

COUNCILLOR CONDUCT PANEL

**In the matter of an Application by the Chief Municipal Inspector concerning
Councillor Ben Buckley of East Gippsland Shire Council**

DECISION

**HEARING PURSUANT TO DIVISION 1B OF PART 4 OF
LOCAL GOVERNMENT ACT (1989)**

Applicant: Chief Municipal Inspector, represented by Ms Alicia Robson of the Victorian Government Solicitor's Office

Respondent: Cr Ben Buckley, represented by Mr Peter Murphy of Warren, Graham and Murphy Pty Ltd

Council: East Gippsland Shire Council

Hearing location: East Gippsland Shire Council Corporate Centre

Date of Application: 8 February 2017

Date of Hearing: 5 June 2017

Date of Decision: 28 August 2017

Panel Members: Mrs Jo-Anne Mazzeo (Chairperson)
Mrs Helen Buckingham

Principal Conduct Officer: Mrs Wendy Veldhuizen

DECISION

Pursuant to section 81J(1)(b) of the *Local Government Act 1989* the Panel makes a finding of serious misconduct against Cr Ben Buckley of East Gippsland Shire Council.

Pursuant to section 81J(2A)(b)(iv) the Panel suspends Cr Buckley (effective from the date of the decision) for a period of four (4) months.

Jo-Anne Mazzeo
Chairperson

Helen Buckingham
Panel Member

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STATEMENT OF REASONS FOR DECISION

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Date of Statement of Reasons for Decision: 28 August 2017

Panel Members: Mrs Jo-Anne Mazzeo (Chairperson)
Mrs Helen Buckingham

Principal Conduct Officer: Mrs Wendy Veldhuizen

STATEMENT OF REASONS FOR DECISION

The Application

1. The Application dated 8 February 2017 was made by the Chief Municipal Inspector (CMI) seeking a finding of serious misconduct against Cr Ben Buckley in relation to the issues outlined in their Application (listed below).
2. The Application arises from conduct surrounding alleged disclosure of confidential information on three separate occasions:

Allegation 1: That Cr Ben Buckley released confidential information between 8 December 2015 and 15 December 2015

Allegation 2: That Cr Ben Buckley released confidential information on WIN TV on 8 July 2016

Allegation 3: That Cr Buckley released confidential information to the Bairnsdale advertiser between 10 May 2016 and 25 July 2016 as evidenced by publication on 25 July 2016

3. The Application outlined that the issues above breached the following:

ALLEGATION 1: The Councillor Conduct Principles and section 77 of the *Local Government Act 1989* (the Act)

ALLEGATION 2: Section 77 of the Act

ALLEGATION 3: Section 77 of the Act

Evidence provided at hearing

4. Oral evidence was given at hearing by:

- Ms Maryanne Bennett (Director, Corporate, East Gippsland Shire Council);
- Mr Gary Gaffney (Chief Executive Officer, East Gippsland Shire Council);
- Mr Peter Neal (ex Councillor, East Gippsland Shire Council);
- Mr Jeff McNeill (ex Councillor, East Gippsland Shire Council); and
- Cr Marianne Pelz (Councillor, East Gippsland Shire Council).

5. The Respondent chose not to give oral evidence, but did answer limited questions from the Panel.

6. Written evidence was also submitted by the Applicant prior to the hearing.

The Panel

7. A Councillor Conduct Panel was formed by the Principal Councillor Conduct Registrar comprising Mrs Jo-Anne Mazzeo (Chair) and Mrs Helen Buckingham, with Mrs Wendy Veldhuizen as the Principal Conduct Officer.

The jurisdiction of the Panel in relation to this Application

8. Pursuant to section 81B(1) of the Act, the Panel may hear an Application that alleges serious misconduct by a Councillor.

9. Pursuant to section 81J of the Act, the Panel may determine whether or not a Councillor has engaged in serious misconduct. "Serious misconduct" is defined in section 3 of the Act and includes:

"(g) the release of confidential information by a Councillor in contravention of section 77."

The Hearing

10. An initial Directions Hearing took place on 5 April 2017 and a subsequent Directions Hearing took place on 23 May 2017.
11. The Councillor Conduct Panel conducted the substantive hearing on 5 June 2017, and was required to adjourn the matter part heard to allow parties to provide written submissions on a question of law.
12. The Applicant relied on the Application lodged with the Panel and the evidence of its witnesses submitted in writing and on oral evidence at the hearing.
13. The Respondent provided no evidence in writing to the Panel, relying instead on written submissions dated 3 July 2017 and reiterated at the hearing. The respondent chose not to give evidence at the hearing, but did answer limited questions from the Panel.
14. The Panel subsequently reconvened in the absence of the parties to consider the above submissions on the relevant points of law and reach its Decision.

Point of Law raised in relation to the Application

15. The Application related to three instances of alleged release of confidential information. Section 77 of the Act provides for the restricted use of confidential information by Councillors. Section 77 was amended on 1 March 2016¹.
16. In relation to the confidential information the subject of allegation 1, the applicable version of the Act at this time was the version incorporating amendments as at 2 December 2015.
17. In relation to the confidential information the subject of allegations 2 and 3, the applicable version of the Act was the version incorporating amendments as at 1 March 2016.

Section 77 of the Act as at 2 December 2015

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that he person knows, or should reasonably know, is confidential information.
- (2) For the purpose of this section, information is confidential information if—
 - (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or

¹ By consequential amendments in the *Local Government (Improved Governance) Act 2015*

- (b) the information has been designated confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (c) subject to subsection (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subsection (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless subsection 2(a) or 2(b) applies to the information.

Section 77 of the Act as at 1 March 2016

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.
- (1A) A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person knows is confidential information in the following circumstances—
- (a) for the purposes of any legal proceedings arising out of this Act;
 - (b) to a court or tribunal in the course of legal proceedings;
 - (c) pursuant to an order of a court or tribunal;
 - (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
 - (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
 - (g) to the extent reasonably required for any other law enforcement purposes.

- (1B) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (1), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless—
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (1C) If a Councillor is charged with an offence against subsection (1), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- (2) For the purposes of this section, information is confidential information if—
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

18. In summary, the 2016 amendment meant that there was no longer a 50 day time limit on information deemed confidential pursuant to that section.
19. In relation to allegation 1, the confidential information that was alleged to be released was designated as confidential information by the Chief Executive Officer on 17 November 2015, when he deemed a memorandum and any discussions pertaining to issues covered in the memorandum as

confidential information pursuant to s77(2)(c) of the Act.² At the relevant time, s77(3) of the Act provided that confidential information referred to in subsection 2 (c) ceased to be confidential at the expiry of 50 days after the designation was made. Fifty days from the designation had effect to 6 January 2016. As allegation 1 relates to alleged release between 8 and 15 December 2015, the confidential information remained designated as confidential at the relevant time.

20. In relation to allegation 2, the Panel did not make a finding of serious misconduct on this ground, as there was not sufficient evidence that confidential information had in fact been released. Accordingly, it made no determination as to the duration of the designation as to its impact on this ground.
21. In relation to allegation 3, the confidential information that was alleged to be released was designated as confidential information by the Chief Executive Officer on 10 May 2016 and is alleged to have been released between 10 May 2016 and 25 July 2016. There was no time limit on the designation of confidential information, as section 77(3) of the Act had been repealed.

Evidence and information before the Panel

22. By way of background, the timeline below outlines the order in which matters transpired:
 - On 13 November 2015 the CEO of the East Gippsland Shire Council, Mr Gaffney, wrote to Councillors regarding comments that had been made at the Special Council Meeting of 10 November 2015 about Councillor behaviour. The CEO indicated a "closed door" session would take place on 17 November 2015 to allow councillors to raise any issues of concern regarding councillor behaviour that was inconsistent with the Code of Conduct. He also advised councillors to "keep their counsel on the question of councillor behaviour" until the meeting took place, in order to allow for frank and open discussion, and "not give the issue any more oxygen" that necessary.
 - On 17 November 2015, Mr Gaffney wrote to councillors advising that he had enacted the confidential information clause of the Act in relation to his memo and allegations of inappropriate councillor behaviour and all discussions pertaining to the issues covered in the memo, deeming them as confidential.
 - On 25 November 2015, Mr Doug Loney was appointed as consultant to the Council, to undertake the "Councillor Project 2015".
 - On 8 December 2015 a confidential session was held with Mr Loney and the Councillors from East Gippsland Shire Council.

² Evidence of this was provided to the Panel at Exhibit 2 and Exhibit 3 of the Applicants evidence.

- In December 2015 Council conducted an investigation into alleged inappropriate behaviour of some Councillors, with the assistance of an external consultant.
 - The Council investigation identified a release of confidential information, "which Cr Buckley acknowledges by his own admission"
 - A report of Cr Buckley's action was prepared by Cr Pelz with the assistance of the CEO, Mr Gaffney (this is the basis of the first allegation)
 - On 2 May 2016 the CMI was notified of the alleged release of confidential information.
 - On 14 July 2016: Cr Pelz notified the CMI of a subsequent alleged release of confidential information in a WIN News TV interview with Cr Buckley (this is the basis for the second allegation).
 - On 25 July 2017 Ms Bennett provided the CMI with a copy of an article in the Bairnsdale Advertiser devoted to Cr Buckley and his views on confidential information (this is the basis for the third allegation).
 - The CMI then made enquiries and conducted an investigation. The CMI decided not to charge Cr Buckley with an offence pursuant to s77(1) of the Act, instead deciding to exercise his power to bring an Application to the Panel for a finding of serious misconduct.
23. The matter came to the attention of the CMI by way of a written complaint dated 2 May 2016, written by the Mayor, Cr Marianne Pelz. In her letter Cr Pelz advised that she had also notified Local Government Victoria in April 2016, who subsequently advised that the matter be referred to the Local Government Investigations and Compliance Inspectorate.
24. The Applicant made available all witnesses whose transcripts were relied on in its Application, who were subsequently questioned by Mr Murphy for the Respondent, and by the Panel.
25. Ms Robson provided an opening statement outlining the Application, and submitted that the Applicant would be relying on the written material contained in the Application. This included transcripts of voluntary interviews with the witnesses that took place on 26 and 27 October 2016 by an Inspector of Municipal Administration with the Local Government Investigations and Compliance Inspectorate, Ms Aeron Rice during the process of the CMI Investigation of this matter.
26. Mr Murphy made submissions on behalf of his client, with a general submission that any consideration of the factual evidence should take into account "the negative comments made by most if not all of the witnesses in the matter regarding Cr Buckley."

27. Mr Murphy submitted that the issue of whether or not these were reasonably held opinions was not the point, rather suggesting that they negatively influenced the perception of each of the witnesses regarding Cr Buckley's alleged conduct, particularly in relation to allegations 1 and 2.
28. He then went on to make specific submissions as to each of the allegations in turn.

Submission in relation to allegation 1

29. Mr Murphy submitted that the allegations were based on comments made by two members of the public to two different Counsellors and were hearsay, and thus should not be accepted. Furthermore, Mr Murphy submitted that no attempts had been made by Council to clarify the content of the alleged disclosure.
30. Mr Murphy also made submissions in relation to Cr Buckley's "confession" as to being the source of the information. Mr Murphy submitted that without the admission on the part of Cr Buckley, the evidence supporting the allegation is weak in the extreme. Mr Murphy then suggested to the Panel that it take the admission with some care, stating that "at its highest, the suggestion of an admission relies on the interpretation of comments alleged to have been made by Cr Buckley at a meeting on 15 December". These comments were "yeah well that was me" and a suggestion by Cr Buckley that he "might have inadvertently said something to Mr Carrison".

Submission in relation to allegation 2

31. Regarding the second allegation, Mr Murphy conceded that the Code of Conduct was used in a WIN TV interview on 8 July 2016, but stated that as this was a public document there was no breach of confidentiality.
32. As to the suggestion by the Applicant that the other document used in the interview was a report prepared by Cr Pelz on 5 December 2015, Mr Murphy submitted that there was no clear evidence that it was in fact the Pelz report, and "even if it was, it would have been the last few pages of that report" which were attachments and clearly not confidential.
33. Finally, Mr Murphy submitted that in any event, the information used could not even be identified in freeze frame, with the information impossible to read.

Submission in relation to allegation 3

34. Mr Murphy stated that the summary of the evidence indicated a prima facie basis to suggest that Cr Buckley was the source of the information in the article published in the Bairnsdale Advertiser on 25 July 2016. However, Mr Murphy submitted that the evidence to suggest Cr Buckley breached confidentiality was "vague, jumbled, inconsistent and lacking in objectivity."

Penalty

35. My Murphy made a submission as to any penalty determined by the Panel if a finding of serious misconduct was made. Mr Murphy submitted that an appropriate penalty would be a "formal reprimand and possibly a request that Cr Buckley attend training".
36. On behalf of his client, Mr Murphy strenuously refuted the suggestions in the Applicant's evidence that Cr Buckley was motivated by a desire to gain votes in Council elections, instead submitting that the driver for his actions was his desire that organisations like Council be open and transparent.
37. My Murphy requested the Panel take into account Cr Buckley's "age, long history of community service including but by no means limited to a service as a Councillor for many years."

Evidence of Ms Maryanne Bennett (Director, Corporate, East Gippsland Shire Council)

38. Ms Bennett gave evidence to the Panel, and presented as a reliable, respectful and honest witness.
39. Ms Bennett was questioned regarding the letter Cr Buckley sent to Council seeking information (allegation 3) that was later published in the Bairnsdale Advertiser. Ms Bennett confirmed that she drafted the response in her capacity as Director of Corporate. It was then reviewed by the CEO and dispatched.
40. Regarding the general day to day dealing with correspondence in and out at Council, Ms Bennett advised the Panel that there is a written protocol as to how correspondence is managed – documents are seen by "as few sets of eyes as possible". Ms Bennett said all correspondence and corporate information is captured into a management system with confidential classifications to protect it. The only people with access are the CEO, Ms Bennett and the IT administrator.
41. The Panel then asked Ms Bennett about note taking protocols, in particular for CEO and Councillor meetings. Ms Bennett confirmed that they are not recorded. The CEO's Executive Assistant attends and takes informal notes.
42. Ms Bennett was then asked if an informal meeting of Councillors (such as that which occurred in December 2015) constitutes a Council Meeting. She said a Council Meeting is a formal meeting at which decisions are made. The CEO and Councillor meetings are informal, where no specific Council decisions are made.

Evidence of Mr Gary Gaffney (Chief Executive Officer, East Gippsland Shire Council)

43. Mr Gaffney gave evidence to the Panel, and presented as a reliable, respectful and honest witness.

44. In relation to allegation number one, Mr Gaffney was able to recall the meeting of 15 December 2015, where he also heard Cr Buckley admit that he was person who had discussed confidential information. Specifically, he recalled Cr Buckley said "yeah well that was me", when discussing the release of confidential information,
45. Mr Gaffney confirmed that the letter containing all of the information that was subsequently published in the Bairnsdale Advertiser on 25 July 2016 was only sent to Cr Buckley.
46. The Panel questioned Mr Gaffney about the security of Council documents, and whether someone else could have inappropriately accessed the information. Mr Gaffney was certain that not only was the letter stored by Ms Bennett as the Director of Governance, but was password protected with restricted access.

Evidence of Mr Peter Neal (ex Councillor, East Gippsland Shire Council)

47. Mr Neal gave evidence to the Panel, and presented as a reliable, respectful and honest witness.
48. Mr Neal gave evidence as to the conversation that took place between himself and a member of the public (in relation to allegation 1). In his transcript of interview for the CMI Investigation, Mr Neal stated:

"It just came out of the blue actually, and he wanted to know all of the why, why and details that were on that night and I kept saying to him, how did you find this out? You know that was in a CEO discussion, I find these things out and of course he is a mate of Buckley's. I have since found out that what had happened was Buckley had left all the confidential information on his dining room table and this fellow being a mate of Buckley's was sitting at the dining room table and read it all."

49. Mr Neal also gave evidence as to the meeting that took place in December 2015, confirming that he heard Cr Buckley answer in response to questions around the release of confidential information "yeah, well I said that, I told people that."

Evidence of Mr Jeff McNeill (ex Councillor, East Gippsland Shire Council)

50. Mr McNeill gave evidence to the Panel, and presented as a reliable, respectful and honest witness.
51. In relation to allegation one, Mr McNeill told the Panel of his exchange with a member of the public on 15 December 2015. This person queried him as to "what was happening in respect of media coverage around Councillor behaviour following the 2015/16 Mayoral election". The member of the public went on to tell Mr McNeill that "at a clearing sale he was at recently, he had been told that a barrister from Melbourne had been in Bairnsdale recently and had interviewed each Councillor".

52. Mr McNeill said he challenged the member of the public as to who told him this information, to which the response was "I can't tell you because I have a personal complaint with Council about a planning matter."
53. When asked about the meeting in December 2015 where it is alleged that Cr Buckley admitted to the release of confidential information, Mr McNeill said that Cr Buckley owned up to talking to people. He heard him say "that was me", arguing that he "does not hide anything from his constituents."

Evidence of Cr Marianne Pelz (Councillor, East Gippsland Shire Council)

54. Councillor Pelz gave evidence to the Panel, and presented as a reliable, respectful and honest witness.
55. In relation to allegation number one, Cr Pelz told the Panel that she was clear that Cr Buckley had been the source of the leak of confidential information, but that she did not think he did so with any malice intent. She produced to the Panel a copy of a file note she made from a meeting with Cr Buckley and the CEO, Mr Gaffney.
56. In her file note, Cr Pelz had stated that Cr Buckley said his role was to "defend actions in the tribunal", but that he also went on to declare that he may have inadvertently said something to a member of the public, who had been known to call him up to eight times a day.
57. During the course of the investigation of the alleged disclosures, Cr Pelz wrote to Cr Buckley formally putting each of the allegations to him. Councillor Pelz also conducted a voluntary interview with Cr Buckley in the presence of the CEO Mr Gaffney, and Cr Buckley's son. Again formal responses were sought to the allegations. During the interview Cr Buckley said he had nothing to contribute and said he wanted to "reserve his right to say nothing".
58. On completion of her investigation, Cr Pelz produced a report on her findings, and again provided Cr Buckley with an opportunity to clarify any misunderstanding she may have made. In her evidence to the Panel, Cr Pelz confirmed that no written response was received, and that Cr Buckley provided her with a verbal response that he would not entertain her report.
59. In relation to allegation number two, Cr Pelz told the Panel how she recalled receiving the written request from Cr Buckley for an itemised costing for specific events. Cr Pelz told the Panel that the information Cr Buckley was seeking was not information she was privy to, so she forwarded the request on to the CEO, Mr Gaffney, due to the "operational nature" of the request.
60. Regarding the document used in the WIN TV clip, Cr Pelz stated that she was positive that it was the report she drafted regarding Cr Buckley's release of confidential information, as it is the only document in the history of Ms Pelz's term as Mayor that she created with a watermark across it. Councillor Pelz was very firmly of the view that the whole of the document was confidential, but did acknowledge that pages 6-10 of the report were extracts from the Act.

61. As to a submission made regarding Cr Pelz's negative attitude towards Cr Buckley, the Panel does not accept this contention. Not only did Cr Pelz engage warmly with Cr Buckley during the Panel hearing, she provided evidence of a file note she had made in relation to a meeting of Councillors where she observed another Councillor being disrespectful, bullying and offensive towards Cr Buckley, and that this was not appropriate.
62. The Panel asked Cr Pelz about the training Councillors had received regarding the obligation of confidentiality. She confirmed training was provided from January to March, after the Loney Investigation (referred to above in paragraph 22) so by the time the conduct pertaining to allegations two and three occurred, all councillors had been retrained regarding confidentiality. Councillor Pelz went on to confirm that Council budgets for \$3000 per year for up skilling each Counsellor.

Evidence of Cr Ben Buckley (Councillor, East Gippsland Shire Council)

63. On first request, Cr Buckley did not wish to participate in the Panel, refusing to answer questions. He subsequently agreed to answer limited questions from the Panel.

Allegation 1

64. When asked about this allegation, and in particular his admissions at the meeting of 15 December 2015, Cr Buckley provided the Panel with no explanation as to his admission, refusing to elaborate on what he meant when he said that "it might have been him" and that he "may have inadvertently said something to Carrison".

Allegation 2

65. In response to direct questions from the Panel, Cr Buckley stated that he "may have picked up a document for the purpose of the TV footage without paying too much attention to what it was", noting that the focus of his attention was on the Code of Conduct, not the report.
66. When pressed by the Panel as to what the documents were that he used, Cr Buckley reluctantly admitted that it was not only the Code of Conduct, but also the report prepared by Cr Pelz, which he then acknowledged that he knew was a confidential document.

Allegation 3

67. Cr Buckley provided limited information on this point, only stating that he "speaks to the media often", indicating to the Panel that he had even spoken with the media during the morning break of the Panel hearing. He said "I often talk to the media, I've just been talking to them now out there before. That's part of my role to talk to the media. That's what I was elected for, to keep the people informed of what is going on."
68. The Panel then asked Cr Buckley directly whether he spoke with the media in relation to this allegation. His response was "yes, I spoke to them. Yes. And that's all I am prepared to say on that."

69. Regarding confidentially generally, and then specifically how he can maintain his legislative obligations regarding confidential information moving forward, Cr Buckley told the Panel that he would “only breach confidentiality if he really had to.” When asked by the Panel to explain what he meant by this, Cr Buckley said “Well, I’d have to make a judgment about it at the time, because if something is ridiculously stamped confidential and there is no obvious logical reason for it except the putting of a stamp on it...I would have to make my own judgment on that”.
70. When asked by the Panel as to how Cr Buckley would deal with any further actions for breach of his obligations, Cr Buckley responded saying “I’m not frightened anymore of the consequences of my actions if I think they are right.”

Finding of the Panel

71. The Panel makes a finding of serious misconduct against Cr Ben Buckley, of East Gippsland Shire Council in relation to allegations 1 and 3.

Penalty

72. Section 81J(2A)(b) sets out the penalties available to the Panel if it makes a finding of serious misconduct against a Councillor:
- (b) the Panel may—
 - (i) reprimand that Councillor; or
 - (ii) direct that Councillor to make an apology in a form or manner determined by the Panel; or
 - (iii) direct that Councillor to take a leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel; or
 - (iv) suspend that Councillor from office for a period specified by the Panel not exceeding 6 months; or
 - (v) direct that the Councillor is ineligible to chair a special committee of the Council for a period specified by the Panel not exceeding the remainder of the Council's term.
73. Pursuant to section 81J(2A)(b)(iv), the Panel suspends Cr Ben Buckley from office for a period of four (4) months.

Reasons for the Panel’s Decision

Allegation 1

74. Two Councillors reported the alleged breach back to Council on two separate days, with information obtained from two separate sources. Neither Mr Neal (Cr Neal at the time), nor Mr McNeill (Cr McNeill at the time) was aware that the other had come forward. Subsequent to these disclosures, Cr Buckley

made admissions as to the breach in a meeting of all Councillors on 15 December 2015. This meeting took place in the Council Chamber with Mr Gaffney as CEO, with official notes captured and reflected in the Appendix to the Application³. It is at this meeting that the four witnesses heard Cr Buckley admit that he had spoken to people about the Loney meeting.

75. Councillor Buckley could offer no other explanation as to what he meant, and given his statements were made in the context of a discussion of the alleged breach of confidential information, heard and discussed in evidence before the Panel by all four witnesses (who gave similar accounts of the wording and the exact same context for which the discussion took place) the Panel did not accept the submission for the respondent that he did not release confidential information that was deemed confidential pursuant to section 77 of the Act.
76. As to the submissions regarding the 50 day requirement for confidentiality to be maintained, the Panel accepted the submissions of the Applicant, accepting that the breach was within 50 days of the information being deemed confidential pursuant to section 77(3) of the Act (as it was enacted at that time).

Allegation 2

77. Whilst it appeared from watching the relevant TV footage that a confidential document has been waved around in the WIN TV news interview on 8 July 2016 (a fact ultimately admitted by Cr Buckley after questioning from the Panel) the duration in which it was shown made it extremely unlikely that any information was gleaned from the document.
78. The Panel accepted the submissions of Mr Murphy that the duration and manner in which the information was shown in the WIN TV interview made it insufficient to establish an allegation of a release of confidential information.
79. Whilst the Panel did not make a finding of serious misconduct in relation to this allegation, the Panel was concerned about the intent and manner in which Cr Buckley managed his confidential information, and how it was used as a prop.

Allegation 3

80. The Panel accepted the evidence of the Applicant that there was no other way the information could have been provided to the Bairnsdale Advertiser, other than from Cr Buckley.
81. The Panel accepted the evidence of Ms Bennett and Mr Gaffney as to the record management processes of Council, and was satisfied that based on the stringent security measures within the Council records management database, there was no other individual that would have had access to the information as requested by Cr Buckley other than Ms Bennett, Mr Gaffney, and Cr Buckley.

³ At tab 7 of the Applicant's supplementary material.

82. Specifically, the Panel accepted the evidence of Ms Bennett confirming the secure nature of the letter from Cr Buckley requesting the information that was ultimately published in the Bairnsdale Advertiser, and how it is stored within the IT and paper storage system.
83. The Panel also accepted the evidence of Cr Buckley, where he conceded that he had spoken with the Bairnsdale Advertiser.
84. As indicated above, regarding the duration of the confidentiality provision of the Act, the Panel noted that no time limit applied on the confidentiality of the information, as the previous section 77(3) of the Act had been repealed. Therefore, at the time of its release, it was still confidential in nature and not for release.

Suspension

85. With regards to the duration of the suspension imposed by the Panel, the Panel was satisfied that Cr Buckley has shown a total disregard for the requirement that a Councillor must not disclose information that the Councillor knows, or reasonably ought to know, is confidential information.
86. Cr Buckley said he understands the requirements of confidentiality and was at pains to tell the Panel that he would never divulge any information to do with a tender process. However, he seems to believe that there is a hierarchy of need within the confidentiality requirements and that he is able to identify what he believes the community needs to know, regardless of the confidential nature of the material. Clearly he does not understand the requirements of the Act.
87. Mr Murphy provided alternative closing submissions in the event that the Panel made a finding of serious misconduct, seeking lenience given Cr Buckley's experience, his standing within the community and his advanced age.
88. Regardless of how long Cr Buckley has served his community and how committed he is to his cause, he is bound by the law. When queried, he could not assure the Panel members that he would not breach confidentiality again.
89. Confidentiality is one of the most fundamental aspects of the governance framework of the Act. No one individual has the right to interpret and determine how to apply the law on a case by case basis.
90. For these reasons the Panel considered it appropriate to suspend Cr Buckley from office for a period of four (4) months.

Jo-Anne Mazzeo
Chairperson

Helen Buckingham
Panel Member

28 August 2017