



CORRUPTION AND CRIME COMMISSION

SUPPLEMENTARY REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT LINKED TO THE SMITHS BEACH DEVELOPMENT AT YALLINGUP

27 August 2009

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CORRUPTION AND CRIME COMMISSION

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Dear Mr Peacock
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003* ("the CCC Act"), the Commission hereby transmits to you a copy of the *Corruption and Crime Commission Supplementary Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup*.

The Commission notes that under section 93(3) of the CCC Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

A handwritten signature in black ink that reads "Len Roberts-Smith".

The Hon. LW Roberts-Smith, RFD, QC
COMMISSIONER

27 August 2009

ABBREVIATIONS AND ACRONYMS

CALM	Department of Conservation and Land Management
“the Commission”	Corruption and Crime Commission
“the Smiths Beach Report”	<i>Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup, 5 October 2007</i>
“the Parliamentary Inspector”	Parliamentary Inspector of the Corruption and Crime Commission, Mr Christopher Steytler QC

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FOREWORD

- [1] On 5 October 2007 the Corruption and Crime Commission (“the Commission”) tabled in the Parliament of Western Australia its *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup* (“the Smiths Beach Report”).
- [2] In the Smiths Beach Report¹ the Commission made certain statements, opinions and a recommendation in respect of the conduct of Mr Mark Brabazon, a public officer employed with the then Department of Conservation and Land Management (CALM).
- [3] In May 2009 the Parliamentary Inspector of the Corruption and Crime Commission, Mr Christopher Steytler QC (“the Parliamentary Inspector”), raised with the Commission a number of complaints made by Mr Brabazon and sought the Commission’s response.
- [4] Following upon correspondence and discussion between the Commission and the Parliamentary Inspector, the Commission has agreed to publish an Addendum to the Smiths Beach Report, in terms which have been agreed with the Parliamentary Inspector and Mr Brabazon.
- [5] The Addendum is accordingly published below.

¹ At Chapter 5.2, 5.7.1 and 7.3.1.

ADDENDUM

- [1] The Commission withdraws its opinion that Mr Mark Brabazon “acted with a lack of integrity” (the Smiths Beach Report, page 73).
- [2] The Commission consequently withdraws Recommendation 1 on page 74 of the Smiths Beach Report.
- [3] The Commission retracts the following statements in the Smiths Beach Report:
 - (a) “Somewhat ironically, Mr Brabazon was willing to come to a seriously adverse view as to the integrity of another CALM officer without giving that officer any opportunity to address those concerns” (page 72); and
 - (b) “If this is so then it would be expected that Mr Brabazon would take some step to have Mr Hanly formally disciplined and perhaps removed from involvement with this proposed development” (page 72).

- [4] The Commission wishes to clarify the following statement in the Smiths Beach Report (page 73):

To his credit, Mr McNamara said that he had some concerns with the view expressed by Mr Brabazon.

The evidence of Mr Kieran McNamara was that he did not have concerns with the views expressed by Mr Brabazon (in the telephone conversation with Mr Brian Burke on 23 May 2006) in the context of what was discussed at the earlier meeting on 2 May 2006. When further questioned he said he would have some reservations about these comments in the absence of the lead up discussions.

- [5] The Commission wishes to clarify the following statement in the Smiths Beach Report (page 86):

Concern has also been expressed about Mr Brabazon gratuitously providing Mr Burke with advice on how ministerial approval could best be achieved by the withholding of concessions to CALM, his own department.

It is not true that Mr Brabazon advised Mr Burke to withhold the concessions from his own department. Mr Burke presented those concessions to Mr Brabazon and CALM’s Chief Executive Officer Mr McNamara at the meeting on 2 May 2006. The advice proffered by Mr Brabazon concerned the timing of the announcement of the concessions.

- [6] The Commission retracts the following statement in the Smiths Beach Report (page 73):

He [Mr Brabazon] said he considered it to be appropriate to withhold concessions as a tactical ploy in dealing with his own department. The ethics of this are at least open to question and his rationalisation of this advice tends to suggest a lack of objectivity.

- [7] The consequence of these changes is that there is now no opinion that is adverse to Mr Mark Brabazon in the Smiths Beach Report.