

## COUNCILLOR CONDUCT PANEL

### HEARING PURSUANT TO DIVISION 1B OF THE LOCAL GOVERNMENT ACT (1989) (AS AMENDED)

Applicant: Cr. Michael Neoh, Cr. Rob Askew, Cr Jacinta Ermacora,  
Cr Andrew Fawcett, Cr John Harris

Respondent: Cr Peter Hulin

Applicant Representative: Cr Michael Neoh (Mayor)

Council: Warrnambool City Council

Where Held: Warrnambool

Date of Application: 31 August 2009

Date of Hearing: 8 October 2009

Panel Members: Mr Roger Batrouney (Chair); Mr John Bruce

CCP Registrar: Mr Peter Brown

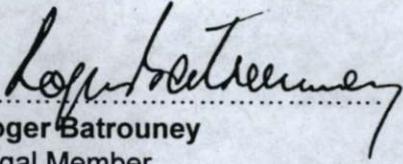
Witness: Mr Peter Collins

#### The Decision

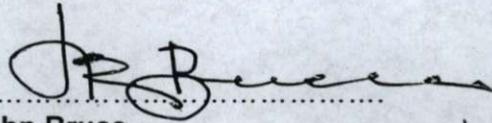
The decision of the Panel is that it makes a finding that the actions of Councillor Hulin constitute misconduct within the meaning of Section 81A of the *Local Government Act* in that he disclosed confidential information to Peter Collins of the Warrnambool Standard on or about 26 August 2009 in breach of the provisions of paragraphs 4F and 44 of the Council's Code of Conduct adopted by the Warrnambool Council on 13 July 2009 and signed by the Councillors on 27 July 2009.

The Panel therefore:

- reprimands Cr Hulin for his release of confidential information;
- requires him to apologise to the Council and his fellow councillors for his breach;
- requires him to undertake remedial action by:
  - undertaking appropriate media training;
  - entering into a mentoring arrangement for 12 months with an appropriately qualified person with municipal experience.



Roger Batrouney  
Legal Member  
Thursday, 22 October 2009



John Bruce  
Municipal Governance Member  
Thursday, 22 October 2009

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#### **Statement of Reasons for the Decision:**

##### The Application

1. An Application dated 31 August 2009 was made by five Councillors of the Warrnambool City Council – Councillors Michael Neoh (Mayor), Jacinta Ermacora, Andrew Fawcett, John Harris and Rob Askew for a Councillor Conduct Panel.
2. The subject of the Application was Cr Peter Hulin.
3. The Application sought a finding of misconduct.

4. The Grounds of the Application were stated as:

- "1. Council, at its Committee of the Whole meeting held pursuant to Sections 77 & 89(2) of the Local Government Act 1989 on Monday 17 August 2009, considered tenders for the construction of the Warrnambool Harbour Pavilion and upon consideration of 7 tenders resolved to award the contract to Kirway Constructions Pty Ltd.

The information provided as part of the agenda for the Committee of the Whole Council meeting is considered confidential information under Section 77(1), 77(2), 77(2)(a) of the Local Government Act 1989.

2. In the Warrnambool Standard on 27 August 2009 (page 3) an article was published headed "Our Pavilion Takes Shape with a Melbourne builder" written by Peter Collins. Cr Peter Hulin was quoted in the article saying the "*BDH Constructions should have been selected because its tender price was only \$35,000 higher. We need to be fair dinkum in supporting locals*".
3. Council, at its meeting on 13 July 2009 unanimously adopted a Councillor Code of Conduct which was subsequently signed by all Councillors. Clause 4(f) of the Councillor Code of Conduct, which deals with Councillor behaviours, states that Councillors will treat Council information appropriately by *(c) not releasing information deemed confidential information in accordance with Section 77 of the Act*.
4. Section 77 of the Act states that a "Councillor must not release information that the person knows or reasonably knows as confidential information. Confidential information in this instance is defined as information that is provided to the Council where the Council meeting is closed to the members of the public and the Council has not passed a resolution that the information is not confidential."

The Panel

5. A Councillor Conduct Panel was constituted by the Municipal Association of Victoria comprising Mr Roger Batrouney (Chair) and Mr John Bruce, with Mr Peter Brown as the Registrar.

### The Hearing

6. The Councillor Conduct Panel conducted a hearing on 8 October 2009 at the offices of the Warrnambool City Council.

### The Reasons

7. Evidence was received from Cr Michael Neoh, Cr Peter Hulin and Mr Peter Collins, a journalist employed by the Warrnambool Standard.
8. It was agreed that at the Council meeting on Monday 17 August 2009, at its Committee of the Whole meeting, the Council considered and decided on tenders for the construction of the Warrnambool Harbour Pavilion. It considered the seven tenders and resolved to award the contract to Kirway Constructions Pty Ltd. That involved receiving information of the various tender prices and the relative merits of the tenders.
9. That information was "confidential information" within the meaning of Section 77(2) of the *Local Government Act*.
10. It was agreed that the Council issued a Press Release on the Harbour Pavilion Project on 26 August 2009 and that on the same day the Mayor spoke to Peter Collins about the Project.
11. It was argued by Cr Hulin that the Press Release and the Mayor's statements, in effect, cancelled the confidentiality of the matters dealt with at the Council meeting of 17 August 2009 by putting them into the public arena. The Panel does not accept that proposition.

12. Following the Press Release and the Mayor's statements, the general issues in relation to the Project were no longer confidential, but the financial details of the tenders retained their confidential nature. For it to be otherwise would be to prejudice the integrity of the tender system.
13. It was agreed that on 26 August 2009 Cr Hulin spoke to Peter Collins, at the initiative of Peter Collins, and that the conversation included a discussion of the Harbour Pavilion Project.
14. Cr Hulin stated that he probably said to Peter Collins that BDH Constructions' tender was the second lowest tender price to the successful tender by Kirway Constructions. He further stated that he did not state that the BDH Construction tender price was only \$35,000.00 higher than the successful tender.
15. Cr Hulin stated that his conversation with Peter Collins caught him somewhat unprepared as he was about to go to a restaurant with his wife.
16. Peter Collins' statement confirmed his conversation with Cr Hulin, but stated that Cr Hulin indicated to him that the price differential was about \$35,000. He subsequently confirmed this in a discussion with the unsuccessful tenderer.
17. Following the article in the Warrnambool Standard on 27 August 2009, there were conversations between Peter Collins and Cr Hulin. Peter Collins expressed regret that the article may cause some difficulty for Cr Hulin.
18. On 21 September 2009 Peter Collins signed a typed note prepared by Cr Hulin from a handwritten note by Peter Collins. In that note, Peter Collins does not

state that Cr Hulin specified the difference of \$35,000.00 but states that he later confirmed it to be around \$35,000.

19. On the balance of the evidence received, the Panel concludes that Cr Hulin mentioned to Peter Collins that the difference was about \$35,000.00 and that Peter Collins subsequently confirmed that figure in his discussions with the tenderers.
20. The Panel accepts that these discussions were in the context of a vigorous campaign by Cr Hulin for support for local contractors for Council tenders.
21. The Panel finds that the breach of confidentiality by Cr Hulin was careless and a result of his inexperience rather than malicious or premeditated and was motivated by his buy local campaign.
22. Cr Hulin, in his detailed submission, referred to a number of issues in which he believed his relationship with the other Councillors and Council staff were unsatisfactory. That unsatisfactory relationship is a relevant background to the events that have given rise to this Application.
23. The Panel advised that it was beyond the scope of its engagement to enquire into and deal with these other issues, but strongly recommended to all parties that they be fully addressed to ensure the proper working of the whole Council.
24. In particular, the Panel noted Cr Hulin's willingness to receive further training to assist him in his role as an effective Councillor.

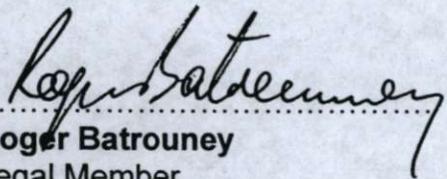
25. The Panel notes Cr Hulin's indication of his willingness to apologise in the event of a finding against him.

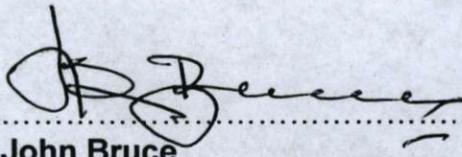
The Decision

26. The decision of the Panel is that it makes a finding that the actions of Councillor Hulin constitute misconduct within the meaning of Section 81A of the *Local Government Act* in that he disclosed confidential information to Peter Collins of the Warrnambool Standard on or about 26 August 2009 in breach of the provisions of paragraphs 4F(c) and 44 of the Council's Code of Conduct adopted by the Warrnambool Council on 13 July 2009 and signed by the Councillors on 27 July 2009.

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