

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

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| Complaint Number | SP 19 of 2014 DLG 20140147 |
| Legislation | <i>Local Government Act 1995</i> (WA) |
| Complainant | Mr Adrian Alexander Wilson |
| Subject of complaint | Councillor Neville Robert Veitch |
| Local Government | Shire of Augusta-Margaret River |
| Regulation | Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> |
| Panel Members | Mr B Jolly (Presiding Member) Cr P Kelly (Member) Mr P Doherty (Member) |
| Heard | 3 February 2014 (Determined on the documents) |
| Result | Breach of Regulation 11(2) |

FINDINGS AND REASONS FOR FINDING

DEFAMATION CAUTION

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1. Summary of the Panel's Decision

- 1.1 The Panel found that Cr Veitch committed a breach of regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007* by failing to disclose an 'impartiality interest' at an Ordinary Council Meeting of the Shire held on 11 June 2014.

2. Introduction

- 2.1 In these Reasons unless otherwise indicated:

- (a) a reference to a regulation is a reference to the corresponding regulation of the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**), and a reference to a section is a reference to the corresponding section of the *Local Government Act 1995* (**Act**);
- (b) the term "viewed objectively" means "as viewed by a reasonable person" (the reference to a reasonable person being a reference to a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts);
- (c) "CEO" means the Shire's Chief Executive Officer;
- (d) "Complainant" means Mr Adrian Alexander Veitch;
- (e) "Complaints Officer" means the Shire's Complaints Officer;
- (f) "Council" means the Shire's Council;
- (g) "Department" means the Department of Local Government;
- (h) "OCM" means Ordinary Meeting of the Council;
- (i) "Panel" means the Local Government Standards Panel; and
- (j) "Shire" means the Shire of Cue.

3. Jurisdiction

- 3.1 By written complaint dated 8 September 2014 the Complainant lodged a complaint of a minor breach with the Department regarding alleged conduct by Cr Robert Veitch of the Shire on 11 June 2014 (**Complaint**).
- 3.2 On or about 15 September 2014 the CEO (being the Complaints Officer) sent the Complaint to the Panel in accordance with the requirements of section 5.107.
- 3.3 The Complainant alleges that:
- (a) Cr Veitch failed to disclose an interest adverse to his impartiality at the OCM of 11 June 2014 (**June 2014 OCM**) during which Scheme Amendment 20 and a Proposed Structure Plan regarding Lot 1 Darch Road, Margaret River (**Darch Road Matter**), was discussed, in contravention of regulation 11(2); and
 - (b) at the time of the June 2014 OCM Cr Veitch had an interest in the Darch Road Matter that could, or could reasonably be perceived to, adversely affect his impartiality in regard to that matter, the nature of such interest being that his sister-in-law, Ms Rosslyn Yakas, was a co-owner of the Lot 1 Darch Road, Margaret River (**Property**).

- 3.4 Regulations 6 to 12 (both inclusive) are the rules of conduct for the purposes of section 5.104(1).
- 3.5 A breach of any such rule of conduct is a “minor breach” as defined in section 5.105(1)(a).
- 3.6 Pursuant to section 5.110(2), the Panel is required to make a finding as to whether the breach alleged in the Complaint occurred or to send the Complaint to the Department’s Chief Executive Officer under section 5.111.
- 3.7 The Panel has been informed by the Department, and so finds that Cr Veitch:
- (a) was at the relevant times (i.e. 11 June 2014) and remains currently, an elected member of the Council; and
 - (b) satisfies the requirements of being an elected member of the Council as:
 - (i) he is qualified to be an elector of the district under section 2.19(1)(b);
 - (ii) there is no evidence to indicate that he is disqualified for Council membership under sections 2.21, 2.22, 2.23 or 2.24; and
 - (iii) he is not disqualified from continuing his membership of the Council under section 2.25.
- 3.8 The Panel also finds that:
- (a) the Complaint is made in writing in the form approved by the Minister pursuant to section 5.107(2);
 - (b) the Complaint was sent to the Complaints Officer within two years after the breaches alleged in the Complaints occurred, as required by section 5.107(4);
 - (c) the Complaint is not one that ought to be sent to the Department’s Chief Executive Officer under section 5.111; and
 - (d) it has jurisdiction to determine whether the minor breach alleged in the Complaint occurred.

4. **Legislative background**

- 4.1 The Regulations include the following regulations:

“11(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.
- (3) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.
- (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 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.”

5. The Panel’s Role

5.1 The Panel observes that:

- (a) clause 8(6) of Schedule 5.1 of the *Act* requires that each member of the Panel is to have regard to the general interests of local government in the State of Western Australia;
- (b) a finding of a minor breach is a serious matter as it may affect an individual both personally and professionally;
- (c) by section 5.106, in order for the Panel to make a finding that a minor breach has been committed by a council member, the finding is to be “based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur”;
- (d) when making this determination:

- (i) the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the [determining body]”, such as the Panel: *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362; and
- (ii) where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise: *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1 at 5.

5.2 The Panel also observes that:

- (a) it is not an investigative body;
- (b) it determines complaints upon the evidence presented to it; and
- (c) it is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.

6. The Complaint

6.1 The Department sent a copy of the Complaint, together with a Complaint Summary, to Cr Veitch by letter dated 30 September 2014 and asked him if he wished to make any comments in relation to the Complaint.

6.2 The Complaint Summary recited that:

“It is alleged that:

1. You, Councillor Neville Robert Veitch, a member of the Council of the Shire of Augusta-Margaret River (‘the Shire’), attended at the Shire Ordinary Council Meeting held on 11 June 2014 at which a matter was discussed, such matter (‘the matter’) being Scheme Amendment 20 and Proposed Structure Plan regarding Lot 1 Darch Road, Margaret River; and
2. At the time of the said meeting you had an interest in the matter that could, or could reasonably be perceived to, adversely affect your impartiality in regard to the matter – the nature of such interest being that your wife’s sister, Ms Rosslyn Yakas, is a co-owner of Lot 1 Darch Road, Margaret River; and

3. You did not disclose the said nature of your said interest in the matter: in a written notice given to the Shire's Chief Executive Officer before the said meeting; or at the said meeting immediately before the matter was discussed; in contravention of regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007*."

7. The Response

7.1 Cr Veitch responded to the Department by a completed Elected Member's Response (**Form A**) to the Matters set out in the Complaint Summary, which the Department received on 20 October 2014.

7.2 In the Form A Cr Veitch did not dispute the matters set out in the Complaint Summary and advised that:

"I (my family) do not own land directly to the north of Rosslyn Yaka's [sic] lot on Darch Road. We own land approx. 500m further north but not adjoining. Proximity is not a factor in my non-disclosure."

"My email and the information the CEO has tabled, shows that previously I had declared an interest (impartiality) but in this instance I did not. I certainly should have, and regret not doing so."

(Response).

8. The Documents

8.1 Save for the information provided to the Panel by the Department (as set out under the heading "Jurisdiction" above) the Panel determined the Complaint on the papers after considering the Complaint, the Response, the Form A and the following documents:

- (a) copy of (1-page) letter from Mr Gary Evershed (the Shire's CEO and Complaints Officer), dated 15 September 2014;
- (b) copy of (2-page) letter from the Shire CEO to the Department dated 11 July 2014;
- (c) copy of (7-page) pages 3, 5, and 27 to 31 of the Minutes of the Shire Ordinary Council Meeting held on 13 February 2013;
- (d) copy of (18-page) pages 29 to 46 of the Minutes of the June 2014 OCM;
- (e) copy of (3-page) printout of the Shire CEO's email of 13 June 2014 (at 6.45am) to Cr Veitch, preceded by Cr Veitch's email of 13 June 2014 (at 5.09am) to the Shire CEO, preceded by the Shire CEO's email of 12 June 2014 (at 5.39pm) to Cr Veitch;
- (f) copy of (2-page) printout of the Shire CEO's email of 17 June 2014 to Mr Warren Hatley;
- (g) copy of (1-page) article headed "Veitch admits conflict gaffe" by Mr Hatley on page 3 of the Augusta Margaret River Times dated 20 June 2014;
- (h) copy of (1-page) article headed "Veitch makes error apology public" by Mr Hatley on page 11 of the Augusta Margaret River Times dated 4 July 2014; and
- (i) copy of (3-page) Request for Comments letter and attachment to Cr Veitch dated 30 September 2014.

9. Factual Findings

9.1 On the evidence before the Panel it is satisfied that it is more likely than it is not, and accordingly finds, that:

(a) Cr Veitch attended an OCM held on 13 February 2013 (**February 2013 OCM**);

(b) at that OCM, the Council considered item 12.2.1, which was a proposal by Halsall and Associates on behalf of “A Keoppen and R Yakas”, seeking Council’s in-principle support “for the purpose of rezoning [the Property] for the purpose of a variety of composite dwelling/low impact industrial uses (**Development Proposal**);

(c) prior to this OCM Cr Veitch disclosed in writing to the CEO that he had an impartiality interest in this item as one of the proponents was related to his wife and stated that he would consider the item on its merits and vote without bias¹;

(d) the Officer’s report to Council recommended, as follows, in relation to the Development Proposal:

“That Council declines to provide in-principle support for the proposed rezoning of [the subject land] for Special Use purposes as the proposal:

1. Is inconsistent with the agreed planning framework; and
2. Is an inappropriate form of expansion at the long term periphery of the Margaret River townsite.”

(e) at the February 2013 OCM Cr Veitch voted in favour of an alternative motion, namely “[t]hat Council supports ‘in-principle’, the proposed rezoning of [the subject land]”. That motion was carried with 5 votes for, and none against;

(f) at an OCM held on 14 May 2014 (**May 2014 OCM**) the Development Proposal was again considered by Council;

(g) Cr Veitch attended this OCM and was present during presentations given by Mr Marc Halsall of Halsall and Associates Town Planning Consultants, and Ms Yakas, respectively, in support of the Development Proposal²;

(h) the Officer’s report to Council recommended, as follows, in relation to the Development Proposal:

“That Council decline initiation of scheme amendment No. 20 for the purpose of rezoning Lot 1 Darch Road, Margaret River and determine that the related Structure Plan is not satisfactory for advertising, for the following reasons:

- a) the Proposal is outside the agreed medium to long term planning framework set by the Local Planning Strategy and State Planning Policy 6.1 – Leeuwin Naturaliste Ridge;

¹ See Minutes of the February 2014 OCM, item 4.2.

² The Minutes of the OCM do not record any disclosure by Cr Veitch of any interest in the Development Proposal.

- b) the Proposal is related to facilitating subdivision including providing for dwellings at a rural residential density. The Local Planning Strategy and State Planning Policy 6.1 do not support the creation of rural residential areas in the Shire outside of the designated locations;
 - c) the proposal could be viewed to set a precedent for many other properties immediately outside the periphery of the urban footprint identified in the Local Planning Strategy.”
- (i) Cr Veitch voted in favour of an alternative motion, namely “[t]hat Council defers consideration of [the Development Proposal] until the Ordinary Council Meeting of 11 June 2014”, and the motion was carried with 7 votes in favour, and zero against;
- (j) Cr Veitch attended the June 2014 OCM and was present during a presentation given by Mr Halsall in support of an amended Development Proposal (**Amended Development Proposal**);
- (k) the Officer’s report to Council recommended, as follows, in relation to the Amended Development Proposal (**Officer’s Recommendation**):
 - “That Council decline initiation of scheme amendment No. 20 for the purpose of rezoning Lot 1 Darch Road, Margaret River and determine that the related Structure Plan is not satisfactory for advertising, for the following reasons:
 - a) the Proposal is outside the agreed medium to long term planning framework set by the Local Planning Strategy and State Planning Policy 6.1 – Leeuwin Naturaliste Ridge;
 - b) the Proposal is related to facilitating subdivision including providing for dwellings at a rural residential density. The Local Planning Strategy and State Planning Policy 6.1 do not support the creation of rural residential areas in the Shire outside of the designated locations;
 - c) the proposal could be viewed to set a precedent for many other properties immediately outside the periphery of the urban footprint identified in the Local Planning Strategy.”
- (l) the Officer had also advised the Council that if, notwithstanding the Officer’s Recommendation, the Council proposed to approve the Amended Development Proposal:
 - (i) any decision to initiate the proposed scheme amendment and Structure Plan would require modifications to the Amended Development Proposal and proposed Structure Plan before advertising and recommended that any resolution to initiate be formulated in a certain way (**Officer’s Alternate Position**); and
 - (b) there were differences between the approach and conditions preferred by the proponents on the one hand, and the officer on the other;
- (m) Council considered a motion that the Council initiate the proposed scheme amendment and Structure Plan as formulated in the Officer’s Alternate Position;

- (n) when speaking for the motion, Cr Serventy noted that the Officer's Alternative Position "delivered a good compromise as it provided surety of subdivision after the subdivision of the light industrial area"³;
- (o) the motion was lost by a majority of 4 votes to 3, with Cr Veitch voting against it;
- (p) Cr Veitch then moved a motion, which was seconded by Cr Hastie, in substance and effect that Council initiate the proposed amendment and Structure Plan in a different way and on the terms proposed by or on behalf of the proponents, the co-owners of the Property (**Cr Veitch's Motion**)⁴;
- (q) Cr Veitch's Motion was carried by 7 votes to zero. The Minutes record that⁵:

"Cr Veitch spoke to the motion, stating that funding has been secured for the Perimeter Road between Bussell Hwy and Rosa Brook Road. He added that the road could be upgraded and officers' concerns could then be addressed.

Cr Veitch noted that as the property in question is family owned, the needs to develop and when they should be allowed to develop are different to the LIA [Light Industrial Area?] developers, and that it is only fair to allow the family to proceed with their plans without having to wait for the development of the LIA.

Cr Veitch also noted that the development of this land will provide benefits to the wider community as it identifies space for services that have had to move inconvenient distances from town.

Cr Smart asked the Director Sustainable Development, Mr Iliya Hastings, the following question, which Mr Hastings then took on notice.

Did the owners apply under the Scheme Review to have their land included in the industrial zone?

The Director Sustainable Development provided the following response:

Yes, the landowners did apply to have their land included in the industrial zone."

- (r) the Panel accepts the accuracy of the Minutes of the June 2014 OCM;
- (s) Cr Veitch did not declare any interest in the Amended Development Proposal prior to or during the June 2014 OCM; and
- (t) the owners of the Property are Andrei Koeppen and Rosslyn Yakas, who is Cr Veitch's sister-in-law.

³ See Minutes of the June 204 OCM, p 44.

⁴ See Minutes of the June 204 OCM, pp 44-46.

⁵ Page 46.

10. Elements of the offence and determination

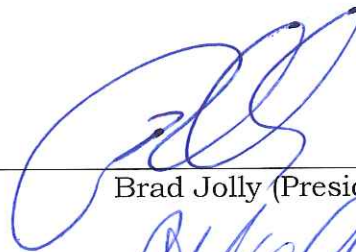
- 10.1 For present purposes, the essential elements or issues of a breach of regulation 11(2) are that it is more likely than not that:
- (a) a person who is a current council member;
 - (b) had an interest in a matter to be discussed at a Council meeting;
 - (c) the matter was discussed at a Council meeting at which the person attended; and
 - (d) the person did not disclose the nature of his or her interest in either of the ways required by regulation 11(2)(a) or 11(2)(b) of the *Regulations*.
- 10.2 The Panel has considered the available evidence and applied the *Briginshaw*⁶ principles. The Panel is satisfied that it is more likely than it is not, and accordingly finds, that:
- (a) as at 11 June 2014 Cr Veitch was a member of the Council, and remains currently a member of the Council;
 - (b) the Amended Development Proposal, the Officer's Recommendation and the Officer's Alternate Position were discussed at the June 2014 OCM and Cr Veitch attended the June 2014 OCM;
 - (c) neither prior to, not during, either June 2014 OCM did Cr Veitch disclose an interest pursuant to regulation 11 of the *Regulations*; and
 - (d) each of the elements set out in subparagraph 10.1 (a), (c) and (d) have been established.

Interest

- 10.3 The remaining issue is whether the interest of Cr Veitch's sister-in-law with the Property, was an "interest" that he ought to have disclosed at or before the June 2014 OCM pursuant to regulation 11(2).
- 10.4 Regulation 11(2) requires the disclosure of an "interest".
- 10.5 Regulation 11(1) defines an "interest" as meaning "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".
- 10.6 In *Bradley and Local Government Standards Panel* [2012] WASAT 44 (**Bradley**) at paragraph [42] Member McNab found that an allegation that a council member has committed a breach of regulation 11(2) "is an allegation of undeclared conflict or bias (apparent or real) clouding the exercise of public duty".
- 10.7 Determining whether a conflict of interest exists, requires an analysis as to the relationship, as reasonably perceived, between the interest and the decision to be made: *McGovern and Another v Ku-Ring-Gai Council and Another* [2008] 72 NSWLR 404 at paragraph [26].

⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362.

- 10.8 Determining whether bias exists involves a consideration of the extent to which the decision maker brought a closed mind to the decision to be made: *McGovern and Another v Ku-Ring-Gai Council and Another* [2008] 72 NSWLR 404 at paragraph [26].
- 10.9 The Panel finds that when view objectively, in the context of the facts found by the Panel that:
- (a) the Amended Development Proposal, the Officer's Recommendation and the Officer's Alternate Position were matters that affected the development potential of the Property;
 - (b) by virtue of Cr Veitch's relationship with a co-owner of the Property (being his sister-in-law)' he had a personal or private interest that could, or could reasonably be perceived to, adversely affect his impartiality when determining the matter;
 - (c) this was therefore an interest that he was obliged to have disclosed pursuant to regulation 11(2).
- 10.10 The Panel also notes that Cr Veitch, in his Response, accepts that:
- (a) for the purposes of the February 2013 OCM, he declared an impartiality interest in the then Development Proposal; and
 - (b) he should have given a like declaration in relation to the June 2014 OCM and he regrets not having done so.
- 10.11 **For the above reasons, the Panel is satisfied and finds that Cr Veitch has committed a breach of regulation 11(2) by failing to disclose an 'impartiality interest' at an Ordinary Council Meeting of the Shire held on 11 June 2014.**



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Peter Doherty (Deputy Member)

