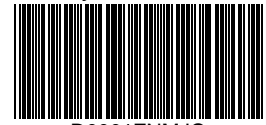




Filed: 24 July 2024 7:59 PM



D0001ZNMJQ

Form 4A, 4B  
Rule 6.2

## SUMMONS

### COURT DETAILS

|             |   |
|-------------|---|
| Court       | Land and Environment Court of New South Wales |
| Division    | Class 4                                       |
| Registry    | Land and Environment Court Sydney             |
| Case number | 2024/00272372                                 |

### TITLE OF PROCEEDINGS

|                       |  |
|-----------------------|--|
| First Applicant       | LIVERPOOL CITY COUNCIL<br>ABN 84181182471                    |
| First Respondent      | Ron Hoenig   |
| Second Respondent     | Brett Whitworth  |
| Number of respondents | 5<br>Refer to Party Details at rear for full list of parties |

### FILING DETAILS

|                                |                     |
|--------------------------------|---------------------|
| Filed for                      | Applicant[s]        |
| Legal representative           | Megan Lesley Hawley |
| Legal representative reference |                     |
| Telephone                      | 02 8235 9700        |
| Your reference                 | LIV24003            |

### HEARING DETAILS

This matter has been listed for Class 4 Directions Hearing at Land and Environment Court Sydney on 6 September 2024 at 09:15 AM.

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Summons (e-Services), along with any other documents listed below, were filed by the Court.

Summons (UCPR form 4A/4B/84/85) (LIV\_LIV24003\_050.pdf)

[attach.]

Form 85 (version 3)  
UCPR 6.2, 59.4

## SUMMONS (JUDICIAL REVIEW)

### COURT DETAILS

|             |   |
|-------------|---|
| Court       | Land and Environment Court of New South Wales |
| Division    | Class 4                                       |
| Registry    | Land and Environment Court Sydney             |
| Case number |   |

### TITLE OF PROCEEDINGS

|                   |   |
|-------------------|---|
| Applicant         | <b>Liverpool City Council</b>   |
| First Respondent  | <b>Minister for Local Government</b>  |
| Second Respondent | <b>Brett Whitworth, in his capacity as delegate of the Departmental Chief Executive, Office of Local Government</b> |
| Third Respondent  | <b>Kiersten Fishburn in her capacity as Departmental Chief Executive, Office of Local Government</b>                |
| Fourth Respondent | <b>Ross Glover in his capacity as Commissioner of a Public Inquiry into Liverpool City Council</b>                  |
| Fifth Respondent  | <b>State of New South Wales</b>   |

### FILING DETAILS

|                                |  |
|--------------------------------|--|
| Filed for                      | Applicant                                |
| Legal representative           | Megan Hawley of Lindsay Taylor Lawyers   |
| Legal representative reference | LIV24003                                 |
| Contact name and telephone     | Megan Hawley (02) 8235 9703              |
| Contact email                  | Megan.Hawley@lindsaytaylorlawyers.com.au |

### HEARING DETAILS

This summons is listed at [time, date and place to be inserted by the registry unless otherwise known].

### TYPE OF CLAIM

Local government law - judicial review/enforcement

### ORDERS SOUGHT

- 1 A declaration that the Second Respondent, in conducting an investigation under s. 430 of the *Local Government Act 1993* (the Act), had no power to make an interim report before the conclusion of the investigation (the interim report).

- 2 A declaration that in reporting adversely about the Applicant and individuals in the interim report, the Second Respondent failed to observe the requirements of procedural fairness and exhibited actual or apprehended bias.
- 3 A declaration that in publishing the interim report, the First, Second and Third Respondents exhibited actual bias or apprehended bias.
- 4 An order setting aside the interim report.
- 5 An order disqualifying the First, Second, and Third Respondents from taking any further steps in reporting on the results of the investigation.
- 6 An order setting aside the First Respondent's decision to appoint the Fourth Respondent as Commissioner to hold a public inquiry under s. 438U of the Act into Council.
- 7 Injunctions restraining the Second and Third Respondents from reporting on the s. 430 investigation, the Fourth Respondent from conducting the public inquiry, and the First Respondent from suspending Council under s. 438W, postponing the election of Council under s. 318B(1) and appointing an administrator under s. 438Y.
- 8 The First, Second, Third and Fifth Respondents by themselves or by their servants or agents, or howsoever, be restrained from publishing or causing to be published in any form, or maintaining online for downloading, or uploading so as to make available for publication online the interim report and any other matter to the same purport or effect as the interim report.
- 9 A mandatory injunction requiring the First, Second, Third and Fifth Respondents within 24 hours of this order to delete from all website, libraries and other record depositories the interim report, and within 7 days to take all practicable steps to cause the interim report to be taken down from all websites and servers on which it is displayed, accessible or hosted, whether or not owned by or under the control of those Respondents.
- 10 Further or other orders.
- 11 Costs.

## DETAILS OF DECISION

- 1 The decision makers were the First, Second and Third Respondents.
- 2 The decisions to be reviewed are:
- a. the decision of the First Respondent to appoint the Fourth Respondent to hold a public inquiry under s. 438U of the Act;
  - b. the proposed decisions of the First Respondent:

- i. to postpone the 2024 elections to the Applicant under s. 318B(1) of the Act;
- ii. to suspend the Applicant under s. 438W of the Act;
- iii. to appoint an administrator to the Applicant under s. 438Y of the Act;
- c. the decision of the Second Respondent to make the interim report;
- d. the proposed decision of the Second Respondent to report on the investigation into the Applicant;
- e. the decisions of the First, Second and Third Respondents to publish the interim report.

3 The Applicant seeks relief from the whole of the decisions.

## GROUNDS

- 1 On 6 May 2024 the Second Respondent as delegate of the Third Respondent determined that there should be an investigation under s. 430 of the Act into those aspects of the Applicant set out in the Terms of Reference (the investigation) and authorised Brad Wade, Roger North and Martin Bass to conduct the investigation (the investigators).
- 2 On 11 July 2024 the Second Respondent made an interim report to the First Respondent of the investigation, before the completion of the investigation.
- 3 On 18 July 2024, on the basis of the interim report, the First Respondent appointed the Fourth Respondent to hold a public inquiry into the Applicant in accordance with terms of reference.
- 4 On 18 July 2024, the First Respondent notified the Applicant that he intended to postpone the September 2024 Council elections under s. 318B(1) of the Act, to suspend the Applicant under s. 438W and appoint an administrator under s. 438Y of the Act, and invited the Applicant to make any submissions to him by 26 July 2024.
- 5 There was no power to report on the investigation until its completion.
- 6 The report made serious allegations against the Applicant and at least 16 individuals, including findings of illegal and improper conduct.
- 7 None of those allegations and the material (if any) on which they were based had been notified to the Applicant or those individuals, and no opportunity was afforded to respond to them.

8 None of the individuals identified by name or office in the report (the individuals) against whom details of the allegations had been made had been interviewed by the investigators, with the exception of the Mayor, but none of the details of the allegations against him which were published in the report had been put to him in the interview, or in any other way.

9 The First, Second and Third Respondents published the report on 18 July 2024.

Particulars

- a. The Second and Third Respondents caused or permitted the publication of the report on the website of the Office of Local Government.
- b. The First Respondent published a press statement on 18 July 2024 with an electronic link to the report on the website.

10 The First, Second and Third Respondents owed a duty of procedural fairness to the Applicant and the individuals which required them to ensure that no report of the investigation was made or published without first notifying them of any adverse material or proposed findings and affording an opportunity to address the allegations against them.

11 The report was made and published in breach of the Act:

- a. the only power to make the report was under s. 433 to report the results of the investigation;
- b. there was no power to publish that, or any other report;
- c. the investigation had no results as it was incomplete;
- d. the report itself was made and published in breach of the duty of procedural fairness.

12 The power to conduct and report on an investigation under s. 430 is subject to an implied condition to act reasonably, impartially and without bias.

13 In making and publishing the report, the Second Respondent had acted unreasonably and displayed partiality and bias against the Applicant and the individuals.

14 Alternatively, a reasonable observer might think that the Second Respondent might not act without bias against the Applicant in making a report of the results of the investigation.

15 The Second Respondent is disqualified from completing the investigation and reporting its results under s. 433 of the Act.

16 In breach of the Act, the First Respondent has acted unreasonably and further or alternatively, has taken into account an extraneous consideration, being the interim report, in appointing the public inquiry.

- 17 In threatened breach of the Act, the First Respondent has notified the Applicant that his intended decisions to postpone the election and suspend Council will be substantially or wholly based on the interim report, or on its findings.
- 18 In publishing the interim report and relying upon it for decision-making, the First Respondent has acted with partiality and exhibited actual or apprehended bias and is disqualified from exercising his powers to appoint the public inquiry, postpone the election and suspend the Applicant.

Particulars of partiality and bias of the First Respondent

- a. The First Respondent is a barrister and has practised as a legal practitioner, including as a Public Defender, since 1981. For 32 years he was a Councillor and for most of that time Mayor of Botany Bay City Council. He must have known that the interim report was prepared in breach of the requirements of procedural fairness, and if published would traduce reputations to the detriment of the Applicant and the individuals, yet participated in its publication.

**SIGNATURE OF LEGAL REPRESENTATIVE**

This summons does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the Applicant[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

24 July 2024

**NOTICE TO DEFENDANT**

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the Applicant's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

## HOW TO RESPOND

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.nsw.gov.au](http://www.ucprforms.nsw.gov.au) or at any NSW court registry.

## REGISTRY ADDRESS

|                |                                    |
|----------------|------------------------------------|
| Street address | 184 Philip Street, Sydney NSW 2000 |
| Postal address | GPO Box 3 Sydney NSW 2001          |
| Telephone      | 1300 679 272                       |

[on separate page]

**PARTY DETAILS****PARTIES TO THE PROCEEDINGS****Applicant**

Liverpool City Council Applicant

**Defendant[s]****Minister for Local Government** First Respondent

[repeat as required for each additional defendant]

**Brett Whitworth, in his capacity as delegate of the Departmental Chief Executive, Office of Local Government** Second Respondent**Kiersten Fishburn in her capacity as Departmental Chief Executive, Office of Local Government** Third Respondent**Ross Glover in his capacity as Commissioner of a Public Inquiry into Liverpool City Council** Fourth Respondent**State of New South Wales** Fifth Respondent**FURTHER DETAILS ABOUT APPLICANT****Applicant**

Name Liverpool City Council  
 Address Civic Tower  
 50 Scott Street  
 Liverpool New South Wales 2170

**Legal representative for Applicant**

Name Megan Lesley Hawley  
 Practising certificate number 21824  
 Firm Lindsay Taylor Lawyers  
 Contact solicitor Megan Lesley Hawley  
 Address Level 18 Suite 1  
 420 George Street  
 Sydney NSW 2000  
 Telephone (02) 8235 9700  
 Email Megan.Hawley@lindsaytaylorlawyers.com.au  
 Electronic service address Megan.Hawley@lindsaytaylorlawyers.com.au



**DETAILS ABOUT RESPONDENTS****First Respondent**

Name Minister for Local Government  
Address 52 Martin Place  
Sydney NSW 2000

**Second Respondent**

Name Brett Whitworth, in his capacity as delegate of the  
Departmental Chief Executive, Office of Local  
Government  
Address Office of Local Government  
5 O’Keeffe Avenue  
Nowra NSW 2541

**Third Respondent**

Name Kiersten Fishburn in her capacity as Departmental Chief  
Executive, Office of Local Government  
Address Office of Local Government  
5 O’Keeffe Avenue  
Nowra NSW 2541

**Fourth Respondent**

Name Ross Glover in his capacity as Commissioner of a Public  
Inquiry into Liverpool City Council  
Address 9 Wentworth Chambers  
Level 9 180 Phillip Street  
Sydney NSW 2000 Australia

**Fifth Respondent**

Name State of New South Wales  
Address Crown Solicitor’s Office  
60-70 Elizabeth Street, Level 4  
Sydney NSW 2000