

17 February 2023

Hon Aileen MacDonald  
MLC Standing Committee on State Development  
Parliament House, Macquarie Street  
Sydney NSW 2000

By email:  
[State.Development@parliament.nsw.gov.au](mailto:State.Development@parliament.nsw.gov.au)

Dear Committee Chair

**Inquiry into allegations of impropriety against agents of the City of Canterbury  
Bankstown council**

We refer to your email sent at 5.10pm on 14 February 2023 requesting responses to questions with notice by 5.00pm on 16 February 2023 and subsequent email granting an extension of time until 12.00noon on 17 February 2023.

We are instructed to provide the **enclosed** responses. At the Committee's request, each response to each question with notice and responses to in camera questions are contained in separate documents.

Our clients note that some of the questions have required that they obtain and review historical records. They have endeavoured to undertake this task as best as reasonably practicable in the short timeframe provided for answering the questions.

We also **enclose** the following documents which was referred to by Mr Stewart and Mr Manoski during their evidence:

- a. Independent report from legal counsel dated 23 December 2022 entitled "Independent Review of the Investigation into Allegations Concerning the Mayor of Canterbury Bankstown Council"; and
- b. Report into statements made under Parliamentary Privilege by Ms Tania Mihailuk MP and MS Wendy Lindsay MP.

Finally, we **enclose** a copy of a marked up version of the transcript, containing transcript corrections.

Yours faithfully

Partner responsible:  
Roland Hassall  
e:

Contact:  
Julie Kneebone, Special Counsel  
t:  
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### Question 1

The Hon. SCOTT FARLOW: Mr Stewart, I might ask you similar questions. Could you please outline all of the trips that you've been on with the mayor and other councillors?

MATTHEW STEWART: I've been on council for 18 years, so I don't have a crystal recall of every single trip. In terms of overseas trips, I've been to Japan and Turkey and the US—that I can recall. I would need to be checking my records in terms of domestic trips, of which there would be numerous.

The Hon. SCOTT FARLOW: Sure. I'm happy for you to take that on notice.

### Answer 1

Mr Stewart has been on the following domestic trips with the mayor and other councillors:

Date	Location	Purpose
17-19 June 2012	Canberra	Australian National General Assembly Conference
28 -31 October 2012	Dubbo	LGNSW Conference
4 - 6 April 2013	Melbourne	2 days with Melbourne Council Mayor, CEO and Staff and separately AFL meeting
18-21 June 2013	Canberra	Australian National General Assembly Conference
11-14 November 2013	Broken Hill	National Sister City Conference
15-19 June 2014	Canberra	Australian National General Assembly Conference
1-22 October 2014	Coffs Harbour	LGNSW Conference
14-17 June 2015	Canberra	Australian National General Assembly Conference
20-22 March 2018	Melbourne	Smart Cities Conference
Oct-18	Cobar/Broken Hill	Drought visit and exchange to both Council local sister cities
20-23 October 2018	Albury	LGNSW Conference
14-16 October 2019	Warwick Farm	LGNSW Conference
19-22 June 2022	Canberra	Australian National General Assembly Conference
23 - 25 October 2022	Hunter Valley	LGNSW Conference

## **Question 2**

The Hon. SCOTT FARLOW: What's the total value of the work that SINC Solutions does for council?

MATTHEW STEWART: That I wouldn't be able to tell you.

The Hon. SCOTT FARLOW: If you could take that on notice, that would be helpful.

## **Answer 2**

Under the Procedures for the Administration of the Code of Conduct for Local Council's in NSW, Councils are required to establish a reviewer's panel or share a panel of conduct reviewers, including through a joint organisation or another regional body associated with councils.

Canterbury Bankstown Council has determined to use the reviewer's panel established through an independent tender conducted by Southern Sydney Regional Organisation of Council's (**SSROC**). SINC Solutions is on the SSROC reviewer's panel.

The total value of the work that SINC Solutions performed for Council last financial year 2021/22 was \$55,704.00. Total payments year to date for 2022/23 is \$31,240.00.

**Question 3**

The Hon. SCOTT FARLOW: Would you be able to provide on notice a digital copy of the memo?

MATTHEW STEWART: Can we take that on notice?

**Answer 3**

Council has undertaken searches but has not been able to locate a word version of the memo.

It is understood that the memo was prepared by the Manager of Executive Services (who left employment with the Council in August 2018) at Mr Stewart's request. At the time the memo was prepared, it was the usual practice of Executive Services staff to prepare draft memos following verbal dictation and present a hard copy for General Manager's review, and if necessary, amendment, before a final memo was printed, and a wet signature placed on it by the General Manager, and the document retained for the hard copy file.

**Question 4**

The Hon. SCOTT FARLOW: How many councillors would have been on that committee?

MATTHEW STEWART: I'd have to check my records.

**Answer 4**

In accordance with the Council resolution of 22 February 2022 and the OLG Guidelines for the Appointment and Oversight of General Managers, five (5) councillors (including the Mayor and Deputy-Mayor) sat on the General Manager's 2022 Performance Review panel.

The remaining nine (9) councillors that were not on the performance review panel were provided with the General Manager's self-assessment on 3 August 2022 and invited to provide feedback. Five (5) of the nine (9) remaining councillors provided feedback that was conveyed to the performance review panel on 11 August 2022 at the panel's meeting to discuss the General Manager's self-assessment.

**Question 5**

The Hon. SCOTT FARLOW: Have you expensed professional development to council previously?

MATTHEW STEWART: I can't recall any.

The Hon. SCOTT FARLOW: Would you be happy to take that on notice?

MATTHEW STEWART: I could.

**Answer 5**

The CEO has not previously sought reimbursement for professional development.

**Question 6**

The Hon. TAYLOR MARTIN: Thank you, Madam Chair. I just want to hash back over the issue of the media release in regards to the mayor's Labor candidacy. Will you commit to conducting an investigation into how council resources and staff time were used for that candidacy, and the management of and the communication of that candidacy?

MATTHEW STEWART: I don't think, without the benefit of the detail, I could commit to that but it's certainly a matter that I can look at and make a determination as to whether there's an investigation warranted.

**Answer 6**

No question was taken on notice; the question provided was answered.

**Question 7**

The Hon. TAYLOR MARTIN: Of course. Just in that interim period, when the new proposed policy was on exhibition, if any expenses were claimed that did not meet the previous policy but met the new policy—

**Answer 7**

Council records indicate that each of the expense claims reimbursed, during the period in which the policy was on exhibition, met the terms of the policy which was in place at that time.



INDEPENDENT REVIEW OF THE  
INVESTIGATION INTO  
ALLEGATIONS CONCERNING THE  
MAYOR OF CANTERBURY  
BANKSTOWN COUNCIL

23 December 2022

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# INDEPENDENT REVIEW OF THE INVESTIGATION INTO ALLEGATIONS CONCERNING THE MAYOR OF CANTERBURY BANKSTOWN COUNCIL

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## 1. INTRODUCTION

- 1.1 The Canterbury Bankstown Council (**Council**) is constituted under the *Local Government Act 1993* (NSW) (**LG Act**). The Council was formed on 12 May 2016 as a result of a merger between the City of Canterbury Council and the City of Bankstown Council.
- 1.2 Mr Khal Asfour was first elected as a Councillor in 2004. In May 2017, Councillor Asfour was elected as the inaugural Mayor of the Council and remains in that position.
- 1.3 On 20 September 2022, Ms Tania Mihailuk MP, the member for Bankstown, made a number of allegations under parliamentary privilege concerning the Council. This included allegations that Mayor Asfour had by “unprincipled” actions furthered the interests of certain developers and individuals. Further, Ms Mihailuk MP stated that the rezoning of the West Terrace car park from V2 to “open space” is a matter that must be investigated.
- 1.4 On 21 September 2022, Ms Wendy Lindsay MP, the member for East Hills, also made allegations under parliamentary privilege with respect to planning matters at the Council. In particular, Ms Lindsay MP was critical of the local environmental plans for East Hills. Ms Lindsay MP contended that the Council had improperly engaged with developers to amend the South East Area Plan, including for Segers Avenue Padstow.
- 1.5 In light of the seriousness of the allegations made by Ms Mihailuk MP and Ms Lindsay MP, the Council engaged SINC Solutions to conduct an independent investigation and review of the allegations. Specifically, SINC Solutions was

retained by the General Council of the Council in correspondence dated 22 September 2022 to prepare a report addressing the following matters:

- (a) Identify what Ms Mihailuk MP and Ms Lindsay MP state is the actual conduct of any employee of council or any elected member;
  - (b) Identify and review the first point in time, if any, Ms Mihailuk MP and Ms Lindsay MP raised these allegations as a matter of complaint;
  - (c) Review, identify and assess the appropriateness of the steps taken by Council when it became aware of the allegations made by Ms Mihailuk MP and Ms Lindsay MP;
  - (d) Identify and review any steps taken by the Council to deal with any matters dealing with probity and corporate governance in relation to the allegations made by Ms Mihailuk MP and Ms Lindsay MP;
  - (e) Advise on the appropriateness of those steps; and
  - (f) Identify what steps or otherwise the Council should take in relation to the allegations made by Ms Mihailuk MP and Ms Lindsay MP.
- 1.6 As part of the investigation, SINC Solutions provided us with drafts of its investigation report and a voluminous number of documents which it had obtained during the course of the investigation. We reviewed the documents to enable us to consider whether there were any others matters that should be the subject of further investigation and whether there were any witnesses that should be interviewed.
- 1.7 On 30 November 2022, we wrote to SINC Solutions and requested that it attempt to further particularise the allegations made under parliamentary privilege and to consider whether there was any evidence to support the particulars of those

allegations. We also expressed our view that Mayor Asfour should be questioned as part of the further investigation of these matters.

- 1.8 On 20 December 2022, we were provided with a final copy of the “*Report into Statements made under Parliamentary Privilege by Ms Tania Mihailuk MP and Ms Lindsay MP*” (**SINC Report**).

#### Scope and Purpose of the Review

- 1.9 We were engaged by Council to conduct a review of the SINC Report. As part of the Review, we were asked to address a number of questions.

- 1.10 The first question was in relation to the allegations which have been made by Ms Mihailuk MP and Ms Lindsay MP, is there any evidence which has been uncovered during the investigation and your review which demonstrates that there has been any conduct by an elected official(s) or employee(s) of the Council which is:

- (a) a breach of any relevant Code of Conduct which was in effect for the purposes of section 440 of the LG Act;
- (b) a breach of the LG Act;
- (c) conduct which could constitute corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988 (NSW) (ICAC Act)*; and/or
- (d) a criminal offence under the law of NSW or any other law relevant to the conduct in question.

- 1.11 As part of the first question, we were asked what steps should be taken by the Council in relation to the elected official(s) or employee(s) if there was evidence of any breach of statutory obligations or the relevant Code of Conduct.

- 1.12 The second question was to identify and review how the relevant complaints or allegations concerning any elected official(s) or employee(s) of the Council were dealt with (if and) when such complaints and allegations were made to the Council (including when it first became aware of such complaints and allegations if the allegations were not made to it).
- 1.13 The third question was to identify and review any issues in relation to Council's policies and procedures which are relevant to Council's corruption prevention measures including, but not limited to, probity and corporate governance which apply during the relevant period that relate to the allegations.

### The conduct of the Review

- 1.14 At the outset a number of observations are made with respect to the matters that have informed the conduct of this Review.
- 1.15 **First**, this Review is limited to the Terms of Reference. It has not examined matters outside the scope of this Review.
- 1.16 **Second**, this Review (as with the investigation) is non-statutory, as such there is no power for us to summon witnesses to give evidence or to produce documents. However, Mayor Asfour, employees of the Council and the NSW Department of Planning and Environment have responded to requests to provide information including documents. It should be noted that if an employee of Council had refused to comply with a direction to assist the investigation this may have led to disciplinary proceedings.
- 1.17 **Third**, the allegations made by Ms Mihailuk MP and Ms Lindsay MP were expressed at a high level of generality. It is a rule of law that allegations of illegality must be stated with clarity and put plainly so that a person accused will have the opportunity to deny it and to put the contrary case.

- 1.18 **Fourth**, Ms Mihailuk MP and Ms Lindsay MP were invited to participate in the investigation and to provide further particulars of the allegations. This invitation was not accepted. No negative inference can be drawn by the failure of Ms Mihailuk MP and Ms Lindsay MP to accept the invitation to provide any further information in respect of the allegations or to participate in the investigation by SINC Solutions. In order to accord Mayor Asfour procedural fairness, we asked SINC Solutions to particularise the allegations which could be inferred from what had been asserted by Ms Mihailuk MP and Ms Lindsay MP.
- 1.19 **Fifth**, the standard of proof that has been applied in this Review is the balance of probabilities. In circumstances where an allegation is serious and the consequences flowing from an adverse finding are grave i.e., it affects a person's rights, interests or legitimate expectations, then the Review has applied the standard which is set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at page 343 per Latham CJ. As noted by the Full Court of the Federal Court in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v ACCC* (2007) 162 FCR 466 at [30], this means '*the more serious the consequences of what is contested...the more a Court will have regard to the strength and weakness of evidence before it in coming to a conclusion.*' Put another way, the more serious and grave the nature and circumstances of the allegation, the stronger and more reliable the evidence is required to prove the fact in issue, to elicit the requisite state of satisfaction.
- 1.20 **Sixth**, while we have expressed conclusions on the issues raised in the Terms of Reference, it is important to note that those conclusions are based on the evidence and the material that was part of the SINC investigation.
- 1.21 **Finally**, there are a number of documents that are referred to in the SINC Report. These documents have been considered by us as part of this Review. Some of the exhibits referred to in the SINC Report are identified as confidential. We have deemed that these exhibits should remain confidential on the basis that they



contain confidential information or are required as a matter of law not to be disclosed.

## **2. THE LEGISLATIVE SCHEME**

2.1 Question One of the Terms of Reference asks us to consider whether the SINC investigation has identified any conduct which may amount to a breach of the Code of Conduct or “corrupt conduct”, as such it is first necessary to set out the relevant legislative provisions of:

- (a) the LG Act;
- (b) the ICAC Act; and
- (c) any criminal law offences that may be relevant to the matters under consideration.

### **The Local Government Act 1993 (NSW)**

2.2 The LG Act, which replaced the *Local Government Act 1919* (NSW), changed the governance of councils in NSW and provided for much greater autonomy and accountability for Local Councils. The LG Act is principle focused rather than process focused like its predecessor. The guiding principles are set out in s 8A and include that Councils should:

- (a) provide strong and effective representation, leadership, planning and decision-making;
- (b) carry out functions in a way that provides the best possible value for residents and ratepayers;
- (c) plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community;

- (d) apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements;
- (e) work co-operatively with other councils and the State government to achieve desired outcomes for the local community;
- (f) manage lands and other assets so that current and future local community needs can be met in an affordable way;
- (g) act fairly, ethically and without bias in the interests of the local community; and
- (h) be responsible employers and provide a consultative and supportive working environment for staff.

2.3 These principles have particular resonance in respect of planning decisions that come before Council, which may involve significant financial benefits for property developers at the expense or loss of local amenities.

#### Provisions governing the conduct of Councillors and council staff

2.4 The LG Act sets out the roles of the Mayor (s 226) and Councillors (s 232(1)). These roles are primarily directed at strategic leadership, governance and planning of council rather than the day-to-day delivery of council services.

2.5 Section 439(1) of the LG Act provides that every Councillor and member of staff of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.

2.6 Section 440(1) provides that the regulations may prescribe a model code of conduct (**model code**) applicable to Councillors, members of staff of councils and delegates of councils.

- 2.7 Section 440(3) provides that a council must adopt a code of conduct that incorporates the provisions of the model code. The adopted code may include provisions that supplement the model code.
- 2.8 Section 440(5) requires Councillors and members of staff to comply with the model code. Failure to comply with an applicable requirement of a code of conduct constitutes “misconduct” for the purposes of Division 3 of Part 1 of Chapter 14 of the LG Act (s 440F).

### Council Codes of Conduct

- 2.9 The SINC investigation requested and received copies of the Codes of Conduct in place at Council since 2008 (SINC Report at [146(d)], in particular:
- (a) Model Code of Conduct – adopted 22 July 2008 (Attachment WTCP38 to the SINC Report)
  - (b) Model Code of Conduct – adopted 26 February 2013 (Attachment WTCP39 to the SINC Report)
  - (c) Model Code of Conduct – adopted 25 October 2016 (Attachment WTCP40 to the SINC Report)
  - (d) Model Code of Conduct – adopted 26 March 2019 (Attachment WTCP41 to the SINC Report)
- 2.10 We have reviewed the above codes and note that the provisions of the codes that are relevant for this Review (in particular the identification and management of conflicts of interest) have not changed in any material respect since 2008.
- 2.11 The SINC Report refers to the provisions of the 2008 Code of Conduct. This was the Code of Conduct in force when the Canterbury Bankstown Car Parking Strategy was considered by the Bankstown City Council in 2009. Any reference

in this Review to a provision of the Code of Conduct is a reference to the 2008 Code of Conduct.

- 2.12 The Code of Conduct details council officials' obligations in relation to the declaration of conflict of interests.
- 2.13 Paragraph 7.10 of the Code of Conduct describes a non-pecuniary conflict of interest as "private or personal interests a council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations and may include an interest of a financial nature". The personal or political views of a council official do not constitute a private interest for the purpose of the Code of Conduct.

#### Managing non-pecuniary conflicts of interest

- 2.14 The Code of Conduct requires that 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, and that you must do this as soon as practicable.
- 2.15 Once disclosed, the Code of Conduct provides for how a non-pecuniary conflict of interest is to be managed.
- 2.16 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 the Code of Conduct.
- 2.17 The management of a non-pecuniary conflict of interest depends on whether or not it is significant.
- 2.18 As a general rule, a non-pecuniary conflict of interest will be significant where a matter does not raise a pecuniary interest but it includes:

- (a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household;
- (b) other relationships that are particularly close, such as friendships and business relationships. **Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship;** and
- (c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong. (our emphasis in bold)

2.19 A council official who has disclosed a significant non-pecuniary conflict of interest 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; or
- (b) have no involvement in the matter, by absenting themselves and not taking part in any debate or voting on the issue.

2.20 If the person determines that a non-pecuniary conflict of interest is less than significant and does not require further action, the person must provide an explanation of why they consider that the conflict does not require further action in the circumstances.

Independent Commission Against Corruption Act 1988 (NSW)

2.21 Mayors and Councillors are public officials for the purposes of the ICAC Act. The ICAC Act defines “corrupt conduct” in s 8(1) to include the following:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust.

2.22 The breadth of the definition in s 8 of the ICAC Act is tempered by s 9(1) which provides that conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official.

2.23 A “criminal offence” is defined in s 9(3) of the ICAC Act to be “a criminal offence under the law of the State or under any other law relevant to the conduct in question”.

2.24 A “disciplinary offence” is defined in s 9(3) to “include any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law”. It is noted that

s 9(6) provides that “a reference to a disciplinary offence in this section...includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the [LG Act], but does not include a reference to any other breach of such a requirement”.

### Potential Criminal Law Offences

2.25 In considering the allegations, we have examined whether there has been any misconduct in public office by Mayor Asfour.

2.26 The criminal law in NSW recognises the offence of misconduct in public office. The elements of the offence are as follows:

- (a) the accused was a public official;
- (b) the accused acted in the course of or in connection with their public office;
- (c) wilfully misconducts themselves, by act or omission; that is, knowing that the act was in breach of their duties as public officials;
- (d) without reasonable excuse or justification; and
- (e) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.<sup>1</sup>

## **3. PLANNING CONTROLS FRAMEWORK**

3.1 The allegations concern Council’s planning decisions and processes. Accordingly, it is necessary to have regard to the legislative scheme in which those

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<sup>1</sup> *Obeid v R* (2015) 91 NSWLR 226; [2015] NSWCCA 309 at [133]; *Maitland v R*; *Macdonald v R* (2019) 99 NSWLR 376; [2019] NSWCCA 32

decisions were made. In our view much of the evidence set out in the SINC Report demonstrates an orthodox application of the requirements of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**), as such particular attention is paid in this part to the obligations imposed by the EPA Act (especially in respect to the making of Local Environmental Plans (**LEPs**)).

### The EPA Act and LEPs

- 3.2 The key piece of legislation governing planning decisions in NSW is the EPA Act. Part 3 of the EPA Act sets out the requirements for the preparation and content of planning instruments (including LEP and Development Control Plans (**DCPs**)). These planning instruments guide and regulate the development of the areas to which they pertain.
- 3.3 Each local government area is required to have its own LEP. The LEP is the governing planning document that sets out how land in the local government can be developed (for example by stipulating restrictions on development such as the maximum floor to space ratio (**FSR**)).
- 3.4 The steps involved in the preparation, or amendment, of an LEP are summarised briefly below:
- (a) **Planning Proposal** – council must first prepare a planning proposal which explains the intended effect of the LEP and sets out the justification for making the proposed instrument (s 3.33(1) of the EPA Act).
  - (b) **Gateway Determination** – after preparing a planning proposal the council may forward it to the Minister for Planning to review the proposal and determine whether the matter should proceed to public exhibition (with or without variation); or whether the matter should be resubmitted for any reason (including for further studies or other information) (s 3.34 of the EPA Act). Prior to the matter proceeding to public exhibition the council is required to action any conditions imposed by the Minister.



- (c) **Public Exhibition and Consultation** – if the Gateway Determination is that the matter should proceed it will then go on public exhibition (for the period stipulated in the Gateway Determination (3.34(2)(c) of the EPA Act)). During this time the public has the opportunity to review and comment on the proposal.
- (d) **Review by council** – after the public consultation process is complete the council is to review any submissions received and decide whether the proposal should proceed or be revised. If the council decides to proceed with a revised proposal, another Gateway Determination is required. If the council withdraws its support the proponent of the application can seek a “rezoning review” by an independent planning panel (s 3.35 of the EPA Act).
- (e) **Gazettal** – the ultimate decision as to whether the LEP is made rests with the Minister (or delegate). Once an LEP is approved it becomes law (s 3.36 of the EPA Act).

### Independent Planning Panel

3.5 Local Planning Panels (**LPPs**) are panels of independent experts that determine development applications on behalf of council. The NSW Department of Planning and Environment website notes that: “The Local Planning Panels ensure increased probity and accountability in the planning system, safeguard against corruption and lead to better planning outcomes.” A council can delegate its functions to the LPP.

### Development Control Plans

3.6 Part 3, Div 3.6 of the EPA deals with DCPs. The main purpose of a DCP is to provide guidance on how a person who is proposing to carry out a development can comply with their statutory requirements – including under a LEP. A DCP

may be prepared by council if it considers it necessary or desirable (s 3.43 of the EPA Act).

**4. THE FIRST QUESTION – WAS THERE ANY UNLAWFUL OR IMPROPER CONDUCT BY AN ELECTED OFFICIAL(S) OR EMPLOYEE(S) OF COUNCIL?**

**What does Ms Mihailuk MP allege is the actual conduct of any employee of Council or Elected Member?**

Mihailuk MP Allegations

4.1 Drawing from the matters identified at [18] of the SINC Report we have inferred Ms Mihailuk MP's central allegations to be as follows:

- (a) Mayor Asfour is a close friend or associate of Mr Eddie Obeid. The only details of this friendship provided by Ms Mihailuk MP is that Mr Eddie Obeid, went to his wedding, and adorned him with a generous gift;
- (b) Mr Eddie Obeid ensured Councillor Asfour remained in the position of Mayor during the redevelopment of landholdings in Bankstown. Ms Mihailuk MP does not specify how Mr Eddie Obeid achieved this outcome;
- (c) The landholdings being referred to by Ms Mihailuk MP were likely the West Terrace carpark, which is owned by Council, and the Bellevue Venue located at 2-10 Restwell Street, Bankstown, which is proximate to the West Terrace carpark and privately owned;
- (d) The Bellevue Venue is owned by Southern Terrace Properties Pty Ltd and the current sole Director is Mr Walhan Wehbe. Mr Eddie Obeid was a Director between 4 October 1989 and 20 August 1993 of a company then known as Redpoc Pty Limited (now known as Southern Terrace Properties Pty Ltd). Mr Paul Obeid, a son of Mr Eddie Obeid, was also a

Director between 20 August 1993 and 26 May 2017 of Redpoc Pty Limited.

- (e) The change of zoning for both the West Terrace carpark and the Bellevue Venue site were done to benefit Mr Eddie Obeid.
- (f) The rezoning of the carpark to open space may be perceived to make the Bellevue Venue streetscape more attractive. The rezoning of the Bellevue Venue to allow greater height is of financial benefit to the owners through this uplift.

**Is there evidence to support a finding that the conduct the subject of the allegations occurred?**

Does Mayor Asfour have any business or personal relationship with Mr Eddie Obeid or his son Mr Paul Obeid?

4.2 At the heart of the allegations made by Ms Mihailuk MP is that there was an association or friendship between Mr Eddie Obeid and the Mayor, Councillor Asfour.

4.3 It is not in dispute that Mr Eddie Obeid attended the wedding of the Mayor.

4.4 As part of the SINC Investigation Mayor Asfour was asked questions about his relationship, if any, with Mr Eddie Obeid (Attachment WTCP34 to the SINC Report). Mayor Asfour expressly denied any relationship with Mr Eddie Obeid and said that he never had any significant or non-significant conflict of interest in relation to Mr Eddie Obeid and/or Mr Paul Obeid. Further, the Mayor, Councillor Asfour stated to the investigation that:

- (a) Mayor Asfour's wedding was held at the Bellevue function centre in 2010;

- (b) There were over 600 guests at the wedding;
- (c) The booking of the Bellevue Venue was done by his parents and his parents in-law;
- (d) It was his understanding that there was no contact with the land owners of the Bellevue Venue in respect of the planning of the wedding;
- (e) The wedding gift was similar to what was given by most guests at the wedding. From memory he stated it was approximately \$200-300;
- (f) He has received no other gifts from Mr Eddie Obeid; and
- (g) Mr Eddie Obeid was invited to Mayor Asfour's wedding at the insistence of Ms Mihailuk MP who was the mayor at the time. Mayor Asfour said that, "she asked me to do it as a favour for her and insisted both her and her husband be seated at his table. I understood from her that she was trying to curry favour with him as she pursued her political ambitions."

4.5 In weighing the credibility of the responses provided by Mayor Asfour we have taken into account:

- (a) That the Mayor, Councillor Asfour voluntarily participated in the investigation;
- (b) That the Mayor was aware that this Report would be made public and accordingly any misleading statements would be exposed by others contradicting him;
- (c) There is nothing in the investigation or SINC Report that contradicts his evidence;

- (d) The wedding which took place in 2010 is the only evidence of any association between Mr Eddie Obeid and Mayor Asfour identified in the SINC Report or in the allegations made by Ms Mihailuk MP; and
- (e) The Mayor has made a report to ICAC in respect of these matters.

4.6 Considering these matters, we have concluded that on the balance of probabilities, the matters set out above 4.4(a)-4.4(f) can be accepted for the purposes of this Review. However, different considerations apply to the matters set out at 4.4(g) above.

4.7 As noted above, the more serious the allegation the more probative the evidence should be to satisfy a conclusion on the balance of probabilities. Given the limitations set out in respect of the investigation and because Ms Mihailuk MP has not taken up the invitation to participate in the investigation, this Review has not made any findings in respect of the assertion that Mr Eddie Obeid attended the wedding at the insistence of Ms Mihailuk MP. This allegation, if true, may cause significant reputational damage to Ms Mihailuk MP and it would be unfair to make a finding in respect of such a matter without first putting the allegation squarely to her.

#### Did Mr Eddie Obeid have an interest in the Bellevue Venue site?

4.8 The Bellevue Venue is owned by Southern Terrace Properties Pty Ltd and the current sole Director is Mr Walhan Wehbe (SINC Report at [167]).

4.9 Mr Eddie Obeid was a Director between 4 October 1989 and 20 August 1993 of a company then known as Redpoc Pty Limited (now known as Southern Terrace Properties Pty Ltd). Mr Paul Obeid, a son of Mr Eddie Obeid was a Director between 20 August 1993 and 26 May 2017 of Redpoc Pty Limited (Attachment WTCP29 to the SINC Report).

4.10 On 26 June 2012, Bankstown City Council resolved to decline to invite a tender from Redpoc Pty Ltd and Taylor Construction Group Pty Ltd in respect of a call for Expressions of Interest in relation to the West Terrace Car Park site (SINC Report at [33]).

Was the West Terrace carpark rezoned from V2 zoning in 2015 to “open space” in 2022?

4.11 There is no evidence in the SINC Report to support this contention, to the contrary the evidence establishes that:

- (a) The current zoning of the West Terrace carpark is zoned B4 Mixed Use.
- (b) The Masterplan does not recommend any change to the zoning.
- (c) The West Terrace carpark has not been rezoned or changed to open space (SINC Report at [72] and Attachment WTCP35 to the SINC Report).

Does the Bankstown City Master Plan Controls provide for an uplift in respect of the Bellevue Venue?

4.12 Yes, the Bankstown City Master Plan Controls provide the FSR for the Bellevue site to increase to 5.1 however this is subject to 50% of the floorspace being for employment generating uses. Under the current 2015 LEP, the FSR is 3.1 (only where the site is at least 18m at front building line) with no incentive bonus.

4.13 As part of the SINC Investigation Council staff noted that in respect of the Bellevue Venue site there had been no engagement by the owner, any occupants or their representatives on the Bankstown City Centre Master Plan. Further it was reported that Council’s planners “do not give regard to owners or occupants of individual sites when preparing the Master Plan” (SINC Report at [79] and WTCP35).

4.14 At the time of the investigation there has been no planning proposals submitted to Council for the Bellevue Venue site.

What was the Mayor's involvement in respect of planning matters related to the Bellevue Venue site or the West Terrace Carpark?

West Terrace Carpark

4.15 Minutes reviewed as part of the SINC Investigation indicate that Mayor Asfour was present in the Bankstown City Council chamber:

- (a) on 24 March 2009 when the Draft Bankstown City Centre Car Parking Strategy was considered by Bankstown City Council. The staff report recommended that Council proceed with a feasibility study to initiate the redevelopment of the West Terrace Carpark post 2012, with full replacement of existing car parking in any future redevelopment (See Attachments WTCP1; WTCP2; and WTCP3 to the SINC Report);
- (b) on 20 September 2011 when the Bankstown City Council resolved to adopt Bankstown CBD Local Area Plan. Voting was not recorded in the minutes for these meetings (SINC Report at [29]);
- (c) on 13 December 2011 when Bankstown City Council considered a report relating to the Proposed Property Management Strategy of three Council sites and resolved to adopt the report and for the General Manager to call for Expressions of Interest. The Mayor was present for the consideration of this matter as was former Councillor Mihailuk. Voting was not recorded in the minutes (SINC Report at [30] and [31]; and Attachments WTCP6 and WTCP7 to the SINC Report); and
- (d) on 26 June 2012 when Council resolved to decline a tender from Redpoc Pty Ltd. The SINC investigation records that the General Manager recalls

this vote by the Councillors present as being unanimous (SINC Report at [32] and [33]).

- 4.16 No conflict of interest declarations were made by Councillor Asfour in relation to the West Terrace Carpark. In his response to the SINC Investigation dated 6 December 2022, Mayor Asfour said he had no conflict of interests with respect to the matter (Attachment WTCP34 to the SINC Report, Question 8).
- 4.17 Mayor Asfour was not a councillor when Mr Eddie Obeid was a Director of Redpoc Pty Ltd (between 1989 and 1993).

#### Bellevue Venue site

- 4.18 There have been no planning proposals submitted to the Council in respect of the Bellevue Venue site (SINC Report at [75]).
- 4.19 There have been no Development Applications submitted with respect to the Bellevue Venue site in the past five years (SINC Report at [76]).
- 4.20 In respect of the Bankstown City Master Plan (which covers the Bellevue Venue site), Mayor Asfour declared a significant, non-pecuniary conflict of interest due to his role as a Director with the Bankstown Return Services League (RSL), which was also affected by the Bankstown City Centre Master Plan. He also declared a reportable donation which had been made to his election campaign by a donor, who had no connection to the Bellevue Venue site. Records gathered in the investigation indicate that the Mayor Councillor Asfour declared this conflict of interest and left the relevant council meeting on:
- (a) 23 March 2021 (Attachment WTCP22 to the SINC Report);
  - (b) 27 April 2021 (Attachment WTCP24 to the SINC Report); and
  - (c) 28 September 2021 (Attachment WTCP28 to the SINC Report).



## **Summary of key factual findings**

- 4.21 The SINC Investigation has not uncovered any evidence that:
- (a) Mayor Asfour failed to declare and manage conflicts of interest in respect of decisions concerning the West Terrace carpark;
  - (b) Mayor Asfour, has, or at any relevant time had, any business or personal relationship with Mr Eddie Obeid or his son Mr Paul Obeid. In our view, the fact Mr Eddie Obeid attended the wedding of the Mayor in 2010, on its own and in the circumstances outlined above could not be characterised as a personal or business relationship; and
  - (c) the West Terrace carpark has been rezoned to “open space”. The West Terrace carpark is zoned B4 mixed use.
- 4.22 The evidence reveals that the Mayor was not directly involved in any decisions with respect to planning matters concerning the Bellevue Venue site.
- 4.23 Finally, in light of the factual findings set out above (namely that there was no personal or business relationship between Mayor Asfour and Mr Eddie Obeid and that Mr Eddie Obeid was not a director of Redpoc Pty Ltd at the time Mayor Asfour voted on matters relating to West Terrace carpark) there does not appear to be any requirement for the Mayor to declare the wedding gift of approximately \$200-300. In the circumstances, there was no requirement under any policy or procedure to declare a personal gift of this nature and amount. Critically, there is no evidence in this investigation of any nexus between the wedding gift in 2010 and the consideration of any planning matters by Mayor Asfour.
- 4.24 Accordingly, we have not identified any conduct in this investigation that may constitute a breach of the Code of Conduct or the LG Act, corrupt conduct for the purposes of the ICAC Act, or an offence for the purpose of any other Act.

## Allegations raised by Ms Lindsay MP

4.25 The allegations raised by Ms Lindsay MP relate primarily to the Local Area Plan (LAP) as it concerns Segers Avenue, Padstow, and the development of the Draft LEP for East Hills.

4.26 In respect of the LEP for East Hills Ms Lindsay MP said:

*“There is just something very fundamentally wrong with these local environment plans. I urge the planning Minister to seriously address my many concerns that I have with the local area plans proposed for East Hills. These plans are so bad that council members abrogated their rights to vote on them. This Labor-dominated council, led by Mayor Asfour, comes up with the absolute destruction of the East Hills electorate and amenity, and then refuses to back their own plans and not even vote on them. What an absolute disgrace!”*

4.27 Ms Lindsay MP alleges that at a council meeting held on 11 May 2016, she witnessed an “open conversation” between Councillors and developers regarding the South East Area Plan including Segers Avenue, Padstow. The result of this “open conversation” was that Segers Avenue which was zoned a normal residential level before the meeting was rezoned to multistorey level by the end of the meeting.

4.28 Ms Lindsay MP makes no direct allegation against any particular Councillor (with the exception of naming Mayor Asfour). Rather her complaints are directed to the Councillors generally who she asserts have abrogated their responsibilities for the LEP.

4.29 Drawing from the matters identified by the SINC investigation at [18] of the SINC Report, the particulars of the allegations made under Parliamentary privilege by Ms Lindsay MP may be characterised as follows:

- (a) that at the council meeting held on 11 May 2016, Councillors had discussions with developers that resulted in amendments to the South East Area Plan including Segers Avenue, Padstow;

- (b) that the proposed LEP zoning for Segers Avenue, the LEP in the East Hills area and the Local Area Plans are inappropriate and represent poor work by unnamed council officials;
- (c) that Councillors have abrogated their responsibilities for the LEP due to the poor quality of the plans; and
- (d) that Mayor Asfour has led this inappropriate approach and then refused to vote on the plans which was also inappropriate.

### **The 11 May 2016 Meeting**

4.30 At the meeting referred to by Ms Lindsay MP the Bankstown City Council resolved to: (i) adopt the South East LAP subject to amendments including, amongst others, in relation to Segers Avenue, Padstow; and (ii) delegate authority for the General Manager to submit a planning proposal to the Department of Planning and Environment. Mayor Asfour declared a conflict of interest, as did some other Councillors, in relation to the South East LAP and left the meeting. **(11 May 2016 Meeting).**

4.31 The minutes of the 11 May 2016 Meeting reflect that Ms Lindsay MP spoke at the meeting. However, there is no record of what was said at the meeting. The resolution adopted at the meeting of Council is set out at [107] of the SINC Report (Attachments SEG14 and SEG15 to the SINC Report). After the 11 May 2016 Meeting the following occurred:

- (a) on 9 September 2016, Council submitted a planning proposal in relation to the LAP(s) to the Department of Planning and Environment seeking a Gateway Determination (SINC Report at [108]);
- (b) on 19 May 2017, the Department of Planning and Environment issued a Gateway Determination to enable the planning proposal to proceed to

exhibition subject to the removal of the amendments (as listed in their correspondence) (Attachment SEG16 to the SINC Report);

- (c) on 25 July 2017, the then Administrator of the Council noted the Gateway Determination and delegated the General Manager to prepare and exhibit draft amendments to the Bankstown Development Control Plan 2015 and the Section 94A Development Contributions Plan and that the matter be reported to Council following the exhibition (Attachments SEG17 to the SINC Report); and
- (d) on 26 June 2018, Council adopted the staff recommendation to execute the funding agreement for the accelerated local environmental plan review program and commence work on a Local Strategic Planning Statement (**LSPS**) (Attachment SEG18 to the SINC Report).

4.32 Importantly, on 24 July 2018 the Council resolved not to proceed with the Planning Proposal for the South East LAP and advised the Department accordingly. At this meeting the Mayor Asfour declared a conflict of interest, and left the meeting (SINC Report at [112] and Attachments SEG18 to the SINC Report).

4.33 In September 2018, the proponent submitted a rezoning application for the site located at 1-17 Segers Avenue, Padstow (SINC Report at [115]).

4.34 On 3 April 2019, the LPP considered a report to proceed with a site specific planning proposal for 1-17 Segers Avenue Padstow. The LPP recommended that the planning proposal not proceed to Gateway Determination as they were of the view the proposal was premature. They also stated in their recommendation the following:

- (a) The proposal should be considered in light of (a) the Council's local strategic planning statement and (b) future town centres studies;

- (b) The proposal does not have site specific merit when looked at in isolation with the surrounding neighbourhood; and
  - (c) A development control plan is required to be prepared before further consideration of the proposed rezoning of the site (Attachments SEG21 and SEG22 to the SINC Report).
- 4.35 After considering these observations from the LPP and a recommendation from Council staff, the Council resolved on 30 April 2019 to adopt the staff recommendation to prepare and submit a planning proposal with amendments for 1-17 Segers Avenue, Padstow to the Department of Planning and Environment seeking a Gateway Determination (SINC Report at [117] and Attachment SEG23 to the SINC Report).
- 4.36 On 12 June 2019, Council submitted a planning proposal for 1-17 Segers Avenue Padstow to the Department of Planning and Environment seeking a gateway Determination (SINC Report at [118]).
- 4.37 On 24 September 2019, Council resolved to:
- (a) exhibit the draft “*Local Strategic Planning Statement Connective City 2036*”;
  - (b) prepare and submit a planning proposal to the Department of Planning, Industry and Environment for Gateway Determination to create the new Canterbury Bankstown Local Environmental Plan. It was noted that the Planning Proposal will not have any changes to planning provisions, it is to seek the Department’s requirements for exhibition including agency engagement requirements up front so as to not delay this process;
  - (c) provide a detailed report to Council on the planning proposal after a Gateway Determination has been received and prior to exhibition;

- (d) ensure that the local strategic planning statement identify the following areas for their special natural, scenic or architectural value and ensure that these areas are protected from inappropriate future development;
  - (i) Areas south of the East Hills Rail Line at East Hills, Padstow, Panania, Picnic Point and Revesby;
  - (ii) Areas in the east of our city along the Cooks River and conservation areas including around Ashbury, Hurlstone Park and Earlwood;
- (e) undertake further analysis and refinement of these areas during the exhibition of the Local Strategic Planning Statement; and
- (f) include provisions into the new Canterbury Bankstown LEP to ensure the special character of these areas is protected and enhanced (see [121] of the SINC Report).

4.38 On 20 February 2020, the Department of Planning and Environment issued a Gateway Determination to enable the planning proposal for the Consolidated LEP to proceed to public exhibition, subject to conditions. Relevantly the conditions to this review included: “*Condition 1(c)(iii) included the implementation of the LAP(s) and any further proposed modifications and 1(g) incorporated the planning proposal relating to 1-17 Segers Avenue, Padstow.*” (Attachment SEG24 to the SINC Report).

4.39 On 25 February 2020, Council resolved that given the nature and number of disclosures of interest, and the lack of quorum, Council delegate to the LPP its statutory function(s) in considering and voting and determining the Minister’s Gateway Determination in relation to the proposed Canterbury Bankstown LEP (see [124] of the SINC Report and SEG25).

- 4.40 On 4 March 2020, the LPP adopted the staff recommendation and determined to exhibit the planning proposal for the Consolidated LEP which included Segers Avenue, Padstow (see Attachments SEG26 and SEG27 of the SINC Report).
- 4.41 Between 10 March 2020 and 22 May 2020, Council exhibited the planning proposal (Attachments SEG26 and SEG27 of the SINC Report).
- 4.42 On 30 June 2020, the LPP resolved to adopt the planning proposal subject to amendments and resolved that it be submitted to the NSW Department of Planning and Environment to make the Consolidated LEP. The decision was unanimous (Attachments SEG28 and SEG29 of the SINC Report).
- 4.43 We note that the Council is still awaiting the decision of the NSW Department of Planning and Environment regarding the planning proposal (which is now part of the Consolidated LEP) to progress to gazettal (see [134] of the SINC Report).
- 4.44 The NSW Department of Planning and Environment provided the investigation with a copy of the Independent Urban Design Review it undertook in relation to 1-17 Segers Avenue, Padstow. As set out at [135] of the SINC Report, the Department advised that their review determined it was aligned to that provided by Council, and as such Council's proposed LEP changes in this area were appropriate with some minor amendments (Attachments SEG31 to the SINC Report).
- 4.45 The point of setting out in detail the above matters is to highlight that the planning matters in respect of the properties impugned in the allegations made by Ms Lindsay MP are proceeding as required under statute. We note that many of the issues raised in the NSW Parliament concern decisions in which the NSW Department of Planning and Environment has either involvement or responsibility. In conclusion there is simply no evidence of unlawful or otherwise inappropriate conduct by any Councillor or employee of the Council in relation to the allegations raised by Ms Lindsay MP.

**5. THE SECOND QUESTION - WHEN DID THE COUNCIL BECOME AWARE OF THE ALLEGATIONS MADE BY MS MIHAILUK MP OR MS LINDSAY MP AND HOW WERE THEY DEALT WITH BY THE COUNCIL?**

5.1 The investigation has not been able to, and does not identify, any occasion upon which Ms Mihailuk MP or Ms Lindsay MP raised their concerns directly with the Council prior to their statements in the NSW Parliament.

5.2 At all relevant times Council had in place, as required by s 440AA of the LG Act, the “Procedure for the Administration of the Model Code of Conduct for Local Councils in NSW” (Administrative Procedure) (Attachment WTCP44 to the SINC Report). The Administrative Procedure provides a mechanism for the making of Code of Conduct complaints and a framework for the review and resolution of those complaints.

5.3 Part 4.1 of the Administrative Procedure provides that a code of conduct complaint:

*“is a complaint that shows or tends to show conduct on the part of the council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council’s code of conduct if proven”.*

5.4 Clearly, the matters the subject of the allegations made under parliamentary privilege constitute matters that would satisfy the definition of a “code of conduct complaint” under the Administrative Procedure. Part 4.6 provides that any code of conduct complaints relating to the Mayor and or Councillors is “to be made to the general manager in writing”. The complaint must be made within 3 months of the complainant becoming aware of the alleged conduct. The Administrative Procedure does not operate to prevent any complaints being made to an external agency.



5.5 Ms Mihailuk MP did raise, in her capacity as the Member for Bankstown, matters critical of Council’s planning decisions in a written submission on Council’s Bankstown City Centre Masterplan (see SINC Report at [159] and Attachment WTCP46 to the SINC Report). In this submission Ms Mihailuk MP is highly critical of most elements of the Bankstown City Centre Masterplan. Ms Mihailuk MP is also critical of Mayor Asfour for declaring a conflict of interest and leaving the chamber, but continuing to support the masterplan in the Mayoral Messages column and to speak on the masterplan. Ms Mihailuk MP does not however make any other allegations against the Mayor in this submission.

5.6 While no direct complaints were made by Ms Mihailuk MP or Ms Lindsay MP, the SINC Report identifies that at times the General Manager did become aware that comments were being made by Ms Mihailuk MP in the general community. Upon becoming aware of this and other issues the General Manager reported the matters to the ICAC, [REDACTED]

(a) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(c) [REDACTED]  
[REDACTED]  
[REDACTED]

5.7 In respect of each of the reports to the ICAC set out above, the ICAC informed the Council that it determined not to investigate the matters referred to it by the General Manager. (See SINC Report at [155], [157], and [162]).

5.8 In our view, based on the evidence, it appears that at all relevant times Council sought to adhere to its obligations to investigate allegations in a timely manner and also to report matters to the ICAC.

**6. THE THIRD QUESTION - WHAT WERE COUNCIL'S POLICIES AND PROCEDURES WHICH WERE RELEVANT TO COUNCIL'S CORRUPTION PREVENTION MEASURES WHICH APPLIED DURING THE RELEVANT PERIOD THAT RELATE TO THE ALLEGATIONS?**

6.1 In our view, including for the reasons set out at [168] of the SINC Report, the Council had in place, at all relevant times, appropriate corporate governance with respect to corruption prevention measures. Council's compliance with its obligations under the LG Act and the EPA Act in respect of corruption prevention is set out above and are not repeated in this section. Evidence of probity measures that applied specifically in respect of the impugned properties and decisions which were the subject of allegations in the NSW Parliament are considered in this section.

Governance in respect of West Terrace Carpark – EOI Process

6.2 As discussed above, on 13 December 2011 Council considered a staff report concerning a proposal that Council conduct an EOI process for three properties one of which was the West Terrace Car Park. The governance framework in respect of the EOI proposal noted the following:

***Governance Framework***

*An important part of any EOI process is to ensure an appropriate governance framework be established to assist in managing projects. As part of the process, Council will engage suitable external consultants to ensure that the overall process is not only compliant with requirements of the statutory framework but it also:*

- *provides a high level of probity and transparency;*
- *identifies appropriate interested parties for Council to consider;*
- *provides a detailed, clear and structured evaluation process;*

- *assists in ensuring the objectives of the EOI are met.*

*The development of a Probity Plan will be a component of this framework. The purpose of the Probity Plan is to ensure that the level of transparency, competitive fairness and accountability are appropriate. It also provides the probity principles that should apply to all parties with an awareness of Council's values. (Attachment WTCP6 to the SINC Report)*

- 6.3 We have reviewed the Bankstown City Council Probity Plan in respect of the disposal of the West Terrace carpark [REDACTED]. In our view, the Probity Plan, which was prepared by Maddocks an external legal firm, provides a detailed and comprehensive governance framework developed in accordance with recognised probity principles.

#### Appointment of Probity and Governance Referee for the City Wide Planning Instruments

- 6.4 On 12 September 2019, the Council appointed Hall & Wilcox Lawyers as Probity and Governance Referee for the City Wide Planning Instrument. We have reviewed the confidential documentation and note that the intention of the appointment of a probity officer was to assist Councillors to understand and comply with their obligations under the Code of Conduct in respect of matters associated with the Council's then proposed new City Wide Planning Instrument. This included correspondence issued to all Councillors and Designated staff regarding their requirements under the Code of Conduct and associated provisions relating to declaration of interests for the City Wide Planning Instruments [REDACTED].

- 6.5 The appointment of the Probity and Governance Referee was adopted by Council in a confidential session on 24 September 2019. [REDACTED]  
[REDACTED].

## **Governance concerning Bankstown Masterplan**

### **Appointment of probity referee for the Bankstown and Campsie Master Planning and Planning Proposals**

- 6.6 On 22 July 2020, Council engaged Hall & Wilcox Lawyers as probity referee for the Bankstown and Campsie Master Planning and Planning Proposals. The probity referee (a) provided advice throughout the process (b) met with any planning proposal applicants in the study area (c) met with landowners who had made submissions (d) attended Councillor briefings and provided ad-hoc advice on probity issues (SINC Report at [49]).
- 6.7 The General Manager and senior staff proactively took steps to ensure that Councillors were meeting their obligations in respect of the Code of Conduct, for example:
- (a) on 19 February 2021, Council's General Manager issued correspondence to all Councillors and Directors regarding their Code of Conduct obligations in relation to the Bankstown and Campsie Masterplans. Each Councillor was subsequently contacted by Governance Officers regarding the completion of relevant documentation (Attachment WTCP17 to the SINC Report) (SINC Report at [51]);
  - (b) on 24 February 2021, Council's General Manager issued correspondence to all Councillors and Directors regarding an in-person briefing to be held on the Draft Masterplans with the probity referee to be in attendance and again reminding Councillors of their obligations (SINC Report at [52]);
  - (c) on 9 March 2021, a briefing with Councillors was held regarding the Draft Masterplans with the probity referee in attendance. Records indicate that the purpose of the meeting included ensuring that Council and Councillors uphold and/or comply with the Code of Conduct and Meeting Practice procedures/requirements (SINC Report at [54]); and

- (d) by working directly with the Mayor and each Councillor regarding their possible conflicts of interest regarding the Draft Masterplan (Attachment WTCP19 to the SINC Report) (SINC Report at 53).

“Unsolicited” approach from representative of Restwell Street and South Terrace

- 6.8 On 7 June 2021, Council received an email from Mr Brian Hood of Laurus Project Pty Ltd representing the landowners of 2-10 Restwell Street, 12 Restwell Street and 290 South Terrace which form part of the Draft Masterplan for Bankstown City Centre. (Attachment WTCP25 to the SINC Report). Mr Hood indicated in part as follows:

*In this specific block, which includes Councils’ West Terrace Carpark and No.7 West Terrace and various other properties, we are of the view that there exists an opportunity to potentially combine properties and allocate elements like, public open space and carparking within this block to benefit all stakeholders. We have engaged Fender Katsalidis to assist us with a proposal. We would request a convenient time to meet with the relevant council staff and planners to discuss potential opportunities for this area of the Masterplan.*

- 6.9 On 7 June 2021, the General Manager forwarded the email to various Council staff and requested: “Could you please acknowledge this and advise the unsolicited proposal route....And that we would not entertain such a proposal until the masterplan is finalised and a gateway sought (subject to Council)”. This request of the General Manger was complied with by Council staff and managed in accordance with the Unsolicited Proposals Policy Guidelines (SINC Report at [58]).
- 6.10 While we have concluded that at all relevant times, the Council had in place appropriate governance measures, it is our view that if Council has not already done so it should engage with the ICAC for the purposes of reviewing its corruption prevention measures to ascertain if these measures can be improved.

## 7. CONCLUSION

7.1 Mayors, local councillors and employees of councils have important statutory obligations to discharge in any decision concerning development applications and zoning. These decisions impact on the amenities of local communities and have the potential to benefit developers.

7.2 As observed by the Hon. P.M. Hall KC:

*“To a very large extent, the public must rely upon the good faith and integrity of those entrusted with public office. However, in more recent times, efforts have been directed towards formulating comprehensive standards and principles, and establishing accountability measures considered essential for safeguarding individual and institutional integrity.”* (P.M. Hall KC, Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures (Thomson Reuters, Second Edition, 2019), page 1 at [1.05]).

7.3 Accordingly, it is for that reason that the Model Code of Conduct for councils which is mandated by section 440 of the LG Act requires that councillors must identify conflicts of interest and either avoid or manage those conflicts of interest. It is imperative that councillors and employees comply with the relevant Codes of Conduct in order to ensure that not only that decisions made are lawful and impartial, but also that there is no apprehension that decisions have been made which favour a particular developer or individual. This ensures that local communities can have confidence that a council is making decisions in the public interest and not for the benefit of a developer or an individual.

7.4 One of the significant difficulties which has confronted the SINC investigation and this Review has been the lack of particularisation of what is alleged to be the misconduct by Mayor Asfour and by implication unidentified persons within the Council. This lack of particularisation resulted in a considerable amount of time being spent on a wide ranging review of documents to ascertain if anything could be uncovered which fell within the broad nature of the allegations.

7.5 In relation to the allegations which have been made by Ms Mihailuk MP and Ms Lindsay MP, there is no evidence which has been uncovered by the SINC investigation that demonstrates that there has been any conduct by Mayor Asfour or employees of Council which constitutes:

- (a) a breach of any relevant Code of Conduct which was in effect for the purposes of section 440 of the LG Act;
- (b) a breach of the LG Act;
- (c) conduct which could constitute corrupt conduct for the purposes of the ICAC Act; and/or
- (d) a criminal offence under the law of NSW or any other law relevant to the conduct in question.

7.6 It is our view that the following conclusions of the investigator which are set out at paragraph 175 of the SINC Report are soundly based:

*“175. In relation to each allegation we advise as follows:*

- 1. Whether the Mayor, Councillor Asfour sought and /or accepted benefits as an inducement or reward for partially and dishonestly exercising his official functions to favour the interests of developers, landowners or Mr Eddie Obeid in relation to planning matters affecting the West Terrace Car Park site and or the Bellevue Venue site.*

*This allegation is not substantiated.*

- 2. Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers, landowners or Mr Eddie Obeid in relation to the West Terrace Car Park site and or the Bellevue Venue site.*

*This allegation is not substantiated.*

- 3. Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his*

*relationship with developers or landowners in relation to the Local Area Plan and or the Planning Proposal relating to Segers Avenue, Padstow.*

*This allegation is not substantiated.*

4. *Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers and landowners in relation to the Draft Consolidated Local Environmental Plan as it related to the East Hills area.*

*This allegation is not substantiated.”*

7.7 These conclusions were clearly open to the investigator on the material that was gathered during the course of the investigation. The evidence which has been gathered by the investigation demonstrates that Mayor Asfour was aware of his obligations under the Code of Conduct. It is equally apparent from the evidence that Mayor Asfour managed conflicts of interest diligently and in line with the requirements under the Codes of Conduct that applied during the relevant period that he served as a Councillor or Mayor.

7.8 Regrettably, given the nature of the allegations which were made and the understandable media interest in the allegations, it has meant that a shadow was cast upon the entire Council. This necessarily has the potential to undermine public confidence in the entire Council which has a vital role to play in providing services to local communities.

7.9 It is a matter for any Member of Parliament to use their parliamentary privilege to advance what she or he considers is a matter which should be raised in the public interest. We make no observation as to whether it was proper or not for allegations concerning the Council to be raised in the NSW Parliament. However, we note and respectfully agree with the following observations by the Chief Commissioner of the Independent Commission Against Corruption, the Hon John Hatzistergos AM, in the ICAC Annual Report 2021-2022 released on 31 October 2022:



*“As we approach the 2023 NSW election, it is once again timely to remind candidates for public office that they should act properly in making referrals to the Commission. Investigations into allegations of corrupt conduct are rarely if ever assisted by premature publicity. It is inappropriate to weaponise a referral to the Commission for attention or political advantage. All accusations of corruption are extremely serious and should not be made lightly. This should be heeded at all times. I do not suggest that appropriate referrals should not be made. Indeed for some there are legislated obligations to do so. However, the Commission’s focus remains on corrupt conduct not any matter that attracts comment or controversy.”*

**ARTHUR MOSES SC**  
New Chambers

**JAYE ALDERSON**  
State Chambers

23 December 2022





**sinc**solutions  
strategic independent consulting

## **City of Canterbury Bankstown**

**Report into statements made under Parliamentary Privilege by**

**Ms Tania Mihailuk MP and Ms Wendy Lindsay MP**

20 December 2022

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## Executive Summary

On 20 September 2022, Ms Tania Mihailuk MP, the member for Bankstown, made a statement under parliamentary privilege relating to Council officials of the City of Canterbury Bankstown (hereafter referred to as Council). These statements related to conduct by the Mayor, Councillor Asfour, and other unnamed Council officials, and related to planning and development generally at Council as well as strategic and planning decisions relating to the Council owned site known as the 'West Terrace Carpark' and the adjoining privately owned site known as the Bellevue Venue site.

On 21 September 2022, Ms Wendy Lindsay, MP, the member for East Hills, made a statement under parliamentary privilege referring to the statement made by Ms Mihailuk MP on 20 September 2022, and raised concerns regarding the Local Area Plan (LAP) as it related to Segers Avenue, Padstow, and the development of the Draft Local Environment Plan (LEP) for East Hills. Ms Lindsay's statement related to conduct by Mayor, Councillor Asfour, and other unnamed Council officials.

Since that time there have been a number of statements made in the media in relation to the broad comments raised under parliamentary privilege. SINC Solutions were engaged by Council to undertake a review of the statements made; determine the steps taken by Council in relation to the allegations; whether those steps were dealt with appropriately in terms of probity and corporate governance; and what steps should have been taken (if required).

A significant documentary review was completed to address the statements made as they were not particularized and were broad alleging inappropriate conduct by Council officials. The broad allegations related to planning matters between 2009 to 2022. From the statements made, it was determined that a review of governance processes associated with planning on the following be undertaken:

- i. West Terrace Carpark site and the Bellevue Venue site and their interrelationship
- ii. Segers Avenue, Padstow – Local Area Plan
- iii. Drafting of Local Environmental Plan (LEP) as it relates to East Hills

It has been determined that appropriate governance and probity processes were in place for the various phases associated with the above. In several instances, determinations were made by the Local Planning Panel and assurances were granted or sought from the Greater Sydney Commission and the Department of Planning and Environment. Council had also engaged a probity advisor from Hall & Wilcox lawyers throughout major components of the process. It has been concluded that there is no governance, probity or conduct issues relating to Council Officials arising from this review.

## Background

1. On 20 September 2022, Ms Tania Mihailuk MP, the member for Bankstown, made a statement under parliamentary privilege relating to Council officials of the City of Canterbury Bankstown (hereafter referred to as Council).
2. These statements related to conduct by the Mayor, Councillor Asfour, and other unnamed Council officials, and related to planning and development generally at Council as well as strategic and planning decisions relating to the Council owned site known as the 'West Terrace Carpark' and the adjoining privately owned site known as the Bellevue Venue site.
3. On 21 September 2022, Ms Wendy Lindsay, MP, the member for East Hills, made a statement under parliamentary privilege referring to the statement made by Ms Mihailuk MP on 20 September 2022, and raised concerns regarding the Local Area Plan (LAP) as it related to Segers Avenue, Padstow, and the development of the Draft Local Environment Plan (LEP) for East Hills. Ms Lindsay's statement related to conduct by Mayor, Councillor Asfour, and other unnamed Council officials.
4. Further information was sought by Council's General Counsel from Ms Mihailuk MP to assist this review. In particular a request was made for Ms Mihailuk to provide a statement setting out evidence of any inappropriate or unlawful conduct by Councillors and/or employees. No response or information was provided.
5. Further information was sought by Council's General Counsel from Ms Lindsay MP who, following an exchange of correspondence, did not provide any information to the review.
6. It should be noted that no negative inferences can be drawn by the failure of the two (2) persons to provide particulars in relation to their complaints raised under parliamentary privilege. This report has been initiated by the statements made under parliamentary privilege and the resultant numerous media reports.
7. Under this review, there are no legislative powers upon which to rely to compel a person to provide information.
8. It is not known whether either of the two (2) persons have reported the matters raised to the Independent Commission Against Corruption.
9. Council engaged legal counsel in relation to the statements raised under parliamentary privilege by both Ms Mihailuk MP and Ms Lindsay MP.

10. It should be noted that both the matters raised by the two Members of Parliament, date back lengthy time periods and have been raised and reviewed previously. In relation to the West Terrace Carpark it was initially part of the Draft Bankstown City Centre Car Parking Strategy which was resolved by Bankstown City Council on 24 March 2009 to go on public exhibition. Ms Mihailuk was a Councillor with Bankstown City Council at that time. Ms Mihailuk MP first raised an issue regarding West Terrace Carpark in November 2013, after she ceased her role as a Bankstown City Councillor (in 2012). The General Manager advised that this was not raised directly with Council but rather Council was informed by members of the public that these issues were being raised by Ms Mihailuk MP in the community. The allegations that were circulating in the community were that the Mayor was colluding with Mr Eddie Obeid in relation to West Terrace Carpark tender process.
11. In relation to the South East Local Area Plan and Segers Avenue, Padstow, the former Bankstown City Council resolved on 26 February 2013 to exhibit the South East Local Area Issues Report as part of the Local Area Plan which related in part, to Segers Avenue, Padstow. The minutes reflect at page 9, that Ms Lindsay MP attended and spoke at the Bankstown City Council Meeting held on *11 May 2016* in relation to the South East Local Area Plan (Attachment SEG15).
12. Ms Lindsay MP spoke to a Council official on *20 April 2021* in which she indicated she was unhappy with the new comprehensive Canterbury Bankstown LEP for the area of East Hills.
13. Legal Counsel identified the process under which a review by SINC Solutions Pty Ltd would be completed. The review required six (6) questions to be addressed. The six (6) questions are as follows:
  1. *Identify what the MP alleges is the actual conduct of any employee of Council or any elected member;*
  2. *Identify and review the first point in time, if any, the MP has raised these allegations as a matter of complaint;*
  3. *Review, identify and assess the appropriateness of the steps taken by Council when it became aware of the allegations made by the MP;*
  4. *Identify and review any steps taken by the Council to deal with any matters dealing with probity and corporate governance in relation to the allegations made by the MP;*
  5. *Advise on the appropriateness of those steps;*
  6. *Identify what steps or otherwise the Council should take in relation to the allegations made by the MP.*
14. This report deals with those questions and responses based on the detailed information reviewed.

## 1. Identify what the MP alleges is the actual conduct of any employee of Council or any elected member

15. The following Hansard of **20 September 2022 at 23:02 hours** as stated by Ms Tania Mihailuk (Bankstown) MP (Attachment WTCP53):

- a. *“I raise my legitimate and longstanding concerns regarding Asfour's character and his unprincipled actions in furthering the interests of developers and identities, in particular Eddie Obeid, who went to his wedding, adorning him with a generous gift, as Asfour boasted at the time, and remained steadfastly committed to ensuring Asfour would be mayor throughout the period of redeveloping the landholdings in Bankstown.”*
- b. *What is most alarming is that in 2015 the West Terrace car park was characterised as V2 zoning, a zoning that permitted 38 metres—very valuable land for ratepayers. Now, in 2022, the space is reclassified as open space. Council is prepared to forego very valuable land in the CBD instead of seeking its full value for the benefit of the ratepayers it has rendered it virtually worthless for. This must be investigated.*
- c. *But I thought Bob Nanva, tasked with the challenge of cleaning up Labor post ICAC, would be different. I met with him on 7 February 2020 at 2.30 p.m. I relayed my concerns about the horrific influence with respect to developers, the pressure on councillors, the unusual party members joining up and the myriad of documents that have been presented to party office and respective authorities over the years.*

16. The following Hansard of 21 September 2022 at 22.26 hours as stated by Ms Wendy Lindsay (East Hills) MP (Attachment SEG35):

- d. *In the original draft LAP one side of Segers Avenue was zoned as six storeys residential and the other side was zoned three storeys and four storeys residential. This is a small avenue that has approximately 24 properties. In the proposed amendments requested by councillors, in the papers on page 88 of the extraordinary meeting of council held on 11 May 2016, Segers Avenue was then shown to be six storeys mixed use one side and, on the other side, two storeys and four storeys. I was in attendance at that council meeting and it was an absolute disgrace. It was an open conversation between councillors and developers that resulted in many changes to the South East Local Plan, with members of the public in the gallery furious with what they witnessed transpiring that evening. Segers Avenue did not fare well with the section of Segers Avenue that was back to a normal residential level before the meeting and was rezoned to multistorey level by the end of the meeting. In the current proposed LEP of 2020, Segers Avenue is now four storeys one side, with the other side zoned six storeys mixed use and six storeys residential. This just makes absolutely no sense and is completely representative of council's appalling work on their LAPs and LEPs.*



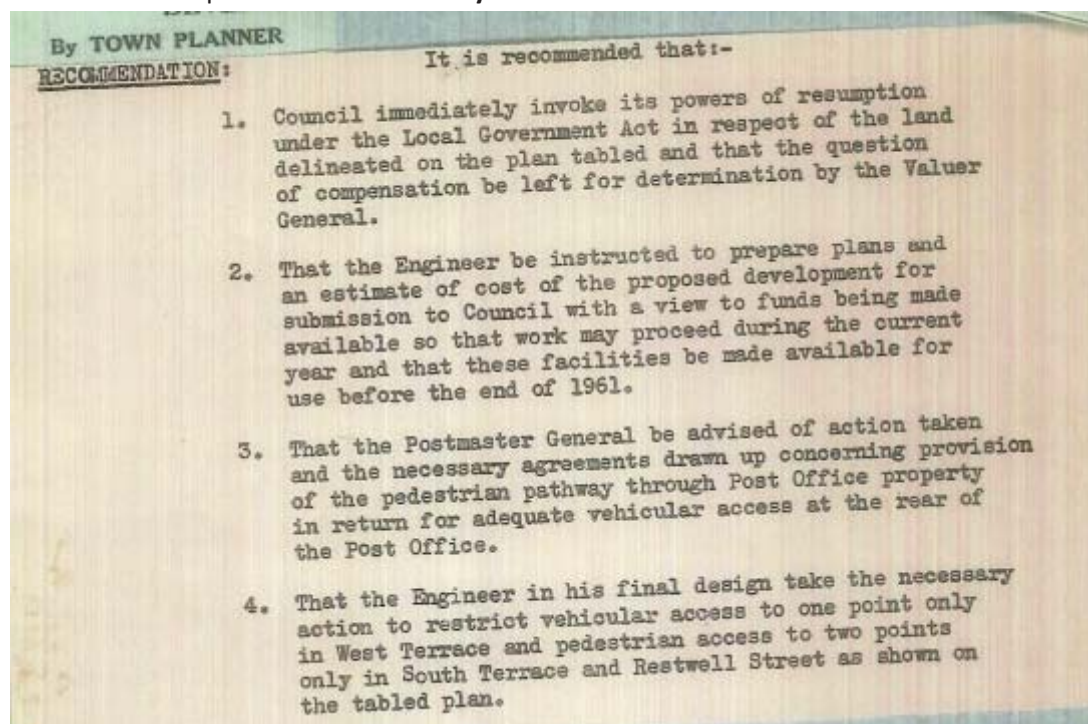
- e. *Discrepancies similar to this are found throughout the LEP for East Hills. There is just something very fundamentally wrong with these local environment plans. I urge the planning Minister to seriously address my many concerns that I have with the local area plans proposed for East Hills. These plans are so bad that council members abrogated their rights to vote on them. This Labor-dominated council, led by Mayor Asfour, comes up with the absolute destruction of the East Hills electorate and amenity, and then refuses to back their own plans and not even vote on them. What an absolute disgrace!*
17. Given the broad nature of the allegations made by the MPs it has been difficult to particularise what is the actual conduct of any employee of Council or any elected member.
18. We have attempted to interpret the particulars of the allegations made by Ms Milhailuk to be as follows:
- i. That the Mayor is a close associate and or friend of Mr Eddie Obeid and there are negative connotations with that association.
  - ii. That Mr Eddie Obeid ensured the Mayor remained in the position of Mayor during redevelopment of landholdings in Bankstown.
  - iii. The landholdings being referred to were likely the West Terrace carpark, which is owned by Council, and the Bellevue Venue located at 2-10 Restwell Street, Bankstown, which is proximate to the West Terrace carpark. The Bellevue Venue is under private ownership.
  - iv. The Bellevue Venue is owned by Southern Terrace Properties Pty Ltd and the current sole Director is Mr Walhan Wehbe. Mr Eddie Obeid was a Director between 4 October 1989 and 20 August 1993 of a company then known as Redpoc Pty Limited (now known as Southern Terrace Properties Pty Ltd). Mr Paul Obeid, a son of Mr Eddie Obeid was also a Director between 20 August 1993 and 26 May 2017 of Redpoc Pty Limited.
  - v. The change of zoning for both the West Terrace carpark and the Bellevue Venue site were done to benefit Mr Eddie Obeid.
  - vi. The rezoning of the carpark to open space may be perceived to make the Bellevue Venue streetscape more attractive. The rezoning of the Bellevue Venue to allow greater height is of financial benefit to the owners through this uplift.
19. We have attempted to interpret the particulars of the allegations made by Ms Lindsay to be as follows:
- i. That at the Council meeting held on 11 May 2016, Councillors colluded with developers to amend the South East Area Plan including Segers Avenue, Padstow.
  - ii. That the proposed LEP zoning for Segers Avenue, the LEP in the East Hills area and the Local Area Plans are inappropriate and represent poor work by unnamed Council officials.
  - iii. That Councillors have abrogated their responsibilities for the LEP due to the poor quality of the plans.

- iv. That the Mayor, Councillor Asfour has led this inappropriate approach and then refused to vote on the plans which was also inappropriate.
20. Despite requests for further information from Ms Mihailuk MP and Ms Lindsay MP, of which none were forthcoming, the only Council official identified by both MPs as engaging in improper conduct is the Mayor, Councillor Asfour.
  21. Based on the particulars set out above, it appears that the allegations against the Mayor, Councillor Asfour are as follows:
    1. Whether the Mayor, Councillor Asfour sought and /or accepted benefits as an inducement or reward for partially and dishonestly exercising his official functions to favour the interests of developers, landowners or Mr Eddie Obeid in relation to planning matters affecting the West Terrace Car Park site and or the Bellevue Venue site.
    2. Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers, landowners or Mr Eddie Obeid in relation to the West Terrace Car Park site and or the Bellevue Venue site.
    3. Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers or landowners in relation to the Local Area Plan and or the Planning Proposal relating to Segers Avenue, Padstow.
    4. Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers and landowners in relation to the Draft Consolidated Local Environmental Plan as it related to the East Hills area.
  22. It was determined that a review of governance processes associated with planning to assist in the determination of the allegations be undertaken on the following:
    - a. West Terrace Carpark site and the Bellevue Venue site and their interrelationship
    - b. Segers Avenue, Padstow
    - c. South East Local Area Plan and Drafting of Consolidated Local Environmental Plan (LEP) as it relates to East Hills area

## Background Information on West Terrace Carpark & Bellevue Venue

The following provides the sequence of events relating to the West Terrace Carpark and associated inclusion into the Draft Local Environment Plan. There is significant documentation to support this sequence of events. Council initially provided a Timeline with Attachments (Attachment SEG30) and further information was sought throughout the review. It should be noted the sequence of events is not exhaustive, but rather refers to key decision making points throughout the extended process. The sequence of events is detailed as follows:

23. On **21 February 1961** a Town Planner provided a report to the Council of the Municipality of Bankstown, entitled *"94. (West) Provision of Council Car Park and Rear Service Access – Bankstown – T.P.Z6A/61."* It detailed the location as "Area bounded by South Terrace, West Terrace, Raymond St. and Restwell Street." The report identified in part, that the location *"is very satisfactory for a car park and it is also noted that the proposal will provide rear service access to properties fronting all streets, such facilities being lacking at the moment."* The report suggested that Council should completely implement the whole proposal by the end of the year *"so as to justify Council's levying a special rate for parking in Bankstown."* Council was resuming the land for car park purposes and including rear access to properties and in return paying compensation as determined by the Valuer General. At that time, the proposal was for parking for approximately 110 cars and for rear service lane facilities to all affected properties, providing direct access to the Post Office and removing front vehicle access to the Post Office in return for a pedestrian pathway from the proposed car parking area to Restwell Street (through Post Office property) and some minor beautification. It was noted that *"all properties affected will benefit very considerable from this proposal particularly as it is ultimately hoped that a car parking station will be erected on the land."*
24. The town planner on **21 February 1961** recommended as follows:



25. On **28 February 1961**, the Council of the Municipality of Bankstown resolved *“That the recommendation of the Town Planner be adopted.”*
26. As such, the West Terrace Carpark in 1961 was established and owned by Council and provided rear lane access to all affected properties bounded by South Terrace, West Terrace, Raymond Street and Restwell Street.
27. On **24 March 2009**, Bankstown City Council considered a report on the Draft Bankstown City Centre Car Parking Strategy. (Attachments WTCP1; WTCP2; WTCP3)  
The report in part stated as follows:

*This report details the recent public exhibition of the draft Bankstown City Centre Car Parking Strategy. The Draft Strategy outlines how the provision of car parking in the Bankstown City Centre is to be managed and provided for into the future. The Draft Strategy details various works required in the city centre to develop further car parking facilities and to manage parking to ensure greater efficiency of both on-street and off-street car parking. It is recommended that this Draft Strategy be adopted with the minor changes as detailed within this report.*

...

*The following amended actions are proposed to achieve these objectives identified in the Parking Strategy:*

...

*Summary Actions*

*2. Replacement parking facilities, location in walkable distance to key business areas and to limit impact on traffic and congestion in the CBD area:*

...

*d. Proceed with a feasibility study to initiate the redevelopment of the West Tce Carpark post 2012, with full replacement of existing car parking in any future redevelopment. This option is likely to be limited in viability and only a long-term development option.*

28. Bankstown City Council adopted the staff report recommendation for the Bankstown City Centre Car Parking Strategy to be Council’s policy direction on car parking.
29. On **20 September 2011**, Bankstown City Council resolved to adopt the Bankstown CBD Local Area Plan and submit a Planning proposal to seek a Gateway Determination. The Mayor, Councillor Asfour was present for the consideration of this matter and former Councillor Mihailuk had left the meeting and was not in the Chambers for this item. No declarations of interest are recorded. Voting was not recorded in the minutes (Attachments WTCP4; WTCP5)
30. On **13 December 2011**, Bankstown City Council considered a report relating to the Proposed Property Management Strategy of three (3) Council sites (Attachments WTCP6; WTCP7). The report stated in part as follows:

*Council recently adopted the Bankstown Local Area Plan (LAP) which states that “The Bankstown Central Business District is the “City for the City”, a major activity and transport hub that services*

*the City of Bankstown and the wider West Central Subregion...The State Government and Bankstown City Council identify the Bankstown CBD as a preferred location for residential and employment growth due to its proximity to jobs, shops and community facilities. By 2031, the Bankstown CBD is expected to grow by 8,470 residents and 4,000 new jobs".*

*With the vision of invigorating Bankstown as a major activity and transport hub, Council, over the recent years, has undertaken many reviews of its strategic property holdings within Bankstown CBD and Yagoona Town Centre, which is located on a transport corridor, to be utilised as a mechanism to support Council in accomplishing its objectives for both town centres.*

*As part of the process, Council will conduct an Expression of Interest for the following sites:*

- *No. 32-36 Stanley Street, 1-9 Leonard Street and 74-80 Restwell Street, Bankstown*
- *No. 176 Cooper Road, Yagoona*
- *No. 5-7 West Terrace and West Terrace Carpark, Bankstown*

*In particular, in relation to the West Terrace Carpark site, the report stated as follows:*

*West Terrace car park (WTCP) is situated on the southern side of the railway line and it is within a block bounded by South Terrace, Restwell Street, Raymond Street and West Terrace. The site is being landlocked on 3 sides with existing residential towers of approximate 6-8 storeys in height along West Terrace and Raymond Street, and some low height commercial and retail shopfronts along South Terrace and Restwell Streets incorporating ground floor retail and second floor function centres.*

*Vehicular access to the carpark is available either via Morgan Lane, which leads through to West Terrace, or via Lopez Lane which leads to Raymond Street. Pedestrian access is via a laneway beside 290 South Terrace or through an existing private retail arcade at 12 Restwell Street.*

*The site can be described in two parts, which are:*

1. *Existing West Terrace Car park (approx. size 4,311 m<sup>2</sup> with functional dimensions 72m long x 51m wide)*
2. *Existing Senior Citizens Centre, 2-7 West Terrace (approx. size 1,118 m<sup>2</sup> with functional dimensions 33m long x 31m wide)*

*Furthermore, the car park has 248 car spaces in an open multi-deck above ground structure and the senior citizens centre incorporates a functional floor area of approx. 880m<sup>2</sup>.*

*The site is zoned 3(a) Business CBD-Operational with the FSR 3:1 to a maximum height of 30 metres.*

*...*

*While the WTCP currently meets its operational requirement, it is a strategic asset for Council, which appears to have further development potential that Council can explore as part of revitalising and strengthening the southern part of the CBD.*

*In its current format, the site has a number of constraints including:*

- *Very limited street frontage*



- Awkward, disjointed vehicle access
- Limited, land locked area (4311sqm)
- Poor visibility from street fronts

*As part of initial investigation works, Council engaged an external consultant to undertake a detailed retail study of the site. This specific site study showed the location could yield a viable retail facility; however, would need to take into consideration the site's constraints.*

*As such it is intended that further assessments will be undertaken for the WTCP including the traffic/parking and community facilities to provide Council with feasible options a) to rectify or minimise some or all of these constraints, and b) how the existing facilities can be optimised to meet the community's future requirements.*

*Ultimately, any redevelopment on the site will be required to maintain the current public car parking spaces and make them accessible at all times to the public.*

In relation to Governance the report stated as follows:

#### **Governance Framework**

*An important part of any EOI process is to ensure an appropriate governance framework be established to assist in managing projects. As part of the process, Council will engage suitable external consultants to ensure that the overall process is not only compliant with requirements of the statutory framework but it also:*

- *provides a high level of probity and transparency;*
- *identifies appropriate interested parties for Council to consider;*
- *provides a detailed, clear and structured evaluation process;*
- *assists in ensuring the objectives of the EOI are met.*

*The development of a Probity Plan will be a component of this framework. The purpose of the Probity Plan is to ensure that the level of transparency, competitive fairness and accountability are appropriate. It also provides the probity principles that should apply to all parties with an awareness of Council's values.*

31. Bankstown City Council resolved to adopt the staff report recommendation and for the General Manager to call Expressions of Interest (EOI) for three (3) sites one of which was the West Terrace Car Park, with a further report on the outcomes of the EOI process and proposed options to be provided to Council for consideration. The Mayor, Councillor Asfour was present for the consideration of this matter as was former Councillor Mihailuk. Voting was not recorded in the minutes.
32. On **26 June 2012**, Bankstown City Council considered the responses to the EOI. The Confidential Council report provided details in relation to the adherence to the governance framework along with a copy of the probity plan developed by an external provider who also provided the probity advice for the duration of the process (Attachment WTCP8; [REDACTED]).

33. Bankstown City Council resolved to decline to invite a tender from Redpoc Pty Ltd and Taylor Construction Group Pty Ltd and sought a further report be prepared which detailed further information and available options for Council's consideration. The Mayor, Councillor Asfour was present for the consideration of this matter. Former Councillor Mihailuk had left the meeting and was not in the Chambers for this item. Voting was not recorded in the minutes. It should be noted that voting on this type of issue in 2012 did not require names to be recorded in the minutes of each person voting. When questioned regarding voting on this matter, the General Manager advised that he recalled this vote by the Councillors present as being unanimous. He further recalled there was no discussion, debate or questions.
34. On **26 February 2013**, Bankstown City Council resolved to adopt the staff report recommendation to proceed to publicly exhibit the CBD Property Renewal Strategy with a further report to be submitted to Council for its consideration following the exhibition period. (Attachment WTCP9 and WTCP10)
35. On **27 August 2013**, Bankstown City Council resolved to adopt the staff report recommendation to endorse in principle, the CBD Property Renewal Strategy and sought further reports regarding the strategy to be submitted to Council for considerations as required. (Attachment WTCP11 and WTCP12)

*Note: Further background information is included in the next section relating to Local Area Plans and the Draft Local Environment Plan process.*

36. On **16 December 2014**, Bankstown City Council considered a Confidential Report in relation to the CBD Renewal Strategy – West Terrace Carpark ( [REDACTED] ). The minutes record that Council resolved as follows:
- 1. Council agrees to negotiate the purchase of 12 Restwell Street Bankstown based on the information, as contained in this report.*
  - 2. Subject to item 1, the Mayor and General Manager be delegated authority to complete the acquisition process and execute all relevant documentation, as required.*
  - 3. Subject to item 1 and 2, Council's 2014/15 Budget be adjusted to reflect the acquisition through the appropriate quarterly budget review process, as required.*
  - 4. A further report be provided on the proposed site outcomes for the West Terrace car park site.*
37. The minutes record Councillor Asfour was an apology for this meeting and not in attendance. No voting was recorded in the minutes (Attachment WTCP46).
38. On **24 February 2015** Bankstown City Council considered a Confidential Report in relation to the CBD Renewal Strategy – Acquisition of Restwell Street Bankstown ( [REDACTED] ). The minutes record that Council resolved as follows:
- 1. Council agrees to acquire 12 Restwell Street, Bankstown subject to the conditions contained in this report.*

2. Council agrees to continue its negotiations for the purchase of 12 Restwell Street, Bankstown based on the information, as contained in this report.
  3. Subject to item 2, the Mayor and General Manager be delegated authority to complete the acquisition process and execute all relevant documentation, as required.
  4. Subject to item 2 and 3, Council's 2014/15 Budget be adjusted to reflect the acquisition through the appropriate quarterly budget review process, as required.
  5. A further report be provided on the proposed site outcomes for the West Terrace car park site.
39. Councillor Asfour was in attendance for this meeting. No voting was recorded in the minutes (Attachment WTCP47).
40. On **24 March 2015**, Bankstown City Council considered a Report in relation to the CBD Renewal Strategy – Stage 2 (Attachment WTCP48). Council resolved to adopt the staff recommendation. The report stated in relation to West Terrace Carpark site and 12 Restwell Street, Bankstown, in part, as follows on page 1:

*12 Restwell Street, Bankstown*

*Councillors will recall recently considering in confidential session the option of acquiring 12 Restwell Street, Bankstown, a property adjoining Council's West Terrace Car Park site.*

*Having regard to Council's resolution and agreed financial parameters around any further negotiations, Council continued its discussions with the Agent however was unsuccessful in its bid.*

*Whilst the acquisition would have provided Council some further scope and options, it does not prevent Council achieving its broader vision and expected outcome for its West Terrace Car Park site. Details of this will be outlined further on in this report.*

And further on page 3 of the report as follows:

*West Terrace Car Park and Bankstown Senior Citizens Sites*

*As indicated earlier, the next phase of Council's CBD Property Renewal Strategy is to determine the specific nature and type of development Council expects on its car park and senior citizens site, and ensure that the proposed outcome is a prerequisite of the sale process.*

*As Councillors would be aware, the planning controls for this site provide for a large scale, high rise development. Whilst this may be the case, Council also has the opportunity to incorporate specific public features/elements of any future development through placing certain conditions on any buyer, via the sale contract.*

*In stepping through the required processes, this initial phase is to agree to the broader expectations and/or outcome for the site. Having carried out various investigations and assessments of the site, it is suggested that Council consider agreeing to and/or incorporating the following elements/features as part of the sale:*



- 7 *In conjunction with the current users, Council look to identify suitable facilities and/or location throughout the City to relocate the current services being provided out of the Bankstown Senior Citizens community centre.*
- 8 *In supporting the number of businesses which surround the current West Terrace car park site, Council look to retain public car parking on the ground floor of any development.*
- 9 *Similarly, Council provide for and/or facilitate appropriate vehicular access for specific adjoining owners who currently require access to their properties via Council's car park.*
- 10 *Ensuring the continuation of appropriate vehicular and pedestrian access through Lopez Lane and similarly pedestrian access through South Terrace.*
- 11 *Incorporate the use of Morgan Lane to facilitate appropriate entry and/or exit for Council's public car parking facility.*

*Subject to Councillors agreeing to the above, a further report will be submitted to Council, whereby a detailed concept/design of Council's expectations will be presented, including issues such as:*

- *How best to maximise use of the ground floor for vehicle circulation, public parking, pedestrian access, residential access to residential towers and access for adjoining owners,*
- *Accommodating the optimum type of residential development, within Council's planning controls,*
- *Effectively structure the sale contract to address ownership and ongoing management of Council's new ground floor public carpark,*
- *Provide an independent appraisal of Council's approach, particularly in relation to the proposed concept, when best to sell the property and preferred method by which the site will be sold,*
- *Approach to appointing a suitably qualified Agent(s) and Lawyers to assist in facilitating the sale, and*
- *Obtaining relevant independent/external valuations in order to set the financial basis of the sale.*

*The above approach and considerations will ensure that Council provides itself every opportunity to obtain a well-balanced outcome for our Community.*

41. The minutes record that Council resolved as follows:

1. *The information, as outlined in this report, be noted.*
2. *A further report be submitted to Council, providing a detailed assessment of proposed options for relocating the current users and suggested site outcome parameters for the West Terrace Car Park and Bankstown Senior Citizens Community Centre, as outlined in this report.*

3. *Council's due diligence process into the redevelopment of the Old Bankstown Library site include an assessment of the outcome of the Expression of Interest sale process for the Bankstown Compass Centre, including any potential site outcome opportunities that Council may consider pursuing with the new owner.*
  
42. Councillor Asfour was in attendance for this meeting. No voting was recorded in the minutes (Attachment WTCP49).
  
43. On **11 August 2015**, Bankstown City Council held a Confidential Councillor Briefing. [REDACTED]  
[REDACTED]  
[REDACTED]
  
44. On **22 March 2016**, Bankstown City Council considered a Report in relation to the CBD Renewal Strategy Update Car Parking Sites – 2016 (Attachment WTCP51). Council resolved to adopt, in the main, the staff recommendation with one minor amendment in point four (4) being the inclusion in the brackets. The resolution was as follows:
  1. *Council endorse, in principle, the CBD Property Renewal Strategy as outlined in this report.*
  2. *A further report be provided to Council indicating the outcomes and implications of the NSW Government's final corridor plan for the Sydenham to Bankstown Urban Renewal Corridor.*
  3. *Council agrees to commence a tender process to procure the services of suitably qualified traffic and transport consultant to prepare a high-level traffic and transport strategy for the City Centre as detailed in this Report.*
  4. *Council agrees to commence a review of planning and development controls and prepare masterplans to guide future redevelopment of the Greenfield Parade Car Park, West Terrace Car Park (**including an alternative option for car parking**) and Senior Citizens Centre, Stanley Street Car Park and their surrounds with further reports to be presented to Council on the recommended planning outcomes.*
  5. *Council commence the preparation of a detailed masterplan and detailed design for the Brandon Ave Car Park / Griffith Park site. A further report be brought back to Council detailing the outcomes of the masterplan and detailed design process.*
  6. *Council agrees to commence discussions with the proponent for the Bankstown RSL site to establish planning principles and options for the precinct, inclusive of the Meredith Street Car Park and Ambulance Station site. A Report be brought back to Council detailing the outcomes of these discussions.*
  7. *Council commence the preparation of a cost-benefit analysis to test the relative value of constructing an additional two levels on top of the existing multi-deck car park at Marion Street and alternative scenario including removal of the existing facility and construction of a major parking station at this location. A further Report be bought back to Council to detail the outcomes of this analysis and a recommended path forward.*
  8. *The funding requirements as outlined in this report be approved and reflected as part of Council's Quarterly Budget review process.*

45. Councillor Asfour was in attendance for the meeting. No voting was recorded in the minutes (Attachment WTCP52).
46. On **12 September 2019**, Council appointed Hall & Wilcox Lawyers as Probity and Governance Referee for the City Wide Planning Instruments. At this time Hall & Wilcox issued correspondence to all Councillors and Designated staff regarding their requirements under the Code of Conduct and associated provisions relating to declaration of interests for the city wide planning instruments. They provided correspondence to be completed (separate to the s449 Disclosure Returns). This also set the governance framework for the matter to ensure transparency and decision-making in the public interest ( [REDACTED] )
47. **On 24 September 2019**, at a Council Meeting in Confidential session, Council adopted [REDACTED]  
[REDACTED]  
[REDACTED]
48. On **10 December 2019**, Council resolved to adopt the staff recommendation to endorse the Local Strategic Planning Statement (LSPS), known as *Connective City 2036*, and referred it, as required, to the Greater Sydney Commission for assurance. The LSPS was assured by the Greater Sydney Commission on 16 March 2020 and was subsequently adopted by Council. The LSPS, along with the Housing Strategy, set the vision for the City of Canterbury Bankstown and was developed in response to NSW Government requirements in 2018, for Councils to review their Local Environmental Plans (LEPs) within five (5) years of a District Plan being in force. It required Councils to exhibit and forward a Consolidated Draft LEP to the Department of Planning, Industry and Environment by June 2020. The LSPS responds to the planning priorities outlined in the South District Plan developed by the Greater Sydney Commission. It should be noted that the LSPS and Housing Strategy underpin the Draft LEP. These documents inform the master planning for the Bankstown Town Centre amongst others (Attachments WTCP13 and WTCP14 and WTCP36).
49. On **22 July 2020**, Council engaged Hall & Wilcox Lawyers as probity referee for the Bankstown and Campsie Master Planning and Planning Proposals. Council's Manager City Strategy and Design advised the following in relation to the engagement of probity officers as follows:

*Probity*

*Hall and Willcox was appointed in October 2022 (sic) to provide probity services for the stakeholder engagement process for the Bankstown and Campsie Master Plans. There (sic) role was to be present at meetings with key landowners and planning proposal applicants within the Master Plan study areas and respond to any probity concerns that arose through the process. There (sic) engagement was then extended following recommendations by the Local Planning Panel to further liaise with landowners who made new submissions to the Panel following finalisation of the Master Plan. Certification from Hall and Willcox on meeting minutes, memos to extend their appointment and confirmation of meeting acceptances are provided as separate email attachments.*

(Attachment WTCP33)

From the engagement letter of Hall and Wilcox dated 22 July 2020, they advise in their scope of work that they will undertake, in part, the following:

*That throughout the process, as the appointed probity referee I would read and understand and be familiar with emails and written correspondence as between Applicants and Council officers, (which would be supplied) and I would be available to attend meetings between Council and Planning Proposal Applicants.*

*This is for the purposes of documenting the process and ensuring full transparency and accountability on the part of Council in considering submitted planning proposals through the master planning process. The process is to be one that is able to withstand public scrutiny at any point in time.*

( [REDACTED] )

50. On **5 August 2020**, Council held an early engagement briefing with Vicinity Centres regarding the Bankstown Master Plan (applicants for the Bankstown Central Planning Proposal and Development Application). The probity referee was present and certified Council's notes taken of the discussion (Attachment WTCP15 and WTCP16).
51. On **19 February 2021**, Council's General Manager issued correspondence to all Councillors and Directors regarding their Code of Conduct obligations in relation to the Bankstown and Campsie Masterplans. Each Councillor was subsequently contacted by Governance Officers regarding the completion of relevant documentation, to assist in ensuring their obligations were met. (Attachment WTCP17)
52. On **24 February 2021**, Council's General Manager issued correspondence to all Councillors and Directors regarding an in-person briefing to be held (not online due to security concerns) on the Draft Masterplans with the probity referee to be in attendance. He also issued a reminder regarding conflict of interests declarations and the confidential nature of the workshop (Attachment WTCP17).
53. The General Manager and Director Corporate advised that they and Governance staff worked with the Mayor and each Councillor regarding their possible conflict of interests regarding the Draft Masterplans and LEP. With regard to the Mayor Councillor Asfour, the following reflects correspondence from the General Manager to the Mayor (Attachment WTCP19):

**From:** [Matthew Stewart](#)  
**To:** [Khal Asfour](#)  
**Subject:** UPDATE: Bankstown/Campsie Masterplans - Workshop to be in person and CoC Considerations reminder

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Khal

I refer to my previous emails regarding the upcoming briefing re the Draft Bankstown/Campsie Masterplans.

To assist you with your decision around conflicts of interests, staff have cross referenced Councillors political donation disclosures and disclosure of interest returns, and how they may apply with regards to Masterplans.

Based on previous information, our records indicate the following:

Clr	Property	Interest
Mayor Asfour	[REDACTED] Bankstown	[REDACTED]
Mayor Asfour	[REDACTED] Bankstown	Political Donor
Mayor Asfour	[REDACTED] Bankstown	[REDACTED] Board member
Mayor Asfour	[REDACTED] Bankstown	[REDACTED]

Subject to the above still being applicable, and given the requirements of Council’s Code of Conduct, it is likely that you will have a pecuniary interest of some nature in relation to the certain properties noted above and as such, it is recommended that you do not participate in any discussion and/or decisions when considering the Bankstown Masterplan.

If you choose to not participate, I ask that you confirm the above – by way of return email - particularly indicating you decision to not participate any discussions on the matter.

Your response will serve as a declaration – as required under the Code - for the purposes of considering the matter going forward.

Please feel free to give me a call if you need to further discuss the above.

Regards|

Matt

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54. The General Manager noted in other documentation (Attachment WTCP20) that the Mayor would not be attending the briefing session on 9 March 2021 or participating in the decision on the Bankstown Masterplan as follows:



**From:** [Matthew Stewart](#)  
**To:** [Ken Manoski](#); [Brad McPherson](#)  
**Subject:** FW: UPDATE: Bankstown/Campsie Masterplans - Workshop to be in person and CoC Considerations reminder  
**Date:** Tuesday, 9 March 2021 9:19:56 AM

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Please note Mayor has advised me verbally the same.  
Please note both only refer to Bankstown Masterplan but both will not attend the briefing.  
Matt

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**From:** Bilal El-Hayek  
**Sent:** Friday, 5 March 2021 9:09 AM  
**To:** Matthew Stewart  
**Subject:** RE: UPDATE: Bankstown/Campsie Masterplans - Workshop to be in person and CoC Considerations reminder  
Thanks for the clarification.  
Just to confirm that I will not participate in the briefing or decision.  
Clr Bilal El-Hayek  
City of Canterbury Bankstown  
Sent from my Samsung Galaxy smartphone.

55. On 09 March 2021, a briefing with Councillors was held regarding the Draft Masterplans with the probity referee in attendance. The General Manager in the briefing invitation also stated in part as follows:

...

- *The purpose of this is largely to ensure that:*
  - *Council and Councillors uphold and/or comply with Council’s Code of Conduct and Meeting Practice procedures/requirements – as it applies to the matter;*
  - *Oversee and/or advise on any specific conflicts of interests that may exist and/or arise throughout the process; and*
  - *Provide general support and/or assurance regarding the above, as required.*
- *Importantly, the above will also ensure that Council and/or Councillors will be able to openly address any mis-information, false allegations and/or suggested impropriety that unfortunately tends to arise and/or is asserted when considering matters of this kind – in the event it arises.*

...

Attendance at the meeting was recorded by Council staff as follows:

**Present**

*Clrs Kuskoff, Downey, Zakhia, El-Hayek, Saleh, Huda, Madirazza, Eisler*

**Absent:**

*Clrs Ishac, Harika, Tuntevski, Waud, Asfour, Raffan*

(Attachment WTCP18)

56. On **23 March 2021**, Council at its meeting considered the Draft Bankstown City Centre Masterplan which was resolved to be deferred. The Mayor, Councillor Asfour declared a conflict of interests and left the meeting. Other Councillors also made declarations (Attachment WTCP21 and WTCP22). The minutes record the Mayor as declaring the following interest:

*In respect of Item 5.2 – Draft Bankstown City Centre Master Plan, I Clr Asfour declare a significant Non Pecuniary Conflict of Interest given my role on the Board of Bankstown RSL and a reportable donation was made to my election campaign where both the Bankstown RSL and the donor have property which is the subject of this report and indicate I will vacate the Chamber taking no part in debate.*

57. On **27 April 2021**, Council at its meeting considered the Draft Bankstown City Centre Masterplan which was resolved to adopt the staff recommendation that the information and next steps outlined in the report be noted (Attachment WTCP23 and WTCP24). The Mayor, Councillor Asfour declared a conflict of interests and left the meeting. Other Councillors also made declarations. Following a division where hands need to be raised to record the voting of each person, the voting was recorded as follows:

*For:- Ctrs Downey, Eisler, Harika, Ishac, Madirazza, Raffan, Saleh, Tuntevski, Waud and Zakhia  
Against:- Clr Kuskoff*

58. On **7 June 2021**, Council received an email to the Community Engagement page and to the General Manager and another Council officer, from Mr Brian Hood of Laurus Project Pty Ltd representing the landowners of 2-10 Restwell Street, 12 Restwell Street and 290 South Terrace which form part of the Draft Master Plan for Bankstown City Centre. (Attachment WTCP25). Mr Hood indicated in part as follows:

*In this specific block, which includes Councils' West Terrace Carpark and No.7 West Terrace and various other properties, we are of the view that there exists an opportunity to potentially combine properties and allocate elements like, public open space and carparking within this block to benefit all stakeholders. We have engaged Fender Katsalidis to assist us with a proposal.*

*We would request a convenient time to meet with the relevant council staff and planners to discuss potential opportunities for this area of the Masterplan.*

59. On **7 June 2021**, the General Manager forwarded the email to various Council staff and requested in particular as follows:

*Could you please acknowledge this and advise the unsolicited proposal route...*

*And that we would not entertain such a proposal until the masterplan is finalised and a gateway sought (subject to Council).*

60. On **15 June 2021**, Council's Public Officer responded to Mr Hood and provided a copy of council's Unsolicited Proposals Policy and Guidelines and informed him to advise the Public Officer if he would like any further information about submitting a formal proposal to Council. No further proposal has been lodged with Council by the owners or their representative (Attachment WTCP26).
61. On **28 September 2021**, Council at its meeting considered the Draft Bankstown City Centre Master Plan. Council resolved to adopt the staff recommendation which was in part, '*prepare and submit a Planning Proposal to amend the draft Canterbury Bankstown Local Environmental Plan 2021 for Gateway that implements the Bankstown City Centre Master Plan, subject to the following conditions:...*' Council also resolved to acknowledge the extensive work over many years of numerous Council staff and community members to developing the Bankstown City Master Plan document along with seeking support from other levels of government. The Mayor, Clr Asfour declared a conflict of interests and left the meeting. Other Councillors also made declarations. The minutes record the Mayor as declaring the following interest:

*In respect of Item 5.2 – Bankstown City Centre Master Plan and Planning Proposal, I Clr Asfour declare a significant Non Pecuniary Conflict of Interest given my role on the Board of Bankstown RSL Club and a reportable donation was made to my election campaign where both the Bankstown RSL and the donor have property which is the subject of this report and I will vacate the Chamber taking no part in debate.*

The voting was recorded as follows:

*For:- Clrs Downey, Eisler, Harika, Huda, Ishac, Madirazza, Raffan, Saleh, Tuntevski, Waud and Zakhia*

*Against:- Clr Kuskoff*

(Attachments WTCP27 and WTCP28)

62. It is noted that there is significant information in the public domain on Council's website [<https://www.cbcity.nsw.gov.au/development/planning-for-the-city/master-plans/bankstown-city-centre-master-plan>] on the Draft Bankstown City Centre Master Plan.
63. The probity referee Hall & Wilcox Lawyers have provided advice throughout the process and engaged in the following:
- Meetings with any planning proposal applicants in the study area
  - Meetings with landowners who had made submissions and wished to discuss their submission
  - Councillor briefings
  - Providing ad hoc advice on probity issues as they arose.
64. There are no outstanding issues of probity identified in the various correspondence.



65. The following map depicts the area relating to the West Terrace carpark and surroundings:



## Information on the interrelationship between the West Terrace Carpark site and the Bellevue Venue site

66. The interrelationship between the West Terrace Carpark site (Council owned site) and the Bellevue Venue site (privately owned site) has been reviewed given the concerns raised regarding the ownership of the Bellevue Venue site and its alleged connections to the Mayor, Councillor Asfour.
67. The Bellevue Venue is owned by Southern Terrace Properties Pty Ltd and the current sole Director is Mr Walhan Wehbe. Mr Eddie Obeid was a Director between 4 October 1989 and 20 August 1993 of a company then known as Redpoc Pty Limited (now known as Southern Terrace Properties Pty Ltd). Mr Paul Obeid, a son of Mr Eddie Obeid was also a Director between 20 August 1993 and 26 May 2017 of Redpoc Pty Limited (Attachment WTCP29).
68. The statements made under Parliamentary Privilege implied that a change of zoning had occurred for both the West Terrace carpark (Council owned) and the Bellevue Venue site (privately owned) and had occurred to benefit Mr Eddie Obeid, either directly or indirectly.
69. It was also implied that the rezoning of the West Terrace carpark to open space may be perceived to make the Bellevue Venue streetscape more attractive. The rezoning of the Bellevue Venue, to allow greater height, is of financial benefit to the owners through this uplift.
70. Council staff were asked to respond to a series of questions, including regarding what the relationship was between the Bellevue Venue site and the West Terrace Carparking site (Attachment WTCP35). City Strategy and Design staff advised as follows:
- Currently, the Bellevue site benefits from the provision of substantial and free parking directly adjacent to their site for use by employees and visitors to the function centre. The entry to the function centre faces the public parking. Furthermore, the Venue is able to undertake servicing and loading from the laneway between it and the car park site.*
71. The review was advised (Attachment WTCP35) that the Bellevue Venue site, along with other buildings within the block, were able to access and be serviced (for loading and waste) by the laneway that provides access from the surrounding streets into the West Terrace carpark.

### **West Terrace Car Park**

72. Council staff confirmed that the West Terrace Car Park site has not been rezoned and the Masterplan does not recommend any change to the zoning. Further they advised there are no steps underway to rezone the site. The site is zoned B4 Mixed Use (Attachment WTCP35).
73. Further Council staff responded to questions regarding the reasoning for changing the West Terrace Car Park to open space rather than generate significant value from the site under the current planning controls (Attachment WTCP35). They advised as follows:

*The value of the West Terrace car park will not be reduced by the master plan. The master plan seeks to maintain the current zoning, height and floor space ratio controls that are applicable to the site. This allows Council to utilise this value when it undertakes future detailed design work for all of its land holdings within this block. A comprehensive redevelopment or plan for Council's lands would allow for the transfer of floor space from the car park site to other parts of the block.*

74. Council staff were questioned with regards to the advantages and disadvantages of altering the use of the West Terrace Car Park under the Masterplan, and the response was provided by staff as follows (Attachment WTCP35):

#### *Advantages:*

- *The relocation of parking from the West Terrace car park site will reduce the volume of traffic entering the core of the City Centre, creating the ability for an improved pedestrian environment.*
- *The development capacity of the site under current controls is maintained, allowing for flexibility and the application of that capacity to be maintained at such a time that Council undertakes more detailed design work for its site's within this block.*
- *There is a need for public space within this part of the City Centre in line with the Greater Cities Commission target of high density housing being within 200m of public space and the existing lack of quality public civic space on the southern side of the City Centre around the railway.*

#### *Disadvantages*

- *The proposed relocation of parking will remove substantial timed and untimed parking from the core of the City Centre.*
- *The success of a public plaza in this location will rely on heavy foot-traffic from the Metro/Railway, as well as an improved design interface with surrounding, privately owned sites.*

### **Bellevue Venue Site**

75. No planning proposal has been submitted to Council for the Bellevue Venue site.
76. There have been no Development Applications for the Bellevue Venue site submitted to Council within the last five (5) years.



77. On 14 September 2016 and 14 December 2017, representatives (architect) from Bellevue Venue site met with Council officers and “presented a 25 storey shop top housing scheme”. This scheme related to the Department of Planning and Environment strategy on the Sydenham to Bankstown Corridor. Council has advised this review that the representatives were informed that they should contact the State Government regarding the site and that Council would not engage on any changes to the Bellevue Venue site until the State Government had completed their strategy (Attachment WTCP35) . Documentary evidence supports this advice (Attachment WTCP32 specifically pages 11 and 27). Council advised this review that this information was not considered or submitted and did not inform the Master Plans.
78. No representation was made at any time by the owners or the occupants of the Bellevue Venue site during the Master Planning process which included during the ‘early landowner’ engagement at which the probity officer was in attendance and confirmed the accuracy of the notes taken by Council. Further, no representation was made as part of the community engagement (July to November 2020); the subsequent community engagement (March to June 2021); and when the matter was being considered by the Local Planning Panel - as to whether to progress the planning proposal - (September 2021).
79. In an internal memorandum dated 27 October 2022 a Council staff member provided a table which contained an overview of the current and future controls for the block bound by Restwell Street, Raymond Street, West Terrace and South Terrace, Bankstown. (Attachment WTCP33). That table is shown as follows:

Control	Bankstown LEP 2001	Bankstown LEP 2001 (Am 46)	Bankstown LEP 2015 – Current controls	Bankstown City Master Plan Controls		
	Pre-March 2014	March 2014	March 2015	Bellevue site under BCCMP	West Terrace Car Park site under BCCMP	Other sites in the block under BCCMP
Land Use Zoning	3(a) – Business: CBD	3(a) – Business: CBD	B4 Mixed Use	No change	No change	No change
Max. floor space ratio – Base	Applies to Zone 3(a)  3:1 only where site has minimum primary frontage of 30m. Otherwise 2:1 FSR applies.	Applies to CBD Core  3:1 only where site is at least 18m at front building line. Otherwise 2:1 FSR applies.	Applies to CBD Core  3:1 only where site is at least 18m at front building line. Otherwise 2:1 FSR applies.	No change	No change	No change
Floor space ratio – Incentive bonus	No incentive bonus	No incentive bonus	No incentive bonus	5:1, subject to 50% being for employment-	Incentive bonus does not apply	Range from 3.75:1 to 5:1, subject to: providing

Control	Bankstown LEP 2001	Bankstown LEP 2001 (Am 46)	Bankstown LEP 2015 – Current controls	Bankstown City Master Plan Controls		
	Pre-March 2014	March 2014	March 2015	Bellevue site under BCCMP	West Terrace Car Park site under BCCMP	Other sites in the block under BCCMP
				generating uses		50% employment generating uses, affordable housing or community infrastructure
Floor space ratio – Sustainability bonus	No sustainability bonus	Potential 0.5:1 for sustainability bonus	Potential 0.5:1 for sustainability bonus	No change	Sustainability bonus does not apply	No change
Max. building height – Base	30m (8 storeys)	35-38m (10-11 storeys)	35-38m (10-11 storeys)	38m	38m	35-73m
Building height – Incentive bonus	No incentive bonus	No incentive bonus	No incentive bonus	83m (25 storeys) subject to 50% being for employment-generating uses.	Incentive bonus does not apply	73m (22 storeys) subject to providing 50% employment generating uses, affordable housing or community infrastructure.

80. Council staff responded to questions as part of this review and in particular what the rationale was for the Bellevue Venue receiving a 5:1 incentive Floor Space Ratio (FSR) and further which other sites could also receive a similar incentive and why (Attachment WTCP35). It was advised as follows:

*A number of sites will have access to incentive FSR of 5:1 (or more), including:*

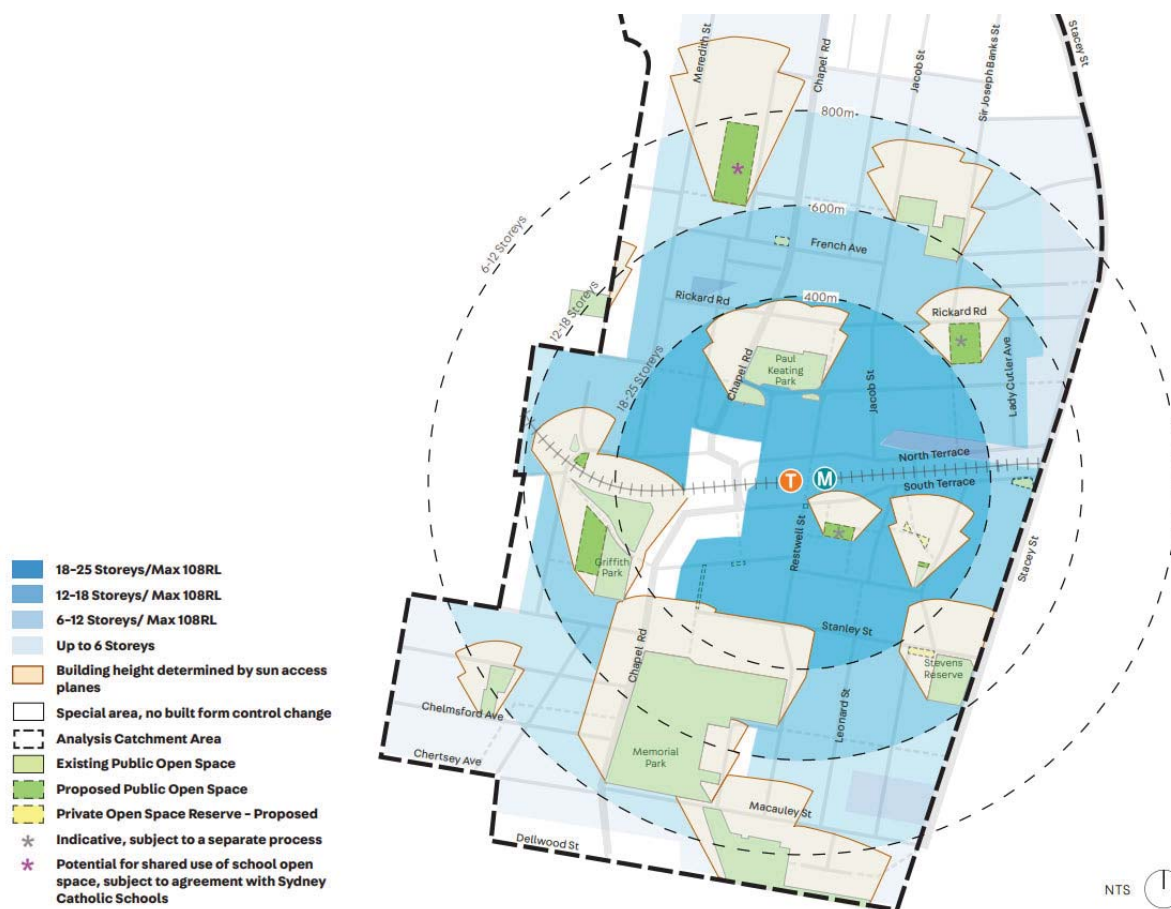
- *Compass Centre and former Council Library site (5.8:1) – mandatory minimum 50% employment-generating floor space to access uplift*
- *Site’s along the north side of Greenfield Parade (5.5:7.5:1) – proposed commercial core zone, which requires 100% employment generating uses*
- *Block bounded by The Mall, Appian Way, Chapel Road and Old Town Plaza (5.5:1) – proposed commercial core zone, which requires 100% employment generating uses*
- *Corner of French Avenue and Chapel Road (5.5:1) – subject to providing new multi-purpose community facility*



- Various sites in Civic Precinct (bounded by The Mall, Rickard Road, Jacob Street and Chapel Road) – proposed commercial core zone, which requires 100% employment generating uses
- 49-53 Raymond Street and 7 West Terrace (up to 5.5:1) – within one street block of the new Metro Station and Railway Station entries, and subject to provision of employment-generating uses or affordable housing.
- Corner sites at 34-38 Restwell Street and 56-70 Restwell Street (5:1) to provide good design outcome and mark key corners along Restwell Street, and subject to provision of employment-generating uses or affordable housing.

The rationale for the provision of 5:1 (+ potential for a 0.5:1 bonus for sustainability) FSR on the Bellevue site is that:

- a) The Bellevue site is across the road (less than 50 metres) from the proposed new Metro and Railway Station entry plaza, which will shift the centre of activity within the Bankstown City Centre to this block
- b) This site (along with the three other sites around the Station Entry Plaza) are required to provide at least 50% employment generating uses. When testing this type of building typology, commercial/employment space results in a higher floor space ratio as buildings generally have a larger floor plate and less services, corridors and the like when compared to residential floor space, which is required to comply with the apartment design guide and other controls that limit floor plate size and efficiency. Therefore, most sites with this level of floor space are those that are required to provide either 50% or 100% employment-generating uses.
- c) The Master Plan is intended to accommodate the jobs and housing targets for the City Centre, the largest centre in Canterbury Bankstown and a State-identified Strategic Centre, Health and Education Precinct. This level of growth, being for 12,500 new homes and 14,000 new jobs, requires sufficient uplift and capacity to be realised. The approach in the Master Plan Intensification Strategy has been to focus the largest amount of growth as close as possible to the station, and reduce densities, further away from the centre core that interfaces with the lower density, surrounds. This information is clearly articulated in the Intensification Principles at Section 2.3 of the Bankstown City Centre Master Plan (see below).
- d) The site is located on a prominent arrival corner, which requires a higher standard of design resolution and will act as a 'marker' for the City Centre.
- e) The FSR is commensurate with Bankstown's strategic role as the primary centre for jobs and housing in Canterbury Bankstown, in line with long-standing State Government regional planning directions, and Council's Local Strategic Planning Statement, which includes a number of actions on reinforcing Bankstown's commercial and civic role, and provides a housing target which is double that of any other centre in the local government area – due to Bankstown's level of amenity, transport access, services and its role as an emerging health and education precinct.



81. Council staff also responded to questions as part of this review relating to Bellevue Venue being able to receive a building height incentive up to 83m subject to 50% employment generating uses whilst other sites can receive up to 73m (subject to employment generating uses, affordable housing or community infrastructure) and why this was determined (Attachment WTCP35). It was advised as follows:

*The proposed height of 83 metres, subject to providing 50% employment generating uses, is comparable to the other three sites around the Metro and Railway Station Entry Plaza (Compass Centre and Vicinity sites), also required to provide at least 50% employment generating uses.*

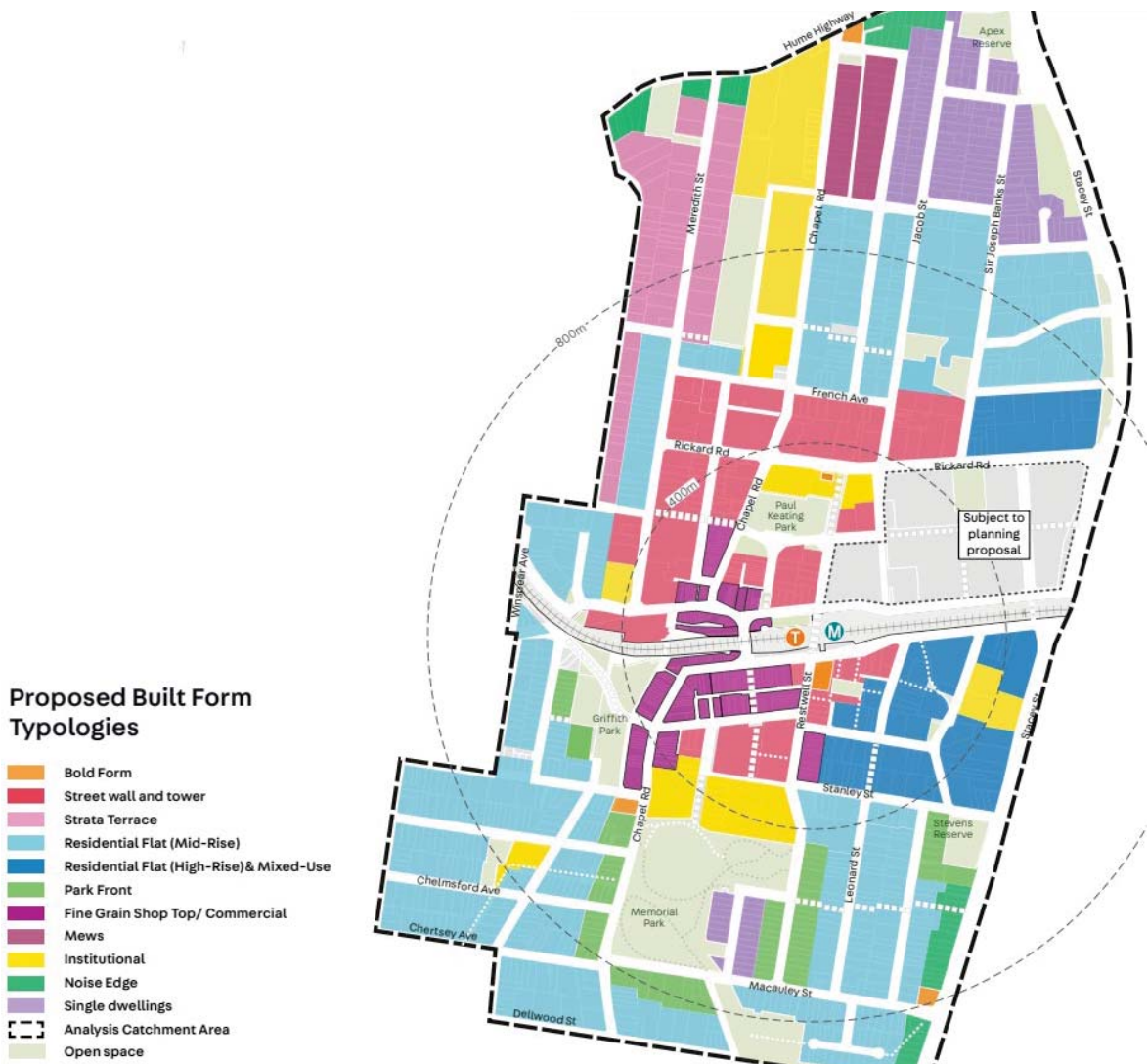
*A number of other sites will be capable of realising heights of 73 metres or more within this block and other large sites within 400m of the railway station. As set out in the Master Plan intensification principles (see figure above), these sites are best suited to buildings of 18-25 storeys. There are therefore several sites within this precinct that are eligible for heights of 73m or more, including most of the block surrounded South Terrace, West Terrace, Restwell Street and Raymond Street, the corner of Restwell Street and Greenfield Parade and site's within the recommended commercial core.*

*Some sites within key blocks that act as 'arrival points' in the City Centre, have a marginally higher height than surrounding sites in order to physically mark these sites and provide design*

variation at City Centre Gateways – ‘bold form’ sites. This site, along with other sites such as the corner of Chapel Road and Hume Highway, corner of Macauley Street and Stacey Street, corner of Chapel Road and Brandon Avenue are also in this category as per Objective 4.1 of the Master Plan (see image below).

This approach is also consistent with longstanding planning principles for strategic centres, with the height and floor space ratio being commensurate with, or less than in some cases, the height and floor space achieved in other key strategic and/or health and education centres, such as Bondi Junction, Chatswood, Burwood, Liverpool and Blacktown. These centres allow for developments of up to 40 storeys or more adjacent to railway stations to assist in achieving their jobs and housing growth.

Furthermore, it is important to note that the location of density in Bankstown City Centre is consistent with long-standing State Government and Council directions to reinforce Council’s role as a primary strategic centre for the local government area and region. In focusing growth in well serviced localities such as this site, it reduces the pressure to deliver housing in our suburban areas.





82. Council staff provided a response to the question regarding the advantages and disadvantages of the changes in the Masterplan for the Bellevue Venue site and the response was provided by staff as follows (Attachment WTCP35):

*Advantages:*

- *Restwell Street becomes the central activity spine of the City Centre, particularly due to the shifting of the Metro and Railway Station entries to this location. This will create a key, central and direct north south spine through the City Centre, and bring additional foot-traffic to this street and block. In this sense, the Master Plan is responding to Sydney Metro design decisions.*
- *Subject to providing 50% employment generating uses, the Bellevue Venue site can realise greater development potential.*
- *Future development on this block, both commercial and residential, will have immediate proximity to the Metro and Railway Station, bus services and other amenities and services provided in the immediate surrounds (both north and south) including retail, entertainment and education.*

*Disadvantages*

- *The proposed relocation of parking, which also aligns with other Council strategies, from West Terrace to the ring road network, substantially reduces the amount of available parking for function centre employees and patrons.*
- *The provision of 50% employment generating uses (as set out in the SGS Land Use Economics Report exhibited with the Master Plan) on the subject site may not be feasible in the current market. This control is intended to reinforce Bankstown's long term, strategic centre and jobs-focused role, and relies on market demand for greater employment-floor space capacity within Bankstown, which is dependent on many factors, such as infrastructure investment in Bankstown, market attractiveness of Bankstown as a commercial/jobs hub and broader market forces.*
- *Future development of the site would have three street frontages required to be activated (to Restwell Street, South Parade and new public/urban plaza at the rear, which will require a greater level of design detail and sophistication compared to other single or dual frontage sites, particularly when dealing with loading, waste collection and building services.*

83. When questioned as to whether the changes proposed for the West Terrace Carpark to open space makes the Bellevue Venue site more attractive which has been the implication through the allegations raised, Council staff advised as follows (Attachment WTCP35):

*As per q. 12, the West Terrace car park will not be rezoned.*

*The implications for the Bellevue site of having a public plaza as opposed to public parking is a negative one, as the function centre, or future uses, will not have ready access to substantial amounts of times and untimed car parking at their doorstep, and future uses that require significant parking will need to be accommodate on their site. A public plaza will also create an additional layer of design complexity for the Bellevue Venue should it be redeveloped, as it creates a new active frontage for the site, effectively providing a third frontage. This will require a higher level of design resolution to minimise the impacts of waste collection, loading and building services on two street frontages and the public plaza.*

84. Council staff were asked if they were aware of any inappropriate conduct by any Council officials in relation to the dealings with the Bellevue Venue and or the West Terrace Carpark and the response was as follows (Attachment WTCP35):

*No. Council officials have always acted with the highest level of accountability, transparency and integrity in relation to planning decisions relating to the Bankstown City Centre, including in relation to the Bellevue Venue site and the West Terrace Car Park site. Furthermore, there has been no engagement by the owner, any occupants or their representatives on the Bankstown City Centre Master Plan.*

***Involvement of the Mayor, Councillor Asfour in West Terrace Car Park and the Bellevue Venue site***

85. It is noted that the Mayor Councillor Asfour commenced as a Councillor in 2004. Councillor Asfour was not a Councillor when Mr Eddie Obeid was a Director of Redpoc Pty Ltd (between 1989 and 1993). Redpoc Pty Ltd were then then owner of the Bellevue Venue site.
86. Mr Paul Obeid was a Director from 1993 to May 2017.
87. Australian Securities and Investment Commission (ASIC) reports for the Mayor Councillor Asfour do not identify any relationship between himself and the owners, current or former, of the Bellevue Venue; Southern Terrace Properties Pty Ltd; Redpoc Pty Limited; Mr Eddie Obeid and Mr Paul Obeid (Attachments WTCP30 and WTCP31).
88. A review of the Mayor, Councillor Asfour's Disclosure Returns (also known as Pecuniary Interest Returns or Section 449 Returns) from 2011 to 18 November 2022, do not identify any relationship between himself and the owners, current or former, of the Bellevue Venue; Southern Terrace Properties Pty Ltd; Redpoc Pty Limited; Mr Eddie Obeid and Mr Paul Obeid (Attachment WTCP37).
89. The Disclosure Returns indicate that the Mayor, Councillor Asfour has been a Director of the Bankstown Returned Services League (RSL) since the return date of 16 September 2017.
90. The Mayor, Councillor Asfour was asked a number of questions in relation to the matters under review (Attachment WTCP34). In relation to his relationship with Mr Eddie Obeid or Mr Paul Obeid, the Mayor, Councillor Asfour stated that he has no relationship with either Mr Eddie Obeid or Mr Paul Obeid. He stated as follows:

*There is no relationship with Eddie Obeid, or his son Paul.*

*Eddie Obeid was a long-time member of the Labor Party, and a Minister of the Crown, and had acquaintances in business, politics, the broader community, religious organisations and indeed in the Liberal party. He was a prominent and well-respected member of the Arabic community. I have never had any business dealings with him, or his son.*

*Eddie Obeid did attend my wedding at the insistence of Tania Mihailuk who was the Mayor at the time. She asked me to do it as a favour for her and insisted both her and her husband be seated at his table. I understood from her that she was trying to curry favour with him as she pursued her political ambitions.*

*My wedding was held at the Bellevue function centre as it was able to accommodate my wedding of over 600 guests. Wedding arrangements and booking the venue were done by my parents and in-laws-to be direct only with the venue operator/manager. I understand there was never any contact with any owners of the land.*

91. The Mayor, Councillor Asfour advised in response to questions that his wedding was held on 26 September 2010 and that he received from Mr Eddie Obeid a *'wedding gift was similar to most guests at the wedding. From memory it was approximately \$200-\$300.'* He further advised when questioned on whether Mr Eddie Obeid provided any gifts to him at any time, *"No. At no other time"*.
92. The Mayor, Councillor Asfour also stated in response to questions, that he had not declared any conflict of interests in relation to Mr Eddie Obeid or Mr Paul Obeid as he did not, and does not, have any personal or business relationships with either of them. Similarly, he stated that he has not had any conflict of interests with the Bellevue Venue or any of its Directors.
93. The Mayor, Councillor Asfour also advised that he had not lobbied or spoken to other Councillors to vote in any way, which resulted in, or would result in, a benefit to the Bellevue Venue and or the Directors associated with the site. He also advised that he has not attended any meetings (including phone or virtual meetings) with any applicant, owner, Director or any person associated with the Bellevue Venue site in which there was any discussion concerning the Bellevue Venue site.
94. He stated that he had no involvement in the Bankstown City Centre Master Plan in relation to the Bellevue Venue site.
95. The review noted that on the occasions when the Bankstown City Centre Master Plan had been the subject of a report to Council, the Mayor, Councillor Asfour had declared a significant, non-pecuniary conflict of interests due to his role as a Director with the Bankstown Return Services League (RSL), which was also affected by the Bankstown City Centre Master Plan as it has a site in the area, and he had declared that conflict of interests and left the meeting. He also declared a reportable donation which had been made to his election campaign by a donor, who had no connection to the Bellevue Venue site. The actions taken to identify and manage the conflict of interests are prescribed in Council's Codes of Conduct (2008; 2013; 2016; 2019) and the actions taken by the Mayor, Councillor Asfour accord with those requirements for the nature of the disclosures made.
96. In relation to the West Terrace Car Park, the Mayor, Councillor Asfour advised that he had no requirement to declare a conflict of interests in relation to the consideration of the responses to the expressions of interest for the Purchase and Redevelopment of West Terrace Carpark, when the matter was considered at a Council Meeting on 26 June 2012. He stated that he had no conflict of interests with Redpoc Pty Ltd (now known as Southern Terrace Properties Pty Ltd) and the Taylor Construction Group Pty Ltd.
97. The Mayor stated that he was not aware of any inappropriate conduct that had occurred by any Council officials in relation to their dealings with the Bellevue Venue site and or the West Terrace Carpark.

## **Background Information on South East Local Area Plan, Draft Consolidated Local Environment Plan and Segers Avenue, Padstow**

The following provides the sequence of events relating to the South East Local Area Plan and Draft Consolidated Local Environment Plan, and Segers Avenue, Padstow. There is significant documentation available to support this sequence of events.

96. On **26 February 2013**, Bankstown City Council adopted the staff recommendation to exhibit the Issues Paper for the South East Local Area Plan (LAP) and report back (Attachment SEG1).
97. Between **06 August and 19 September 2013**, the Issues Paper was publicly exhibited (Attachment SEG2).
98. On **24 September 2013**, Bankstown City Council adopted the staff recommendation to note the issues raised and the preparation, amongst others, of the South East LAP (Attachment SEG3 and SEG4).
99. On **16 September 2014**, Bankstown City Council adopted the staff recommendation to exhibit the Draft LAP and consider a further report on the matter including a planning proposal following exhibition (Attachment SEG5 and SEG6). The voting was recorded as follows:  
  
*For:- Ctrs Downey, Kuskoff, Najjar, Tadros, Waud, Winterbottom, Asfour, Daniel, Golledge and Nguyen*  
  
*Against:- Nil*
100. Between **7 October 2014 and 2 February 2015**, Bankstown City Council exhibited the Draft LAP (Attachment SEG7).
101. On **22 September 2015**, Bankstown City Council adopted the staff recommendation to note the updated report and engage the Future Cities Collaborative to work with Councillors to finalise the Draft LAP(s) and to progress further future planning for the City (Attachment SEG8).
102. On **24 November 2015**, Bankstown City Council adopted the staff recommendation to re-exhibit the Draft LAP(s) and for a further report to be submitted at the expiration of the exhibition period (Attachment SEG9 and SEG10).
103. Between **15 December 2015 and 26 February 2016**, Bankstown City Council re-exhibited the Draft LAP(s) (Attachment SEG11).
104. On **26 April 2016** Bankstown City Council resolved to defer the Draft LAP(s) to a Councillor briefing to allow any proposed amendments to be considered. The Mayor, Councillor Asfour was absent for the meeting (Attachment SEG12 and SEG13).
105. On **10 May 2016**, a briefing was held by staff and Chaired by the General Manager for Bankstown City Councillors to discuss proposed amendments to the North Central; North East; South East and South West Local Area Plans.

106. On **11 May 2016** Bankstown City Council resolved to adopt the South East LAP subject to amendments including, amongst others, in relation to Segers Avenue, Padstow, and delegated authority for the General Manager to submit a planning proposal to the Department of Planning and Environment. The Mayor, Clr Asfour declared a conflict of interests, as did some other Councillors, in relation to the South East LAP and left the meeting (Attachment SEG14 and SEG15).

The minutes record the Mayor as declaring the following interest:

*Clr Asfour declared a Significant, Non-Pecuniary Conflict of Interest in respect of Item 3.3 – South East Local Area Plan as a relative owns property in the area subject of the Local Area Plan.*

107. The resolution, as it applies to this matter, and voting is recorded as follows:

*1. Council adopt the South East Local Area Plan as shown in Attachment A and incorporate the following amendments (to be read in conjunction with Table contained in the report):*

...

*(h) For the properties at Nos. 1–31 Segers Avenue and Nos. 12– 20 Faraday Road in Padstow; rezone the properties to Zone B2 Local Centre with a maximum building height of 6 storeys and provide a FSR to match the height limit.*

...

*(l) For the properties at Nos. 1-23 Gloucester Avenue rezone to R3 Medium Density with a building height of 3 storeys and properties at Nos. 8-12 Segers Avenue in Padstow rezone to R4 High Density Residential with a maximum building height of 4 storeys and provide FSR to match the height.*

*(m) Council investigate the heritage listing of Endeavour Hall at No. 89 The River Road, Revesby.*

*(n) The current proposal to rezone the properties at Nos. 89-99 Howard Road, Nos. 2-6 Segers Avenue and Nos. 2-6 Gloucester Avenue in Padstow be deferred and rezoning options be investigated.*

*2. Based on the actions of the South East Local Area Plan, Council delegate authority to the General Manager to prepare and submit a planning proposal to the Department of Planning & Environment to seek a gateway determination.*

*3. Council seek authority from the Department of Planning & Environment to exercise the delegation of the Minister for Planning regarding the plan making functions under section 59 of the Environmental Planning & Assessment Act 1979.*

*4. Subject to approval from the Department of Planning & Environment, Council exhibit the planning proposal to provide further community comment, and the matter be reported to Council following the exhibition.*

*- CARRIED*

*For:- Clrs Najjar, Tadros, Waud, Winterbottom and Daniel*

*Against:- Clrs Downey, Kuskoff, Golledge and Nguyen*

108. On **9 September 2016**, Canterbury Bankstown Council (Council) submitted a planning proposal in relation to the LAP(s) to the Department of Planning and Environment seeking a Gateway Determination.

109. On **19 May 2017**, the Department of Planning and Environment issued a Gateway Determination to enable the planning proposal to proceed to exhibition subject to the removal of the amendments (as listed in their correspondence) (Attachment SEG16).
110. On **25 July 2017**, the then Administrator noted the Gateway Determination and delegated the General Manager to prepare and exhibit draft amendments to Bankstown Development Control Plan 2015 and the Section 94A Development Contributions Plan (Bankstown); and that the matter be reported to Council following the exhibition (Attachment SEG17).
111. On **26 June 2018**, Council adopted the staff recommendation to execute the funding agreement for the accelerated local environmental plan review program and commence work on a Local Strategic Planning Statement (LSPS) (Attachment SEG18).
112. On **24 July 2018** Council resolved not to proceed with the Planning Proposal for the South East LAP and advise the Department accordingly. The Mayor, Clr Asfour had declared a conflict of interest, along with some other Councillors, and left the meeting. (Attachment SEG19 and SEG20).
113. The minutes of the meeting record the declaration of the Mayor as follows:
- In respect of Item 5.4 – Progressing the Planning Proposal for the South East Local Area Plan, His Worship the Mayor, Clr Asfour declared a significant, Non Pecuniary Conflict of Interest as a relative owns a property in the area that is subject to the planning proposal and indicated that he would not participate in considering the matter and would vacate the chamber.*
114. The voting was recorded as follows:
- For:- Clrs Eisler, El-Hayek, Harika, Huda, Kuskoff, Madirazza, Raffan and Saleh*  
*Against:- Clrs Ishac, Waud, Zakhia and Zaman*
115. In **September 2018**, the proponent submitted a rezoning application for the site located at 1-17 Segers Avenue, Padstow.
116. On **03 April 2019**, the Local Planning Panel (LPP) considered a report to proceed with a site specific planning proposal for 1-17 Segers Avenue Padstow. The LPP recommended that the planning proposal not proceed to Gateway determination as they were of the view the proposal was premature. (Attachment SEG21 and SEG22). They also stated in their recommendation as follows:
- ....
3. *The proposal should be considered in light of (a) the council’s local strategic planning statement and (b) future town centres studies.*
  4. *The proposal does not have site specific merit when looked at in isolation with the surrounding neighbourhood*



5. *A development control plan is required to be prepared before further consideration of the proposed rezoning of the site. That DCP must ensure delivery of the widening of the through site link.*
117. On **30 April 2019**, the Council adopted the staff recommendation to prepare and submit a planning proposal with amendments for 1-17 Segers Avenue, Padstow to the Department of Planning and Environment seeking a Gateway determination (Attachment SEG23. The voting was recorded as follows:
- For:- Ctrs Asfour, El-Hayek, Huda, Ishac, Madirazza, Waud, Zakhia and Zaman*  
*Against:- Ctrs Downey, Eisler, Harika, Kuskoff, Raffan, Saleh and Tuntevski*
118. On **12 June 2019** Council submitted a planning proposal for 1-17 Segers Avenue Padstow to the Department of Planning and Environment seeking a gateway determination.
119. On **12 September 2019**, Council appointed Hall & Wilcox Lawyers as Probity and Governance Referee for the City Wide Planning Instruments. At this time Hall & Wilcox issued correspondence to all Councillors and Designated staff regarding their requirements under the Code of Conduct and associated provisions relating to declaration of interests for the city wide planning instruments. They provided correspondence to be completed (separate to the s449 Disclosure Returns). This also set the governance framework for the matter to ensure transparency and decision-making in the public interest.
120. On **24 September 2019**, at a Council Meeting in Confidential session, Council adopted the proposed approach to assist Councillors in assessing their individual circumstances regarding their Conflict of Interests Declarations for the City Wide Planning Instrument.
121. On **24 September 2019** Council resolved as follows:
1. *Council exhibit the draft Local Strategic Planning Statement Connective City 2036 at Attachment A and supporting documents at Attachment B between 25 September and 15 November 2019 in line with the proposed exhibition program outlined in Attachment C.*
  2. *Council prepare and submit a planning proposal to the Department of Planning, Industry and Environment for Gateway Determination to create the new Canterbury Bankstown Local Environmental Plan. The Planning Proposal will not have any changes to planning provisions, it is to seek the Department's requirements for exhibition including agency engagement requirements up front so as to not delay this process.*
  3. *A detailed report be provided to Council on the planning proposal after a Gateway Determination has been received and prior to exhibition.*
  4. *The local strategic planning statement identify the following areas for their special natural, scenic or architectural value and ensure that these areas are protected from inappropriate future development.*
    - (a) *Areas south of the East Hills Rail Line at East Hills, Padstow, Panania, Picnic Point and Revesby.*
    - (b) *Areas in the east of our city along the Cooks River and conservation areas including around Ashbury, Hurlstone Park and Earlwood.*



5. Council undertake further analysis and refinement of these areas during the exhibition of the Local Strategic Planning Statement.

6. Council include provisions into the new Canterbury Bankstown LEP to ensure the special character of these areas is protected and enhanced.

The vote was recorded as follows:

*For:- Clrs Asfour, Downey, Eisler, El-Hayek, Harika, Huda, Ishac, Raffan, Saleh, Tuntevski, Waud, Zakhia and Zaman*

*Against:- Nil*

122. On **10 December 2019**, Council adopted the staff recommendation to endorse the Local Strategic Planning Statement and refer it to the Greater Sydney Commission seeking their assurance (Attachment **WTCP14**)

123. On **20 February 2020**, the Department of Planning and Environment issued a gateway determination to enable the planning proposal for the Consolidated LEP to proceed to public exhibition, subject to conditions. (Attachment SEG24). Relevant conditions to this review included:

Condition 1(c)(iii) included the implementation of the LAP(s) and any further proposed modifications and 1(g) incorporated the planning proposal relating to 1-17 Segers Avenue, Padstow.

124. On **25 February 2020** Council resolved as follows:

*RESOLVED that given the nature and number of disclosures of interest, and the lack of quorum, Council delegate to the Local Planning Panel its statutory function(s) in considering and voting and determining the Minister's Gateway Determination with request to the proposed Canterbury Bankstown LEP. (Attachment SEG25)*

The Mayor Councillor Asfour was one of the Councillors who declared a conflict of interests on this item. The minutes record the following in relation to the Mayor's declaration:

*In respect of Item 5.2 – Canterbury Bankstown Consolidated Local Environmental Plan, Clr Asfour declared a significant Non Pecuniary Conflict of Interest as a reportable donation was made to his election campaign and the donor has an interest in a property which is the subject of this report and indicated he would vacate the Chamber taking no part in debate.*

125. On **4 March 2020**, the Local Planning Panel adopted the staff recommendation and determined to exhibit the planning proposal for the Consolidated LEP which included Segers Avenue, Padstow (Attachment SEG26 and SEG27).

126. The Local Planning Panel (LPP) is a mandatory panel whose role has been established by the NSW Government and there are statutory rules which govern the LPP's operations. The LPP comprises independent experts and a community representative that determine development applications on behalf of the Council and provide advice on other planning matters including planning proposals. In this instance, the Elected Council resolved to delegate their statutory functions to the LPP to determine and act as the LPP saw fit.

127. Between **10 March 2020 and 22 May 2020** Council exhibited the planning proposal.
128. On **16 March 2020** the Greater Sydney Commission notified Council of its assurance of the Local Strategic Planning Statement and in their letter, they stated in part as follows:

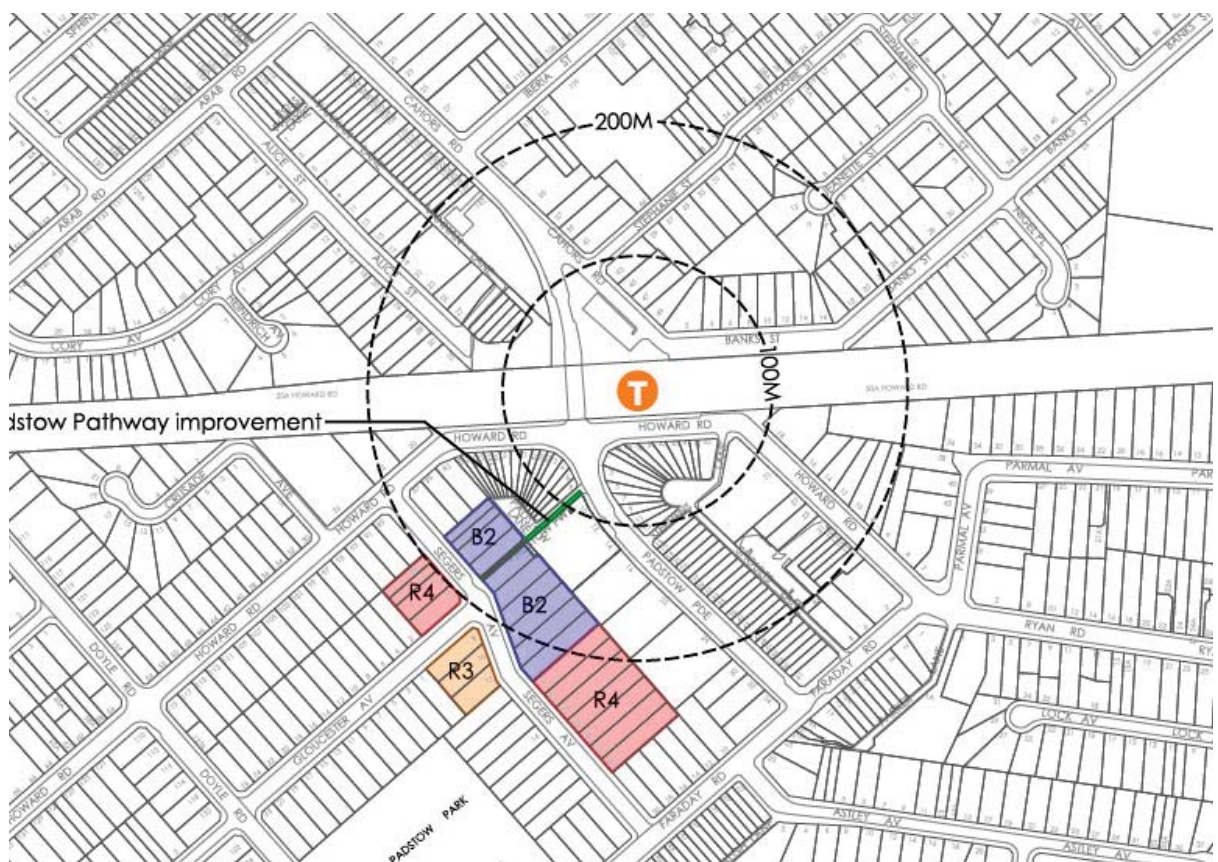
*...We confirm that the Commission supports the City of Canterbury Bankstown's draft Local Strategic Planning Statement (March 2020) as being consistent with the Greater Sydney Region Plan and South District Plan under Section 3.9(3A) of the EP&A Act.*

*Our decision on consistency reflects the significant work undertaken to develop a comprehensive strategic planning and evidence base to inform your Local Strategic Planning Statement and deliver the South District Plan...*

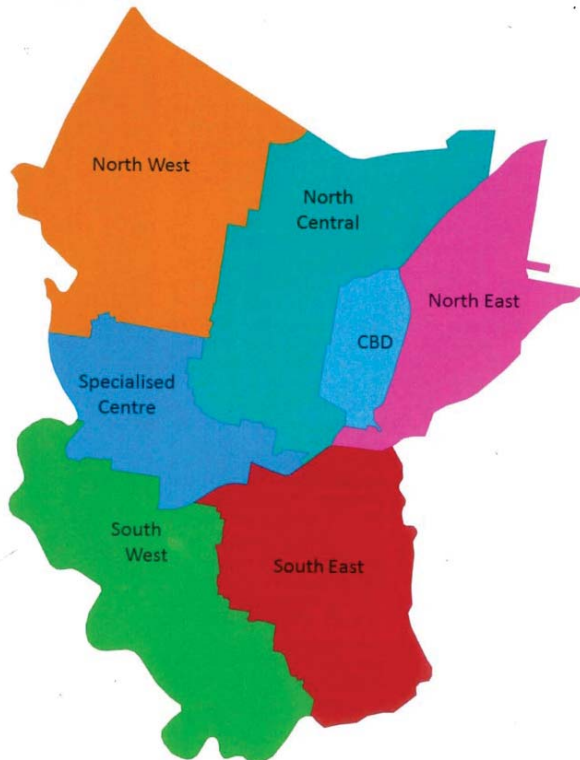
(Attachment **WTCP36**)

129. It should be noted that amongst other things, this assurance by the Greater Sydney Commission underpinned the master planning for the Bankstown and Campsie Town Centres and set the work program for the master planning of these centres.
130. On **17 June 2020** Council's Project Control Group (PCG) briefed the Directors on the project plan, which included the proposed governance structure, on the Bankstown City Centre and Campsie Town Centre Masterplan. This plan (and structure) was endorsed and provided the framework for the work undertaken by the PCG (Attachment SEG34).
131. On **23 June 2020** Council resolved to adopt the staff recommendation to endorse the Employment Lands Strategy, the Affordable Housing Strategy; the Planning Agreement Policy; and the Housing Strategy and seek the concurrence of the NSW Department of Planning, Industry and Environment and authorised the General Manager to make any changes to the Housing Strategy in response to issues raised by the NSW Department of Planning, Industry and Environment, provided that the changes did not alter policy positions endorsed by Council. Further staff recommended and was resolved by Council to develop an affordable housing scheme and report to Council prior to public exhibition. Council also resolved to undertake an interim review of the performance of the Housing and Affordable Housing Strategies and Council's Development Control Plan within 2.5 years of being in place. The minutes record the voting as follows:
- For:- Ctrs Asfour, Downey, Eisler, El-Hayek, Harika, Huda, Ishac, Kuskoff, Madirazza, Raffan, Saleh, Tuntevski, Waud and Zakhia*
- Against:- Nil*
132. On **30 June 2020**, the Local Planning Panel resolved to adopt the planning proposal subject to amendments and resolved that it be submitted to the Department of Planning and Environment to make the Consolidated LEP. The decision was unanimous (Attachment SEG28 and SEG29).

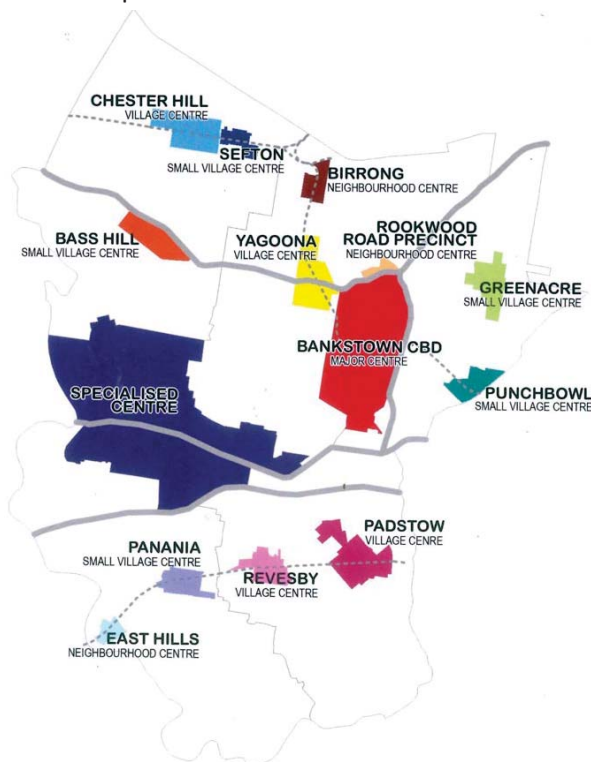
133. It is noted that the LPP received a written submission from the Hon David Coleman MP and Ms Sophie Cotsis MP addressed the LPP meeting. A review of the written submission by the Hon David Coleman MP stated that he was ‘strongly opposed’ to the Draft LEP, however, it did not identify any conduct of an inappropriate or untoward nature by any person. The Mayor sent a detailed response to the Hon David Coleman MP. The verbal submission of Ms Sophie Cotsis to the LPP was reviewed and similarly she did not identify any conduct of an inappropriate or untoward nature in relation to the development of the LEP by any person (Attachment SEG32 and SEG33).
134. Council is still awaiting the decision of the NSW Department of Planning and Environment regarding the Consolidated LEP to progress to gazettal. The Department initially advised Council this decision was expected in September/October 2022.
135. It is noted that the NSW Department of Planning and Environment provided this review with a copy of the Independent Urban Design Review it undertook in relation to 1-17 Segers Avenue, Padstow. The Department advised that their review determined it was aligned to that provided by Council, and as such Council’s proposed LEP changes in this area were appropriate with some minor amendments (Attachment SEG31).
136. The following map depicts Segers Avenue, Padstow and surroundings:



137. The following map depicts the Local Area Plans with East Hills electorate covering the South East and the South West plans:



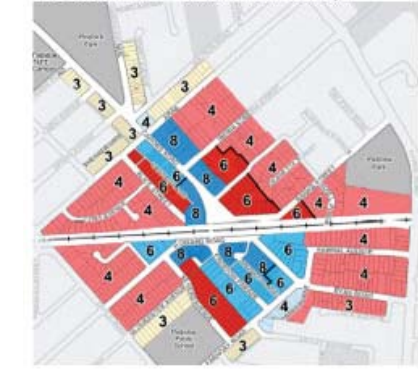



138. The following map depicts the above LAPs and provides the main suburbs within each area for a reference point:





139. Council provided a summary of the history of Segers Avenue, Padstow and it is depicted in the following series of diagrams:

<p><b>Draft South East Local Area Plan (First Exhibition)</b></p> <p>Northern side – B2/R4 6 storeys Southern side – B2/R4 4 storeys</p> 	<p><b>Draft South East Local Area Plan (Second Exhibition)</b></p> <p>Northern side – R4 6 storeys Southern side – R4/R3 3-4 storeys</p> 
<p><b>Extraordinary Meeting (11 May 2016)</b></p> <p>Northern side – R4 6 storeys Southern side – R4/R3 3-4 storeys</p> 	<p><b>Department's Gateway to Local Area Plan PP (May 2017)</b></p> <p>Northern side – R4 6 storeys Southern side – R4/R3 3-4 storeys</p> 
<p>Subject to the following amendment specific to Segers Avenue:</p> <ul style="list-style-type: none"> <li>For the properties at Nos. 1-31 Segers Avenue and Nos. 12-20 Faraday Road in Padstow; rezone the properties to Zone B2 Local Centre with a maximum building height of 6 storeys and provide a FSR to match the height limit.</li> <li>For the properties at Nos. 1-23 Gloucester Avenue rezone to R3 Medium Density with a building height of 3 storeys and properties at Nos. 8-12 Segers Avenue in Padstow rezone to R4 High Density Residential with a maximum building height of 4 storeys and provide FSR to match the height.</li> <li>The current proposal to rezone the properties at Nos. 89-99 Howard Road, Nos. 2-6 Segers Avenue and Nos. 2-6 Gloucester Avenue in Padstow be deferred and rezoning options be investigated.</li> </ul>	<p>Omit amendments</p>

## Consolidated LEP

Northern side – R4 6 storeys

Southern side – R4/R3 3-4 storeys



Site specific clause to apply to 1-17

Segers Avenue to read:

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied of the following—

- (a) the development will have a floor space ratio not exceeding 2.5:1,
- (b) retail premises and business premises will be located on the ground floor only,
- (c) the gross floor area used for retail premises and business premises will be equal to a floor space ratio of at least 0.5:1,
- (d) the lot on which the development will be carried out will be at least 40m wide at the front building line.

### **Involvement of the Mayor, Councillor Asfour in the South East Local Area Plan, Draft Consolidated Local Environment Plan and Segers Avenue, Padstow**

140. In response to questions regarding his involvement in the Local Area Plan for Segers Avenue, Padstow, the Mayor, Councillor Asfour stated as follows:

*I have never had any involvement in the Local Area Plan for Segers Avenue, Padstow.*

*I was a member of a Council Working Party with membership delegated to the Mayor and General Manager in and around 2010 (I was not the Mayor). The working party engaged with staff on the issues paper that would be put out to the community as a starting point for conversation. I considered the issues paper as a Policy matter at Council in February 2013, I considered the reporting of community feedback to the issues paper in September 2014.*

*I considered the exhibition of the SELAP in September 2014.*

*I considered the re-exhibition of the SELAP in November 2015.*

*I was not present (leave of absence granted) for consideration of adoption of the SELAP in April 2016.*

*The SELAP also came to the 11 May 2016 meeting, which Ms Wendy Lindsay refers to in her Parliamentary comments. I was not in the chamber for that matter as I had made the following declaration:*

*Clr Asfour declared a Significant, Non-Pecuniary Conflict of Interest in respect of Item 3.3 – South East Local Area Plan as a relative owns property in the area subject of the Local Area Plan.*

*For your information the property is in Faraday Road, not Segers Ave. Also the land owner is the husband of my wife's cousin who was not a close family member. I declared at this point as he attended an extended family holiday in the new year of 2016 and so I declared as a precaution.*

141. Further, the Mayor advised that he did not lobby or speak to other Councillors to vote in any particular way in relation to Segers Avenue, Padstow for the meeting held on 11 May 2016.
142. The review notes that the Mayor, Councillor Asfour was not required to declare a significant non-pecuniary conflict of interests based on the relationship status of 'the husband of my wife's cousin'. He has exceeded the minimum requirements of that required by the Code of Conduct (2013) and had no involvement in the Council Meeting at which the matter was determined. The Mayor advised he declared this way 'as a precaution'.

143. Further the Mayor, Councillor Asfour voted to adopt the staff recommendation on 30 April 2019 to prepare and submit a planning proposal with amendments for 1-17 Segers Avenue, Padstow to the Department of Planning and Environment seeking a Gateway determination. He advised that he did not lobby or speak to other Councillors to vote in any particular way in relation to that planning proposal.
144. The Mayor Councillor Asfour advised that he did not vote on the Local Area Plans and Draft Local Environmental Plan for the areas affecting the East Hills electorate and that he declared the following in respect of the Canterbury Bankstown Consolidated Local Environmental Plan at the February 2020 meeting:

*I, Clr Asfour declared a significant Non Pecuniary Conflict of Interest as a reportable donation was made to his election campaign and the donor has an interest in a property which is the subject of this report and indicated he would vacate the Chamber taking no part in debate.*

*With the consolidated LEP being a wide plan, a number of Councillors similarly and appropriately declare conflicts of interest and removed themselves from considering the matter and accordingly quorum was lost. As a result, Council delegated consideration of the matter to the Local Planning Panel.*



## Policy Application

145. There are several legislative and policy obligations that Council officials were required to meet in relation to the matters under review.
146. Council has in place the following which governs it's activities:
- a. *Strategic Planning Framework* – which maps out the role of all current and future Council strategies and plans that work to deliver the vision for the City. The framework works from the highest level of strategic direction in the Community Strategic Plan through to more detailed plans that will eventually drive works projects and programs on the ground. The framework is comprised of several levels.
  - b. *Corporate Governance Framework* (Attachment WTCP43) – is one of the supporting plans of the Strategic Planning Framework. It is recognised as a lead document in the Strategic Planning Framework and it sets the high-level strategic direction and approach for corporate governance at Council. It underpins the leadership, strategic direction, structure and operations of Council. It is designed to ensure that Council can deliver in terms of compliance, accountability and performance, but also can appropriately manage internal and external influences and relationships. It also underpins the level of community confidence and drives the accountability of Council to the community it serves. Importantly it involves a number of practical measures that aim to support the highest standards of corporate governance. The Framework details the following in relation to *Planning and Development Functions*:

## Planning and Development Functions

The City of Canterbury Bankstown plays a vital role in land use planning and managing the sustainable development of the local government area whilst contributing to regional long-term development goals.

The City's planning functions include:

- Future planning to create a liveable environment for all residents through equitable and sustainable land use and community planning.
- Town centre planning to provide well planned, attractive and sustainable town centres which cater for wide ranging community and economic needs.
- Development services to deliver quality, compliant development that suits the City and meets its housing needs.
- Regulation and compliance to improve the health, safety and amenity of the local community and environment by promoting and enforcing local laws, regulations, policies, controls and guidelines.

The NSW Department of Planning and Environment is responsible for the administration of the *Environmental Planning and Assessment Act 1979 (EPAA)*, which provides the framework for development decisions made by local government in NSW.

The City of Canterbury Bankstown has a responsibility under this Act to encourage the proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community and a better environment.

Under the EPAA the City also has responsibility for:

- Consulting with relevant bodies in land use plan preparation;
- Assessing and weighing the interests and demands of different sections of the community with those of the development applicant in the determination of planning policies and development applications;
- Ensuring that **Local Environmental Plans (LEPs)** and development control decisions are related to the sound management of the environment and its resources;
- Identifying local planning needs;
- Developing policies addressing issues in the LEP; and
- Ensuring that responsibilities for Environmental Impact Assessment are met.

Further in relation to the *Local Planning Panel* it states as follows:

### Canterbury Bankstown Local Planning Panel

The relationship between local government and land use planning has undergone significant reform since 2016. Reforms introduced by the NSW Government have focused on improvements to community participation, plan making and development controls, local development, State significant proposals, improving governance and review processes, enforcement and reporting, and promoting good design.

In accordance with these reforms, the City of Canterbury Bankstown established the Canterbury Bankstown Local Planning Panel in April 2018. The Canterbury Bankstown Local Planning Panel is a state mandated Panel and is not subject to the direction or control of Council. The referral criteria for both development applications and planning proposals is set by the Minister for Planning and can be viewed on the NSW Department of Planning and Environment website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

This means that decisions on development applications and planning proposals are no longer referred to the elected body of Council for determination. Council's planning officers are delegated to determine a large volume of development applications, however, those applications that meet set criteria, which relate to conflicts of interest, contentious or sensitive development, or a departure from development standards by more than 10%, must be referred to the Canterbury Bankstown Local Planning Panel for determination.

The Canterbury Bankstown Local Planning Panel comprises of:

- A chair appointed by the Minister for Planning;
- Two members selected by Council from a pool of experts established by the Department of Planning and Environment; and
- Community representatives for each ward selected by Council.

All members of the panel are bound by the **Code of Conduct for NSW Local Planning Panels**.

The Panel meets once per month, or more often if required. Panel meetings are open to the public and publicly webcast. Panel agendas and minutes are also available on the Council website much like an Ordinary Council Meeting.

All development applications with a construction value in excess of \$30 million are beyond the jurisdiction of the Canterbury Bankstown Local Planning Panel and must be forwarded to the Sydney South District Panel.

In addition, in relation to *Statutory Compliance* it states as follows:

This component identifies what the City must do in order to comply with legislative requirements and standards, manage risks and maintain internal and external oversight to ensure Council acts with integrity.

### Statutory Compliance

Good corporate governance is directly linked to vigilant compliance with key financial and statutory requirements, and is critical in maintaining the City's position as a leading local government agency in NSW.

The City of Canterbury Bankstown recognises the importance of ensuring that matters involving deliberations of the Council, the implementation of Council resolutions, the operating environment and the fulfillment of its reporting requirements are fully compliant with all legislation and regulations applicable to local government in NSW.

The City adheres to core statutory requirements, which include (but are not limited to):

- Undertaking planning and reporting activities in accordance with the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* and the *Integrated Planning and Reporting Guidelines for Local Government in NSW 2013*; and
- Preparing financial reports each year in accordance with prescribed standards under the *Local Government Act 1993*. These reports are externally audited by the NSW Auditor-General, made available for public exhibition and presented openly at a Council Meeting.

The City also complies with a number of other accountability standards and compliance mechanisms, which are outlined in detail below. These are based on best practice in local government and internationally accepted standards.

Council has specialist staff dedicated to ensuring Council adheres to the various compliance requirements and proactively engages with regulatory bodies and industry forums to maintain the highest standards in meeting its obligations.

- c. The Governance Framework also refers to ‘Delegations’ and Council has adopted an Instrument of Delegation where appropriate. In addition, the Framework incorporates ‘Policies’ and the ‘Code of Conduct’ which outlines the principles, values, behaviours and minimum standards of conduct expected of all Council officials.
  - d. *Code of Conduct* – Council was requested and provided to the review copies of their Codes of Conducts since 2008. The codes of conduct detail, amongst other things, the requirements for Council officials in relation to their identification and management of conflict of interests (Attachments WTCP38 to WTCP42)
  - e. *Code of Meeting Practice* – Council has in place a Code of Meeting Practice which governs, amongst other things, how meetings of Council are conducted and decisions are made. It provides for the declaration and recording of conflict of interests as part of the meeting requirements and these managed in accordance with the requirements of Council’s Code of Conduct.
  - f. *Public Interaction and Meeting Disclosure Policy* - which provides guidance for Councillors when interacting with stakeholders to ensure transparency, integrity and public accountability in Council’s decision-making process. The City of Canterbury Bankstown maintains a Register of Councillor Interaction with Members of the Public to ensure appropriate records are maintained in regard to public interactions.
  - g. *Making of the Consolidated Local Environmental Plan* - Division 3.4 of the Environmental Planning & Assessment Act 1979 prescribes how Environmental Planning Instruments – in particular, Local Environmental Plans (LEPs) are made. Council is required to follow the legislative requirements and ultimately refer their Draft Consolidated LEP for Gateway Determination to the respective Minister (Department of Planning and Environment) who ultimately determines the matter.
147. The *Code of Conduct* details Council officials’ requirements in relation to the declaration of conflict of interests. Council’s Codes of Conduct have been based on the Model Code of Conduct developed and implemented by the Office of Local Government. In relation to conflict of interests identification and management, the requirements have not significantly changed since 2008. This Code of Conduct was in force in 2009 when the Canterbury Bankstown Car Parking Strategy was considered by Council and this and similar conflict of interests requirements have remained applicable to all Council officials. In 2008, the Code of Conduct detailed a non-pecuniary conflict of interests as follows:

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

- 11.10 *Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.*



11.11 *The matter of a report to council from the conduct review 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.*

11.12 *The political views of a councillor do not constitute a private interest.*

*Managing non-pecuniary conflict of interests*

7.13 *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.*

7.14 *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 7.13.*

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

7.16 *As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:*

- a) *a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household*
- b) *other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship*
- c) *an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.*

7.17 *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*

7.18 *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.*

7.19 *If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.*

7.20 *Despite clause 7.17(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) above.*

Political donations exceeding \$1,000

7.21 *Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.*

7.22 *Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, councillors should have reasonable knowledge of contributions received by them or their "official agent" (within the meaning of the Election Funding Act 1981) that directly benefit their election campaign.*

7.23 *Where a councillor or the councillor's "official agent" has received "political contributions" or "political donations", as the case may be, within the meaning of the Election Funding Act 1981 exceeding \$1,000 which directly benefit their campaign:*

- *from a political or campaign donor or related entity in the previous four years; and*
- *where the political or campaign donor or related entity has a matter before council,*

*then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b).*

7.24 *Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.*

7.25 *If a councillor has received a donation of the kind referred to in clause 7.23, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).*

148. *Disclosure of Interest Returns (Section 449) are required to be completed by all Councillors and designated persons. These returns are prescribed under Council's Code of Conduct and are completed yearly and on other occasions as required by the relevant Council official. They are a public record.*

## 2. Identify and review the first point in time, if any, the MP has raised these allegations as a matter of complaint

149. The Procedures for the Administration of the Code of Conduct for Local Councils in NSW (the Procedures), (Attachment WTCP44) are made under section 440AA of the *Local Government Act 1993* (NSW) and the Local Government (General) Regulation 2021 and every Council in NSW is required to adopt not only a Code of Conduct but also the Procedures for the Administration of the Code of Conduct. Whilst the Procedures have been updated over the course of time, they have been consistent in the following regard.
150. Section 4.1 of the Procedures states that a code of conduct complaint *“is a complaint that shows or tends to show conduct on the part of the council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council’s code of conduct if proven.”*
151. The Procedures detail at Part 4.6 that a code of conduct complaint relating to the Mayor and or Councillors is *“to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency”*. Part 4.4 provides that a code of conduct complaint *“must be made within 3 months of the alleged conduct occurring or within 3 months of the complainant becoming aware of the alleged conduct.”*
152. There is no information which indicates that Ms Mihailuk MP or Ms Lindsay MP raised their allegations or complaints directly with Council.
153. When the General Manager became aware of any issue raised by any person that may have involved alleged corrupt conduct, he referred the matter to the Independent Commission Against Corruption in accordance with his reporting obligations under section 11 of the *Independent Commission Against Corruption Act 1988 (NSW)*. This is set out in detail in Part 3 of this report.

### 3. Review, identify and assess the appropriateness of the steps taken by Council when it became aware of the allegations made by the MP

154. On **25 November 2013**, a report was made to ICAC by the General Manager regarding information that there was alleged inappropriate conduct occurring by a Council official in relation to the West Terrace Car Park Tender process. Further information was provided on **3 December 2013** ( [REDACTED] ). [REDACTED]  
[REDACTED]  
[REDACTED]

155. On **13 December 2013**, the ICAC wrote to Council advising that they had determined they would not be investigating the matter of 25 November 2013 and 3 December 2013 [REDACTED]  
[REDACTED].

156. On **2 January 2014**, a report was made to the ICAC by the General Manager regarding information that there was alleged inappropriate conduct occurring by a Council official and requesting the ICAC to interview the person making the allegations. [REDACTED]  
[REDACTED]  
[REDACTED]

157. On **20 January 2014**, the ICAC wrote to Council advising that they had determined they would not be investigating the matter of 2 January 2014 [REDACTED].

158. On **22 April 2021**, a report was made to the ICAC by the General Manager [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

159. On **14 May 2021**, Ms Mihailuk MP made a public submission on Council’s Bankstown City Centre Masterplan. Part of the submission identified concerns regarding the process in the creation and exhibition of the plan; peculiarities in the building height limits that indicated a lack of fairness and equity and provided the Bellevue Function Centre as the example; critical of the Mayor, Clr Asfour for declaring a conflict of interests and leaving the chamber, but continuing to support the masterplan in the Mayoral Messages column and speak on the masterplan. Further, she raised that property developers were present at an event on 19 March 2021 which was an ‘exclusive premiere screening’ of the Master Plan and they ‘*were made privy to the information contained in this Master Plan prior to formal public exhibition which did not begin until 29 March 2021.*’ (Attachment WTCP46)

160. On **22 June 2021**, the ICAC wrote to Council advising that they had determined they would not be investigating the matter of 22 April 2021 [REDACTED]



161. On **5 July 2021**, the General Manager wrote to the ICAC providing a copy of the submission by Ms Mihailuk MP of 14 May 2021 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
162. On **20 August 2021**, the ICAC wrote to Council advising that they would not be investigating the matter of 5 July 2021 [REDACTED].
163. On **10 December 2021**, the General Manager wrote to the ICAC regarding information that there was alleged inappropriate conduct [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
164. On **25 February 2022**, the ICAC wrote to Council advising that they had determined they would not be investigating the matter of 10 December 2022 [REDACTED]
165. On **20 September 2022**, Ms Mihailuk MP made statements under parliamentary privilege as detailed in point one (1) above
166. [REDACTED]  
[REDACTED]
167. On **21 September 2022**, Ms Lindsay MP made statements under parliamentary privilege as detailed in point one (1) above.

#### **4. Identify and review any steps taken by the Council to deal with any matters dealing with probity and corporate governance in relation to the allegations made by the MP**

168. As indicated in the background information provided earlier Council dealt with probity and corporate governance throughout the various processes and this occurred across an extended timeframe between 2009 and 2022. Without limiting the extent of the actions carried out by Council that relate to the allegations, Council in part, undertook the following:

- a. Applied the requirements detailed by the Department of Planning and Environment in relation to the Making and Amending of LEPs and Planning Proposals.
- b. Undertook probity planning and engaged Probity Referees for both expression of interest processes and the development of the City Wide Planning Instruments. The probity referees were actively involved throughout these processes.
- c. Matters were referred to the Elected Council for consideration as required under the *Local Government Act (NSW) 1993*. This included matters being appropriately considered in confidential session under the provisions of Chapter 4, Part 1 of the Act.
- d. Council delegated to the Canterbury Bankstown Local Planning Panel (CBLPP) its statutory functions relating to the Draft Consolidated Local Environment Plan due to a lack of a quorum following the declaration of conflict of interests by Councillors. This is a group of independent experts, not linked to Council, and who operate under statutory rules governing their operations and conduct. This action accords with the requirements specified in Part 4 Council's Code of Conduct (2019), in particular clauses 4.28 to 4.39 inclusive.
- e. The Elected Council adopted the governance requirements required to be met as part of the City Wide Planning Instruments.
- f. Internally established a Project Control Group (PCG) for the Bankstown and Campsie Town Centre plans which incorporated the governance structure for the process.
- g. Ensured Councillors were trained and informed of their governance requirements, including the Code of Conduct, by conducting Councillor inductions in 2008; 2012; 2017; and 2021.
- h. Ensured Council staff were trained and informed of their governance requirements, including the Code of Conduct, by conducting either face to face or online training every two to three years.
- i. Assurance was provided by the Greater Sydney Commission on the Local Strategic Planning Statement.

- j. The Draft LEP is with the Department of Planning and Environment awaiting their assurance. Council has no correspondence signifying any outstanding planning issues that would cause a concern in this assurance now being granted by the Department.
- k. Council Officials have an obligation to declare any conflict of interests and the onus is on them to do so under the Code of Conduct. Declarations of interest for Council Officials were made, recorded and managed in accordance with the relevant declaration. Further, the probity referee had oversight and involvement, if required, on declarations of interests.
- l. In accordance with good governance, any briefings held were chaired by the General Manager.
- m. Reported under the section 11 reporting requirements to the Independent Commission Against Corruption when any relevant matters arose.
- n. There was various and numerous correspondence provide by the General Manager to Council Officials on their obligations in relation to the City Wide Planning Instruments. In particular, these were often provided just prior to the consideration of matters of significant importance on the City Wide Planning Instruments.
- o. Significant records exist for the processes reviewed which accords with Council's obligations under the *State Records Act (NSW) 1998*.
- p. Council introduced a Public Interaction and Meeting Disclosures Policy in 2017 to provide guidance for Council officials when interacting with stakeholders. Whilst this policy was in existence, it was not required to be utilized for interaction under the City Wide Planning Instruments as any interaction relating to that was captured through the specific governance framework which included the probity referee's attendance at meetings as required.
- q. It is observed that on a number of occasions, the Elected Council adopted the staff report recommendation, in the main, without alteration.
- r. It was observed that on some occasions, no declarations of interests were made by some Councillors but rather, they left the meeting prior to the matter being considered. There is a concern that this has occurred to avoid being part of the decision making on a topical issue. If this is the case, such action is not appropriate as it is not properly fulfilling a Councillor's responsibilities under the *Local Government Act (NSW) 1993*.

**Review of Assertions:**

169. No evidence has been provided which reflects that the assertions as made by Ms Mihailuk MP, as alleged against the Mayor, Councillor Asfour, are substantiated. In particular, in giving consideration to the assertions made by Ms Mihailuk MP in her statement of 20 September 2022, the following has been determined:

1. There is no evidence that the Mayor is a close associate and or friend of Mr Eddie Obeid.
2. The review did not encompass whether Mr Eddie Obeid 'ensured' that the position of the Mayor remained with Councillor Asfour, but as there is no evidence that the Mayor is a close associate and or friend of Mr Eddie Obeid, it is unlikely that this occurred.
3. The West Terrace carpark has not changed zoning. The West Terrace carpark is zoned B4 mixed use. No steps are underway by Council to rezone the site. The Masterplan seeks to maintain the current zoning, height and floor space ratio controls that are applicable to the site.
4. The possibility of making the West Terrace carpark into 'open space' will not necessarily make the Bellevue Venue more attractive as it will impose provisions to incorporate specific car parking requirements commensurate to any development proposed. It is noted that for the Bellevue Venue site to obtain certain benefits including height, floors space ratio, etc, that these are subject to the Bellevue Venue providing at least 50% employment generating uses amongst other things.
5. The assertion that the change of zoning for both the West terrace car park and the Bellevue Venue site were done to benefit Mr Eddie Obeid, It should be noted there has been no change of zoning for the West terrace car park; that the Bellevue venue can only obtain certain benefits subject to at least 50% employment generating uses; there is no evidence of a close association or friendship by the mayor Councillor Asfour and Mr Eddie Obeid; and there is no evidence that Mr Eddie Obeid has any ownership associated or interest with the Bellevue Venue site.

170. No evidence has been provided which reflects that the assertions as made by Ms Lindsay MP, as alleged against the Mayor, Councillor Asfour, other Council officials and Council are substantiated. In particular in giving consideration to the assertions made by Ms Lindsay MP in her statement of 21 September 2022, the following has been determined:

1. The Mayor, Councillor Asfour declared a significant, non-pecuniary conflict of interests in relation to the South East Local Area Plan (item 3.3) at the Council Meeting held on 11 May 2016 and was not present for the discussion or decision on that item.
2. The NSW Department of Planning and Environment undertook an independent urban design review on the 1-17 Segers Avenue, Padstow, and they advised their review determined it was aligned to the approach provided by Council and as such, Council's changes in this area were appropriate, with some minor amendments, as part of the Draft Consolidated LEP process.

3. Council delegated its decision making in relation to the Draft Consolidated LEP process, to the Local Planning Panel which is an independent body established by the State Government in March 2018, comprising a panel of experts as well as a community representative. It was the Local Planning Panel who resolved to adopt The Planning Proposal with amendments, to be submitted to the Department of Planning and Environment to make the consolidated LEP.
4. It is ultimately the decision of the NSW Department of Planning and Environment to progress the Consolidated LEP to gazettal.
5. That the Department of Planning and Environment gave Gateway Determination to enable Council to proceed to exhibition subject to the removal of amendments listed in their correspondence. This determination was issued on 19 May 2017 a year after the 11 May 2016 meeting was held. Ultimately, Council withdrew this planning proposal due to changes required at the State Government level. A separate Planning Proposal was subsequently submitted by the proponent for Segers Avenue.
6. Further a Gateway Determination was issued by the Department of Planning and Environment for the Consolidated LEP to proceed to exhibition (subject to conditions) on 20 February 2020. The LAPs and the planning proposal for Segers Avenue were included in this determination.
7. The Greater Sydney Commission assured the Local Strategic Planning Statement (LSPS) in March 2020 and identified to Council that it was consistent with the assumptions of the South District Plan.
8. Council had an external probity officer appointed throughout the process= who was present for all discussion between Council officials and affected parties in the Master planning process.

## Advise on the appropriateness of those steps

171. The background information provides the sequence of events which relate to the broad allegations made under Parliamentary privilege. A review of the information indicates that Council adopted a strong governance approach with a key focus on probity and transparency throughout the processes undertaken.
172. Each of the steps or areas identified in Part 4 above, were appropriately conducted and in many cases, exceeded the governance expectations for a local authority. For example, the number and consistency of communication to the Councillors by the General Manager reminding them of their obligations during process and requesting their declarations of interests was well beyond that required or expected.
173. The delegation to the Canterbury Bankstown Local Planning Panel (CBLPP) of Council's statutory functions relating to the Draft Consolidated Local Environment Plan was appropriate and accorded with Code of Conduct requirements.
174. It is important to note that the Department of Planning and Environment must support the LEP application for the whole local government area, including the sites identified of concern. As such, the Department needs to be satisfied that Council has undertaken a proper process so that Department can then support the drafting of the LEP into a legal document. As such, assurance for the LEP rests with the Department of Planning and Environment, not Council.
175. In relation to each allegation we advise as follows:
1. *Whether the Mayor, Councillor Asfour sought and /or accepted benefits as an inducement or reward for partially and dishonestly exercising his official functions to favour the interests of developers, landowners or Mr Eddie Obeid in relation to planning matters affecting the West Terrace Car Park site and or the Bellevue Venue site.*

This allegation is not substantiated.

2. *Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers, landowners or Mr Eddie Obeid in relation to the West Terrace Car Park site and or the Bellevue Venue site.*

This allegation is not substantiated.

3. *Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers or landowners in relation to the Local Area Plan and or the Planning Proposal relating to Segers Avenue, Padstow.*

This allegation is not substantiated.



4. *Whether the Mayor, Councillor Asfour failed to declare or properly manage any conflict of interests arising from his relationship with developers and landowners in relation to the Draft Consolidated Local Environmental Plan as it related to the East Hills area.*

This allegation is not substantiated.

176. On the information reviewed, there are no governance, probity or conduct issues relating to Council Officials arising from this review.

## **6. Identify what steps or otherwise the Council should take in relation to the allegations made by the MP**

177. Given the statements which caused this review to occur were made under Parliamentary Privilege the statements are in the public domain. As such, it would be appropriate for the following to occur to ensure transparency in relation to steps which Council has taken to investigate the allegation:

- a. This report, with any redactions that Council considers necessary, be provided to a Council Meeting in open session for noting; and
- b. A copy of this report be provided to the Independent Commission Against Corruption.

Report prepared and authorised by SINC Solutions Pty Ltd:

Kath Roach  
Managing Director  
20 December 2022

*Attachments:*

Attachment A– Attachments for West Terrace Car Park & Bellevue Venue (separate folder)

Attachment B – Attachments for Segers Avenue and Draft Consolidated LEP for East Hills (separate folder)

Attachment C – Confidential Attachments – NOT FOR DISTRIBUTION (separate folder)

Attachment D – Limitations

Attachment E – Review Process

**Attachment A - Attachments for West Terrace Car Park & Bellevue Venue (separate folder)**

**Attachment B - Attachments for Segers Avenue and Draft Consolidated LEP for East Hills (separate folder)**

**Attachment C - Confidential Attachments – NOT FOR DISTRIBUTION (separate folder)**

## **Attachment D - Limitations**

SINC Solutions Pty Ltd has prepared this report for the purposes set out in its engagement with Canterbury Bankstown Council and it is not to be used for any other purpose without prior written consent. Accordingly, SINC Solutions Pty Ltd accepts no responsibility in any way whatsoever for the use of this report for any purpose other than that for which it has been prepared and agreed between Canterbury Bankstown Council and SINC Solutions Pty Ltd. No party other than Canterbury Bankstown Council may rely on this report.

If you are a party other than Canterbury Bankstown Council, SINC Solutions Pty Ltd owes you no duty (whether in contract, tort, under statute or otherwise) with respect to or in connection with this report or any part thereof; and will have no liability to you for any loss or damage suffered or costs incurred by you or any other person arising out of or in connection with the provision to you of this report or any part thereof however any such loss or damage is caused including, but not limited to, as a result of negligence but not as a result of any fraud or dishonesty of SINC Solutions Pty Ltd.

If you are a party other than Canterbury Bankstown Council and you rely upon this report or any part thereof, you do so entirely at your own risk.

SINC Solutions Pty Ltd has considered and relied upon information that is believed to be reliable, complete and not misleading. Nothing in this report should be taken to imply that SINC Solutions Pty Ltd has verified any information supplied or have in any way carried out an audit of any information supplied other than as expressly stated in this report. The statements and findings included in this report are made in good faith and in the belief that such statements and findings are not false or misleading. SINC Solutions Pty Ltd's findings are based solely on the information set out in this report. SINC Solutions Pty Ltd reserves the right to amend any findings, if necessary, should any further information become available.

## Attachment E – Review Process

SINC Solutions Pty Ltd was requested to undertake the review of statements made under parliamentary privilege in relation to the City of Canterbury Bankstown Council officials. In relation to the investigation procedures as they applied to the review of those statements, the following information was sourced and reviewed:

1. Documentary records of Council were sourced either directly from Council's website (<http://www.cbccity.nsw.gov.au>) including but not limited to, 'Council Meetings, Reports and Committees'; 'policies and codes'; 'planning for the city'; and the 'engagement' pages. It should be noted the website holds Council meeting records for Canterbury Bankstown Council to 25 May 2016 (the first meeting post amalgamation). It also contains Council meeting records for the former Bankstown City Council. The records were accessed for the relevant date of an event and or content from engagement and planning documentation as detailed in the report.
2. Extensive documentary information from Council planning staff including documentation from the Greater Sydney Commission and the Department of Planning and Environment.
3. Documentation Information was sourced from Hall & Wilcox Lawyers in relation to their probity and governance related services as they applied to the review.
4. Documentary and audio information from Council's Governance area in relation to the Governance information including relevant Council policies; Local Planning Panels; and Disclosure Returns relating to Council officials.
5. Confidential documentation in relation to correspondence to/from the Independent Commission Against Corruption as detailed (without compromising confidentiality) in the report. Other confidential documentation as prescribed under section 10A of the Local Government Act 1993.
6. Independent Urban Design Review undertaken by the Department of Planning and Environment for 1-17 Segers Avenue, Padstow
7. NSW Parliament – Hansard  
<https://www.parliament.nsw.gov.au/hansard/Pages/home.aspx?s=1>
8. Australian Securities and Investment Commission information
9. Open source data
10. Specific written questions were provided to Council officials and where relevant their responses have been included in the report.