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## Local Government Standards Panel

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| Complaint Number   | SP 1 of 2018<br>[DLGSC 20180212]  |
| Legislation        | <i>Local Government Act 1995</i>  |
| <b>Complainant</b> | <b>Mr Gary Evershed</b>   |
| <b>Respondent</b>  | <b>Councillor Michael Smart</b>   |
| Local Government   | <b>Shire of Augusta Margaret River</b>  |
| Regulation         | Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>     |
| Panel Members      | Mrs Sheryl Siekierka (Presiding Member)<br>Cr P Kelly (Member)<br>Ms M Strauss (Member) |
| Heard              | 8 March 2018<br>Determined on the documents   |
| Outcome            | One breach of regulation 11(2)  |

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### FINDING AND REASONS FOR FINDING

Published 17 April 2018

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## Summary of the Panel's finding

1. The Complainant alleged that Councillor Michael Smart, a Councillor for the Shire of Augusta Margaret River, committed five minor breaches under the *Local Government Act 1995 (WA)* (the Act) and regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007* when he failed to disclose interests affecting impartiality at ordinary council meetings on 30 November 2017 (the November OCM) and 13 December 2017 (the December OCM) when he was a member of the Friends of Flinders Bay community group.
2. The Panel found that Cr Smart committed one minor breach of regulation 11(2) when he failed to disclose an interest affecting impartiality in one item at the November OCM concerning the adoption of the Flinders Bay Protection and Management Plan and the installation of a handrail and rubber matting at a boat ramp.
3. Cr Smart did not breach regulation 11(2) in relation to two other items at the November OCM when Council considered floating swimming rafts and safety measures at the boat ramp to prevent slipping accidents. Neither did Cr Smart breach regulation 11(2) in relation to two items at the December OCM when Council considered an amendment to the November OCM minutes and a number of other safety measures affecting the boat ramp.

## Jurisdiction and procedural fairness

4. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
5. On 9 January 2018 the Panel received a Complaint of Minor Breach Form dated 28 December 2017 signed by the Shire's Chief Executive Officer, Mr Gary Evershed (the CEO) alleging Cr Smart committed five breaches of regulation 11(2) at the November OCM and December OCM when Council considered matters concerning the Flinders Bay Protection and Management Plan and a boat ramp at Flinders Bay (the Complaint) when he was a member of Friends of Flinders Bay Inc., an incorporated association under the *Associations Incorporation Act 2015 (WA)* [FOFB].
6. The CEO included a detailed statement in his Complaint Form and provided copies of the following documents:
  - Extracts from the published minutes of the November and December OCMs.
  - An election candidate profile for Ms JM.
  - An email dated 30 October 2017 from Cr Smart to Mr MB, the Shire's Director Infrastructure Services, headed "Flinders Bay Boat Ramp handrails".
  - An email dated 2 November 2017 from Cr Smart to Mr MB headed "Flinders Bay Boat Ramp handrails".
  - An email dated 3 November 2017 from Cr Smart to Mr MB headed "FOFB General Meeting Minutes Monday 25 September 2017" attaching a copy of the minutes of that FOFB meeting.

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<sup>1</sup> Section 5.105 of the Act.



7. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged breach occurred. However, if a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the Department instead of considering the complaint itself.<sup>2</sup> As Cr Smart had not previously committed any minor breaches the Panel did not consider sending the Complaint to the Chief Executive Officer of the Department.
8. The Panel convened on 8 March 2018 to consider the Complaint. The Panel:
  - accepted the Department’s advice that, based on information published on the Western Australian Electoral Commission’s website, Cr Smart was a Shire Councillor at the time of the alleged breaches and when the Panel met to consider the Complaint;
  - was satisfied the Complaint was made within two years after the alleged breaches occurred<sup>3</sup> and that the Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>4</sup>;
  - noted that on 18 January 2018 the Department sent Cr Smart a copy of the Complaint Form and the documents referred to in paragraph 6 above, inviting Cr Smart to respond to the Complaint;
  - noted that on 12 February 2018 Cr Smart provided a detailed response in an Elected Members Response Form (the Response);
  - was satisfied the Department had provided procedural fairness to Cr Smart; and
  - found it had jurisdiction to consider the Complaint.

### **Panel’s role**

9. The Panel is not an investigative body.<sup>5</sup> It makes decisions about complaints of minor breaches solely upon the evidence presented to it and, when relevant, information published on a local government’s website, such as agendas for and minutes of council meetings, codes of conduct, standing orders and policies. For the Panel to find that a councillor committed a minor breach it must be satisfied on the evidence before it that it is more likely than not that the alleged breach occurred.<sup>6</sup> This is commonly referred to as “the required standard” or “the required standard of proof”.
10. The Panel cannot rely on an alleged fact unless it is satisfied that it is more likely than not that the alleged fact is true.<sup>7</sup> The Panel cannot merely choose between two or more conflicting but equally possible versions of events.<sup>8</sup> To accept one of the

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<sup>2</sup> Sections 5.110(2)(b), 5.111(1) of the Act.

<sup>3</sup> Section 5.107(4) of the Act

<sup>4</sup> Sections 5.107, 5.108, 5.109 of the Act.

<sup>5</sup> *Re v Local Government Standards Panel* [2015] WASC 51, paragraph 24.

<sup>6</sup> Section 5.106 of the Act.

<sup>7</sup> The effect of section 5.106 of the Act.

<sup>8</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



competing versions of events it must be satisfied that one is more likely to be the correct version.

11. For a finding that a councillor has breached a particular regulation the Panel must be satisfied to the required standard that every element of that regulation has been established.
12. Where the complainant submits the Panel should come to a particular conclusion, such as that the evidence establishes an element of the regulation, the Panel must be satisfied, after weighing up all the evidence and applying the relevant legal principles, that its conclusion is the one best supported by the evidence.<sup>9</sup>

### The Complaint

13. The CEO alleges Cr Smart breached regulation 11(2) at the November OCM by failing to disclose impartiality interests arising from kinship, friendship and his membership of FOFB in items affecting Council's adoption of the Flinders Bay Flinders Bay Protection and Management Plan, a boat ramp at Flinders Bay (the Boat Ramp) and swimming rafts at Flinders Bay and Hardy Inlet (the Rafts).
14. The CEO also alleges Cr Smart breached regulation 11(2) at the December OCM by failing to disclose impartiality interests arising from kinship, friendship and his membership of FOFB when Council considered items relating to the Boat Ramp.

### Regulation 11

15. Regulation 11 requires a councillor to disclose what is commonly referred to as an "impartiality interest". The relevant parts of regulation 11 provide:

*"11. Disclosure of interest*

*(1) In this regulation —*

*interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.*

*(2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —*

*(a) in a written notice given to the CEO before the meeting; or*

*(b) at the meeting immediately before the matter is discussed."*

*...*

*(4) Subregulation (2) does not apply if —*

*(a) a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter;*

*or*

*(b) a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an*

<sup>9</sup> The effect of section 5.106 of the Act.



*interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.*

- (5) *If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —*
- (a) *before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and*
- (b) *at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.*
- (6) *If —*
- (a) *under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or*
- (b) *under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,*
- the nature of the interest is to be recorded in the minutes of the meeting.”*

## **The Response**

16. Cr Smart denies he committed the alleged breaches.
17. Much of Cr Smart's Response is irrelevant to the allegations in the Complaint. He refers to proximity interests under the Act and matters concerning his membership of Arts Margaret River.
18. In relation to matters relevant to this Complaint, Cr Smart says:
- The Complaint is vindictive.
  - The assertions that he had impartiality interests through kinship and friendship are trivial and “nonsense”.
  - Augusta is a small community, he has had a holiday home in the area for 40 years, has been living in the area for 18 years, has been a Shire councillor for 10 years and has “consistently supported the overwhelming sentiment of the Augusta community”.
  - If he is required to disclose impartiality interests then other councillors would also be required to do so.
  - The Department's 2011 Guidelines for Disclosure of Interests Affecting Impartiality advised that a councillor who is a member of a residents' group who occasionally attends meetings and events is “probably not” required to disclose an interest.



## Background

19. It is more likely than not as at the date of the November and December OCMs, Cr Smart was a member of FOFB. The Panel makes this finding because it is implied in the Complaint, Cr Smart says in his Response he was a member (albeit not specifying when) and the FOFB minutes of its meeting on 25 September 2017 record that Cr Smart attended.
20. Cr Smart has not questioned the accuracy of the published minutes of the November and December OCMs. The Panel has no reason to doubt the minutes of these two OCMs accurately record the contents of the officers' reports to Council and the proceedings.
21. The Panel has no reason to doubt that published minutes of previous council meetings accurately record the contents of the officers' reports to Council and the proceedings.
22. Council considered the Draft Flinders Bay Masterplan encompassing a wide range of infrastructure projects in the Flinders Bay area at its ordinary council meeting on 23 November 2016. The officer's report (pages 44, 45 of the 23 November 2016 minutes) presented one of the many proposed projects as:

*"7. Improve accessibility to the beach around the existing jetty and boat ramp (including handrails and investigate ramp removal).*

*Since the development of the Augusta Harbour and the subsequent closure of the Flinders Bay boat ramp, the maintenance of this facility has been brought into question. In the short term, actions will be pursued to address the safety concerns associated with the slippery concrete in the tidal area of the ramp through an appropriate cleaning program. Although not raised by the public during the consultation process, it was separately requested that a handrail be considered at this location. The feasibility of a handrail is currently being investigated. In the longer term, it is recommended that the removal of the ramps be investigated as these are no longer used, will require ongoing maintenance and have the effect of impeding movement along the beach. It is not proposed to remove the jetty."*
23. At the ordinary council meeting on 23 November 2016 Council resolved to consult "immediate property owners" at a meeting in January 2017 before considering the Draft Flinders Bay Masterplan further (23 November 2016 minutes, page 47; officer's report in November OCM minutes, pages 56, 57).
24. FOFB was formed during the Shire's consultation following the 23 November 2016 meeting (officer's report, November OCM minutes, page 58; page 2 of Cr Smart's Elected Members Response Form).
25. At the ordinary council meeting on 8 March 2017, after considering the results of community consultation, an amended Draft Flinders Bay Masterplan was put to Council. Council resolved to adopt the new Draft Flinders Bay Masterplan for the purposes of further community consultation (23 November 2016 minutes, page 55; officer's report, November OCM minutes, pages 56, 58).



Item 11.2.3 at the November OCM, “Flinders Bay Protection and Management Plan, Augusta”

26. At its meeting on 25 September 2017 FOFB (email from Cr Smart to Mr MB) decided, among other things:
- the Masterplan should specify that the Shire will consult FOFB “on all development or improvement works before implementation”;
  - FOFB supported the proposed installation of a handrail on the Boat Ramp, subject to consultation with FOFB; and
  - FOFB will ask the Shire to expedite the construction of the handrail.
27. On 30 October 2017 Cr Smart emailed Mr MB (email provided with the Complaint Form) stating there was \$26,000 in the Shire’s current budget to provide a stainless steel handrail and non-slip matting at the Boat Ramp and the community is “100% behind the handrail”. The email does not indicate in what capacity Cr Smart emailed Mr MB.
28. In his email to Cr Smart on 2 November 2017 Mr MB advised Cr Smart that the handrail and non-slip matting options had been extensively researched in 2016 and discussed with the Shire’s insurer. He said the insurer’s advice had been put before Council at its ordinary council meeting on 14 December 2016. Mr MB also advised Cr Smart in this email that a decision about the handrail and matting had been deferred pending Council’s decisions on the new Draft Flinders Bay Masterplan.
29. On 3 November 2017 Cr Smart emailed Mr MB again, attaching a copy of the minutes of FOFB’s meeting on 25 September 2017, reiterating that there was ongoing strong support for a handrail and non-slip surface adjacent to the Boat Ramp.
30. The officer’s report in the November OCM minutes states:
- FOFB sought to have a number of maintenance/infrastructure projects included in the Draft Masterplan (pages 58, 59) including:  

*“(Removal of) potential pedestrian and vehicle hazards around the top of a boat ramp, in consultation with FOFB”*
  - The FOFB wanted the Masterplan to include the installation of a handrail (page 59).
  - After receiving technical advice about the proposed handrail, including from its insurers, the Shire formed a firm view that a handrail should not be installed (pages 59, 60).
  - FOFB sought to have the Masterplan require the Shire to recognise FOFB as the “principal” body for liaison, and consult it on all development and improvement works (page 59).
  - The Shire renamed the Draft Flinders Bay Masterplan as the Flinders Bay Protection and Management Plan (the PM Plan) [page 58].





- FOFB supported the future removal of the Boat Ramp but in the meantime requested a handrail be installed at the ramp. The administration did not support the installation of a handrail because of risks and public liability issues (pages 59, 60).
  - The draft PM Plan being put to Council at the November OCM included the works FOFB wanted the Shire to undertake, including the installation of the handrail (page 59).
31. At the November OCM (minutes page 61) the officer's report recommended that Council resolve:
- "1. To adopt the PM Plan;*
- 2. Not to proceed with the installation of a handrail and rubber matting at the existing boat ramp; and*
- 3. Reallocate the existing capital budget of \$26,000 in job FFS21 Flinders Bay Boatramp Handrails to a new operating expenditure job to be created for "Flinders Bay Foreshore and Surrounds Maintenance ..."*
32. At the November OCM Council split the recommended motion. It resolved to adopt the PM Plan (November OCM minutes page 61). A motion to accept recommendations 2 and 3, moved by a Councillor other than Cr Smart, lapsed as there was no seconder (minutes page 62).

Item 11.3.1 at the November OCM, "Provision of Floating Swim Rafts"

33. The officer's report advises that Council had considered the installation of Rafts in Flinders Bay and the Hardy Inlet in November 2016 and, after community consultation, was to revisit the matter at the November OCM. The officer's report advised that, in line with community views, the PM Plan being presented to Council did not include the installation of the Rafts.
34. At the November OCM Council resolved not to install Rafts in either Flinders Bay or the Hardy Inlet. The officer's report for item 11.3.1 does not mention FOFB.

Item 12.2 at the November OCM "Slip Incidents Associated with the Boat Ramp Area at Flinders Bay"

35. Before this OCM Cr Smart had given notice of his intention to move:

*"That Council instructs the following:*

- 1. That minimal barriers be placed adjacent to the jetty on the two northern boat ramps to deter pedestrian usage";*
- 2. A hand rail, extending into the water, be provided on the lower section of the northern edge of the Southern Boat Ramp; and*
- 3. Non-slip matting be affixed to the tidal area of the southern Boat Ramp (underlining added by the Panel)".*





36. Council eventually passed an amended motion, Cr Smart having seconded the motion to amend:

*“That Council instructs officers as a matter of urgency to:*

*1. Investigate a solution to enhance safety in relation to the Flinders Bay boat ramp, that will:*

- o also allow for more secure access to the water;*
- o not detract from the amenity of the location.*

*2. Install further signage at the ramp advising that the ramp is not designed for pedestrian access and recommending against pedestrian use.*

*3. That officers provide an immediate, short and long term solution.*

*4. That should staff or legal advisors suggest a better way forward, that they provide a recommendation at the next meeting.”*

37. The amended motion was carried. There is no reference in the minutes under this item to any views of the FOFB.

#### Item 6.1 at the December OCM

38. Council resolved to remove a reference to the CEO’s advice in the draft minutes of the November OCM for item 12.2 because Councillors had not received the CEO’s advice before Council dealt with item 12.2.

#### Item 11.3.6 at the December OCM, “Flinders Bay Boat Ramp”

39. The officer’s report mentions, by way of background only, FOFB’s submissions to the administration before the November OCM when the administration was preparing the draft PM Plan. The officer’s report contains a detailed discussion about safety. There is no reference to the FOFB’s involvement in the Boat Ramp issues since Council decided at the November OCM not to install a handrail or matting.

### **General principle**

40. Although Cr Smart is a member of FOFB it does not automatically follow that he will have an impartiality interest every time Council considers a matter in which FOFB is interested. Any potential duty to disclose must be considered on a case by case basis, in all the particular circumstances. To establish that Cr Smart may not be impartial, or that it would be reasonable for a person to perceive that he may not be impartial, there must be a sufficient connection between his membership of the group and the item to be discussed.

### **Finding in relation to alleged impartiality interests arising out of kinship and friendship**

41. Based on the assertions in the Complaint Form and the material submitted by the CEO, the Panel is not satisfied to the required standard that Cr Smart had any interests arising out of kinship or friendship that could reasonably be perceived to adversely affect his impartiality when discussing and voting on the five agenda items.



42. The Flinders Bay community is a small community. It is to be expected that councillors and residents will have friends in the area who have opinions about local government issues affecting them personally. A councillor will not breach regulation 11(2) merely because he has friends or family in the area affected by a matter before council.
43. The CEO has not provided any evidence to satisfy the Panel to the required standard that Cr Smart had any family connections or friendships that could reasonably lead to a perception that Cr Smart may not be impartial when considering the Masterplan/PM Plan or Boat Ramp issues.
44. Cr Smart did not breach 11(2) as a result of any friendships or family connections.

**Allegation 1 – November OCM item 11.2.3 – whether Cr Smart had any interest arising out of circumstances other than kinship or friendship**

Whether the Cr Smart had an “interest” in item 11.2.3 within the meaning of “interest” in regulation 11(1)

45. Item 11.2.3 called for Council to decide whether to adopt the PM Plan but also to make decisions on two more specific recommendations concerning the installation of the handrail and matting; and the budget allocation for the handrail.
46. Cr Smart was a member of FOFB at the time of this OCM. The officer’s report set out in the minutes would have been included in the agenda. It is clear that FOFB was advocating for particular outcomes concerning FOFB being written into the PM Plan and changes to the Boat Ramp.
47. Cr Smart emailed Mr MB at the Shire on 30 October and 3 November 2017, without specifying whether he was emailing on behalf of FOFB or in his capacity as a Councillor.
48. There can be tension between a councillor’s views as a member of the community and his or her role to look at issues more broadly. Regulation 11 is intended to address any reasonable perceptions of bias.
49. It is not necessary to establish that a councillor would have voted, or did vote, in a particular way because of any personal interest or involvement in a community group. The test is objective. In all the circumstances could a reasonable person perceive that a councillor’s membership of a community group affected by business before the Council could damage or threaten the councillor’s impartiality?
50. Cr Smart, as a member of FOFB, supported FOFB’s position on the installation of a handrail and non-slip matting. He also wanted the PM Plan to require the administration to consult FOFB about every aspect of the PM Plan.
51. At the November OCM Council had to consider not only the handrail and matting issues but also whether the PM plan should designate FOFB as the Shire’s “principal” point of contact for community liaison. Any decision by Council to tie the administration and the Council to FOFB in this way would have significant implications for the whole community and could be perceived as giving FOFB a special opportunity, not available to non-FOFB members of the community, to influence the decisions of Council and the administration.



52. The Panel finds that in all the circumstances it would be reasonable for a member of the community to perceive that Cr Smart may not consider all the relevant issues in the way expected of a councillor, including those specifically canvassed by the Shire before the November OCM, and that he may vote solely to achieve the outcomes FOFB wanted.
53. The Panel is satisfied that through his membership of FOFB Cr Smart had an interest in item 11.2.3 as defined by regulation 11(1).

Whether Cr Smart disclosed his impartiality interest

54. Cr Smart disclosed a proximity interest under the Act<sup>10</sup>, as the reserve within the scope of the PM Plan included land opposite his residence. Because of this interest he left the chamber before Council considered item 11.2.3, returning only when Council considered recommendations 2 and 3 referred to in paragraph 31 above.<sup>11</sup>
55. Although Cr Smart left the chamber before Council started to discuss item 11.2.3 the Panel is still required to consider the alleged failure to disclose an impartiality interest.
56. Cr Smart does not submit he disclosed an impartiality interest to the CEO before the November OCM commenced and there is no evidence that he did so [regulation 11(2)(a)]. The minutes of the November OCM indicate that Cr Smart did not disclose any impartiality interest just before Council dealt with item 11.2.3 [regulation 11(2)(b)].
57. Accordingly, the Panel is satisfied that Cr Smart did not disclose his impartiality interest as required by regulation 11(2).

Whether regulation 11(4) excused Cr Smart from having to disclose his impartiality interest.

58. There is no evidence to support a finding that Cr Smart did not know he had an impartiality interest in Item 11.2.3 [regulation 11(4)(a)] or that the PM Plan and the Boat Ramp issues were on the agenda [regulation 11(4)(b)]. Regulation 11(4) does not excuse Cr Smart from his duty to disclose the interest.
59. Cr Smart breached regulation 11(2).

**Allegation 2 – November OCM item 11.3.1 – whether Cr Smart had any interest arising out of circumstances other than kinship or friendship**

Whether Cr Smart had an interest in Item 11.3.1 within the meaning of “interest” in regulation 11(1)

60. There is no evidence that FOFB had a particular view in relation to the proposed installation of the Rafts. There is nothing in the material provided to the Panel to indicate that Cr Smart may not have set out to be impartial when discussing this item or that any person could reasonably perceive that he may not be impartial.

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<sup>10</sup> November OCM minutes, page 56. The Regulations apply to impartiality interests, whereas the disclosure provisions in the Act apply to different types of interests, including proximity interests. Proximity interests must be disclosed under sections 5.60B and 5.65 of the Act.

<sup>11</sup> November OCM minutes, pages 56, 62.



61. The Panel finds that Cr Smart did not have an “interest” resulting from his membership of FOFB or from any other circumstances. Accordingly, Cr Smart did not have any duty of disclosure under regulation 11(2) in relation to item 11.3.1. The Panel does not need to consider the other elements of regulation 11.

62. Cr Smart did not breach regulation 11(2).

**Allegation 3 – November OCM item 12.2 – whether Cr Smart had any interest arising out of circumstances other than kinship or friendship**

63. Item 11.2.3 was about the PM Plan. Item 12.2 was titled “Slip Incidents ...”

64. The minutes for item 12.2 do not refer to FOFB’s views about the installation of a handrail. It is more likely than not that the agenda for item 12.2 did not refer to FOFB.

65. The Panel’s view is that by the time Council came to deal with item 12.2 (recorded 54 pages after item 11.2.3 in the minutes) Councillors’ deliberations had moved on from discussing FOFB’s position.

66. In all the circumstances the Panel is not satisfied to the required standard that it could reasonably be perceived that Cr Smart may not be impartial when discussing and voting on item 12.2.

67. Cr Smart did not breach regulation 11(2).

**Allegation 4 – December OCM item 6.1 – whether Cr Smart had any interest arising out of circumstances other than kinship or friendship**

68. Councillors were deciding whether to confirm the draft minutes of the November OCM. The CEO suggested that the minutes for item 12.2, “Slip Incidents ...” be amended to remove a CEO Advice about the Boat Ramp and handrail because Councillors did not have access to the advice before they considered item 12.2.

69. This was a technical and procedural issue concerning whether it was appropriate for the November OCM minutes to indicate or imply that Councillors had received advance notice of a CEO’s Advice. Cr Smart supported the CEO by seconding a motion to amend the minutes in accordance with the CEO’s suggestion.

70. There is no basis on which the Panel could find that a reasonable person could consider Cr Smart may not be impartial when voting to ensure the minutes fairly represented what had been put to Councillors to enable them to prepare for the meeting.

71. Cr Smart did not breach regulation 11(2).

**Allegation 5 – December OCM item 11.3.6 – whether Cr Smart had any interest arising out of circumstances other than kinship or friendship**

72. By way of background, the officer’s report outlines the history of the Boat Ramp issues, including Cr Smart’s and the FOFB’s requests for a handrail and matting. The minutes indicate that the handrail and matting options were no longer being considered and that Cr Smart and Council generally had moved on from these.



73. The report presents current options and discusses a wide range of factors, such as the connection between the Boat Ramp and the adjacent Flinders Bay jetty, the use of the Boat Ramp by swimmers and motorised vessels, the role of the Department of Transport in decommissioning the Boat Ramp, algae growth and slip risks. There is no reference to any current FOFB views.
74. The officer's report recommended that Council decide to implement a number of new safety measures, such as the installation of warning signs, balustrades and natural retaining structures; and proceed towards decommissioning the Boat Ramp. Cr Smart moved the motion that Council take these measures, which was carried.
75. The Panel is not satisfied that any person could reasonably perceive that Cr Smart, because of his membership of FOFB, may not be impartial when considering a wide range of alternative safety measures at the Boat Ramp.

### **Panel's finding**

76. The Panel finds that Cr Smart breached regulation 11(2) at the ordinary council meeting on 22 November 2017 by failing to disclose an impartiality interest in item 11.2.3 concerning the Flinders Bay Protection and Management Plan and the provision of a handrail and rubber matting at the Flinders Bay Boat Ramp.
77. Cr Smart did not breach regulation 11(2) at the ordinary council meeting on 22 November 2017 in relation to items 11.3.1 and 12.2, or at the ordinary council meeting on 13 December 2017 in relation to items 6.1 and 11.3.6.
78. Therefore, Cr Smart committed one breach of regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007*

Sheryl Siekierka (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Reasons – 6 April 2018