

MODIFICATION OF CONSENT REPORT – 328/99DACC (S96057/14) - PROPOSED MODIFICATION TO THE MAXIMUM NUMEBR OF DOGS WITHIN AN ANIMAL BOARDING ESTABLISHMENT, Lot 1 DP 501973 - 74 GEORDIE STREET LITHGOW NSW 2790

1. PROPOSAL

Council is in receipt of a modification of development consent application. The modification seeks to modify condition 2 on the original consent that stipulates the maximum number of dogs permissible on the property.

Condition 2 states:

“The development be limited to 20 dogs only.”

The proposal as originally submitted to Council made application to modify this condition to allow for the boarding of up to 100 dogs on the property. Due to Council officer’s concerns with over-development of the site and noise concerns, the application has been reduced to 50 dogs (30 additional).

The additional 30 dogs are proposed to be located in an additional new kennel block. The Statement of Environmental Effects states that the additional kennel block will be situated in proximity to the existing kennel block.

The kennel block will consist of brick exterior walls, colourbond roof with weldmesh internal walls. The floor would be a concrete slab.

The rear of the site is shown in the photo below:



The property consists of a brick veneer home on 2.3 hectares with dog kennels and dog exercise yards. A pet supply business is also operating at the premise. Farmers Creek and the railway line adjoin the property.

The original approval was granted by the full Council, for “an animal boarding or training establishment” for up to 20 dogs. The development required the construction of a brick kennel with 20 compartments, an exercise yard and a waste disposal

facility consisting of an effluent disposal system whereby liquid effluent goes to the sewer and solid effluent is to be collected and taken to the Lithgow tip.

The original application was assessed as having 6 kennels for greyhound racing dogs and 14 kennels for general boarding. The proposed additional 30 kennels are expected to be for general boarding purposes.

The application will be assessed under Section 96 1(A) of the *Environmental Planning and Assessment Act 1979*.

2. SUMMARY

To assess and recommend determination of Section 96 1(A) Modification of Consent No. S96057/14 of 328/99DACC. The recommendation will be for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 1 DP 501973 and Lot 1 DP 778953
Property Address : 74 GEORDIE STREET LITHGOW NSW 2790

4. DETAILS OF CURRENT APPROVAL

The original approval was granted by the full Council, for “an animal boarding or training establishment” for up to 20 greyhound dogs and kennels. The development required the construction of a brick kennel with 20 compartments, an exercise yard and a waste disposal facility consisting of an effluent disposal system whereby liquid effluent goes to the sewer and solid effluent is to be collected and taken to the Lithgow tip.

The consent was issued on 1 November 1999.

5. PERMISSIBILITY: The development was originally permissible in the zone under Clause 9 of Council’s LEP 1994 in which an ‘animal boarding and training establishment is permissible in the 1(a) Rural (General) zone. This permissibility is not proposed to change as part of this modification.

It is considered that the proposal is consistent with the aims and objectives of the 1(a) Rural (General) zone.

Council’s LEP 1994 defines the development as:

Animal boarding and training establishment means a place used for the commercial boarding, breeding, keeping or training of animals, and includes a riding school.

5.1 POLICY IMPLICATIONS (OTHER THAN DCP’s)

Policy 7.7 Calling in of Development Applications and or Development Application/Construction Certificates by Councillors

4. This policy does not apply to applications to modify development consents unless the modification represents a significant departure from the original application; would involve issues the subject of an objection with the original application; or where

the modification application itself has been called in under the processes outlined in this policy.

The original application was approved by the elected Council (ordinary Meeting) on 1 November 1999 (Minute Number 828).

As the original application was approved by Council and the modification is considered to represent a significant departure, the application is required to be determined at a Council meeting.

Policy 7.5 Notification of Development Applications

4. Notification of Section 96 Application

4.2 Section 96(1A) modifications that involve minimal environmental impact will not be notified unless in the opinion of Council, the proposed modification has the potential to increase the impact of the development on adjoining land.

No objections were received to the original application. As the development is proposing to intensify the existing usage, the development was referred to notified and placed on public display for a period of 14 days.

During this period one submission was received. The comments are summarised later in this report and relate to parking concerns.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

Lithgow Council's Section 94A Contributions Plan 2012

Lithgow Council's Section 94A Contributions Plan 2012 is not applicable to this application as the expected cost value is below \$100,000.

5.3 LEGAL IMPLICATIONS

5.3.2 Environmental Planning and Assessment Act 1979- Section 96 (1A)

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

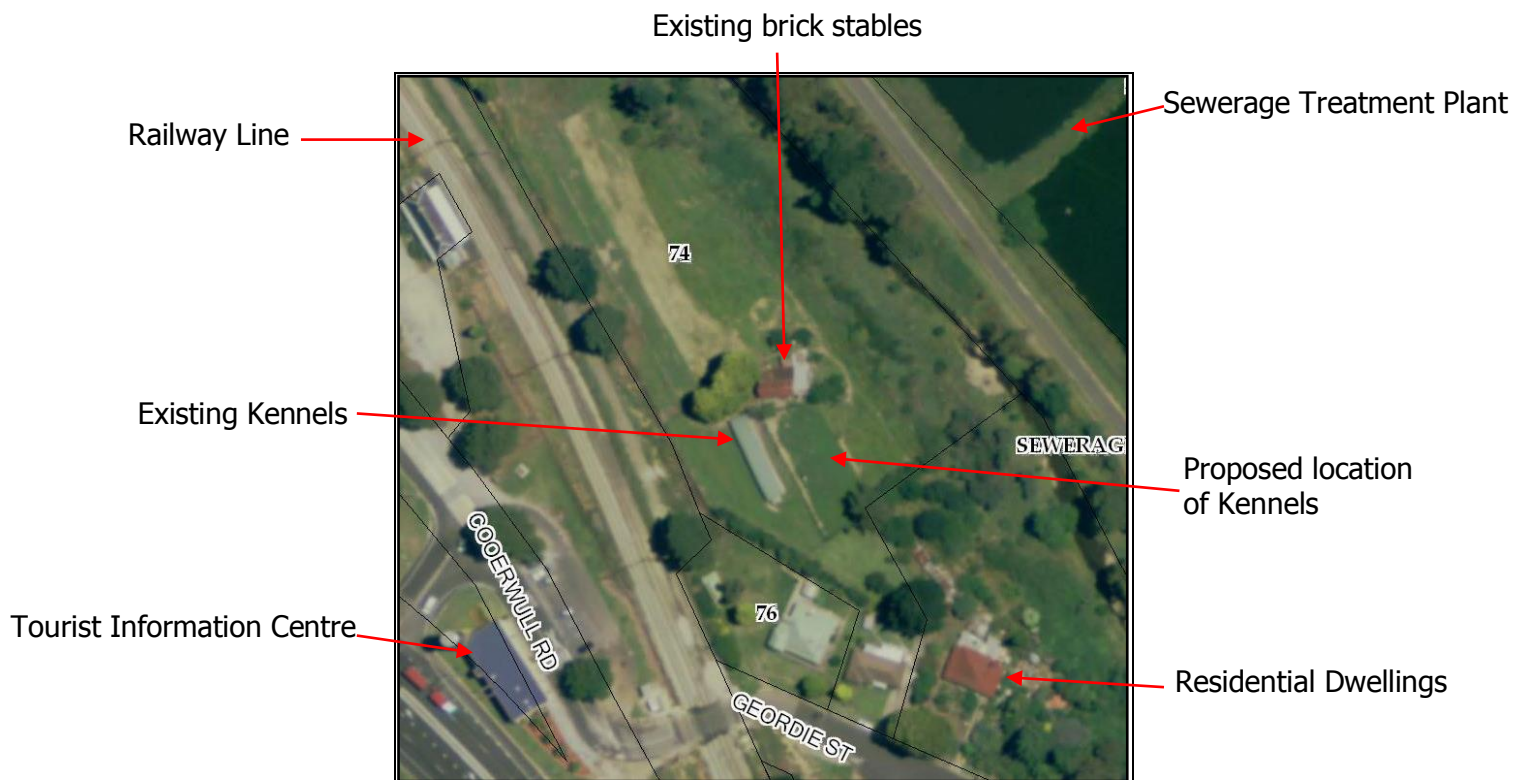
Comment: The proposal is for an additional 30 dogs on a 2.3 hectare property.

The property is within proximity to the Council operated Sewerage Treatment Works, Lithgow Waste Disposal Facility and the Lithgow Animal Pound.

Council's Animal pound accommodates 11 kennels.

In comparison to other light industrial uses the development is considered to be minor in terms of traffic, visual impacts, dust, soot, ash etc. Waste water would be managed through a trade waste system with all waste products being suitably disposed of. Conditions relating to waste were a condition on the original consent with trade waste being controlled by way of additional conditions if the application is approved.

An aerial view of the property and adjoining landuses is shown in the map below:



The development was referred to Council's Environmental Officer and Building Officer for comments. These comments are found later in this report. The development was also referred to adjoining neighbours and placed on public display. During the notification period one submission was received. Their concerns are detailed later in this report.

Any Environmental Planning Instruments

Lithgow City Local Environmental Plan 1994

The original application was assessed in accordance with the provisions of Lithgow's Local Environmental Plan 1994 and was found to be compliant. The modification does not require any further assessment under the LEP.

State Environmental Planning Policies

The original application was assessed in accordance with the provisions of the relevant SEPP's, and was found to be compliant. The modification does not require any further assessment under any SEPP.

Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Council's Draft Local Environmental Plan 2013

Council's Draft LEP 2013 – Compliance Check	
Clause	Compliance
Part 2 IN2 Light Industrial zoning table	No

Comment: Council's Draft LEP 2013 defines the development as:

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

Although the development is not permissible under Council's Draft LEP 2013, the development meets the objectives of the zone. The objectives being:

Zone 1N 2 Light Industrial

1 Objectives of the zone

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on any other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To maintain or improve the water quality of receiving water catchments in accordance with the NSW water quality objectives.

The development would provide a service and employment to the Lithgow community as well as having minimal impact on the water quality in the area. The development is not expected to impact Council operated Sewerage Treatment Works, Lithgow Waste Disposal Facility and the Lithgow Animal Pound.

Should any further industrial developments be constructed in the future, the development is considered to have minor impacts.

Impacts such as noise to the surrounding residential dwellings and over development of the site are provided in more detail later in this report.

The property contains an existing operation that involves the manufacture of sale of bedding, rugs and food for dogs (DA 32/97).

As the original application was assessed under Council's LEP 1994, the modification is permissible in the zone.

Any Development Control Plan

Animal Boarding and Training Establishments Development Control Plan

Animal Boarding and Training Establishments DCP – Compliance Check	
Clause	Compliance
Part B Site Selection	Yes
Waste Management	Yes
Water Management	Yes
Impact of Other Development	No

Comment: Council's Animal Boarding and Training Establishments Development Control Plan states:

10. The maximum number of dogs that may be kept on a rural holding of land in the same ownership as the development is 5 dogs per hectare. The maximum number of dogs that may be kept on a rural property for commercial boarding or training purposes is 100.

11. The maximum number of dogs that may be kept on a holding of land in the same ownership as the development in other permissible zones is a maximum of 20 dogs.

The original application was assessed as being within the 1(a) Rural Zone. Twenty (20) Dogs were limited on the consent due to the proximity to surrounding land uses and that six (6) of the dogs were to be grey hounds and fourteen (14) for general dog boarding.

Council has concerns with noise impacts to adjoining residential premises as the property contains an area of 2.3 hectares.

The following condition is on the original consent relating to noise:

The noise associated with the kennel operation is not to exceed 5Db(a) above the background noise at the property boundary. Should any complaint be received by Council, the applicant shall be responsible for obtaining a report from an independent noise consultant to ensure compliance with this condition.

Council has not received any complaints to date relating to noise impacts therefore this condition is proposed to remain on the consent if the application is approved.

Water and waste management conditions were also on the original consent and are proposed to remain.

A colourbond fence is also proposed to be constructed around the property. This is expected to screen the development and reduce noise to adjoining residents. It would be conditioned on the consent that the colourbond fence would be required to be erected on the property boundary between the residential dwellings and the kennels prior to occupation of the new kennels.

Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

None.

Any matters prescribed by the regulations that apply to the land

The original application was assessed in accordance with the provisions of the Regulations, and was found to be compliant. The modification does not require any further assessment under the Regulations.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Noise: The Statement of Environmental Effects states:

“Noise from dogs barking may occur however kennels are located at a distance from neighbouring homes. The kennels are enclosed and the surrounding properties include the dog pound and the sewerage works. The Tic Tac Factory utilise heavy vehicles along Geordie Street, the railway line adjoins the property. These all have noise impacts with loud bells and horns”.

As two dwellings are the immediate neighbours to the proposed development (see photo 2), Council requested further information as to how noise would be managed. The applicant provided the following response:

The kennels will be constructed of brick walls with a colourbond roof. The front of the buildings will include a colourbond roller doors that will be closed at night. The proposed buildings will be facing towards each other. A colourbond fence will surround the buildings with additional trees to be planted to assist in shielding any noise and to enhance the environment.

No objection has been received from neighbours in relation to noise nuisance concerns

If the development is approved then the following conditions would be placed on the consent:

- 1. The kennels are to be constructed of brick walls to minimise noise in the vicinity.*
- 2. A landscaping plan is to be submitted to Council for approval prior to the issue of the Construction Certificate.*
- 3. The proposed colourbond fence and trees is to be constructed and planted prior to an Occupation Certificate is given for the additional kennels.*

The neighbours to the original application had no objections at the time of the original approval. A restaurant/cafe was originally within the vicinity with Council having noise concerns. It is to be noted that the restaurant/cafe has ceased operating.

Safety and Security: The property is surrounded by residential dwellings at the front and the railway line at the side of the property. The applicant proposes to construct a colourbond fence around the kennels. This is expected to provide the facility with satisfactory security measures.

Adjoining Landuses: The property adjoins, two residential dwellings, the Lithgow Waste Disposal Facility, Lithgow dog pond and sewerage treatment plant. Adjacent to the property is the railway line.

The development is considered to be compatible to the surrounding landuses subject to conditions being imposed on the consent to minimise impacts to the residential dwellings.

Waste: The original application stated that the disposal of animal waste is to be dealt with in the following manner:

- Liquid effluent goes to the sewer and solid effluent is to be collected and taken to the Lithgow tip.

Additional conditions would be imposed on any consent to ensure that waste is appropriately disposed of. A liquid trade waste application is to be also submitted to Council for the additional dogs and associated kennels.

Social and economic Impacts: The applicant made the following statement:

The existing kennels have been constructed with total regard for the dogs and surrounding environment. This is the only dog boarding facility in Lithgow and needs to expand to be able to cater for the demands of the community.

The applicant believes that the property is in an ideal location to provide a necessary service close to town for the people of Lithgow as well as providing employment for 2-3 locals.

Council is satisfied that the development would provide a service to the Lithgow area as well as providing a small amount of employment and economic benefits such as the construction of the kennels.

The development is expected to have a positive social and economic benefit to the area.

Parking, access and traffic impacts: parking for customers collecting and delivering the dogs is proposed to be via an existing separate driveway from the driveway for the garage (attached to the dwelling) and from Geordie Street. A section of the railway land is available for parking adjacent to the property. This is currently utilised for larger trucks that are stopping at the property to pick up dog food etc at the business carried out within the garage. Traffic is expected to be minimal as the vehicles parked at the property are expected to be for a short time period.

Larger trucks would have access to park on the adjacent railway land and would be parked for a short period of time. This is considered satisfactory for the development due to the time frame of the parked vehicles and due to the limited street parking in front of the property.

The Suitability of the site for the development

The original application was assessed in terms of site suitability and was found to be suitable. The modification does not require any further assessment of suitability.

Any submissions made in accordance with this Act or the Regulations

Given that the proposed amendment is for the additional number of dogs to be boarded at the property, the modification was referred to Council's Environment Officer, Trade Waste Officer, and Council's Building Surveyor. The application was

also re-notified to adjoining neighbours and placed on public display for a period of 14 days.

NEIGHBOUR NOTIFICATION

During the notification period, one submission was received with the following concern:

1. Traffic would be increased and there is limited parking in the vicinity for the dropping off and picking up of dogs. This would make it hard to see on-coming traffic when reversing from adjoining driveways.

Applicant's Comment: *The kennels will be accessed by a separate driveway that will run from the front boundary to the kennels at the rear. Therefore picking up and dropping of dogs would take place on the property and not in the street. Vehicles will be able to park and turn around easily on the property near the kennels. There will be no impediment whatsoever to the neighbour's vision when they leave their driveway.*

Geordie Street already carries already carries a lot of traffic.

Council Comment: Council is satisfied with the applicant's response that the majority of the vehicles dropping off and picking up dogs would be via the existing driveway. Larger trucks would have access to park on the adjacent railway land and would be parked for a short period of time. This is considered satisfactory for the development due to the time frame of the parked vehicles and due to the limited street parking in front of the property.

COUNCIL'S ENVIRONMENTAL OFFICER

Council's Environmental Department has no objection to the proposed development subject to the original conditions remaining on the consent and to include the following condition:

1. The development is to comply with the NSW Animal Welfare Code of Practice No 5.

COUNCIL'S TRADE WASTE OFFICER

Council's Liquid Trade Waste Officer has no objection to the proposed development subject to the following conditions being included on the consent:

11. A Liquid Trade Waste Application is required to be submitted for the operation of Dog Kennels.
12. All liquid trade waste shall pass through screens or a basket waste arrestor (where appropriate) before being discharged to the sewerage system.
13. Animal droppings, litter and any waste disposal products shall not be disposed of to the sewerage system.
14. Animal waste disposal units are not allowed to be connected to the sewerage system.
15. Spills and leaks should be cleaned up using dry cleaning methods.

16. Floors are to be dry swept prior to washing or hosing of the kennels.

17. Measures shall be taken to prevent the contamination and ingress of stormwater into the sewerage system. Areas where stormwater may become contaminated should be bunded and roofed over.

COUNCIL'S BUILDING SURVEYOR

Should Council consent to the development a Construction Certificate shall be obtained for the structures.

The consent should contain conditions for proper management of waste, management of stormwater and noise.

The public interest

The original application was assessed in terms of the public interest. The proposed modification does not change whether the development is within the public interest.

6. DISCUSSION AND CONCLUSIONS

The application has been thoroughly assessed under Section 96 1(A) of the *Environmental Planning and Assessment Act 1979* and is appropriate for recommendation of approval subject to conditions.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT the Section 96 Modification of Consent application S96057/14 associated with 328/99DACC be approved subject to the following amendments and additions. These modified and additional conditions are also outlined in Schedule A:

The following condition be modified to:

2. The development be limited to a maximum of 50 dogs and kennels.

Additional Conditions include the following:

10. The kennels are to be constructed of brick walls to minimise noise in the vicinity.

11. A landscaping plan is to be submitted to Council for approval prior to the issue of the Construction Certificate.

12. The proposed colourbond fence and trees is to be constructed and planted between the residential dwellings and the kennels prior to an Occupation Certificate is given for the additional kennels.

13. A Construction Certificate is required to be submitted to Council for the additional kennels.

14. The development is to comply with the NSW Animal Welfare Code of Practice No 5

Liquid Trade Waste

15. A Liquid Trade Waste Application is required to be submitted for the operation of Dog Kennels.

16. All liquid trade waste shall pass through screens or a basket waste arrestor (where appropriate) before being discharged to the sewerage system.

17. Animal droppings, litter and any waste disposal products shall not be disposed of to the sewerage system.

18. Animal waste disposal units are not allowed to be connected to the sewerage system.

19. Spills and leaks should be cleaned up using dry cleaning methods.

20. Floors are to be dry swept prior to washing or hosing of the kennels.

21. Measures shall be taken to prevent the contamination and ingress of stormwater into the sewerage system. Areas where stormwater may become contaminated should be bunded and roofed over.

Report prepared by: Lauren Stevens

Group Manager of Environment and
Development: Andrew Muir

Signed:.....

Signed:.....

Dated:.....

Dated:.....

REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts..
- To ensure there is no unacceptable impact on the water quality.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

ADMINISTRATIVE CONDITIONS

1. Prior to the commencement of works for the kennel the existing operation involving the manufacture of sale of breeding, rugs and food for dogs is to be brought into conformity with Development Consent No. 32/97.
2. **3. The development be limited to a maximum of 50 dogs and kennels.**

-Amended condition as per Section 96 Application S96 057/14.
3. The developer is to maintain the kennels in a clean and hygienic condition at all times.
4. Any animal faeces is to be bagged and taken to the Lithgow tip to an approved disposal area. Alternatively, the applicant may install an appropriate composting facility. Details of either alternative are to be provided to Council prior to implementation.
5. The noise associated with the kennel operation is not to exceed 5Db(a) above the background noise at the property boundary. Should any complaint be received by Council, the applicant shall be responsible for obtaining a report from an independent noise consultant to ensure compliance with this condition.
6. The developer is to obtain written concurrence from the Greyhound Racing Control Board for the development and provide Council with a copy of such concurrence, prior to the commencement of construction.
7. The building works are to be inspected during construction, by the Council or by an Accredited Certifier or other suitable qualified person (as applicable) and documentary evidence of compliance with the relevant terms of approval/standards of construction detailed in the Building Code of Australia, is to be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:
 - a) Footings,
 - b) Steel reinforcement,
 - c) Roof frame,
 - d) Final**(Copies of the above stated documentary evidence are to be submitted to the Council upon completion of each specified stage of construction and prior to occupation of the building).**
8. That roof water drainage lines shall be taken to the open drainage easement and be terminated to the satisfaction of Council or the Principal Certifying Authority.
9. That all plumbing and drainage work be carried out by a licensed plumber and drainer and inspected by Council officers.
10. **The kennels are to be constructed of brick walls to minimise noise in the vicinity.**

-Additional condition as per Section 96 Application S96 057/14.

11. **A landscaping plan is to be submitted to Council for approval prior to the issue of the Construction Certificate.**
-Additional condition as per Section 96 Application S96 057/14.
12. **The proposed colourbond fence and trees is to be constructed and planted between the residential dwellings and the kennels prior to an Occupation Certificate is given for the additional kennels.**
-Additional condition as per Section 96 Application S96 057/14.
13. **A Construction Certificate is required to be submitted to Council for the additional kennels.**
-Additional condition as per Section 96 Application S96 057/14.
14. **The development is to comply with the NSW Animal Welfare Code of Practice No 5.**
-Additional condition as per Section 96 Application S96 057/14.

Liquid Trade Waste

15. **A Liquid Trade Waste Application is required to be submitted for the operation of Dog Kennels.**
-Additional condition as per Section 96 Application S96 057/14.
16. **All liquid trade waste shall pass through screens or a basket waste arrestor (where appropriate) before being discharged to the sewerage system.**
-Additional condition as per Section 96 Application S96 057/14.
17. **Animal droppings, litter and any waste disposal products shall not be disposed of to the sewerage system.**
-Additional condition as per Section 96 Application S96 057/14.
18. **Animal waste disposal units are not allowed to be connected to the sewerage system.**
-Additional condition as per Section 96 Application S96 057/14.
19. **Spills and leaks should be cleaned up using dry cleaning methods.**
-Additional condition as per Section 96 Application S96 057/14.
20. **Floors are to be dry swept prior to washing or hosing of the kennels.**
-Additional condition as per Section 96 Application S96 057/14.
21. **Measures shall be taken to prevent the contamination and ingress of stormwater into the sewerage system. Areas where stormwater may become contaminated should be bunded and roofed over.**
-Additional condition as per Section 96 Application S96 057/14.