

**CITY OF MARION
GENERAL COUNCIL MEETING
25 November 2008**

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

Director: Peter Tsokas, Director City Development
Subject: Development Assessment Panel Processes
Reference No: GC251108F01
File No: 9.33.3.18

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 provide information to Council on the findings of an investigation regarding an email sent by Councillor Mudge to Development Assessment Panel members regarding a declaration of conflict of interest and whether the email constituted a breach of the Minister's Code of Conduct.

The findings of the investigation indicate that while the email was inappropriate, it does not constitute a breach of the Code of Conduct or the City of Marion Development Assessment Panel Constitution.

RECOMMENDATIONS:

That:

- 1. Council note the report from Mr Ted Byrt, Legal Consultant detailing the findings from his investigation as to whether the email sent by Councillor Mudge to Development Assessment Panel members constituted a breach of the Minister's Code of Conduct.**
- 2. Council advise the Public Officer that it considers no further action is necessary in this matter.**
- 3. 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 13 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 2009.**

DUE DATES:

Recommendations 1 and 2

25 November 2008

BACKGROUND:

At the 23 September 2008 General Council meeting, Council considered a report relating to the manner in which Councillor Mudge declared a conflict of interest regarding a matter that was to be considered at a Development Assessment Panel meeting.

After considering this report, Council resolved *"to note the report and advise 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"*.

DISCUSSION

Following Council's resolution, Council's Public Officer engage Mr Ted Byrt – Legal Consultant to undertake an investigation regarding the email sent by Councillor Mudge and whether it constituted a breach of the Minister's Code of Conduct. As part of the process, Mr Byrt was instructed to interview Councillor Mudge, Development Assessment Panel (DAP) members, relevant Planning staff and the Public Officer.

The investigation has been completed and Mr Byrt's report is attached as Appendix 1 *"Report to the Council"*.

In summary, the Report indicates that while Councillor Mudge's email was inappropriate, it does not amount to misconduct pursuant to the Minister's Code of Conduct or the City of Marion DAP Constitution. Mr Byrt recommends that the report be noted and that no further action be taken on this matter in relation to Councillor Mudge.

The Report does however recommend changes be made to the distribution of the DAP agenda and supporting material where it is known that a "conflict of interest" exists for any DAP member.

This suggestion will be considered as part of the next review of the DAP's Terms of Reference and associated processes.

INTERNAL ANALYSIS

Legal / Legislative & Risk Management

A review of the DAP's Terms of Reference and processes will consider the suggestion by in Mr Byrt's Report. The review will ensure that the DAP continues to function in an ethical and transparent manner.

Financial Implications

The cost of the investigation and subsequent report (approximately \$5,000) will be met within the existing operational budget for Development Services.

CONCLUSION

An investigation into Councillor Mudge's email has been completed by an independent external party, Mr Ted Byrt. The findings indicate that while the email was inappropriate, it does not amount to misconduct pursuant to the Minister's Code of Conduct or the City of Marion DAP Constitution.

Report to the Council of the City of Marion on an investigation into an issue of “propriety” arising from an email from Clr. Steven Mudge to Members of the Council’s Development Assessment Panel on 2 September 2008.

1. Background

1.1 The Council’s DAP was to meet on the 3 September 2008 to consider a range of development applications including an application for a variation to an approved development for 7 Griffiths Road, Plympton Park. In particular the variation proposed alterations to building design relative to finished floor level, namely a variation to the design of windows to protect privacy and overlooking, and to modify the privacy treatment associated with upper level windows of the proposed development.

On 2 September 2008 Clr Steven Mudge – then a Member of the DAP - forwarded an email to all other Members of the City of Marion DAP advising that he:

“... will be declaring a conflict with regard to 7 Griffiths Road. I’m at number 12 Griffiths Road 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 DAP meeting was held on 3 September 2008 and before the matter relating to 7 Griffiths Road was considered, Clr Mudge again formally but orally declared his conflict of interest and left the meeting.

1.2 The Public Officer took legal advice about the content of the email and then referred the matter to Council in light of a possible breach of the Minister Code of Conduct to be observed by Members of the Development Assessment Panel.

1.3 The Council considered a report on the matter and on 23 September 2008 resolved that:

“Council notes the report and advises the Public Officer of the City of Marion Development Assessment Panel that Council considers the matter of Clr Mudge’s email about the development application relating to 7 Griffiths Road warrants further investigation.”

1.4 As a consequence of that resolution I was engaged on 27 October 2008 by the Public Officer to conduct an investigation with the following brief:

- To undertake an investigation regarding the email sent by Clr Mudge and whether it constitutes a breach of the Minister’s Code of Conduct
- As part of the process, interviews be held with Clr Mudge, DAP members, Planning staff and the Public Officer
- A report be prepared for Council’s consideration.

2. The Regulated Framework

2.1 The Development Act 1993.

Pursuant to **Section 56A** of the Development Act 1993 Council is required to establish a Development Assessment Panel the primary function of which is to act as a delegate of the Council as the relevant planning authority under the Development Act.

Subsection 56A(7) provides that:

“A member of a council development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons):

(a) must, 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

(b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.”

Subsection 56A(14) provides that:

“A disclosure under subsection (7)(a) must be recorded in the minutes of the council development assessment panel.”

And **Subsection 56A(21)** states that:

“Except as otherwise provided in this section, the *Local Government Act 1999* does not apply to, or in relation to, a council development assessment panel established under this section (including with respect to its members when acting under this section or its processes or procedures).”

Accordingly the Council has established a Development Assessment Panel which at the relevant time comprised 4 independent Members, namely, Mr Mark Adcock (Presiding Member), Ms Kirsty Kelly, Ms Rebecca Thomas, and Ms Jenny Newman and 3 Elected Members, namely, Cllr Steven Mudge, Cllr Rob Durward and Cllr Natalie Victory.

2.2 City of Marion Development Assessment Panel Constitution

The Council’s DAP is constituted and regulated by the Constitution.

The relevant provisions for this investigation are:

Clause 4.3 which provides that:

“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

(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

(ix) breach of the DAP Code of Conduct.”

Clause 4.4 which provides that:

“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.”

Clause 8.8 which provides that:

“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.

Clause 10.3 which provides that:

“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 the operations of the Panel itself.”

2.3 Minister’s Code of Conduct

The Council’s DAP Members are also regulated by the Minister’s Code of Conduct established pursuant to Section 21A of the Development Act 1993.

The relevant provisions for this investigation are:

Clause 2.1 which provides that:

“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.

Clause 2.3 which provides that:

“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.”

Clause 2.4 which provides that:

"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."

Clause 2.5 which provides that:

"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."

Clause 2.6 which provides that:

"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."

Clause 2.8 which provides that:

"In your role as panel member, you must not (other than in accordance with the provisions of the Act):

(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."

Clause 2.9 which provides that:

"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."

Clause 2.10 which provides that:

"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;

(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."

Clause 3.1 which provides that:

"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.”

Clause 3.2 which provides that:

“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.”

Clause 3.3 which provides that:

“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).

Clause 4.1 which provides that:

“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.”

Clause 4.2 which provides that:

“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.”

Clause 4.3 which provides that:

“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 regards 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 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.”

Clause 4.5 which provides that:

“You must not:

(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.”

3. Nature of the investigation and process undertaken

It is important to note that:

3.1 to date no formal charge of misconduct has been made against Clr Mudge under Clause 4.5 of the Constitution for determination by Council under the Constitution.

3.2 pursuant to the Minister's Code of Conduct, the Public Officer (with the support of the Council) has requested that an investigation be conducted into the circumstances of the email sent by Clr Mudge to determine whether those circumstances constitute a breach of the Minister's Code of Conduct; and

3.3 I am conducting an investigation to determine whether there is any behaviour which may constitute a breach of the Minister's Code of Conduct requiring a charge of misconduct to be formally made against Clr Mudge to be heard and determined by Council under the Constitution.

3.4 Accordingly, I have undertaken a process of investigation which is a semi-formal process but is not the formal process which would be required under the Constitution in the event of a formal charge of misconduct being made against Clr Mudge.

3.5 Clr Mudge has been provided by the Public Officer with the same written information which was provided to me by the Public Officer for investigation and this includes the 3 page statement of relevant facts for investigation prepared by the Public Officer, a copy of the Constitution and also the Code of Conduct, a copy of the material presented to the DAP on 3 September 2008 re Agenda Ref No: DAP030908R05 and a summary of the history of relevant development applications for 7 Griffiths Road Plympton Park.

3.6 For the purpose of the investigation I have interviewed every Member of the DAP including Clr Mudge, the DAP Executive Officer, the Manager – Development Services and the Public Officer.

3.7 To ensure natural justice is afforded to Clr Mudge and there is due process I had a second discussion with Clr Mudge to confirm his agreement to the statement of facts in this report but I did not discuss with him or anyone else my findings and recommendation which are presented to Council in this report.

4. Observations about the regulated regime

4.1 There is repetition/duplication in the relevant provisions of the Development Act, the Constitution and the Code of Conduct but read together there is consistency of principle and obligation on members of the DAP in that the following principles are universally applicable:

4.1.1 Every member of DAP is required to act honestly and diligently and make all decisions impartially and in accordance with the requirements of the Development Act, respecting the principles in the Constitution and the Code of Conduct.

4.1.2 Every member of DAP **"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"** (Clause 2.4 of the Code of Conduct) and **"must as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel"** (Clause 8.8 of the Constitution and Subsection 56A(7)(a) of the Development Act).

4.1.3 In the event of an actual or perceived "conflict of interest" it is clear from the above that timely written notice to the Presiding Member **and** to the Panel is required.

4.2 Pursuant to the Minister's Code of Conduct an allegation of **"misconduct"** may be investigated by the Public Officer (Clause 3.2) and the Council may remove a member of the Panel from office for proven **"misconduct"** (Clause 4.3 of the Constitution) detrimental to the interests of the DAP after enquiry and due process (Clause 4.4 of the Constitution).

4.3 What amounts to **"misconduct"** is not defined in the relevant legislative and regulated regime. There are a multitude of judicial interpretations of "misconduct" but every one of them relate back to the public purpose of the legislation or regulation creating the concept of "misconduct". But what can be gleaned from the judicial interpretations is that for "misconduct" to exist there must be:

4.3.1 for a solicitor to be struck off the roll for professional misconduct there must be conduct which other solicitors of good repute would regard as disgraceful or dishonourable.

4.3.2 for a police officer conduct which tends to destroy his authority and influence in his relations with the public amounts to misconduct.

4.3.3 for a medical practitioner gross negligence might amount to misconduct if accompanied by indifference to or lack of concern for the welfare of the patient, and

4.3.4 for a vehicle dealer misconduct which is required to justify a suspension or cancellation of a dealer's licence must be something that is more than a mistake, it must be wilful.

4.4 In summary the conduct required to amount to "misconduct" generally must be disgraceful or dishonourable, more than a mistake and wilful, indifferent to responsibility and such as to destroy authority and influence. These are heavy and serious standards.

4.5 For the purposes of this report and the applicable regulated regime I regard the standard of behaviour expected of a Member of DAP to be no less than the standard of behaviour expected generally of a public officer and the standards expressed above for special categories of people guide us in the determination of that standard.

4.6 Behaviour which is disgraceful or dishonourable, more than a mistake and wilful, indifferent to responsibility and such as to destroy authority and influence is behaviour which amounts to "misconduct" and the standard applicable here.

5. Facts upon which report is based

5.1. Mr Steven Mudge moved into his home at 12 Griffiths Road Plympton Park in June 2005 after the proposed development at 7 Griffiths Road had been approved. Mr Mudge

became aware of the approved development later in 2005 and was disappointed because he believed that the approved development did not respect the character of the locality.

5.2 In December 2005 and subsequently on more than one occasion through to 2007 further applications were made to Council to either extend time or to vary the approved development. On the last occasion the proponent sought an extension of time in May 2007. Mr Mudge expressed his objection and opposition to the development and the application to extend time because it had been over 3 or more years since development approval was first granted. He spoke to Council staff about his objections. Those objections were not successful.

5.3 In 2006 Steven Mudge was so motivated by the circumstances of the approved development at 7 Griffiths Road and his objections to such development he decide to nominate as a candidate for election to Council and was successful at the November 2006 election.

5.4 Cllr Steven Mudge continued his objections to the development and applications to vary and extend time after his election to Council. He had several discussions with Council staff during this time all of which were regarded as appropriate.

5.5 In November or December 2006 Cllr Steven Mudge was appointed to the DAP.

5.6 In 2007 after the last application for an extension of time was lodged (the May 2007 application) Cllr Mudge had discussions with senior management at Council who advised him and emphasised to him the potential of a conflict of interest for him should any matter come before DAP related to the development at 7 Griffiths Road.

5.7 While Cllr Mudge remained vigilant about the progress of the development at 7 Griffiths Road raising process and detail issues with senior management from time to time Cllr Mudge took those advices about conflict of interest seriously.

5.8 In preparation for the DAP meeting on 3 September 2008 Cllr Mudge received the DAP Agenda and supporting material and noted that there was a matter on the Agenda concerning the project at 7 Griffiths Road together with all related material.

5.9 By this time (2 September 2008) the building work for the development at 7 Griffiths Road was nearly completed and Cllr Mudge states that as he had failed in his earlier objections he was resigned to it's completion and he had "moved on".

5.10 Cllr Mudge states that he referred to the Code of Conduct and the Constitution and consistent with his obligations thereunder, on 2 September, he notified all members of DAP by email of his "conflict of interest" because of his past objections and his residential location in proximity to the development.

5.11 At the time he sent the email in question Cllr Mudge states that he believed that all members of DAP would be aware of his objections to the development at 7 Griffiths Road and not be surprised about his declaration of a conflict.

5.12 He states that the comment *"Needless to say I was unimpressed by the approval process and the disregard for the amenity of the street and neighbouring properties"* relates back directly to the preceding comment about his motivation to run for Council and his declaration of a conflict of interest and was not intended to have any other meaning or influence.

5.13 He states that the comment "*You could also add my name in the third para there somewhere after notified....*" relates back to the fact that the party referred to in the third para was himself. He was the person who had previously notified senior management at the Council of the potential condition breach on behalf of the immediate neighbour Robert Fitzsimons of 9 Griffiths Road and himself.

5.14 He further states that the comment "*Without stepping over too many more lines. I'm sure you'll make a sensible decision with regard to the application*" relates to the facts that he had previously raised technical issues with senior management about the development and alleged breaches of the Development Act, that he was previously advised by senior management of his potential for a conflict, and it was not intended to have any other meaning or influence.

5.15 In particular he states that he had no intention to influence the DAP members to act in any particular way except to "*make a sensible decision*" as per the staff recommendation about the simple application for a variation related to the structure and glazing to windows to protect privacy and prevent overlooking. He now acknowledges that this comment was not necessary and he regrets making it. He states that if he had his time over again he would not make this comment.

5.16 Overall Clr Mudge states that his reputation and integrity are important to him and that he regrets that there has been a "misinterpretation" of his intentions and he has learned from the experience.

5.17 In particular he accepts that people may have seen the email as inappropriate, and that is what motivated him to subsequently resign the appointment to DAP.

5.18 Every member of DAP and the Council staff who support DAP and who received the email before the meeting on 2 or 3 September and who were present at the DAP meeting thought that it was appropriate for there to be an email notifying them of the "conflict of interest", none were surprised to be notified about the conflict nominated by Clr Mudge because they were aware of the history, but everyone of them stated that the comments referred to above were not necessary and some thought them inappropriate and should not have been made but no-one thought that there was an improper endeavour in the email to influence them in their decision making at DAP.

5.19 Some members of DAP thought that Clr Mudge must have sent the email "without thinking" and stating that he probably felt that at the time he had done nothing wrong. Some other members of DAP were upset, disappointed and surprised by the comments.

5.20 At the time for hearing the application for 7 Griffiths Road and after Clr Mudge had declared his conflict and left the DAP meeting on 3 September 2008, the Presiding Member, acting on legal advice provided to him through the Public Officer, discussed the email with all members of DAP present at the meeting (obviously excluding Clr Mudge who had left the meeting) and staff present. The Presiding Member wanted to be assured that no member of DAP present at the meeting and no staff were improperly influenced by the email about the decision to be made and that they were all comfortable proceeding with the matter in these circumstances.

5.21 All members of DAP assured the Presiding Member that they were not unduly influenced by the email and subsequently that evening they considered the matter before them. Council staff present were likewise not unduly influenced by the email.

6. Findings

6.1 I found all persons interviewed to be credible and honest.

6.2 It was appropriate and necessary that Clr Mudge notify the DAP in writing of his "conflict of interest" as soon as he became aware of that conflict.

6.3 Subject to the findings in paragraphs 6.4, 6.5 and 6.6 below, the email to the members of DAP was an effective notification by Clr Mudge of his "conflict".

6.4 The comments in the email detailed in paragraphs 5.12, 5.13, 5.14 and 5.15 were not necessary to convey the notification of a "conflict" and should not have been made which is acknowledged by Clr Mudge.

6.5 The comments in the email detailed in paragraphs 5.12, 5.13, 5.14 and 5.15 were not intended by Clr Mudge to inappropriately influence the DAP.

6.6 The comments in the email detailed in paragraphs 5.12, 5.13, 5.14 and 5.15 did not inappropriately influence any member of DAP nor any staff of Council.

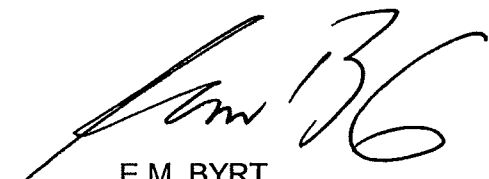
6.7 The effective functioning of DAP and the interests of DAP were not unduly affected by the inappropriate content of the email notwithstanding the subsequent referral of the matter to Council and this investigation.

6.8 The comments in the email detailed in paragraphs 5.12, 5.13, 5.14 and 5.15 do not in my opinion in these circumstances amount to conduct which is "disgraceful or dishonourable, more than a mistake and wilful, indifferent to responsibility and such as to destroy authority and influence" and as such do not amount to "misconduct" pursuant to the Code of Conduct or the Constitution.

6.9 The publication of the comments in the email detailed in paragraphs 5.12, 5.13, 5.14 and 5.15 does not in the present circumstances amount to "misconduct" by Clr Mudge which is actionable under the Code of Conduct and/or the Constitution.

6.10 There is no further action recommended to Council other than to note the Report and to ensure the recommendation in paragraph 6.11 is actioned.

6.11 In future whenever a known "conflict of interest" exists for any member of DAP before the distribution of the Agenda and supporting material then that Member should not be provided with any information about such a matter coming before the DAP for consideration.

A handwritten signature in black ink, appearing to read 'E.M. BYRT', with a large, stylized flourish extending from the end of the signature.

E.M. BYRT
Legal Consultant.
19 November 2008.

REF NO: GC2551108F01

CONFIDENTIAL ITEMS

Development Assessment Panel Processes

Reference No: GC251108F01

File No: 9.33.3.18

Moved Councillor Whennan, Seconded Councillor Telfer 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; Jeff Rittberger, Director Governance, Kathy Jarrett, Manager Governance and Susan Smith, Team Leader Executive Support), 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

10:13pm Cllr Mudge declared a conflict of interest on the basis that the report regarding Development Application Processes related to himself, and left the meeting

Development Assessment Panel Processes

Reference No: GC251108F01

File No: 9.33.3.18

Moved Councillor Whennan, Seconded Councillor Tilbrook that:

1. Council note the report from Mr Ted Byrt, Legal Consultant detailing the findings from his investigation as to whether the email sent by Councillor Mudge to Development Assessment Panel members constituted a breach of the Minister's Code of Conduct.
2. Council advise the Public Officer that it considers no further action is necessary in this matter.
3. 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 13 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 2009.

Carried Unanimously

