

**CITY OF MARION  
GENERAL COUNCIL MEETING  
23 September 2008**

**REPORT RELATING TO:  
An Organisation of Excellence**

**Director:** Peter Tsokas, Director City Development  
**Subject:** Development Assessment Panel Processes  
**Reference No:** GC230908F01  
**File No:** 9.33.3.18

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**RECOMMENDATION**

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(a) of the Local Government Act 1999 on the grounds that it relates to the personal affairs of a person (living or dead).



**Mark Searle**  
Chief Executive Officer

1. That Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following Council officers (Mark Searle, Chief Executive; Peter Tsokas, Director City Services; Sarah Philpott, Director Community and Corporate Development; Kathy Jarrett, Manager Governance; Susan Smith, Team Leader Executive Support, and Anna Minges, Media Adviser), be excluded from the meeting as the Council considers that the requirement for the meeting to be conducted in a place open to the public has been outweighed in circumstances where the Council will receive and consider information pertaining to the personal affairs of a person (living or dead).

## **STRATEGIC OBJECTIVES:**

*EG1.4 Support Council in leading the delivery of the Community Vision through mechanisms such as development of effective protocols, Council reporting and Elected Member Development.*

## **REPORT OBJECTIVE AND EXECUTIVE SUMMARY:**

The purpose of this report is to seek Council's input on the manner in which to proceed with addressing a possible breach of the Minister for Planning Code of Conduct under section 21A of the Development Act 1993.

## **RECOMMENDATIONS:**

**That:**

- 1. Council provide guidance as to the manner in which to proceed with addressing a possible breach of the Minister for Planning Code of Conduct under section 21A of the Development Act 1993.**
- 2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, the minutes arising from this report be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). This confidentiality order will be reviewed at the General Council Meeting in December 2008**

## **DUE DATES:**

Recommendation 1.

23 Sept 2008

## **BACKGROUND:**

On 2 September 2008 Councillor Steven Mudge forwarded an email to members of the City of Marion Development Assessment Panel advising that he:

*"... will be declaring a conflict with regard to 7 Griffiths Road. I'm at number 12 Griffiths Rd and the approval of this development, as i've probably mentioned to some of you previously, was my motivation to run for Council. Needless to say I was unimpressed by the approval process and the disregard for the amenity of the street and neighbouring properties. You could also add my name in the third para there somewhere after notified....*

*Without stepping over too many more lines. I'm sure you'll make a sensible decision with regard to the application."*

The matter with regard to 7 Griffiths Road was listed for consideration at the Development Assessment Panel meeting to be held on Wednesday 3 September 2008.

## DISCUSSION

The Development Assessment Panel meeting was held on 3 September 2008 and before the matter relating to 7 Griffiths Road was considered, Councillor Mudge formally declared his conflict of interest and left the meeting

Prior to the DAP's consideration of the matter, and in my role as Public Officer, I sought the advice of Michael Kelliedy from Wallman's Lawyers regarding the appropriateness or otherwise of Councillor Mudge's comment in the last line of his email. An extract from the legal advice received follows:

*"The application in question relates to land in close proximity to his residence and an open admission that this very issue was his primary reason for standing for Council in the 2006 general election. Unfortunately, in declaring his conflict of interest by email communication to all members of the CDAP, Cllr Mudge has taken the opportunity to proffer additional gratuitous comments about the development application in a manner that might objectively be regarded as a representation upon the development application.*

*The Development Act, at Section 56A(7), provides that a member with an interest must disclose the nature and extent of the interest to the CDAP (this ordinarily occurs at a meeting of the CDAP rather than by email communiqué) and must then absent themselves from the meeting so as not to take part in any deliberations or decision making in relation to that matter.*

*In addition, the Minister's Code of Conduct under Section 21A of the Development Act, makes provisions for CDAP members not to misuse or derive any benefit from their position, not to partake in any of the assessment processes where the member has an interest, to act impartially and/or not to express an opinion on a development assessment application outside of a formal CDAP meeting.*

*As you will see from the above, the actions of Cllr Mudge in emailing personal views (query representation) to the other CDAP members is a breach of the Development Act in terms of his ability to make a representation on this matter, is contrary to the intent of the conflict of interest requirements of the Act and otherwise breaches various provisions of the Minister's Code. The question which arises for consideration by the CDAP, as a condition precedent to the determination of the development application in question, is whether the actions have Cllr Mudge can fairly be said to have tainted the process to the extent that the CDAP is now in a position whereby the members are unable to (and be seen to) objectively determine the application having regard only to relevant considerations. In all things, the CDAP members must also be aware of taking any actions that might objectively be said to be detrimental to the applicant as the innocent affected party in the circumstances."*

Mr Kelliedy went on to recommend that relevant Council officers meet with the DAP members before consideration of the application to discuss whether DAP members are able to (and feel sufficiently comfortable to) proceed with consideration of the application upon the basis that they will have no regard to Councillor Mudge's views. Such a discussion occurred in the DAP meeting following Councillor Mudge declaring his conflict of interest, with the result being an indication from DAP members that they had formed their opinions on the application without due regard to Councillor Mudge's email. The DAP proceeded to determine the matter in line with the officer's recommendation.

Although the DAP determined the matter in line with the officer's recommendation (and the applicant's request), Mr Kelliedy also noted in his advice that if *"the decision made is one that is not acceptable to the applicant there is a real possibility that amongst any ground of challenge will likely be that the process has been tainted by the actions of Cllr Mudge such that there is at least an apprehension of bias on the part of the CDAP"*.

Irrespective of the outcomes of the Development Application, as Public Officer of Council's Development Assessment Panel I am referring this matter to Council in light of a possible breach of the Minister's Code of Conduct. This referral is by virtue of clause 10.3 of Council's DAP Constitution (see Appendix 1). Accordingly, I am seeking Council's input as to a process that could be adopted in investigating the matter further.

A copy of the Minister's Code of Conduct is provided at Appendix 2 for information. Your attention is drawn specifically to clause 2.3 – 2.7 of the Code of Conduct with respect to this matter.

A possible process could involve referring the matter to an appropriate person e.g. legal counsel, myself or another person with the necessary experience and expertise for investigation. Refer also to clause 3 of the Minister's Code of Conduct for details on how to address breaches of the Code.

## **CONCLUSION**

Ensuring ethical practices for all of Council's meetings will increase stakeholder confidence in decisions made. Adopting an appropriate process for dealing with this matter is an important governance practice and due regard to procedural fairness is critical.

**CITY OF MARION  
DEVELOPMENT ASSESSMENT PANEL**

**CONSTITUTION  
(Revised 13 February 2007)**

**1. ESTABLISHMENT**

- 1.1 Pursuant to Section 56A of the Development Act 1993 the City of Marion Development Assessment Panel (“DAP”) is established for the purpose of acting as the “*relevant authority*” in respect of all matters prescribed to it under the Development Act 1993.
- 1.2 This Constitution came into operation on 27 May 2003 (and was amended by resolutions of the Council on 27 July 2004 and 13 February 2007).

**2. FUNCTIONS**

The functions of the DAP are:

- 2.1 to act as a delegate of the Council in accordance with the requirements of the Act;
- 2.2 to provide advice and reports to the Council as it thinks fit on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under the Act; and
- 2.3 to perform other functions (other than functions involving the formulation of policy) assigned to the DPA by the Council.

**3. MEMBERSHIP**

- 3.1 Membership of the DAP comprises seven (7) Members appointed by the Council as follows:
  - 3.1.1 up to three (3) persons who are Elected Members or officers of the Council (“Council Representatives”); and
  - 3.1.2 the balance being persons from the community (“Independent Representatives”), who satisfy the requirements of Section 56(3)(c)(ii) of the Development Act, 1993;
  - 3.1.3 the presiding member must not be a member or officer of the Council;
  - 3.1.4 At least one member of the panel must be a woman and one member must be a man.

(collectively referred to in this Constitution as the “DAP Members”).

- 3.2 Persons referred to in Clauses 2.1 are eligible for membership of the DAP only if:
  - 3.2.1 they have attended Council’s nominated DAP training programme; or
  - 3.2.2 as otherwise agreed by a resolution of the Council.
- 3.3 A Council Representative is not entitled to be re-appointed as a DAP Member for a second successive term unless expressly authorised by a resolution of the Council.
- 3.4 An Independent Representative is entitled to be re-appointed as a DAP Member for successive terms.
- 3.5 The term of office for each DAP Member shall be as determined by Council but in any event shall not exceed 2 years.
- 3.6 A member of the DAP whose term of office expires may nevertheless continue to act as a member of the DAP for a period of up to 6 months until he or she is reappointed or a successor is appointed (as the case may be).
- 3.7 The Presiding Member of the DAP will be chosen by the Council in accordance with Section 56A(3)(b) of the Development Act, 1993.
- 3.8 The Deputy Presiding Member of the DAP will be chosen by the DAP Members.

#### **4. REMOVAL OF A MEMBER/VACANCY OF OFFICE**

- 4.1 The term of office of a DAP Member will become vacant if the member:
  - (i) dies; or
  - (ii) completes a term of office and is not reappointed (subject to clause 3.6 of this constitution);
  - (iii) resigns by written notice to the Council; or
  - (iv) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - (v) is convicted of an indictable offence punishable by imprisonment; or
  - (vi) is removed from office by the Council.

- 4.2 A DAP Member may resign from the DAP by giving the Executive Officer notice in writing to that effect. Such notice takes effect immediately upon receipt by the Executive Officer.
- 4.3 The Council may remove a member of the Panel from office for
- (i) breach of, or failure to comply with, the conditions of appointment; or
  - (ii) misconduct; or
  - (iii) neglect of duty; or
  - (iv) incapacity to carry out satisfactorily the duties of his or her office; or
  - (v) failure to carry out satisfactorily the duties of his or her office; or
  - (vi) failure to declare a direct or indirect personal or pecuniary interest in a matter before the DAP in breach of Section 56A(7) of the Development Act 1993, or
  - (vii) with respect to a DAP member who is not also a member of Council - failure to disclose his or her financial interests in accordance with Schedule 2 of the Development Act 1993;
  - (viii) failure to attend three consecutive meetings of the DAP without the leave of the DAP; or
  - (ix) breach of the DAP code of conduct.
- 4.4 Subject to giving a DAP Member an opportunity to be heard or to make a written submission, the Council may remove a DAP Member upon a charge of misconduct detrimental to the interests of the DAP.
- 4.5 Particulars of a charge of misconduct must be communicated in writing to the DAP Member at least seven days before the meeting of the Council at which the matter will be determined.
- 4.6 The determination of the Council will have immediate effect and must be communicated to the DAP Member in writing.
- 4.7 Should a vacancy in the membership of the DAP occur, the Council will fill that vacancy at the earliest opportunity in accordance with this Constitution (“a Replacement DAP Member”) and all references to DAP Member in this Constitution include a Replacement DAP Member, as applicable.
- 4.8 A Replacement DAP Member shall be appointed to serve the remainder of the term of the DAP Member whose position they have filled and shall enjoy the same rights and obligations as that DAP Member.

- 4.9 A vacancy in the membership of the DAP will not invalidate any decision by the remaining DAP Members, provided a quorum is maintained during meetings.

## **5. TERMS OF REFERENCE**

The DAP:

- 5.1 is responsible for all matters prescribed to it, under Section 56A(2) of the Development Act, 1993.
- 5.2 must act in strict accordance with the Development Act 1993 and the Development Regulations 1993 and with delegations, policies, guidelines and protocols which are relevant to the DAP;
- 5.3 will meet on the first and third week of every month at, on dates and times to be decided by the members of the DAP, subject to there being business to consider;
- 5.4 will meet in the Council Administration Centre at 245 Sturt Road, Sturt or at such other place as the DAP may determine;
- 5.5 has no obligation to report on its decisions to the Council.

## **6. OBJECTIVES**

- 6.1 The primary role and objective of the DAP is to ensure that decisions are consistent with the law and the policy intent of the Development Plan.
- 6.2 A DAP Member should always seek to ensure that their comments are made and voting rights exercised in such a way as to ensure that an application is assessed against the provisions of the Development Plan.
- 6.3 In doing so it is important to note that if a development application is assessed as being seriously at variance with the Development Plan it must not be granted approval.

## **7. NOTICE OF MEETING**

- 7.1 Written notice detailing the date, time and place of a meeting must be given to each DAP Member at least three (3) clear days before the date of the meeting. The notice shall include the agenda for the meeting. Late items may be included in the agenda at a meeting with the leave of the Presiding Member.
- 7.2 The notice may be given by personal delivery to the usual residence of each DAP Member or by post to that address or such other place as authorised in writing by a DAP Member.
- 7.3 A special meeting may be convened by the Presiding Member at any time to consider urgent business by giving not less than forty eight (48) hours written notice to all DAP Members.



## 8. PROCEDURAL REQUIREMENTS

- 8.1 Meetings will be conducted in accordance with the Development Act 1993 and this Constitution.
- 8.2 Meetings will commence on time and as soon as a quorum is present. If a quorum is not present within fifteen (15) minutes of the time for commencement the Presiding Member may either adjourn the meeting for up to thirty (30) minutes to allow a quorum to attend or may adjourn to the next scheduled meeting time and date, or to a special meeting.
- 8.3 A quorum at a meeting of the DAP shall be taken to be four (4) members, ascertained by dividing the total number of members of the panel by 2, ignoring any fraction resulting from the division, and adding 1.
- 8.4 Meetings will be conducted in public except where the DAP resolves to exclude the public in accordance with Section 56A(12) of the Development Act 1993.
- 8.5 Each member of the DAP present at a meeting is entitled to 1 vote on any matter arising for decision and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote. The recording of votes is not mandatory but shall be determined by the Development Assessment Panel.
- 8.6 All DAP Members shall have a deliberative vote and in the event of an equality of votes the Presiding Member shall also have an additional casting vote.
- 8.7 All decisions of the DAP shall be made on the basis of a majority decision of the members present.
- 8.8 A DAP Member having a direct or indirect personal or pecuniary interest in accordance with Sections 56A(7) and (8) of the Development Act 1993 must
  - (i) as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and;
  - (ii) must not take part in any hearings conducted by the panel, or in any deliberations or decisions of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.
- 8.9 In the absence of the Presiding Member, the Deputy Presiding Member will preside at the meeting. If both the Presiding Member and Deputy Presiding Member are absent a DAP Member chosen from those present will preside at the meeting and have all of the powers and duties of the Presiding Member.

- 8.10 If the number of apologies received by the Executive Officer of DAP (“Executive Officer”) indicates that a quorum will not be present at a meeting, the Executive Officer may adjourn the meeting to a specified day and time.
- 8.11 If a meeting is adjourned for want of a quorum, the Executive Officer will record in the minutes the reason for the adjournment, the names of any members present, and the date and time to which the meeting is adjourned.
- 8.12 The Executive Officer is responsible for ensuring that accurate minutes are kept and that they are confirmed by the DAP and signed by the Presiding Member.
- 8.13 On the confirmation of the minutes, the Presiding Member will:
- (i) initial each page of the minutes, which pages are to be consecutively numbered;
  - (ii) place his or her signature and the date of confirmation at the foot of the last page of the minutes.
- 8.14 The Minutes of a DAP must be available within two business days after the adoption by the members of the panel.
- 8.15 The minutes must include the detail of every resolution and any disclosure of an interest pursuant to Sections 56A(7) and (8) of the Development Act 1993.
- 8.16 Insofar as the Development Act 1993 and this Constitution do not prescribe the procedure to be followed at a meeting, the DAP may determine its own procedure. In this regard the DAP will determine a Code of Conduct to regulate its meetings.
- 8.17 The DAP may call for and consider such professional assistance from Council staff and other professional advisors as it deems necessary and appropriate.
- 8.18 The DAP will permit and encourage the active participation of Council staff in attendance and in providing advice to the DAP at a meeting.
- 8.19 A person who has made an application or a representation in relation to a matter is entitled to appear before the DAP and be heard in support of the application or representation, in person or by an agent.
- 8.20 A DAP Member may ask relevant questions of any person appearing before the DAP and each DAP Member may also address the DAP once only in relation to each matter for consideration.
- 8.21 No DAP Member or any other person present shall behave in an improper or disorderly manner, cause an interruption or disrupt a person who is speaking.

8.22 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a DAP Member, an applicant, a representor or any person present at the meeting of the DAP until such time as the disruption or disturbance ceases.

8.23 Members of the public are entitled to every reasonable access-

(i) to the agendas for the meetings of the DAP; and

(ii) to the minutes of meetings of a council development assessment panel.

However, the DAP may before it releases a copy of any minutes of a DAP exclude from the minutes information about any matter dealt with on a confidential basis by the panel.

## **9. PROTOCOLS**

9.1 Members of the DAP who are not members of Council shall disclose their financial interests in accordance with Section 56A(6) and schedule 2 of the Act. Failure to do so may result in removal of the member from office pursuant to Section 4.3(vii) of this constitution.

9.2 A DAP Member must not initiate individual discussions with applicants, representors, members of the public or government agencies in relation to any matter before the DAP for consideration or likely to be considered by the DAP.

9.3 In a situation where a person seeks to provide information to a DAP Member outside of a meeting, the DAP Member should not make comment or express an opinion upon the merits or otherwise of the particular application. A DAP Member may indicate that the only decision to be made will be that of the DAP at a properly convened meeting.

9.4 These protocols should also be observed whenever a DAP Member visits a site of a proposed development.

9.5 Subject to collective DAP site visits as organised by the Executive Officer a DAP Member should avoid entering development sites, even if invited by the land owner or a neighbouring property owner.

## **10. EXECUTIVE OFFICER AND PUBLIC OFFICE APPOINTMENTS**

- 10.1 There is an Executive Officer appointed by the Council to support the DAP.
- 10.2 There is a Public Officer appointed by the Council to fulfil the obligations prescribed in Section 56A (24) of the Development Act, 1993.
- 10.3 The functions of the Public Officer shall include ensuring the proper investigation of complaints about the conduct of a member of the relevant Panel or of operations of the Panel itself.

## **11. REPORTS TO COUNCIL**

The DAP shall report to Council on an as needs basis, detailing issues for consideration by the Council. The report shall include advice on trends, issues and other matters relating to planning or development than have become apparent or arisen through the DAP's assessment of applications under the Act.

# Code of Conduct

## Section 21A of the *Development Act 1993*

This Code has been adopted pursuant to the provisions of the *Development Act 1993* as a Code of Conduct to be observed by Members of the Development Assessment Commission, Members of Regional Development Assessment Panels, Members of Council Development Assessment Panels and delegates.

In order to foster the respect of applicants, representors and the community, panel members and delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

This Code is binding on all panel members and delegates exercising their powers and functions as members of a panel or as a delegate.

This Code must be read in conjunction with the Act.

### 1. Interpretation

**Act** means the Development Act 1993.

**closed meeting** means a panel meeting, or a part of a panel meeting where the public is excluded in accordance with the Act :

**Code** means a code of conduct established under section 21A of the Act.

**confidential information** includes but is not limited to:

- (a) information derived from a document marked by the presiding member to clearly show that the information in the document is confidential or not to be disclosed;
- (b) information you acquired in a closed meeting ; and
- (c) any other information which would be considered confidential and not generally available to members of the public

**delegate** means a person who is authorised to act as a delegate under sections 20 or 34(23) of the Act but does not include a panel member.

**disclosure of financial interest** means disclosing a pecuniary interest as set out in Schedule 2 of the Act.

**interest** has the same meaning as in Section 56A (7)&(8) of the Act

**Minister** means the Minister responsible for the administration, from time to time, of the Act.

**panel** means an assessment panel as defined in Schedule 2 of the Act.

**panel information** means information that is disclosed at a panel meeting or in the course of a panel member's duties.

**panel member** means a person who is a member of a panel under the Act.

**presiding member** means a panel member appointed as presiding member under the Act.

**public officer** means a person appointed as a public officer under the Act .

## 2. Panel Member Behaviour

### Panel information

2.1 As a panel member, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat panel information appropriately by:

- (a) Not using information gained by virtue of your membership of the panel for any purpose than to exercise your role as a panel member;
- (b) Respecting the panel's procedures in relation to public comments and communications with the media;
- (c) Not releasing confidential information;
- (d) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
- (e) Recognising that information may be subject to the requirements of the Privacy Act 2000 and abiding by the principles of that legislation.

*However, nothing in this Code prevents you from disclosing information:*

2.2 At a closed meeting;

- (a) To the extent specified by the panel and subject to such other conditions as the panel determines;
- (b) That is already in the public domain; or
- (c) If the disclosure is required by law.

## **Conflict of Interest**

- 2.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of financial interests and disclosure of any other interest which may affect your ability to fulfil your duties on a panel.
- 2.4 If you consider that you have, or might reasonably be perceived to have an interest in the matter before the panel, you must clearly state the nature of that interest in writing to the presiding member before the matter is considered.
- 2.5 If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above.
- 2.6 If you have an interest in a matter, you must not partake in any of the assessment processes involving the matter. You must leave the room at any time in which the matter is discussed by the panel including during the hearing of any representations or during any vote on the matter. You must not vote on the matter and you must not move or second any motion or participate in any discussion through the consensus process.
- 2.7 If an interest has been declared by any member of the panel, the presiding member must record the nature of the interest in the minutes of meeting.

## **Relations with State/local government employees and applicants/representors**

- 2.8 In your role as panel member, you must not (other than in accordance with the provisions of the Act):
  - (a) Direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee;
  - (b) In the case of members of the Development Assessment Commission, direct a person who is a State government employee to do or not to do anything in the person's capacity as a State government employee;
  - (c) Attempt to influence the conduct of a person who is a local government employee in the person's capacity as a local government employee;
  - (d) Approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel; and
  - (e) Except where required as part of the assessment of a particular decision such as a formal panel viewing of a development site, you should not enter a development site, even if invited by the land owner or a neighbouring property owner or any other person.

## **Development Assessment Conduct**

2.9 You acknowledge that the assessment of development by the panel requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Panel members must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

2.10 You must not:

- (a) Engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
- (b) Give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
- (c) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
- (d) Express an opinion on a development application or a proposed development outside of a panel meeting; and
- (e) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

2.11 In regard to attendance of a public meeting as set out in point 2.10 (c) above, you must inform the panel that you have attended such a meeting and confirmed that you have not made representations to the meeting, discussed the matters raised at the meeting with any person or given an indication as to the merits of a particular development application or proposed development application outside of a panel meeting.

*Note* that nothing in this Code prevents you from properly seeking clarification or comment from staff members prior to or during the discussion of any matter in a panel meeting.

## **Public Comment**

2.12 Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.



### **3. Breaches of the Code, Complaints and Sanctions (Panel Members)**

3.1 You have an obligation to act honestly and diligently as a panel member. You should report any instances of suspected breach of the Act, this Code or any other misconduct by other panel members immediately to the public officer in writing and refrain from discussing those matters at future panel meetings.

3.2 Upon receipt of this information the public officer may:

- (a) Seek legal advice; and/or
- (b) Require an investigation into the allegations by an appropriate person; and/or
- (c) Refer the matter to the police; and/or
- (d) Take any other action which the public officer deems appropriate and which accords with the Act.

*Note that nothing in this Code prevents you, or any other person from making a complaint under the Ombudsman Act 1972.*

3.3 Where an investigation is undertaken in accordance with this Code, the person to whom the allegation of misconduct relates must be given by the public officer:

- (a) Full particulars of the alleged misconduct in advance of the investigation (at least 7 days prior to the date of the meeting at which the complaint will be investigated);
- (b) An opportunity to respond to the allegations; and
- (c) The right to have a representative attend any hearing with them (including legal counsel).

3.4 Where an allegation of misconduct is made out, the Minister (in regard to the Development Assessment Commission), the relevant Councils (in regard to a Regional Development Assessment Panel) and the relevant Council (in regard to a Council Development Assessment Panel or a Regional Development Assessment Panel) may:

- (a) Remove the person from the panel;
- (b) Suspend the person from the panel for a period of time; or
- (c) Take any other reasonable action deemed appropriate.

## 4. Delegate Behaviour

- 4.1 In order to foster the respect of applicants, representors and the community, delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

### Development application information

- 4.2 As a delegate, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat development application information appropriately by:
- (a) Not using information gained by virtue of your role as delegate for any purpose than to exercise that role;
  - (b) Not releasing confidential information;
  - (c) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
  - (d) Recognising that information may be subject to the requirements of the *Privacy Act 2000* and abiding by the principles of that legislation.

### Conflict of Interest

- 4.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of any interest which may affect your ability to fulfil your duties as a delegate:
- (a) If you consider that you have, or might reasonably be perceived to have an interest in the matter before you as delegate, you must clearly state the nature of that interest in writing and must not proceed to exercise your delegation; and
  - (b) If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above and must not proceed to exercise your delegation.

### Development Assessment Conduct

- 4.4 You acknowledge that the exercising of a delegation by you in relation to the assessment of development requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Delegates must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

4.5 You must not:

- (a) Exercise a delegation to make a decision on an application for development plan consent, or issue an instruction in relation to the exercise of a delegation held by another person, where you have assisted the applicant in the preparation of the application, to the extent that it leads to an expectation that if the applicant followed this advice you would grant delegated consent to the application;
- (b) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application where you hold a delegation other than to outline process and/or requirements of the Act or Regulations or, unless required by the Act; and
- (c) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

## **5. Breaches of the Code (Delegates)**

- 5.1 Breaches of this code by a delegate are to be reported to either the chief executive of the relevant council or the chief executive of the relevant government department. The responsible chief executive will take the appropriate action as required.

**Hon. Paul Holloway M.L.C**  
**Minister for Urban Development and Planning**

**Dated:**        /    /



**REF NO: GC2309808**

## **CONFIDENTIAL ITEMS**

### **Development Assessment Panel Processes**

**Reference No: GC230908F01**

**File No: 9.33.3.18**

**Moved Councillor Jason Veliskou, Seconded Councillor Whennan that:**

1. That Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following Council officers (Mark Searle, Chief Executive; Peter Tsokas, Director City Services; Sarah Philpott, Director Community and Corporate Development; Kathy Jarrett, Manager Governance; Susan Smith, Team Leader Executive Support, and Anna Minges, Media Adviser), be excluded from the meeting as the Council considers that the requirement for the meeting to be conducted in a place open to the public has been outweighed in circumstances where the Council will receive and consider information pertaining to the personal affairs of a person (living or dead).

**Carried Unanimously**

**Councillor Mudge sought the leave of the meeting to give a personal explanation in relation to his declaration of a conflict of interest at the Development Assessment Panel meeting on 3<sup>rd</sup> September 2008.**

**The leave of the meeting was granted.**

Councillor Mudge provided a personal explanation regarding his declaration of a conflict of interest (by email) about the development application relating to 7 Griffiths Road.

**Councillor Mudge declared a conflict of interest with the matter relating to Development Assessment Panel processes on the basis that the item related to a possible breach, by himself, of the Minister's Code of Conduct under Section 21A of the Development Act 1993 and left the meeting.**

### **SUSPENSION / RESUMPTION OF FORMAL PROCEDURES**

**Moved Cllr Connor, Seconded Cllr Jason Veliskou** that formal meeting procedures be suspended to allow discussion on the matter of a possible breach of the Minister's Code of Conduct under Section 21A of the Development Act 1993 by Councillor Mudge.

**Carried Unanimously**

**10:34pm formal meeting procedures suspended**

### **MEETING EXTENSION**

**Moved Councillor Bouwens, Seconded Councillor Connor** that the meeting closure time be extended for 30 minutes to 11.30pm

**Carried Unanimously**

**11.25pm formal meeting procedures resumed**

**Development Assessment Panel Processes**

**Reference No: GC230908F01**

**File No: 9.33.3.18**

**Moved Councillor Tilbrook, Seconded Councillor Whennan that:**

1. Council notes the report and advises the Public Officer of the City of Marion Development Assessment Panel that Council considers the matter of Councillor Mudge's email about the development application relating to 7 Griffiths Road warrants further investigation.
2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, the minutes arising from this report be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting on the basis that it deals with information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead). This confidentiality order will be reviewed at the General Council Meeting in December 2008

**Carried**