management Plan prepared by an appropriately qualified consultant.

### SERVICES

37. Approval, in the form of stamped Construction Certificate plans, is to be obtained from Sydney Water to verify that the development meets its requirements concerning the relationship of the development to any water mains, sewers or stormwater channels.
38. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator, for details see Customer Service, Urban Development at [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92.

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Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Construction Certificate.

### **C. PRIOR TO ANY WORK COMMENCING ON THE SITE**

#### **CONSTRUCTION CERTIFICATES**

39. Detailed engineering plans and specifications relating to the acoustic fence must be endorsed with a Construction Certificate, in accordance with Section 81A of the Act, and a copy submitted to Council, with payment of any relevant fees. The fees will include damaged deposit, road opening, damaged inspection fee and any required Section 94 payment or bond. You are required to contact Council's Customer Service Centre to confirm the current amounts.
40. Any Construction Certificate that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent with the approved Development Application plans.

#### **NOTIFICATION / PRINCIPAL CERTIFYING AUTHORITY**

41. The applicant must advise Council of the name, address and contact number of the accredited certifier, in accordance with Section 81A (4) of the Act. (D2.1)
42. The applicant must advise Council, of intended date to commence the work which is the subject of this consent by completing a Notice of Commencement of Building Works Form available from Council's Customer Service Centre. A minimum period of two (2) working days, notification must be given.
43. A written notice of intention must be given to the owner of the adjoining allotments of land outlining the particulars of the proposed work which involves:
  - a) Any excavation, below the base of the footings of a building on an adjoining allotment of land;
  - b) The notice must be given seven (7) days prior to the commencement of work.
44. A sign must be erected in a prominent position on the work site. The sign must state:
  - a) Unauthorised entry to the premises is prohibited, and;
  - b) The name of the builder or other person in control of the premises, and a telephone number at which the builder or other person may be contacted outside working hours.

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### SITE FACILITIES

45. Adequate waste disposal methods and builders storage facilities must be installed on the site. Builders' wastes, materials or sheds are not to be placed on any property other than that which this approval relates to.
46. Access to the site must be provided only via the all weather driveway on the property and is not to be provided from any other site, or location.

### NOTIFICATION OF SERVICE PROVIDERS

47. Construction Certificate plans submitted to Council must be approved by Sydney Water to verify that the development meets its requirements concerning the relationship of the development to any water mains, sewers or stormwater channels.

### D. DURING CONSTRUCTION

#### ENVIRONMENTAL MANAGEMENT

48. No fires are to be lit or waste materials burnt on the site.
49. Waste water from the washing of concrete forms or trucks is not to enter the stormwater drainage system.
50. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated spoil material.

#### SEDIMENT AND EROSION CONTROL

51. Sediment and erosion control measures are to be implemented during the construction of the acoustic fences and waste water management system. All sediment and erosion control measures shall be maintained on site, until such time as all disturbed areas of the site has been revegetated.

#### HOURS OF OPERATION

52. Construction and civil work is only permitted on the site between the hours of 7am to 6pm Monday to Friday and 8am to 1pm on Saturday with no work permitted on Sundays and Public Holidays, unless otherwise approved by Council.
53. Deliveries must only occur between the hours of 7am and 7pm Monday to Friday, and between 7am and 7pm on Saturdays, and must not occur at any time on Sundays or Public Holidays.

### E. PRIOR TO OCCUPATION OF THE DEVELOPMENT

#### GENERAL

54. The use or occupation of the kennels shall not commence until such time as an approved waste water treatment system is installed and the acoustic fences and acoustic insulation of the kennels is completed. An acoustic report by an appropriately qualified acoustic engineer is to be submitted confirming that the kennels achieve compliance with the requisite noise criteria. The use or occupation

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of the development prior to compliance with all conditions of development consent may make the applicant / developer liable to legal proceedings.

55. The kennel management plan is to be implemented at all time. Any reasonable direction given by Council regarding kennel management practices shall be immediately implemented by the Applicant.
56. The premises must not be occupied until an occupation certificate is issued either by Council or an accredited certifier.

**CERTIFICATES**

57. All required compliance certificates shall be submitted to Council.

**WEDNESDAY 19 SEPTEMBER 2009**

<b>ITEM No:</b>	<b>2</b>
<b>APPLICATION NUMBER:</b>	<b>DA-919/2012</b>
<b>SUBJECT:</b>	<b>PRIVATE USE OF 12 KENNELS WITHIN AN EXISTING FARM SHED BUILDING</b>
<b>LOCATION:</b>	<b>LOT 11 DP 2650 NO. 27 GREENDALE ROAD, BRINGELLY NSW 2556</b>
<b>OWNER:</b>	<b>MR S MUSTAFA AND MRS D MUSTAFA</b>
<b>APPLICANT:</b>	<b>MR S MUSTAFA</b>
<b>AUTHOR:</b>	<b>PETER FLYNN</b>

#### ISSUES RELATED TO THE APPLICATION

The Panel have formed the view that there is a lack of clarity in this application. The lack of clarity is due in part to the existence of a number of previous approvals, one of which has lapsed.

**VOTING NUMBERS: 4 - 0**

#### RECOMMENDATION OF PANEL:

The Panel is of the mind to approve the application for 12 kennels for breeding purposes within an existing farm shed building subject to the surrender of DA610/1987 and DA-677/2011 and subject to the following deferred commencement conditions:

1. A new acoustic report, including recommendations, is to be provided by a qualified acoustic engineer. The report is to assess the acoustic impact of;
  - a. 12 breeding kennels to be located in the existing farm shed building on the western boundary and
  - b. the external activities relating to the management of the dogs and
  - c. the existing runs and the temporary enclosures where the main kennel is being serviced.

The report will ensure that there is compliance with the noise requirements as outlined in Council's Animal Management Policy.

The report will make recommendations to ensure that noise levels do not exceed intrusive and amenity guidelines for the nearest sensitive receivers located to the east and the west of the development.

2. A waste water management plan reflecting water usage, drainage and waste disposal from the kennels is to be provided to the satisfaction of Council.

**WEDNESDAY 19 SEPTEMBER 2009**

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3. An odour report is to be prepared for the 12 breeding kennels

These conditions are to be complied with to the satisfaction of Council prior to the commencement of this approval.

The remaining Conditions of Consent are those listed in the Council's report and conditions of consent which will require the carrying out of the recommendations made in the three (3) reports forming the deferred commencement conditions should be added.

**LIVERPOOL CITY COUNCIL****GENERAL MANAGERS REPORT****ORDINARY MEETING****28/11/2012**

<b>ITEM NO:</b>	<b>GMRR 01</b>	<b>FILE NO:</b>	<b>2012/1841</b>
<b>SUBJECT:</b>	<b>CODE OF CONDUCT COMPLAINTS</b>		

**SUBJECT:                   REPORT OF THE CONDUCT REVIEW COMMITTEE  
                                  - SOLE REVIEWER**  
**REPORT BY:               CONDUCT REVIEW COMMITTEE – SOLE REVIEWER**  
**CONTACT:                 KATH ROACH, SINC SOLUTIONS PTY LTD**

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## **PURPOSE**

The following report has been prepared under the provisions of Part 3, Section 12 - Complaint Handling Procedures and Sanctions of Liverpool City Council's Code of Conduct adopted by Council on 18 April 2011.

## **RECOMMENDATIONS**

It is recommended in accordance with the provisions provided for within the Liverpool City Council Code of Conduct that:

1. Council receive and note the report of the Conduct Review Committee – Sole Reviewer

## **BACKGROUND**

<i>Person Subject of Complaint:</i>	<i>Councillor Jim McGoldrick</i>
<i>Date of Alleged Breach:</i>	<i>21 November 2011</i>
<i>Relevant Code of Conduct:</i>	<i>Liverpool City Council Code of Conduct adopted by Council on 18 April 2011</i>

## **COMPLAINT**

It is alleged that Councillor McGoldrick breached the Code of Conduct on 21 November 2011 by allegedly failing to declare a conflict of interests in relation to the Council Resolution arising from Council report CORS 05 entitled "September 2011 Quarter Budget Review" which resolved interalia that Council:

- "5. *Allocates up to \$7,500 towards the printing of core flute signs, bumper stickers and pamphlets for use in promoting the Council opposition to the proposed Intermodal Container Terminals at Moorebank. That the South East Community Alliance Secretary Ms N Gidiess and Action Coordinator Mr A Corben submit to the Council the numbers, style, size, wording and costs to the Council of the core flute signs, bumper stickers and pamphlets for editing and approval, keeping within the budget approved within 21 days. A minimum three quotes will be required.*"

It was alleged that Councillor McGoldrick has a private involvement and interest in the community group 'The South West Community Alliance'

The Council resolution was amended on 25 June 2012 when Council passed the following resolution, as part of the Council report GMRR 03 entitled "Code of Conduct Complaints":

- “4. *“Amends the minutes of 21 November 2011 Council meeting to accurately record the name of the organisation to which it provided a donation under Section 356 of the Local Government Act as the “South West Community Alliance”.*”

#### **FACTUAL BACKGROUND AND DETAILS OF ENQUIRIES MADE:**

The following details the facts in relation to the matter.

1. On 21 November 2011 an Ordinary Meeting of Council was held by Liverpool City Council.
2. As part of the meeting on 21 November 2011, Council considered a report item number CORS 05 entitled “*September 2011 Quarter Budget Review*”.
3. Councillor McGoldrick was present at the Council Meeting on 21 November 2011.
4. No Conflict of Interests were declared by any Councillor or staff member in relation to item CORS 05 entitled “*September 2011 Quarter Budget Review*”.
5. The Council report recommendation was as follows:  
*“That Council:*
  1. *Receives and notes the report.*
  2. *Votes the identified budget variations in accordance with this report.*
  3. *Transfers \$260K to the Property Development Reserve.*
  4. *Transfers \$500K to the Asset Maintenance Reserve.”*
6. Council resolved as follows:  
*“That Council:*
  1. *Receives and notes the report.*
  2. *Transfers \$260K to the Property Development Reserve.*
  3. *Allocates \$42K for signage as per the recommendation of ASST 02 for the Council Service Hotline.*
  4. *Allocates \$167K for the CBD Tree Program.*
  5. ***Allocates up to \$7,500 towards the printing of core flute signs, bumper stickers and pamphlets for use in promoting the council opposition to the proposed Intermodal Container Terminals at Moorebank. That the South East Community Alliance Secretary Ms N. Gidiess and Action Coordinator Mr A. Corben to submit to the Council the numbers, style, size, wording and costs to the Council of the core flute signs, bumper stickers and pamphlets for editing and approval, keeping within the budget approved within 21 days. A minimum three quotes will be required (emphasis added)***
  6. *Refers the road reconstruction of Edmondson Avenue from Bringelly Road to Fifth Avenue to the December quarter review.*
  7. *Refers the balance of \$417,500 be held in reserve for consideration of CCTV for the CBD of Liverpool. A review of the expenditure be carried out upon the finalisation of the input of the information sought by Council of all stakeholders.”*

7. The minutes record the motion was moved by Councillor Lucas and seconded by Councillor Harle.
8. The minutes of the meeting record that Councillor McGoldrick left the meeting at 8.55pm and returned to the meeting at 8.57pm. The minutes do not detail at what point in the consideration of this item that this absence occurred.
9. The resolution at point five (5) provided for persons who occupied offices of Secretary and Action Co-ordinator of the entity 'South East Community Alliance' to submit quotes and proofs to Council for approval within 21 days.
10. The minutes of the meeting do not list any Councillor as being "not present" when the item was voted on.
11. The minutes of the meeting do not record any abstention from voting by any Councillor in relation to item CORS 05.
12. The minutes of the meeting do not record who voted for or against the resolution and there was no legislative requirement for Council to record this detail.
13. The Code of Meeting Practice adopted by Liverpool City Council provides:

*"36(3) A Councillor who is present at a meeting of Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion. This Subclause does not apply to a Councillor who does not vote because he or she has a pecuniary interest or a non-pecuniary conflict of interest in the subject matter of the motion (cl 251).*
14. On 22 February 2012 the General Manager received a complaint regarding "Jim McGoldrick's website". The link provided to the website was <http://nointermodal.com>. The website <http://nointermodal.com> indicates it is run by the South West Sydney Community Alliance. Councillor McGoldrick, in a private capacity, has made various entries on the site.
15. Councillor McGoldrick is identified on the professional network "Linkedin" as the President of the South West Sydney Community Alliance. Information on "Linkedin" further indicates that he has held the position of President for over 22 years.
16. The website <http://nointermodal.com> has Councillor McGoldrick, in his private capacity, as the technical and administrative contact with the registrant of the site being South West Sydney Community Alliance. No other person or address is listed as a contact.
17. A review of the internet records on the website [www.ourcommunity.com.au](http://www.ourcommunity.com.au) (<http://www.ourcommunity.com.au/directories/listing?id=8461>) details that Mr Jim McGoldrick is listed as the contact person for the South West Sydney Community Alliance – SWSCA Bankstown.
18. A review of the internet cannot locate any records for the South East Community Alliance or South East Sydney Community Alliance.

19. On 22 February 2012 the General Manager was subsequently advised by the Manager Community Relations and Events that Council had approved and paid for 'No Intermodal Signs' which contained Council's logo and related to Council's resolution of 21 November 2011. The proof copy of the printed material dated 13 January 2012 included at the bottom of the page a statement as follows: *"For further information.... register with South Western Community Alliance by emailing [7674np@gmail.com](mailto:7674np@gmail.com) or <http://www.nointermodal.com> Or mobile 0410740399 Jim McGoldrick"*.
20. On 27 February 2012 an Ordinary Meeting of Council was held by Liverpool City Council. Councillor McGoldrick was an apology at that meeting.
21. At the meeting on 27 February 2012 a Motion of Urgency was moved by Councillor Mannoun and seconded by Councillor Lucas. The urgency motion stated as follows:  
*"That Council:*  
  1. *Asks the General Manager to urgently investigate the wording on the nointermodal.com website and take appropriate action as necessary including requiring the site administrator to remove the statement and issue an apology.*
  2. *Immediately remove all signs, bumper stickers, and any other paraphernalia that Council has funded to promote the nointermodal.com website.*
  3. *Write to the South West Community Alliance asking them to remove the offensive comments on the website by 3 March 2012."*

The minutes of the meeting record that the motion on being put to the meeting was declared carried. Further, the vote for the motion was recorded as unanimous. The Minutes also record the following under this item *"Note: Cllr McGoldrick was absent from the meeting when this item was voted on."*

22. As required by the Liverpool City Council Code of Conduct, the General Manager subsequently referred the matter relating to an alleged pecuniary conflict of interests by Councillor McGoldrick to the Division of Local Government. Part of that referral to the Division included the following points:  
*"Council officers have confirmed the following:*  
  1. *Councillor McGoldrick was present at the council meeting and voted on the above mentioned matter on 21 November 2011 (refer Council minutes)*
  2. *Councillor McGoldrick left the Council chamber for a couple of minutes after the vote took place*
  3. *...."*
23. After reviewing the matter, the Division of Local Government subsequently referred the matter back to the General Manager by letter received on 7 June 2012.
24. As part of the Division's advice to the General Manager on the matter, the Division advised in part, that their inquiries with regard to the South East Community Alliance were that *"it would not appear that there is any corporation, incorporated, association or co-operative currently registered under that name."*
25. The Division further advised the General Manager that *"on the Division's assessment, the Council's resolution, on its face, would not appear to give rise to any reasonable*

*likelihood or expectation of appreciable financial gain or loss to Councillor McGoldrick personally.” The Division further stated that “...unless Councillor McGoldrick, or his nominee, partner or employer, is a member of the South East Community Alliance, if such a body in fact exists, the pecuniary interest provisions of the Act would appear to have no application and no further analysis of the nature of any interest is required.”*

26. The Division also advised the General Manager to address the matter under the provisions of the Liverpool City Council Code of Conduct.
27. On 25 June 2012 an Ordinary Meeting of Council was held by Liverpool City Council. Councillor McGoldrick was present at the Council Meeting on 25 June 2012.
28. As part of the meeting on 25 June 2012, Council considered a report item number GMRR 03 entitled “*Code of Conduct Complaints*”. Part of that report related to the allegation that Councillor McGoldrick had failed to allegedly declare a conflict of interests in relation to a Section 356 donation to the community group “*The South West Community Alliance*” of which he has a private involvement and interest.
29. The Council Report in relation to that item recommended in part, as follows:  
*“That the minutes of the 21 November 2011 Council meeting be amended to accurately record the name of the organisation to which Council made a donation as the “South West Community Alliance”.*
30. Council resolved in relation to that item in part, as follows:  
*“Amends the minutes of 21 November 2011 Council meeting to accurately record the name of the organisation to which it provided a donation under Section 356 of the Local Government Act as the “South West Community Alliance”.*
31. The minutes of the meeting record that the motion was moved by Councillor Lucas and seconded by Councillor Harle.
32. The Minutes record at the start of this item that Councillor McGoldrick left the chambers at 7.29pm. The minutes further record that following the completion of this item, Councillor McGoldrick returned to the Council Chambers at 7.50pm.
33. On 4 July 2012 Councillor McGoldrick was asked to respond to a series of questions from the Conduct Review Committee – Sole Reviewer in relation to this matter. No response was initially received from Councillor McGoldrick.
34. On 20 July 2012 Councillor McGoldrick was requested again to respond to the series of questions in relation to this matter.
35. On 22 July 2012 Councillor McGoldrick responded to the questions in relation to his non-declaration of a conflict of interests on 21 November 2011 as follows:

*....If you look at the original motion recommendation dated 21/11/2011 CORS 05 page 111 you will see there was no mention of the item 5 that was resolved that night.*

*This clause 5 was added from the floor by Cllr Lucas and seconded by Cllr Harle however I think I recall it was seconded by Cllr Hachitti on the night.*

*I saw the motion typed on the screen verbatim to Cllr Lucas instructions and noted they were talking about local residents I knew and a group South East Community Alliance.*

*I left the chambers to decide what action I should take as noted in the Council minutes. On return I decided I had no relationship with this group and as such had no conflict even though I have been working with hundreds of residents on the No Intermodal issue.*

*Again I felt I had no conflict but when the motion was put to the vote on the floor I did not vote just in case, this made me the only vote in the negative.*

*Following the meeting I was aware that certain residents were in liaison with Council staff to receive the indicated help from council but had totally no input in that project or in any design.*

*With reference to the meeting on 25 June 2012 GMRR03 I was going to declare an interest as I was included in the report but after seeking advice from another councillor with legal training was told I did not need to put in a declaration. When the item started I decided to be safe and leave until after the item had been dealt with as I had no faith in what may come out of this item.*

*As for the changing of the minutes from 21/11/2011 CORS 05, I was not in attendance as I had left the chambers and was not aware of the group mentioned in the report.*

36. On 3 August 2012 Councillor McGoldrick was asked to respond to further questions regarding his relationship with South East Community Alliance Secretary Ms N. Gidiess and Action Coordinator Mr A. Corben who were both referred to in the Council resolution of 21 November 2011. [It is noted that the resolution should have read South West Community Alliance]. No response was initially received from Councillor McGoldrick.
37. On 6 August 2012 Councillor McGoldrick was requested again to respond to the series of questions regarding his relationship with South East Community Alliance Secretary Ms N. Gidiess and Action Coordinator Mr A. Corben who were both referred to in the Council resolution of 21 November 2011. [It is noted that the resolution should have read South West Community Alliance].
38. On 6 August 2012 Councillor McGoldrick responded to the questions as follows:
  1. *“What is the nature of your relationship with Nansi Gidiess?  
I have no relationship with her except protesting against the Intermodals for the past 3 years aprox with the rest of the local community.*
  2. *What is the nature of your relationship with Allan Corben?*

*The relationship is the same as above.*

3. *How long have you known Nansi Gidiess?  
Aprox 3 years following community meetings at Moorebank Community centre organised by Cllr Manoun and Hachitti also attended by Cllr Lucas, Cllr Harle & Napolitano.*
4. *How long have you known Allan Corben?  
Aprox 2.5 years following protest meetings against Intermodals. Do not know exactly when.*
5. *How frequently do you have contact with Nansi Gidiess?  
I am cc in on emails sent to the community with information etc over the years. These emails may go to 10 to 200 people at a time. In person only seen at protest meetings say six to seven times.*
6. *How frequently do you have contact with Allan Corben?  
Around the same as above”.*

#### **NAMES OF PERSONS FROM WHOM INFORMATION WAS SOUGHT:**

1. Governance Officer (for various documentary records)
2. Councillor McGoldrick

#### **ISSUES FOR DETERMINATION:**

1. Did Councillor McGoldrick on 21 November 2011 fail to declare and or appropriately manage a conflict of interests in relation to Council report CORS 05 “*September 2011 Quarter Budget Review*” and was this failure in breach of the provisions of the Liverpool City Council Code of Conduct?
2. Did Councillor McGoldrick on 25 June 2012 fail to declare and or appropriately manage a conflict of interests in relation to Council report GMRR 03 entitled “*Code of Conduct Complaints*” and was this failure in breach of the provisions of the Liverpool City Council Code of Conduct?

#### **Relevant Code of Conduct Provisions**

The **Liverpool City Council Code of Conduct** was adopted by Council on 18 April 2011. The relevant provisions in relation to this complaint are:

#### **6 GENERAL CONDUCT OBLIGATIONS**

##### *General conduct*

- 6.2 *You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (section 439)*

**7 CONFLICTS OF INTERESTS**

7.2 *You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.*

...

*What is a non-pecuniary conflict of interests?*

.....

7.12 *The matter of a report to Council from the Conduct Reviewer Committee/Reviewer relates to the public duty of a Councillor or the General Manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interests in such a matter.*

*Managing non-pecuniary conflict of interests*

7.14 *Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.*

7.15 *If a disclosure is made at a Council or Committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.14.*

7.16 *How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.*

...

7.18 *If you are a Council official, other than a member of staff of Council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:*

- a) *Remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official;*
- b) *Have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply.*

7.19 *If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.*

**FINDINGS OF MATERIAL FACT:**

1. That the South West Sydney Community Alliance, also known as the South West Community Alliance is a known community group with whom Councillor McGoldrick is associated.

2. That Councillor McGoldrick is the President of the South West Sydney Community Alliance.
3. That Councillor McGoldrick is actively opposed to the proposed Intermodal Terminal at Moorebank and is a contributor, in a private capacity, to the website <http://nointermodal.com>.
4. That Liverpool City Council is actively opposed to the proposed Intermodal Terminal at Moorebank.
5. That on the information available to this review the group South East Community Alliance does not exist.
6. That the Council Minutes of 21 November 2011 and the subject resolution incorrectly referred to the South East Community Alliance, an organisation that does not appear to exist, as noted in the advice from the Division of Local Government. These minutes were subsequently corrected at a Council Meeting held on 25 June 2012.
7. That Councillor McGoldrick did not declare a conflict of interests in relation to the proposed motion or resolution of the Council in relation to item CORS 05 at the Council Meeting held on 21 November 2011.
8. That Councillor McGoldrick did not move or second the motion leading to the Council resolution for the item CORS 05 at the Council Meeting held on 21 November 2011.
9. That the minutes reflect that Councillor McGoldrick did not abstain from voting on the Council Resolution in relation to item CORS 05 at the Council Meeting held on 21 November 2011.
10. That there is no evidence available to the review that demonstrates that Councillor McGoldrick had a pecuniary interest in the Council Resolution on 21 November 2011 relating to the South East Community Alliance.
11. That Councillor McGoldrick knew the local residents noted in the Council Resolution on 21 November 2011, being Ms N. Gidiess and Mr A. Corben.
12. That based on the information provided by Councillor McGoldrick in his email of 6 August 2012, and in the absence of information to the contrary, Councillor McGoldrick does not have a non-pecuniary conflict of interests with Ms N Gidiess or Mr A Corben who were included in the Council Resolution of 21 November 2012.
13. That it cannot be determined to what degree Councillor McGoldrick was involved in the preparation of the signage resulting from the Council Resolution on 21 November 2011, although the content of the signage referred directly to him in his private capacity as a contact person.
14. That Council approved the proof copy of the printed material dated 13 January 2012 containing the name of Councillor McGoldrick in his private capacity and his contact details.

15. That Councillor McGoldrick did not declare a conflict of interests in relation to the item GMRR 03 considered at the Council meeting held on 25 June 2012.
16. That Councillor McGoldrick was not in the room and did not vote on the item GMRR 03 considered at the Council Meeting held on 25 June 2012.
17. That the item GMRR 03 before Council on 25 June 2012 related to “*Code of Conduct Complaints*”. The provision contained within Liverpool City Council Code of Conduct at section 7.12 provides that such a declaration was not required given the nature of the report related to Code of Conduct complaints.

#### **REASONS FOR FINDINGS OF MATERIAL FACT:**

1. That the recipient organisation was recorded incorrectly as the South East Community Alliance in the resolution for item CORS 05 at the Council Meeting held on 21 November 2011 and Councillor McGoldrick has no relationship with that organisation. Councillor McGoldrick therefore had no requirement at the meeting of 21 November 2011 to declare a conflict of interests in this matter.
2. That Councillor McGoldrick has stated that he does not have a non-pecuniary conflict of interests with Ms N Gidiess or Mr A Corben who were mentioned in the Council resolution for item CORS 05, and no evidence to the contrary has been obtained by this review. Councillor McGoldrick therefore had no requirement at the meeting of 21 November 2011 to declare a conflict of interests in this matter.
3. Whilst it is noted that the discussion for CORS 05 related to the no intermodal debate which Councillor McGoldrick is actively involved in, the organisation was incorrectly named in the resolution and in the absence of information to the contrary, he had no conflict of interests with Ms N Gidiess and Mr A Corben. Councillor McGoldrick therefore had no requirement at the meeting of 21 November 2011 to declare a conflict of interests in this matter.
4. That the reference in the report and its recommendation to Council on 25 June 2012 which sought to amend the Council Resolution of 21 November 2011 clearly referenced the South West Community Alliance. As Councillor McGoldrick is the President of that group, it may be considered that he had a conflict of interests. However, the report related directly to Code of Conduct Complaints and the provisions contained within the Liverpool City Council Code of Conduct at section 7.12 specifically identify that Councillors do not have a conflict of interests in code of conduct matters. It is noted that the Code of Conduct provision refers to reports from Code of Conduct reviewers, however, by extension this would also apply to reports from the General Manager of a Council given the nature of the report. As such, Councillor McGoldrick did not have to declare a conflict of interests in this report due to this provision of the Code of Conduct
5. Councillor McGoldrick whilst not required to absent himself from the Council Meeting on 25 June 2012, did not take part in the debate or voting of the issue.

## CONSIDERATION ISSUE

Consideration was also given during this review as to whether Councillor McGoldrick had inappropriately used Council Resources, through the use of council funds and or the printed material, for private purposes and as such whether this action may have breached the Liverpool City Council Code of Conduct. Further, consideration was also given as to whether Councillor McGoldrick used the council funds and or the printed material, as part of the re-election campaign which could be considered to be a private interest and whether this action may have breached the Liverpool City Council Code of Conduct.

On both these issues, the following points are relevant:

- Liverpool City Council approved the expenditure of the printed material as part of its resolution on 21 November 2011 albeit for South East Community Alliance which was later changed on 25 June 2012 to the South West Community Alliance; and
- Council staff reviewed and approved the printed material for the 'No Intermodal Signs' which included the name and contact details for Councillor Jim McGoldrick in his private capacity.

Given these points Councillor McGoldrick cannot be considered to have used council resources, either the printed material or the council funds, for private purposes either directly or as part of the re-election campaign.

## CONCLUSION

The allegations made against Councillor McGoldrick as detailed above, are not sustained. As such, there are no recommendations made with regard to further actions to be taken within the provisions of the Liverpool City Council Code of Conduct other than for the Council to receive and note this report.

## RECOMMENDATIONS:

It is recommended in accordance with the provisions provided for within the Liverpool City Council Code of Conduct that:

1. Council receive and note the report of the Conduct Review Committee – Sole Reviewer



Kath Roach  
Conduct Review Committee – Sole Reviewer  
10 August 2012

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Attachments A(1) Letter to the Editor Liverpool Champion dated 25 July 2012

Attachment A(2) Letter to the Editor Liverpool Leader dated 25 July 2012

Attachment A(3) Letter to the Editor Liverpool Champion dated 8 August 2012

## **CODE OF CONDUCT REVIEW – LIVERPOOL CITY COUNCIL**

**Reference Number. 1820702012**

### **CODE OF CONDUCT COMPLAINT RELATING TO AN ALLEGED BREACH BY COUNCILLOR GARY LUCAS**

#### **1. Introduction**

I have been asked to conduct a Review into a Complaint made against Councillor Gary Lucas (the Respondent) by a member of the Liverpool community (the Complainant). The Complainant has chosen to retain confidentiality for reasons outlined later in this Report.

The following Report has been prepared under the provisions of Part 3, Section 12 – Complaint Handling Procedures and Sanctions of Liverpool City Council's Code of Conduct amended 18<sup>th</sup> April 2011.

The complaint was made on 27 July 2012 in a letter addressed to Mr Farooq Portelli General Manager of Liverpool City Council. This complaint relates to a letter to the Editor of the 'Liverpool Champion' under the hand of Councillor Gary Lucas and a letter in 'The Leader' simply signed off as Gary Lucas of Chipping Norton. Both letters appeared in these papers on 25<sup>th</sup> July 2012. A further letter of complaint was received dated 15<sup>th</sup> August 2012 again alleging a breach of the Code of Conduct in a letter to the Editor of the Liverpool Champion written by Councillor Gary Lucas.

Attached and marked A(1), A(2) and A(3)

The Complainant writes "*Your letter of 6<sup>th</sup> stated my complaint has been 'referred o an independent reviewer for assessment and recommendation. I wish you to add this complaint to this assessment, not as a separate complaint. I will continue to bring my complaints to your attention on this matter'*".

In the original complaint the Complainant encloses copies of the relevant articles/letters and says she believes the "*articles have racist overtones*". Added to this comment is "*I am appalled and believe these articles are unbecoming of a Councillor bringing Liverpool City Council into disrepute*".

As with another complaint relating to this subject the Complainant wishes to retain confidentiality. She expressed concerns that in identifying herself people with whom she has discussed this matter might feel compromised.

When the General Manager receives a complaint about a Councillor concerning an alleged breach of obligations under the Code of Conduct, clauses 12.8, 12.9 and 12.16 are relevant and are detailed hereunder:

*“12.8 The General Manager is responsible for assessing complaints, made under section 11.1, alleging breaches of the Code of Conduct by Councillors, in accordance with the assessment criteria provided at section 13 of this Code, in order to determine whether to refer the matter to the Conduct Review Committee/Reviewer.*

...

*12.9. The General Manager must determine either to:*

*a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or*

*b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or*

*c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or*

*d) refer the matter to the conduct review committee/reviewer.*

...

*12.16. Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the General Manager, or Mayor in the case of complaints about the General Manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.”*

...

*13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complainant.”*

The General Manager Mr Farooq Portelli referred the matter to me on 6 August 2012.

In order to conduct the investigation I have been provided with:

- The original letter of complaint dated 27 July 2012
- The amended letter of complaint dated 15 August 2012
- Copy of letter to the editor, under the name of Cr Gary Lucas, published in the Liverpool Champion on 25 July 2012
- Copy of the letter to the Editor under the name Gary Lucas, Chipping Norton dated 25 July 2012 published in the Liverpool Leader.
- Copy letter to the Editor under the name Councillor Gary Lucas dated 8 August 2012 published in the Liverpool Champion.
- Liverpool City Council Code of Conduct amended 18 April 2011
- Anti Discrimination Guidelines for Local Councils

## 2. The Allegations

The allegations in relation to the letters to the Editor of 'The Champion' of 25 July 2012 under the hand of Councillor Gary Lucas are that:

- (a) The writing of such a letter brings Liverpool City Council into disrepute
- (b) The letters have racist overtones

In respect of the letter to the Editor in the 'Liverpool Champion' dated 8 August 2012 also under the hand of Councillor Gary Lucas the Complainant alleges:

I will deal only with the letters under the hand of Councillor Gary Lucas.

### The letters are attached and marked A(1) and A(2)and A(3)

## 3. Preliminary Assessment of the Complaint – Section 13.1 of the Liverpool City Council's Code of Conduct

My review of the complaint against the relevant Code criteria is as follows:

### (a) **Whether there is any prima facie evidence of a breach of the Code of Conduct.**

The use of the language in the letter to the Editor is strong. Whilst this language is testing 6.1 of the code it is language that is used by some to press their viewpoint about people coming to Australia by sea.

The use of the word "midget" is different, its use in the context of the letter to the Editor is derogatory – and breaches 6.3 and 6.7 of the Code

### (b) **Whether the subject matter of the complaint relates to conduct that is associated with the carrying out the functions of civic office or duties as a Mayor.**

Yes

### (c) **Whether the complaint is trivial, frivolous, vexatious or not made in good faith.**

The complaint does not appear to be trivial, frivolous or vexatious. The complaint in my opinion was made in good faith with considerable thought on the part of the Complainant.

### (d) **Whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct.**

Yes. The use of the word "midget" in this context is being used to describe people/person in a derogatory fashion. It could well be hurtful to people with a disability (see 6.7 and 6.3 of the Code).

### (e) **Whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Division of Local Government, the NSW Ombudsman, the independent Commission Against Corruption or the NSW Police**

The alleged breach does not warrant referral to a peak investigative body.

**(f) Whether there is an alternative and satisfactory means of redress.**

Not at this time.

**(g) How much time has elapsed since the events the subject of this complaint occurred.**

The alleged incident i.e. the publication of the "letter to the Editor" was 25 July 2012 and the complaint was lodged on Friday 27 July 2012 and the addition to the complaint dated 15 August 2012

**(h) How serious the complaint is and the significance it has for Council.**

The complaint has been made with sincerity and it might be helpful if when the new Council is elected (8 September 2012) Councillors could be provided with "training" to familiarise and or remind them what their responsibilities as elected representatives are with particular reference to the Code of Conduct and the Anti Discrimination Guidelines for Local Councils.

In accordance with Section 12.19(c) of Liverpool City Council's Code of Conduct I shall proceed to review this complaint

**(i) Whether the complaint is one of a series indicating a pattern of conduct.**

No

**4. Investigative Terms of Reference and Natural Justice** The Review has been carried out with reference to the following:

Liverpool City Council Code of Conduct (amended by Council on 18 April 2012)

" ...14.7 Procedural fairness

In conducting enquiries, the Conduct Review Committee/Reviewer or the person engaged to do so should follow the rules of procedural fairness and must:

- (a) Provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;
- (b) Provide the person the subject of the complaint with an opportunity to place before the Conduct Review Committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;
- (c) Provide the person the subject of the complaint with an opportunity to address the Conduct Review Committee/Reviewer in person;
- (d) Hear all parties to a matter and consider submissions before deciding the substance of any complaint;
- (e) Make reasonable enquiries before making any recommendations
- (f) Act fairly and without prejudice or bias;
- (g) Ensure that no person decides a case in which they have a conflict of interests;
- (h) Conduct the enquiries without undue delay.

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Conduct Review Committee/Reviewer should proceed to finalise the matter.

#### Complaint handling procedures

In addition to complying with procedural guidelines the Conduct Reviewer must ensure all complaints are dealt with in accordance with the provisions of Section 12 of the Code of Conduct.

## **5. Evidence**

### **(a) Meeting/Interview with the Complainant**

I met with the Complainant on 17<sup>th</sup> August 2012 in Liverpool. We discussed the way a Code of Conduct was processed through Council and she decided she would like to retain confidentiality. She said the issues were sensitive and could cause further hurt. During the interview we went through the three (3) articles complained of. In respect of the letter to the Liverpool Leader, Wednesday 25 July 2012 and signed off as Gary Lucas it was agreed that it was not relevant. The interview focussed on:

- (i) the letter to the Liverpool Champion of the 25 July 2012; and
- (ii) the letter to the Liverpool Champion of 8 August 2012

As far as (ii) above upon careful reading with the Complainant it appears to be an argument between Councillor Lucas and the member for Werriwa. Very little of the article relates to Council matters except for mention of potholes and the impact of a carbon tax on councils.

As far as (i) is concerned the Complainant pointed out the items in the articles that had offended. She used the words “racist overtones” – being evident in “all these published articles”. During the interview I referred her to the Anti-Discrimination Guidelines for Local Councils. She told me that two members of Liverpool Council’s staff were concerned about the comments. I suggested to her she could pass on the information contained in the above Guidelines and briefly explained the Public Interest Disclosures Act 1994.

The Complainant explained the broad social mix in the Liverpool area and said she found letters such as Councillor Lucas posted in the letters to the Editor could make people very uncomfortable and that they could bring Council into disrepute. The Complainant said that she believed that these people coming to our shores are refugees seeking a better life and not anything else.

She said: “Councillor Lucas says and does whatever he wants and continually gets away with it and I know he will again this time, but I cannot let it go without protest.” She also said: “I cannot believe there would not be an outcry from the community over these statements printed in the local newspaper”. She said: “he brought Liverpool City Council into disrepute with such statements from a sitting Councillor and contending mayoral candidate in the upcoming Council elections”.

**(b) Meeting/Interview with Councillor Gary Lucas**

I met with Councillor Lucas on Tuesday 21 August. He told me he had been on Council for some time and this was his fifth term as an Independent. We discussed the forthcoming Council election on 8 September and told me that he was standing again for the position of popularly elected Mayor and as a Councillor in North Ward. During the course of our discussion he explained his philosophy in relation to “queue jumpers” arriving and displacing others as well as the impact the numbers of these people have on denying or delaying services for deserving Australians.

We discussed the broad cross section of people living in the Liverpool area coming from overseas. He said he had “no problem with genuine refugees, some of his best friends were refugees” – his problem is with the “illegal refugees”. He told me that there were “154 nationalities in the Liverpool area”.

Councillor Lucas told me that he had lodged a Code of Complaint earlier against the Mayor and that it had been very successful. He felt that the forthcoming election would resolve the problems the current Council had with the Mayor not having a majority on the floor of Council. He described this term on Council as being difficult.

I asked Councillor Lucas if he had had “training” at the beginning of this term about the Code of Conduct and the Anti-discrimination Guidelines for Local Councils. He said “yes” they did have information sessions but there “was a great deal of material to get one’s head around”. When I asked him why in one Letter to the Editor he had signed it Cllr Lucas and in another he just signed off without the title Cllr. He said there was no significance in this.

Councillor Lucas said that he was not aware that the Liverpool City Code of Conduct applied to Councillors, staff etc away from the Council Chamber. He was surprised to find this so.

**6. Reviewer’s Consideration of Available Evidence****Observations**

This complaint referred to me is very similar to another that I have reviewed relating to the same letters. I have dealt with them (interview with Councillor Lucas) simultaneously.

There is a Local Government Election on 8 September 2012. During the course of the investigation it was quite apparent that “election fervour” has caused many Councillors who are intending to stand for re-election to elevate their profile in the way that Councillor Lucas has in his letter to the Editor, the subject of this complaint. Others have looked to the Code of Conduct for alleged breaches in order to enhance their own profile and lower that of an “opponent”. I was told by Council Lucas that Liverpool City Council has had a large number of complaints under the Code to deal with recently.

Councillor Lucas, when writing to the press (as in this letter to the Editor) – is bringing attention to Liverpool City Council generally and could cause some members of the community concern.

A Circular to Councils number 12-29 dated 16 August 2012 from the Division of Local Government has been circulated to Councils with the purpose: :

*“To defer the consideration of code of conduct matters until after the September 2012 local government elections.*

***The issue being:***

*Code of conduct matters require careful and proper consideration. The often politically charged climate that prevails prior to local government elections does not always lend to such consideration.*

*The division intends to address this under the new procedures for the Model Code of Conduct. These will preclude conduct reviewers’ reports being submitted to council for consideration in the 4 weeks preceding an election.*

***Action***

*Councils should defer the consideration of code of conduct matters until after the September 2012 Local Government elections”.*

The advice from the Division of Local Government is wise advice.

With an election over and a new Council in situ, things should settle down. The Division of Local Government is in the process of providing new procedures for the Model Code of Conduct which will *“preclude conduct reviewers’ reports being submitted to Council for consideration 4 weeks prior to the election”*. It is noted that Liverpool City Council is currently in caretaker mode.

As far as the allegation made about Councillor Lucas’s letters to the Editor the words he has used are raw and designed to draw attention to his political viewpoint. He has succeeded in offending some people but this will probably be balanced by people who agree with him. The outcome of the election will reveal whether it was successful.

His use of the word “midget” has offended – In order to understand the offended I took the time to look at the internet for broader views on this matter. I found the following:

*“...like to remind everybody that there are words that we shouldn't use without fully understanding the context in which they came to be...”* . (Skwerl: Under the heading “Report Abuse” .

Also: “Essay by Leonard Sawisch, Phd.  
[www.arturogil.com/m\\_word.htm](http://www.arturogil.com/m_word.htm)

*“..... Our reactions can range from indifference to humiliation; ... our average sized son ... Brandon was raised in the dwarf community where midget was the ‘nigger word’.*

My searching of the internet revealed many sites with derogatory jokes about small people. It is the subject of much discussion on the net, particularly amongst their community.

Putting words into writing to be published allows time for consideration of the content and the impact it might have on readers. With the Paralympic Games occurring in this time frame one might have more heightened awareness of the impact such comments could have on many members of the community.

It is clear from the discussions I have had with the Complainant and reading of the Code and the Anti-Discrimination Guidelines that this particular comment made i.e. “midget” in Councillor Lucas’s letter could be seen to be in bad taste, was hurtful to people with a disability and in breach of Section 6.3 :

*“You must treat others with respect at all times”;*

and 6.7:

*“You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of ...disability ...”.*

The other comments complained of were said at a time when, in the words of Ross Woodward, Chief Executive Officer- Division of Local Government: *“the ... politically charged climate”*. It would be helpful if Councillor Lucas could be familiarised with new terminology for the purpose of describing people with disabilities.

## 7. **Findings and Reasons**

- (a) In respect of the allegations made by the Complainant in her letters of 27<sup>th</sup> July and 15<sup>th</sup> August 2012 addressed to the General Manager Liverpool City Council that: in “writing ... letters to the Editor as Cr Gary Lucas he has breached the Code of Conduct by using racist overtones” thus breaching the Code – “he was doing so in his capacity as an elected member of Liverpool Council. Whilst expressing views that some people might disagree with Councillor Lucas is elected to Liverpool City Council and is entitled to express his views provided they do not breach Code of Conduct, the Local Government Act or other relevant legislation. Whilst the terminology used in the letters has deeply offended, looking at the dictionary description of “trespassers” there is not a breach of that portion of the Code (Section 6.7) referring to “race”.
- (b) Under Section 6.3 “You must treat others with respect at all times” and 6.7 “you must not harass, discriminate .... disability” Councillor Lucas’s use of the word “midget” is disrespectful and derogatory of people with small stature.

**I find that use of this terminology is a breach of the Liverpool City Council’s Code of Conduct Section 6.3 and 6.7.**

## 8. **Recommendations**

1. **Councillor Lucas be counselled, should he be returned to Council, and provided with the Anti Discrimination Guidelines for Local Council published by the Anti-Discrimination Board of NSW.**
2. **Council put in place, as it has done in the past, “training and information sessions” for new Councillors and refresher sessions for Councillors returning.**
3. **The General Manager, with Council approval write to the Complainant advising her of her rights to access the Anti-Discrimination Board for assistance in lodging a complaint should she need to do so in the future and provide her with a copy of the Anti- Discrimination Guidelines for Local Councils.**



**Barbara Armitage OAM  
Code of Conduct Reviewer  
3 September 2012**

**CODE OF CONDUCT REVIEW – LIVERPOOL CITY COUNCIL**

**Reference No183116.2012**

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  - (b) Interview/meeting with Respondent
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**Attachment A – Letter to the Editor Liverpool Champion of 25 July 2012**

**CODE OF CONDUCT COMPLAINT RELATING TO AN ALLEGED BREACH BY  
COUNCILLOR GARY LUCAS – Reference 183116.2012**

1. **Introduction**

I have been asked to conduct a Review into a Complaint made against Councillor Gary Lucas (the Respondent) by a member of the Liverpool community (the Complainant). The Complainant has chosen to retain confidentiality for reasons outlined later in this Report.

The following Report has been prepared under the provisions of Part 3, Section 12 – Complaint Handling Procedures and Sanctions of Liverpool City Council’s Code of Conduct amended 18<sup>th</sup> April 2011.

The Complaint was made in a letter dated 27<sup>th</sup> July 2012 addressed to Mr Farooq Portelli, General Manager Liverpool City Council. The Complaint was later amended to remove reference to a letter published in the Liverpool Leader under the hand of Gary Lucas.

The Complaint is in the following terms:

*“Dear Mr Portelli*

*Under Clause 11.1 of the Code of Conduct I wish to formally make a complaint ...*

*It is my belief that Councillor Lucas has breached the code of Conduct in various ways and most seriously because:*

1. *He wrote these letters as Cr Gary Lucas”, thereby purporting that he was doing so in his capacity as a Councillor, or creating the impression that he was doing so in his capacity as an elected member of Liverpool Council.*
2. *I believe he would not have had prior authority from Council to send these letters; and*
3. *The contents of the letters breach in my view clauses 4.8, 6.1(c);(d);(e); 6.3 and 6.7 of the Code of Conduct.*

*Therefore in accordance with the provisions of the Code of Conduct I ask, as a ratepayer, that you instigate a formal investigation of this complaint with immediate effect and as a priority.”*

The amended letter is as follows:

*Dear Mr Portelli,*

*On the 27 July I lodged a complaint applied under Clause 11.1 of the Code of Conduct about letters written by Councillor Lucas which were published this week in the local papers, the Liverpool Leader, and the Liverpool Champion.*

*I now wish to amend the complaint by deleting reference to the Liverpool Leader so that my complaint concerns only the letter published in the Liverpool Champion on the 25<sup>th</sup> July.”*

When the General Manager receives a complaint about a Councillor concerning an alleged breach of obligations under the Code of Conduct, clauses 12.8, 12.9 and 12.16 are relevant and are detailed hereunder:

*“12.8 The General Manager is responsible for assessing complaints, made under section 11.1, alleging breaches of the Code of Conduct by Councillors, in accordance with the assessment criteria provided at section 13 of this Code, in order to determine whether to refer the matter to the Conduct Review Committee/Reviewer.*

...

*12.9. The General Manager must determine either to:*

*a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or*

*b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or*

*c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or*

*d) refer the matter to the conduct review committee/reviewer.*

...

*12.16. Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the General Manager, or Mayor in the case of complaints about the General Manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.”*

...

*13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complainant.”*

The General Manager Mr Farooq Portelli referred the matter to me on 6 August 2012.

In order to conduct the investigation I have been provided with:

- The original letter of complaint
- The amended letter of complaint
- Copy of letter to the editor, under the name of Cr Gary Lucas, Chipping Norton, published in the Liverpool Champion on 25 July 2012
- Liverpool City Council Code of Conduct amended 18 April 2011
- Anti Discrimination Guidelines for Local Councils

## 2. The Allegations

That Councillor Gary Lucas in writing letters to the Editor of the Liverpool Champion wherein he used terms to describe elected representatives as political midgets, people coming to Australia by boat (Refugees) as “illegal queue jumpers ..”, “trespassers, “boat trespassers”, “... These trespassers are denying the true Aussies better living standards. We do not want these trespassers. Send them back ... ”

### **A copy of the article is attached and marked “A”**

By using the terminology in the Letters to the Editor the Complainant argued that the Respondent was in breach of :

#### Liverpool City Council's Code of Conduct clauses:

##### 4.8 Respect

You must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision making.

**NOTE: The above part of the “Model Code establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct”.**

#### General Conduct

6.1 “You must not conduct yourself in carrying out your functions in a manner that is likely to bring the Council or holders of civic office into disrepute. Specifically, you must not act in a way that:  
“...

- (c) Is improper or unethical;
- (d) Is an abuse of power or otherwise amounts to misconduct;
- (e) Causes, comprises or involves intimidation, harassment or verbal abuse; ...”.

6.3 You must treat others with respect at all times.

#### Harassment and discrimination

6.7 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes , but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.”.

**NOTE: “Part 2 Standards of Conduct sets out the conduct obligations required of Council officials, these are the enforceable standards of conduct”.**

**3. Preliminary Assessment of the Complaint – Section 13.1 of the Liverpool City Council’s Code of Conduct**

The Complainant has set out that part of the Code (outlined in Section 2 of this Review) that he believes are in breach of Liverpool City Council’s Code of Conduct.

My review of the complaint against the relevant Code criteria is as follows:

**(a) Whether there is any prima facie evidence of a breach of the Code of Conduct.**

The use of the language in the letter to the Editor is strong. Whilst this language is testing 6.1 of the Code it is language that is used by some to press their views, particularly about people coming to Australia via the sea.

The use of the word “midget” is different. Its use in the context of the letter to the Editor is derogatory – and breaches 6.7 of the Code.

**(b) Whether the subject matter of the complaint relates to conduct that is associated with the carrying out the functions of civic office or duties as a Mayor.**

Yes

**(c) Whether the complaint is trivial, frivolous, vexatious or not made in good faith.**

The complaint does not appear to be trivial, frivolous or vexatious. The complaint in my opinion was made in good faith with considerable thought on the part of the Complainant.

**(d) Whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct.**

Yes. The use of the word “midget” in this context is being used to describe people/person in a derogatory fashion. It could well be hurtful to people with a disability (see 6.7 and 6.3 of the Code).

**(e) Whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Division of Local Government, the NSW Ombudsman, the independent Commission Against Corruption or the NSW Police**

The alleged breach does not warrant referral to a peak investigative body.

**(f) Whether there is an alternative and satisfactory means of redress.**

Not at this time.

**(g) How much time has elapsed since the events the subject of this complaint occurred.**

The alleged incident i.e. the publication of the “letter to the Editor” was 25 July 2012 and the complaint was lodged on Friday 27 July 2012.

**(h) How serious the complaint is and the significance it has for Council.**

The complaint has been made with sincerity and it might be helpful if when the new Council is elected (8 September 2012) Councillors could be provided with “training” to familiarise and or remind them what their responsibilities as elected representatives are, with particular reference to the Code of Conduct and the Anti Discrimination Guidelines for Local Councils.

In accordance with Section 12.19(c) of Liverpool City Council's Code of Conduct I shall proceed to review this complaint.

**(i) Whether the complaint is one of a series indicating a pattern of conduct.**

No

4. **Investigative Terms of Reference and Natural Justice** The Review has been carried out with reference to the following:

Liverpool City Council Code of Conduct (amended by Council on 18 April 2012)

“ ...14.7 Procedural fairness

In conducting enquiries, the Conduct Review Committee/Reviewer or the person engaged to do so should follow the rules of procedural fairness and must:

- (a) Provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;
- (b) Provide the person the subject of the complaint with an opportunity to place before the Conduct Review Committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;
- (c) Provide the person the subject of the complaint with an opportunity to address the Conduct Review Committee/Reviewer in person;
- (d) Hear all parties to a matter and consider submissions before deciding the substance of any complaint;
- (e) Make reasonable enquiries before making any recommendations
- (f) Act fairly and without prejudice or bias;
- (g) Ensure that no person decides a case in which they have a conflict of interests;
- (h) Conduct the enquiries without undue delay.

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Conduct Review Committee/Reviewer should proceed to finalise the matter.

Complaint handling procedures

In addition to complying with procedural guidelines the Conduct Reviewer must ensure all complaints are dealt with in accordance with the provisions of Section 12 of the Code of Conduct.

## 5. Evidence

### (a) Meeting/Interview with the Complainant

I met with the Complainant and his Wife on Friday 17<sup>th</sup> August 2012. I was provided with some additional material in the form of “Excerpts from the letter by Lucas” – they were the words and phrases that the complainants had felt were in breach of the Code of Conduct. i.e. “...you two political midgets”, illegal queue jumpers, boat trespassers, politically bribe, we do not want these trespassers, ... send them back ...”. **See Attachment A**

We discussed the use of the various words used in the letter – the definition of trespass was provided: “to commit an offense or a sin; transgress or err, to commit an unlawful injury to a person, property or rights of another, with actual or implied force or violence, especially to enter onto another’s land wrongfully.”.

The Complainant’s work is/was in the area of governance and probity and his wife’s is in adult education – cross cultural communication . He described some of the people living in his street and the fact that the majority of them had come from other lands to Australia. Among these people were professionals including doctors, lawyers and civil servants. He also mentioned a local business man who with his wife had come from Cambodia as asylum seekers/refugees during the Pol Pot Regime. When I asked if any of them had raised concerns about this letter with him he told me that it was a very sensitive issue and discussion about matters such as were in the letter to the Editor were not readily talked about. I was informed that the Liverpool area comprised people from all over the world many from non English speaking backgrounds. His wife, a professional woman, was more vocal and said that she found the letter highly offensive and hurtful.

We discussed the process a complaint went through and whether they wanted to retain confidentiality. Because of the sensitive nature of the complaint they chose confidentiality

The Complainant and his wife said they felt that this letter to the Editor reflected poorly on Council bringing it into disrepute and generally and provoked negative attitudes towards many of the people living in the Liverpool area.

### (b) Meeting/Interview with Councillor Gary Lucas

I met with Councillor Lucas on Tuesday 21 August 2012. He told me he had been on Council for some time and this was his fifth term as an Independent. We discussed the forthcoming Council election on 8 September and told me that he was standing again for the position of popularly elected Mayor and as a Councillor in North Ward. During the course of our discussion he explained his philosophy in relation to “queue jumpers” arriving and displacing others as well as the impact the numbers of these people have on denying or delaying services for deserving Australians.

We discussed the broad cross section of people living in the Liverpool area coming from overseas. He said he had “no problem with genuine refugees, some of his best

friends were refugees” – his problem is with the “illegal refugees”. He told me that there were “154 nationalities in the Liverpool area”.

Councillor Lucas told me that he had lodged a Code of Complaint earlier against the Mayor and that it had been very successful. He felt that the forthcoming election would resolve the problems the current Council had with the Mayor not having a majority on the floor of Council. He described this term on Council as being difficult.

I asked Councillor Lucas if he had had “training” at the beginning of this term about the Code of Conduct and the Anti-discrimination Guidelines for Local Councils. He said “yes” they did have information sessions but there “was a great deal of material to get one’s head around”. When I asked him why in one Letter to the Editor he had signed it Councillor Lucas and in another he just signed off without the title Councillor. He said there was no significance in this.

Councillor Lucas said that he was not aware that the Liverpool City Code of Conduct applied to Councillors, staff etc away from the Council Chamber. He was surprised to find this so.

## 6. Reviewer's Consideration of Available Evidence

### Observations

There is a Local Government Election on 8 September 2012. During the course of the investigation it was quite apparent that "election fervour" has caused many Councillors who are intending to stand for re-election, to elevate their profile in the way that Councillor Lucas has in his letter to the Editor, the subject of this complaint. Others have looked to the Code of Conduct for alleged breaches in order to enhance their own profile and lower that of an "opponent". I was told by Council Lucas that Liverpool City Council has had a large number of complaints under the Code to deal with recently.

Councillor Lucas when writing to the press (as in this letter to the Editor) – is bringing attention to Liverpool City Council generally and could cause some members of the community concern.

A Circular to Councils number 12-29 dated 16 August 2012 from the Division of Local Government has been circulated to Councils with the purpose:

*"To defer the consideration of code of conduct matters until after the September 2012 local government elections.*

#### ***The issue being:***

*Code of conduct matters require careful and proper consideration. The often politically charged climate that prevails prior to local government elections does not always lend to such consideration.*

*The division intends to address this under the new procedures for the Model Code of Conduct. These will preclude conduct reviewers' reports being submitted to council for consideration in the 4 weeks preceding an election.*

#### ***Action***

*Councils should defer the consideration of code of conduct matters until after the September 2012 Local Government elections".*

The advice from the Division of Local Government is wise advice. With an election over and a new Council in situ things should settle down. The Division is in the process of providing new procedures for the Model Code of Conduct which will "*preclude conduct reviewers' reports being submitted to Council for consideration 4 weeks prior to the election*". It is noted that Liverpool City Council is currently in caretaker mode.

As far as the allegation made about Councillor Lucas's letter to the Editor the words he has used are raw and designed to draw attention to his political viewpoint. He has succeeded in offending quite a few people but this will probably be balanced by people who agree with him. The outcome of the election will reveal whether it was successful.

His use of the word “midget” has offended – In order to understand the offended I took the time to look at the internet for broader views on this matter. I found the following:

*“ ...like to remind everybody that there are words that we shouldn't use without fully understanding the context in which they came to be...” . (Skwerl: Under the heading “Report Abuse”.*

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*“..... Our reactions can range from indifference to humiliation; ... our average sized son ... Brandon was raised in the dwarf community where midget was the ‘nigger word’.*

My searching of the internet revealed many sites with derogatory jokes about small people. It is the subject of much discussion on the net, particularly amongst their community.

Putting words into writing to be published allows time for consideration of the content and the impact it might have on readers. With the Paralympic Games on in this time frame one might have more heightened awareness the impact of such comments might have on some members of the community.

It is clear from the discussions I have had with the Complainant and reading of the Code and the Anti-Discrimination Guidelines that this particular comment made i.e. “midget” in Councillor Lucas’s letter could be seen to be in bad taste, was hurtful to people with a disability and in breach of Section 6.7:

*“You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of ...disability ...”.*

The other comments complained of were said at a time when, in the words of Ross Woodward Chief Executive Officer – Division of Local Government: *“the ... politically charged climate”*. It would be helpful if Councillor Lucas could be familiarised with new terminology for the purpose of describing people with disabilities.

## 7. **Findings and Reasons**

- (a) In respect of the allegations made by the Complainant in his letter of 27<sup>th</sup> August 2012 to the General Manager that (1) and (2) “writing ... letters to the Editor as Cr Gary Lucas he has breached the Code of Conduct and that he was doing so in his capacity as an elected member of Liverpool Council he needed prior authority from Council to send these letters”. As a person elected to Council Councillor Lucas is entitled to use this title in his correspondence.

### **I find that this is not a breach of the Liverpool City Council’s Code of Conduct**

- (b) In respect of item (3) where the Complainant alleges Councillor Lucas breached clauses 4.8:

Part 1, Section 4.8 Under the heading Key Principles - “This Part of the Model Code establishes the purpose and principles that are used to interpret the standards of the Code. This Part does not constitute separate enforceable standards of conduct .”. This is a very helpful part of the Model Code and provides elected representatives and staff with valuable information required in order to understand Part 2 - the Standards of Conduct required from staff, Councillors and others associated with the running of Council.

In respect of allegation 3 made by the Complainant - 6.1(c) Councillor Lucas was not in breach of this Clause. In respect of the allegation of a breach of 6.1(d) Councillor Lucas was expressing views that he sincerely held. In respect of 6.1(e) again he expressed views that whilst not acceptable to many in the community were his views. These are matters that will be decided by members of the community at the ballot box. In respect of Clause 6.3, this was disrespectful of people with a disability and breached the Liverpool City Council’s Code of conduct:

### **I find that Councillor Lucas was in breach of Clause 6.3, “You must respect others with respect at all times”:**

In respect of Clause 6.7 under the heading Harassment and Discrimination his use of the derogatory terminology of people of small stature is in breach of the Liverpool City Council Code of Conduct

### **I find that Councillor Lucas was in breach of Clause 6.7 of the Liverpool City Council’s Code of conduct.**

**8. Recommendations**

1. Councillor Lucas be counselled, should he be returned to Council, and provided with the Anti Discrimination Guidelines for Local Council published by the Anti-Discrimination Board of NSW.
2. Council put in place, as it has done in the past, “training and information sessions” for new Councillors and refresher sessions for Councillors returning.
3. The General Manager, with Council approval write to the Complainant advising him of his rights to access the Anti-Discrimination Board for assistance in lodging a complaint should he need to do so in the future and provide him with a copy of the Anti- Discrimination Guidelines for Local Councils.



**Barbara Armitage OAM  
Code of Conduct Reviewer  
Date: 3 September 2012**



# Investigation and Findings Report

For Liverpool City Council  
Regarding a Code of Conduct Complaint

Reviewer: Robin Hill, Way Forward Pty Ltd

Date of Report: 3<sup>rd</sup> October, 2012

## 1. Background

On 29<sup>th</sup> June 2012, a Conduct Reviewer was engaged to investigate and report on a complaint against Councillors Stanley (Respondent 1), Karnib (Respondent 2) and Gillani (Respondent 3) within the parameters of the Liverpool City Council Code of Conduct, adopted by Council on 18<sup>th</sup> April 2011. The complaint related to the alleged conduct of the three Councillors and alleges that they “knowingly and willingly supported the former Mayor in her breach of the code of conduct by agreeing to allocate their mailing allowance for the former Mayor to pay for the mailing out of letters on a bulk scale”. The Complainant alleges that “their involvement is documented on pages 10 and 11 of the Reviewer’s report dated the 25<sup>th</sup> May 2012”

## 2. This Report

This report has been prepared by the Conduct Reviewer for consideration by Liverpool City Council as required by the Liverpool City Council Code of Conduct.

A confidential draft of this report was forwarded to the Parties’ on Monday 10<sup>th</sup> September 2012 by email. The Parties’ were advised that the draft report was confidential and were asked to review the report and to provide any feedback they wished to provide by 9am Monday 17<sup>th</sup> September 2012. The Parties’ were advised that their responses would be included in the final report. The deadline for receiving feedback was extended to Friday evening, 28<sup>th</sup> September 2012 to accommodate the difficulties the Parties’ had in accessing the draft report. The Parties’ could not access their emails until after 19<sup>th</sup> September. Their access to emails had been suspended over the election period. Summaries of the Parties’ responses to the draft report have been included in section 6 of this report from page 31.

This final report has been modified in response to the feedback from Respondents 1 and 2 where the Conduct Reviewer concurred with the feedback and believed it was appropriate to do so.

The status of some of the Parties’ changed as a result of the Council elections. Two of the Parties’ are no longer Liverpool City Councillors and a new Mayor was elected on 8<sup>th</sup> September 2012.

Under the provisions of Section 12.23 of the Code of Conduct, the Reviewer is required to report its findings and any recommendations to Council when it has completed its deliberations. The Guidelines attached to the Model Code of Conduct require the report to be dealt with in open session of Council, unless the report meets the requirements of section 10A (2) of the Local Government Act 1993. In this case, the report does not meet the requirements of 10A (2) of the Local Government Act 1993, and as such, is provided for consideration in the open session of Council.

## 3. The Reviewer

The General Manager, Mr Farooq Portelli received a written complaint regarding the alleged misconduct of Councillors Stanley, Karnib and Gillani on 26<sup>th</sup> June 2012. The General Manager determined under Section 12.9 of the Code of Conduct to refer the matters for review to a Conduct Reviewer.

The General Manager selected a Conduct Reviewer in accordance with the panel that had been appointed by Council under the provisions of Section 12.12 of the Code of Conduct. The Reviewer was initially appointed to the WSROC Panel of Conduct Review Committee

Members. Liverpool City Council subsequently adopted the WSROC Panel of Conduct Review Committee members on 16<sup>th</sup> March 2009.

The General Manager engaged Robin Hill, Director, Way Forward Pty Ltd to fulfil the obligations prescribed in the Code of Conduct including to:

1. Independently assess the complaint
2. Makes findings of fact within the parameters of the Liverpool City Council Code of Conduct, and
3. Make recommendations with respect to the complaint

The Conduct Reviewer cannot and will not make any finding with respect to the law or any legal implications of the facts, other than in regard to the Liverpool City Council Code of Conduct which was developed to ensure Council's compliance with section 440 of the Local Government Act 1993.

#### 4. The Investigation and the Interview Process

The complaint was provided to the Conduct Reviewer on 29<sup>th</sup> June 2012. The complaint related to the alleged conduct of Councillors Stanley, Karnib and Gillani as stated in the complaint received by the General Manager on 26<sup>th</sup> June 2012.

The Conduct Reviewer conducted an Initial Assessment of the complaint as required under section 13.3 of the Liverpool City Council Code of Conduct. The Initial Assessment was forwarded to the Liverpool City Council General Manager on 8<sup>th</sup> July 2012

The Reviewer determined, using the criteria listed in Clause 13.1 of the Liverpool Council Code of Conduct, that in accordance with the provisions of 12.19 (c) of the Code to make enquiries in relation to this complaint

During the investigation the Reviewer conducted a face to face or telephone interview with four individuals, received written responses to questions from three individuals and reviewed a series of documents.

##### 4.1 Procedural Fairness

Section 14.7 of the Liverpool City Council Code of Conduct, amended 18<sup>th</sup> April 2011, requires Conduct Reviewers to follow the rules of procedural fairness. Section 14.7 states:

"In conducting enquiries, the Conduct Review Committee/Reviewer or the person engaged to do so should follow the rules of procedural fairness and must:

1. Provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation;
2. Provide the person the subject of the complaint with an opportunity to place before the Conduct Review Committee/Reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry;
3. Provide the person the subject of the complaint with an opportunity to address the Conduct Review Committee/Reviewer in person;
4. Hear all Parties' to a matter and consider submissions before deciding the substance of any complaint;
5. Make reasonable enquiries before making any recommendations

6. Act fairly and without prejudice or bias;
7. Ensure that no person decides a case in which they have a conflict of interests;
8. Conduct the enquiries without undue delay.

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Conduct Review Committee/Reviewer should proceed to finalise the matter.”

All who participated in the interview were also advised of the specifics of the complaint, the role of the Conduct Reviewer, the limits of confidentiality of the process, and the likely reporting of statements made in interviews.

#### **4.2 The Appropriateness of the Appointed Conduct Reviewer to Investigate and Report on this Matter.**

Respondents 1 and 2 expressed concern that the appointed Conduct Reviewer would not be able to conduct the review in accordance with the rules of procedural fairness. Respondent 1 formally objected to the appointed Conduct Reviewer continuing in the role of Conduct Reviewer. The letters of concern from Respondents 1 and 2 are attached, in full, to this report. The letter of concern from Respondent 1 was received before the letter from Respondent 2.

A summary of the concerns expressed by Respondents 1 in her letter are listed below:

- That the recommendations made by the Conduct Reviewer in a previous report (6<sup>th</sup> June 2012), which were adopted by the Council, resulted in the censure of the former Mayor for misbehaviour.
- That the complaint against Respondent 1 relies on the same facts which were already relied upon by the Complainant in the report of 3<sup>rd</sup> June 2012 (sic). As a result Respondent 1 suggests that an investigation by the Conduct Reviewer would be inappropriate as she would not be conducting the investigation as a truly independent reviewer.
- That the Conduct Reviewer already has preconceived ideas of facts, circumstances and opinions surrounding the “mail out” from her investigation into the former Mayor. Respondent 1 believes that the Conduct Reviewer would not conduct the investigation in a fair way given that she has already made adverse findings based on her interpretation of the facts as she has determined them.
- That the Conduct Reviewer could not comply with Clause 14.7 of the Code of Conduct and conduct an investigation with “*procedural fairness*”. Respondent 1 believes that the facts and circumstances of the complaint against her are “so intertwined with the facts and circumstances concerning the complaint” made against the former Mayor in which the Conduct Reviewer made adverse findings, that she could not bring a fair and unbiased mind to the investigation.
- That the Conduct Reviewer is biased and could not afford Respondent 1 procedural fairness as required under the Code.
- The Conduct Reviewer should cease as the reviewer in this investigation.

- Respondent 1 stated that she expected that the General Manager would appoint another Conduct Reviewer on the Council's panel who has no previous knowledge of the matters which are the subject of the complaint against her.

Respondent 2 stated that:

- The Conduct Reviewer made adverse findings against the former Mayor in her report of 3<sup>rd</sup> June 2012 (sic) which he believed would have an adverse effect on the finding the Conduct Reviewer makes regarding the complaint against him.
- To remain impartial and solely independent the matter should be pursued by a person with no prior knowledge of the matter , nor any preconceived ideas
- Respondent 2 would be denied procedural fairness if the Conduct Reviewer continued to investigate the matter
- The Conduct Reviewer should cease in her position as the reviewer of the complaint against him and the General Manager should appoint another sole independent reviewer.

The Conduct Reviewer forwarded the letter of concern from Respondent 1 to the General Manager of Liverpool City Council who advised her to continue with the Review.

The Conduct Reviewer also sought legal advice on the issues raised by Respondent 1 and as a result of that advice decided to continue with the review.

With regard to the Conduct Reviewer's ability to conduct the review it should be noted that;

1. The Conduct Reviewer has no financial stake in the outcome of the review
2. The outcome of the review is for the Conduct Reviewer to make recommendations regarding what further action should be taken against the Respondent(s). It is the role of the Council to make a decision, through a separate and independent process, to either act on the recommendations or not.
3. The Conduct Reviewer must act in accordance with the complaint assessment criterion defined in clause 13.
4. The Conduct Reviewer's role is limited by the provisions of clause 14.1 of the Code which provides: "the complaint handling function of the Conduct Review Committee/Reviewer is limited to consideration of, making enquiries into and reporting on complaints...."
5. This review is separate from and independent of the review conducted by the Conduct Reviewer earlier in 2012 and reported on 6<sup>th</sup> June 2012.
6. As is indicated in this report the Conduct Reviewer provided a number of opportunities for the Respondents to address the Reviewer in person, to respond to the substance of the allegations and to provide the Reviewer with any information they considered relevant to the enquiry
7. The initial complaint was received by the General Manager on 26<sup>th</sup> June 2012. The Conduct Reviewer was engaged by the General Manager to conduct the Review on 29<sup>th</sup> June 2012. As is evident in the report the Conduct Reviewer made a number of attempts to contact the Respondents from 5<sup>th</sup> July 2012 to provide them with opportunities to

respond to the substance of the allegations and to address the Conduct Reviewer in person.

8. The Conduct Reviewer received written responses to the Reviewer's questions from Respondents 1 and 2 and interviewed Respondent 3.
9. The Conduct Reviewer heard from all three Respondents, the former Mayor and Council staff and considered all of the information provided prior to making findings and recommendations.
10. The draft confidential report was provided to the Complainant, the former Mayor and the three Respondents on Monday 10<sup>th</sup> September 2012 to review. The Parties' were asked to provide a written response to the draft report to the Conduct Reviewer by 9am Monday 17<sup>th</sup> September 2012. This deadline was extended to 28<sup>th</sup> September 2012 at the request of Respondents 1 and 2. In their review of the report the Parties' were invited to provide their response to the report and to comment on any errors of fact or omissions of fact or information.

In summary, the Conduct Reviewer complied with the rules of procedural fairness in accord with section 14.7 of the Liverpool City Council Code of Conduct which includes the requirement for the Reviewer to act fairly and without prejudice or bias.

### 4.3 The Interviews.

The Complainant was contacted by the Conduct Reviewer on 2<sup>nd</sup> August 2012 for confirmation of his complaint.

The Respondents were contacted a number of times by the Conduct Reviewer. The number of contacts has been listed below in order to demonstrate that the Conduct Reviewer complied with 14.7 of the Liverpool City Council Code of Conduct in regard to providing the Parties' with reasonable opportunities to contribute to the investigation in a reasonable timeframe. The Conduct Reviewer ultimately sent Respondents 1 and 2 a set of questions to demonstrate the issues that she wished to discuss with them. Respondents 1 and 2 chose to provide a written response to the set of questions rather than to meet with the Conduct Reviewer for an interview.

#### **Respondent 1:**

- Respondent 1 was contacted by the Conduct Reviewer by telephone on or around 5<sup>th</sup> July 2012 to advise the Respondent about the complaint and to arrange an interview.
- Respondent 1 was emailed a letter on 9<sup>th</sup> July 2012 regarding the outcome of the Initial Assessment undertaken by the Conduct Reviewer. The letter also sought to establish a time to interview Respondent 1. The Conduct Reviewer offered both a face to face or telephone interview.
- Respondent 1 was also contacted by email by the Conduct Reviewer from 9<sup>th</sup> July 2012 to follow up the letter and to organise an interview.
- Respondent 1 was also contacted by telephone by the Conduct Reviewer on a number of occasions including 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> August 2012.

- The Conduct Reviewer emailed a letter to Respondent 1 on 1<sup>st</sup> August 2012 with a set of questions. The letter indicated that when they met for an interview the Conduct Reviewer was particularly interested in the Respondent's answers to the questions. The letter provided possible interview days and times, invited Respondent 1 to bring a support person and offered the option of a telephone interview if that was preferred by Respondent 1.
- The Conduct Reviewer sent an email to Respondent 1 on 7<sup>th</sup> August 2012 stating that while it was her preference to meet with the Respondent to discuss the above questions she might prefer to provide a written response to the questions. The email stated that if a written response was preferred that the written response would need to be provided by 5pm 15<sup>th</sup> August 2012.
- Respondent 1 chose not to take up the opportunity of an interview with the Conduct Reviewer.
- Respondent 1's written response to the questions was forwarded to the Reviewer by email on 9<sup>th</sup> August 2012 and have been included in this document on pages 23 to 26.

## **Respondent 2**

- Respondent 2 was called by the Conduct Reviewer on or around 5<sup>th</sup> July 2012. The Reviewer left a message on the answering machine requesting that Respondent 2 make contact with the Reviewer.
- A letter was emailed to Respondent 2 on 9<sup>th</sup> July 2012 regarding the outcome of the Initial Assessment undertaken by the Conduct Reviewer and seeking an interview. The Conduct Reviewer offered both a face to face or telephone interview. Respondent 2 was also contacted by the Conduct Reviewer by telephone on a number of occasions including 23<sup>rd</sup> July, 2<sup>nd</sup> August, 6<sup>th</sup> August and 7<sup>th</sup> August 2012.
- The Conduct Reviewer emailed a letter to Respondent 2 on 1<sup>st</sup> August 2012 with the same set of questions which were forwarded to Respondent 1 with the exception of question 1 which referred to an email which was specific to each Respondent. The letter indicated that when they met for an interview the Conduct Reviewer was particularly interested in the Respondent's answers to the questions. The letter provided possible interview days and times, invited Respondent 2 to bring a support person and offered the option of a telephone interview if that was preferred by Respondent 2.
- The Conduct Reviewer sent an email to Respondent 2 on 7<sup>th</sup> August 2012 stating that while it was her preference to meet with the Respondent to discuss the above questions he might prefer to provide a written response to the questions. The email stated that if a written response was preferred that the written response would need to be provided by 5pm 15<sup>th</sup> August 2012.
- Respondent 2 chose not to take up the opportunity of an interview with the Conduct Reviewer.
- Respondent 2's written response was forwarded to the Reviewer by email on 13<sup>th</sup> August 2012. Respondent 2's letter is included on pages 27 to 29 of this report.

- The Conduct Reviewer was concerned that it appeared that Respondent 2 was not receiving her telephone calls and emails so the above letters were also mailed to Respondent 2.

### **Respondent 3**

- Respondent 3 was contacted by telephone on or before 5<sup>th</sup> July 2012.
- A letter was emailed to Respondent 3 on 9<sup>th</sup> July 2012 regarding the outcome of the Initial Assessment undertaken by the Conduct Reviewer and seeking an interview. The Conduct Reviewer offered both a face to face or telephone interview.
- Respondent 3 was contacted by email from 9<sup>th</sup> July 2012 to follow up the letter and to organise an interview.
- Respondent 3 was interviewed by the Conduct Reviewer on 16<sup>th</sup> July 2012.

### **Additional Interviews**

The Reviewer also interviewed three additional individuals including the former Mayor of Liverpool City Council and two Liverpool City Council staff members.

Statements and documents from the above three individuals have been included in this report in two sections; 'Witness Statements' and 'Emails, Memos and File Notes'. However, other than with regard to the statements made by the former Mayor, the statements and emails have not been attributed to specific individuals or positions in order to protect their identity. This approach accords with the requirements of section 5.5 in the Guidelines to the Model Code of Conduct. The statements made by the former Mayor have been attributed to her in order to clearly contextualise the matter and the statements made by the three Respondents.

Notes taken at each of the interviews by the Conduct Reviewer were used in the preparation of this report.

## **4.3 Written Information Provided to the Conduct Reviewer**

This section provides the legislative and policy framework pertaining to the investigation. These documents were also mentioned by the Parties' during interviews and in the written information provided to the Reviewer.

The written information gathered during the investigation is included in Section 5.

### **4.3.1 The Local Government Act 1993**

**S226 of the Local Government Act 1993 states that the role of the Mayor is;**

- *To exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council.*
- *To exercise such other functions of the council as the council determines.*
- *To preside at meetings of the council*
- *To carry out the civic and ceremonial functions of the Mayoral office.*

### 4.3.2 Liverpool City Council Code of Conduct

Liverpool City adopted the Model Code of Conduct on 28<sup>th</sup> July 2008.

The allegations relate to a possible breach of one or more of the following provisions of the Liverpool City Council Code of Conduct including:

#### 6. General Conduct Obligations

##### General Conduct

6.1. *You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:*

- a) *contravenes the Act, associated regulations, council's relevant administrative requirements and policies*
- b) *is detrimental to the pursuit of the charter of a council*
- c) *is improper or unethical*
- d) *is an abuse of power or otherwise amounts to misconduct*
- e) *causes, comprises or involves intimidation, harassment or verbal abuse*
- f) *....*
- g) *....*

6.2. *You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (Section 439)*

6.3. *You must treat others with respect at all times*

6.4 *Where you are a Councillor and have been found in breach of the Code of Conduct, you must comply with any Council resolution requiring you to take action as a result of that breach*

### 4.3.3 Liverpool City Council Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy. Adopted 25<sup>th</sup> July 2011. Revised 26<sup>th</sup> March 2012

#### Section 3. Support to Councillors

*....The Councillors, including the Deputy Mayor, are entitled to receive the following benefits:*

*(a) to (c)*

*(d) An allowance of \$500 per month for mailing and stationary to assist Councillors in performing their duties as per section 232 (2) of the Local Government Act. These duties include organisation of community meetings and responding to inquiries.*

## 5. Allegation

The Complainant alleges that the Respondents “knowingly and willingly supported the Mayor in her breach of the code of conduct by agreeing to allocate their mailing allowance for the (former) Mayor to pay for the mailing out of letters on a bulk scale”. The Complainant alleges that “their involvement is documented on pages 10 and 11 of the Reviewer’s report dated the 25<sup>th</sup> May 2012”

## 5.1 Witness Statements

### 5.1.1 Statement Provided by the Former Mayor of Liverpool City Council, Councillor Wendy Waller.

In order to facilitate an interview with the former Mayor of Liverpool City Council, Councillor Wendy Waller, the Conduct Reviewer forwarded the following questions to her by email on 5<sup>th</sup> August 2012. The former Mayor responded by advising that she would be available for interview at the offices of Storey and Gough Lawyers on 10<sup>th</sup> August 2012.

The questions asked of the former Mayor are as follows:

1. What did you actually ask of the three Councillors in regard to their mail allowances and if the request was made in writing I would be appreciative if you could provide me with that document.
2. For what purpose did you seek to pool the mail allowances of the three Councillors?
3. What information and/or advice did you provide to Councillors (the Respondents) about the letter you wished to send?
4. What information and/or advice did Council staff provide to ( the Respondents) about the letter you wished to send
5. Do you know if (the Respondents) were made aware of the total cost of the mail out and if so who provided the information?
6. Did you advise (the Respondents) of the amount of their mail allowance that would be needed for the mail out and for how long?
7. What information or advice did (the Respondents) seek from you in relation to the letter you wished to send?
8. Are you aware of any Council policies which provide guidance to Councillors about the pooling of Councillor mail allowances?

At the meeting of 10<sup>th</sup> August 2012 in the offices of Storey and Gough Lawyers the former Mayor tabled the following responses to the above questions. The following people were also in attendance:

- Ian Woodward of Storey and Gough Lawyers. Mr Woodward was supporting the former Mayor.
- Helen Jarvis of ISDR Pty Ltd. Ms Jarvis, and independent professional, was asked to attend the interview and take notes of the meeting for the Conduct Reviewer.

The handwritten notations on the document tabled by the former Mayor and included on pages 12 and 13 below were made by the Conduct Reviewer during the interview in response to information provided by the former Mayor.

Points arising from the meeting and included in the notes taken by Ms Jarvis, as they relate to the questions are included below after the former Mayor's responses to the Conduct Reviewer's questions.

Mr Woodward queried the statement in the complaint -"Their involvement is documented on pages 10 and 11 of the Reviewer's report dated the 25<sup>th</sup> May 2012"

The Conduct Reviewer indicated that it was likely a reference to the draft confidential report prepared by Way Forward Pty Ltd "Investigation and Findings Report for Liverpool City Council Regarding a Code of Conduct Complaint" Mr Woodward suggested at the interview that "it was probably in reference to the email from each of those councillors" ... "saying that they were prepared to have their allowance used"

The notes taken at the meeting were forwarded to the former Mayor 21<sup>st</sup> August 2012. On 23<sup>rd</sup> August the former Mayor sent an email to the Conduct Reviewer stating "Thank you. I have no objections at this time to the content".

9 August 2012

Ms R Hill  
 Director  
 The Way Forward Pty Limited  
 PO Box 12  
 BIRCHGROVE NSW 2041

Dear Ms Hill

**Code of Conduct Complaint**

I refer to your letter of 5 August 2012 in which you have advised me that you are conducting an enquiry under the Code of Conduct in relation to the behaviour of Councillors Stanley, Karnib and Gillani.

I respond to the questions you have asked me as follows:-

**Question 1**      **What did you actually ask of the three Councillors in regard to their mail allowances and if the request was made in writing I would be appreciative if you could provide me with that document.**

I was verbally advised in February 2012 by the General Manager that I could not send the letter I wished to send on Mayoral letterhead to the rural residents through the general Council mail out. I asked the General Manager whether the mail out could take place if other Councillors consented to contributing their mail out allowance. The General Manager agreed. I understand the General Manager wanted the Councillors to give him written authority that they consented to contributing their mail out allowance for the purpose of mailing the mayoral letter. I asked the councillors whether they would contribute their mail out allocation to the mail out of the letter.

*Verbally*

**Question 2**      **For what purpose did you seek to pool the mail allowances of the three Councillors?**

✓ The purpose was to mail a letter from the Mayor to allay the fears of the rural residents who were affected by the recent publicity in The Daily Telegraph concerning a report which had been released touting Badgerys Creek again as the possible site for Sydney's second airport.

**Question 3**      **What information and/or advice did you provide to Councillors Stanley, Gillani and Karnib about the letter you wished to send?**

I verbally explained to each of the Councillors that I was concerned about the level of anxiety being expressed by the rural residents in representations made by them. I