

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION
AND FINANCE**

LOCAL GOVERNMENT ACT 1985

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 17 NOVEMBER 2003**

SESSION 3

Members

**Hon Barry House (Chairman)
Hon Ed Dermer (Deputy Chairman)
Hon Murray Criddle
Hon John Fischer
Hon Dee Margetts
Hon Ken Travers
Hon Sue Ellery**

[11.45 am]

DOUGLAS, MR NEIL

**Lawyer, Minter Ellison Lawyers,
examined:**

LOADER, MR MARK

**Manager Human Resources, City of Joondalup,
examined:**

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting. Would you please state the capacity in which you appear before the committee.

Mr Douglas: I appear on behalf of the City of Joondalup.

Mr Loader: I appear as a witness.

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to speak into them. Your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public or media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that material published or disclosed is not subject to parliamentary privilege.

Welcome once again, Mr Douglas and Mr Loader. The media have approval for some silent footage to be taken at the beginning of this session for a couple of minutes only. Our apologies for starting the proceedings an hour late. Our indication is that you may have up to a couple of hours of evidence. I intend to take a break in the proceedings at one o'clock this afternoon, just to forewarn you that there may be a break in proceedings. Would you like to make an opening statement on behalf of the City of Joondalup?

Mr Douglas: Thank you, Mr Chairman and members. In his opening statement to this inquiry, the Minister for Local Government said that in calling for the inquiry he hoped to give the City of Joondalup the opportunity to explain to the public its decisions and actions in relation to the appointment and continuing employment of Mr Denis Smith as the city's CEO. The city welcomes this opportunity. Regrettably, much of the public debate about these issues and a good deal of the evidence given to the standing committee on this inquiry have been based on information that is misleading and wrong. This proposition is established largely by reference to the relevant documents, copies of which are included with this submission.

Mr Chairman and members, I provided earlier to the committee two volumes of documents; those documents go from one to 100. There is another volume to come, which is still in the course of being prepared. Throughout the course of these submissions I will be referring to these documents. Each document is numbered consecutively and they are largely in chronological order. The submission will be cross-referenced to those documents.

A large number of issues in connection with the employment and appointment of the CEO has been raised by witnesses and by members of the committee during the course of these proceedings. The submission we make this morning attempts to address in some detail all the relevant issues that appear to have any substance. It does so by cross-referencing - and, as I mentioned, including copies - all the relevant documents, with the object of ensuring that the committee is properly informed. Through the mass of detail, the material contained in the submission highlights some key propositions. The first of these is that the council of the City of Joondalup is a democratically elected body. Secondly, Parliament has given to the council, not to the mayor, individual councillors or any person or body, the statutory power to decide on behalf of the city who should be employed as the city's CEO. Thirdly, there are two categories of decisions that have been made by the council in relation to these matters that are being considered by this inquiry. The first category was the decision to appoint Mr Denis Smith as the city's CEO, together with decisions related to and leading to that employment. The second category of the city's decisions relate to the continuing employment of Mr Smith as the city's CEO. The fourth proposition is that all relevant decisions and actions of the council and employees on behalf of the city have been made lawfully and properly. Specifically, the city's decisions and actions have been made in accordance with the Local Government Act and all relevant laws; they have been made in good faith; they have been made with extensive consultation; and they have been made on the basis of professional advice with proper transparency and in the interests of the city. The final broad proposition is that it is essential and in the interests of good government, and in this case in the best interests of the city, that whatever their personal views may be, individual members of the council and other public officials should comply with their legal obligations and accept, not undermine, the lawful and proper exercise of the council's decision-making powers.

Mr Chairman and members, I want to deal separately with those two categories of decisions. The first of those is the decisions relating to the employment of the CEO, and it is necessary to go back to the contract with the previous CEO. As is the case with a large part of our submission, much of the relevant evidence is taken from the minutes of the council meetings. These minutes are and have long been available to the public. The city's former CEO, as you know, was Mr Lindsay Delahaunty. He had a five-year contract of employment with the city that commenced on 5 July 1996 and terminated on 4 July 2001. At the committee's specific request, a copy of this contract is included in the accompanying documents in volume 1. Perhaps I could take you to that as the first document.

The CEO is entitled to protect the confidentiality of part of his contract of employment with local government. In this case, as you know, Mr Delahaunty has informed the standing committee that he has no objection to the contract being provided to the committee; and that is the basis on which this is provided to you today. Relevant to the committee's investigation is clause 7 of the contract, which is set out on page 7, and deals with renewal of employment. It makes it clear that the city or the CEO shall not be under any obligation to agree to an extension of the term. It sets out in clause 7.2 the obligation on the city to invite the CEO in writing not later than 12 months prior to the expiry to discuss the possibility of, essentially, a renewal. Document No 2 is an extract from the council's minutes of 19 December 2000. This was about seven months before the contract with Mr Delahaunty was due to expire. You will see the formal resolutions of the council on the first page of that extract; that is, page 188. In its formal resolution, the council authorised the extension of the CEO's contract from 4 July to 4 September 2001.

[12 noon]

It indicated its intention that negotiations with the chief executive officer should be completed by 28 February 2001. It foreshadowed that if agreement had not been reached, the chief executive officer's employment would end on 4 September. It requested the Minister for Local Government to ask the Salaries and Allowances Tribunal to assess the remuneration level for the city's CEO. In part, evidence of that was given earlier.

The next document, document No 3, is an extract from the minutes of the meeting of council on 27 February 2001. The council resolved to enter into an agreement with Mr Delahaunty to extend his existing contract of employment. Resolution No 3 indicates that the mayor, deputy mayor and Councillor Barnett are to have further discussions with Mr Delahaunty during the period 27 February to 9 March and that they are report back to the next meeting of council. On 13 March - the minutes of the meeting of council on that date are set out in document No 4 - the council again considered the matter. Paragraph (a) on page 15 of the document indicates that discussions had been held with the CEO concerning the possibility of the city entering into a new contract and that that proposal was not acceptable to the city. Paragraph (b) states that, absent of any agreement, the chief executive officer's contract of employment will come to an end on 4 September 2001 by agreement of the parties. In light of the above, the council resolved not to enter into a further contract with Mr Delahaunty and, secondly, to consider at its next meeting the most appropriate means by which the most suitable candidate for the position of chief executive officer after 4 September could be identified. This was about six months before the contract was due to be terminated and that allowed the city a six-month period to recruit and select a new CEO. The third part of the resolution states that Mr Delahaunty was to be invited to apply for position of chief executive officer. On 27 February -

The CHAIRMAN: Mr Douglas, Hon John Fischer has a quick question.

Hon JOHN FISCHER: Page 15 states that the motion was put and carried. It would have been interesting if the way the councillors voted - that is, who voted for and who voted against - had been noted.

Mr Douglas: I understand that at that time there was little, if any, difference of opinion among the councillors on these matters. The difference of opinion emerged later, as you will see.

Hon JOHN FISCHER: Therefore, we can assume that where it was carried, it was unanimous.

Mr Douglas: I do not know whether that assumption can be made. For one reason or another there may have been disagreement on what might have been a minor issue. As a general proposition, however, there was no fundamental disagreement among councillors at that stage.

I take you back briefly to document No 3, which is the minutes of 27 February. As well as resolving that there be discussions involving Mr Delahaunty, the council also resolved to ask the manager of human resources, Mr Loader, to provide the council with a report at its next meeting on the process of identifying a new CEO and to identify four HR consultants qualified to assist the city in that process. Mr Loader prepared a report to the council for its meeting on 27 March 2001. It is a detailed report and is contained in document No 5. The report identified three options for conducting the recruitment process. Essentially, these were conducting the process in-house with added resources, outsourcing it completely or outsourcing with internal assistance. In response to the council resolution suggesting that four HR consultants be approached, five were approached. The report to the council of 27 March stated that the five were chosen because of their relationship with the city, their experience in placing senior staff in the public and private sector and because they were well known in the recruitment industry and could provide the required service in a professional and competent manner. Each of the five consultant groups were interviewed by the city and each submitted a written proposal. Copies of those proposals were circulated to the mayor and all councillors. A brief background on each of the consultants is set out in document No 5. At its meeting on 27 March 2001, the council, with a couple of minor amendments, adopted the recommendations of Mr Loader and resolved to establish a CEO committee consisting of the mayor

and one councillor from each ward, with the second ward councillor as deputy. It also resolved to set a quorum of five members. It noted that the manager of HR would provide professional advice to the committee when required and agreed to outsource the recruitment process to an external HR consultant and invited three of the consultants that had been approached to provide a presentation at the next meeting briefing session of the council. You will see a pattern emerging from all this: that is, the full council was involved throughout the decision-making process. Two days later, on 29 March, Mr Loader wrote to each of the three consultants inviting them to give a 30-minute presentation to the council and setting out the criteria on which they would be assessed. The 10 criteria are listed in the letter to each of the three and are set out in document No 6.

Hon KEN TRAVERS: Why was it three? This document states that the evaluation identified Lyncroft and Gerard Daniels (Australia) Pty Ltd as the consultants that met the criteria the best.

Mr Douglas: Which document?

Hon KEN TRAVERS: I refer to document No 5 on page 15 and the paragraph above the heading "comment/funding".

Mr Douglas: They were the two that scored highest. The council resolution was that three, including those two -

Hon KEN TRAVERS: I understand that. The question is: if they were the two that scored the highest, why was the third one added to the council resolution?

Mr Douglas: Perhaps Mr Loader can answer that.

Mr Loader: The council decided to interview three. There is no specific reason -

Hon KEN TRAVERS: But the recommendation was that they interview three.

[12.15 pm]

Mr Loader: Yes.

Hon KEN TRAVERS: If those two scored the highest, why was a third added?

Mr Loader: That was a council decision.

Hon KEN TRAVERS: But it was in your recommendation. I assume that is why the council did it, because your recommendation was to interview all three.

Mr Loader: Not all three. Three out of the five.

Hon KEN TRAVERS: Yes, sorry, interview those three. When I say the three, I mean the three that were interviewed. The council's decision was that those three be interviewed, but that was -

Mr Douglas: I am struggling with what the problem is with inviting the top three to be interviewed.

Hon KEN TRAVERS: I want an explanation of the documentation. You had identified Lyncroft and Gerald Daniels as the two companies that best met the criteria. However, the recommendation was that Gerard Daniels (Australia) Pty Ltd, Lyncroft and Management Recruiters Australia provide a presentation. If only two consultants were listed as meeting the criteria, why was a third added?

Mr Douglas: I think we have answered that as best we could.

Hon KEN TRAVERS: No, you have said it was a decision of the council. I am still not sure why the third company was added to the list along with the other two.

Mr Douglas: I clearly cannot assist you any more on that.

Hon ED DERMER: Can Mr Loader assist us?

Mr Loader: The officer's recommendation in five, on page 16, to invite Gerard Daniels, Lyncroft and Management Recruiters. I felt it important that there be three HR recruitment companies rather than two.

Hon ED DERMER: Why?

Mr Loader: For transparency and due process - those kinds of reasons.

Hon ED DERMER: Why did you choose Management Recruiters Australia, given that three other companies had also not best met the criteria?

Mr Loader: At that stage I felt that the other two companies were too small to handle the assignment.

Hon ED DERMER: Thank you.

Hon DEE MARGETTS: May I ask a question?

The CHAIRMAN: As long as they are not detailed questions you can ask them as we go, otherwise we will get to 100 and forget what -

Hon DEE MARGETTS: I think this is the problem. If we have specific questions and we do not ask them at the time -

The CHAIRMAN: As long as they are specific.

Hon DEE MARGETTS: Demonstrated knowledge and demonstrated experience. Were there limitations to the kinds of questions the council could ask to verify those criteria? There are open questions and quite a range of information needs to be proven or demonstrated. Did the council have limitations on the kinds of questions it could ask in the selection process? It would appear that the openness, the ability to cross-reference and to check when selecting the recruiters is a much more detailed process than that of selecting the CEO.

Mr Douglas: We have not got to that yet.

Hon DEE MARGETTS: I know. How are these things demonstrated? Were there any limitations in the questions that the council could ask to obtain verification of any of those 10 criteria?

Mr Loader: The recruitment companies all gave presentations, overheads and voluminous paperwork to show the council that they were the best.

Hon DEE MARGETTS: The council had a lot of information from which to make its choice. Were there any restrictions about the kinds of questions that could be asked to verify that information?

Mr Loader: Not that I recall.

Hon DEE MARGETTS: This is just to choose the people who will choose the CEO.

Mr Loader: Yes.

The CHAIRMAN: As we go though, our questions will have to be specific and general questions should be kept for later.

Mr Douglas: On 29 March, Mr Loader wrote to all councillors in a memo setting out the time frame for the meeting of council at which the recruiters would be selected, which is set out in document No 7. The meeting went from 7.00 pm to 9.15 pm. The document also contains the criteria with the scoresheet attached to that memo. The elected members considered at that meeting that Management Recruiters were overwhelmingly the preferred provider. Eleven elected members attended that meeting and evaluated the three agencies. A copy of the evaluation sheet for Management Recruiters is set out in document No 8, on which you will see the copies and the scores for Management Recruiters.

The CHAIRMAN: Do we have the scores for the other two consultancies?

Mr Douglas: No, they have not been provided.

Hon KEN TRAVERS: In terms of the numbers, what were they generally?

Mr Loader: There was over 100 points difference between the first and the second recruitment company and 100 points difference between the second and third.

Hon ED DERMER: Do you have any problem with providing those other scoresheets to the committee?

Mr Loader: No.

Mr Douglas: A large volume of documents is involved. We have limited, unless the committee wants, to information, particularly that which involves third parties not connected with the city. There may be privacy concerns about releasing those scoresheets.

Hon ED DERMER: Fair enough.

Mr Douglas: The written proposal submitted by Management Recruiters Australia is set out in document No 8, which is very lengthy. At its meeting on 10 April 2001, the full council resolved to engage Management Recruiters Australia. The minutes of that meeting are set out in document No 11. The council also resolved that Mr Warren Reynolds would need to oversee the assignment. It was important that he personally oversee it rather than just the company being appointed. The recommendation from Mr Loader was that it be a condition of appointment that Mr Warren Reynolds oversee the assignment and play an active role in the process. On the following day, Mr Loader wrote Mr Warren Reynolds advising him of the outcome of the selection process. He also wrote to the unsuccessful consultants, and those documents are found in documents Nos 12 and 13. On 27 April, Warren Reynolds wrote two letters to the city. The first acknowledged his company's appointment, which is set out at document No 18. The second outlined details of procedure that he proposed to adopt, which is in document No 19 and written on the same date as document No 18. There was a formal agreement between the City of Joondalup and Crestline Pty Ltd, which was the company trading as Management Recruiters. That document was signed on 2 July 2001 by Mr Delahaunty and Mr Reynolds and is set out at document No 36. It took some time for that documentation to be finalised.

I will deal briefly with the consultations held by the city with regard to this process. The city went to great lengths to consult with key stakeholders and involve them in the recruitment process; firstly, on the initial process of preparing a comprehensive profile of the best person for the job, and, secondly, in developing a recruitment and selection process that would help ensure that the best person was appointed for the position. The close and ongoing involvement of the council and individual councillors was obviously critical to that process. It is consistent with the statutory role of the council as being the appropriate statutory body to make decisions with regard to the appointment of the CEO, which is set out in section 5.36 of the Local Government Act. The involvement of the council and individual councillors occurred in two ways. First, Mayor Bombak played an active and pivotal role throughout the process. He was kept informed, particularly by Mr Loader, as to everything that was being done. A series of meetings were held with him to keep him informed and facilitate his input into the process as well as to ensure that the process was on track and on time. Second, close attention was given to the composition and role of the committee that was established to select the new CEO. When it was first established by the council on 27 March, it was required to be made up of mayor and one councillor from each ward, with a second ward councillor as a deputy. All councillors were entitled and encouraged to attend meetings of the CEO selection committee and be involved in the process. You will see from reading the minutes and from the submissions we made that most councillors took advantage of the opportunity to be involved. It was not uncommon for the committee to have 11 or 12 elected members present. Shortly after the full council had chosen Management Recruiters Australia, Mr Loader wrote to Mr Reynolds giving him a list of the names and contact details of all councillors who were not

standing for elections, which were held shortly afterwards. Mr Loader had earlier written to all those councillors inviting them to contact Mr Reynolds to discuss their views on the attributes they wanted their new CEO to have. A similar consultative approach was taken with regard to each of the city's directors. In documents Nos 16 and 17 you can establish the extent of that consultation process. The city also involved external stakeholders in the consultation process. Two examples we have provided are contacts made with the Vice-Chancellor of Edith Cowan University and the President of the Joondalup Business Association.

Hon DEE MARGETTS: Which documents deal with the attributes?

Mr Douglas: Document 16 was a letter written to Mr Warren Reynolds attaching the names of the directors and the CEO.

Hon DEE MARGETTS: Which document referred to the establishment of the attributes of the successful candidate?

Mr Douglas: Document No 26. The memo of 25 May 2001 refers to an action on 26 April at the desk of the CEO where Mr Loader advised councillors that Mr Reynolds was assisting the city in the recruitment selection and the appointment of the CEO and would be available to talk to councillors concerning their views on the profile of the CEO. It states -

I remind Councillors that the opportunity still exists should you wish to contact Mr Reynolds

It then provides his telephone number and so on. Further material will be provided about the contact made by councillors with Reynolds and Management Recruiters about this matter.

Hon DEE MARGETTS: I am trying to link that up with your earlier statement. That is not quite exactly what you said before. There is a little statement there or a throwaway line about people being able to contact somebody about a profile. Where is it on that page?

Mr Douglas: The passage I read - the memo of 25 May - advised councillors that Mr Reynolds was assisting the city and would be available to talk to councillors and reminded councillors that the opportunity still existed should they wish to contact Mr Reynolds.

Hon DEE MARGETTS: Where does it refer to the profile?

[12.30 pm]

Mr Douglas: I mentioned that the city also involved external stakeholders, and the two I mentioned were the Vice-Chancellor of Edith Cowan University and the President of the Joondalup Business Association. Both of those bodies were two of the larger stakeholders. Document No 25 has copies of letters to each of those. I am happy to go through the documents in more detail if the committee wishes.

The CHAIRMAN: You are just providing an overview. We will come to that later.

Mr Douglas: Each of the letters informs each of those people that the city has commenced the recruitment, selection and appointment process and that the city has engaged an outside consultant. It states -

In order to prepare a comprehensive profile on the best applicant for the position, we are seeking input from key stakeholders that may wish to contribute to the formation of this profile.

It asks for an appointment with each of them so that Mr Warren Reynolds and Mr Loader can discuss their views on the kind of CEO they wish to see appointed to the position.

The CHAIRMAN: Were those the only two groups contacted by letter by Mr Loader?

Mr Loader: They were the only ones I was involved in, Mr Chairman.

The CHAIRMAN: Thank you.

Mr Douglas: Following those letters, Mr Reynolds and Mr Loader met with Professor Poole and Mr Poliwka. Both provided insight into what they believed to be the best interests of the city for a new CEO. Their main focus was on providing opportunities for employment creation, business sense, learning opportunities and a vision for the city. They also wanted a person who came to civic and city functions on a more regular basis. At the first meeting of the new council, two days after the election -

Hon JOHN FISCHER: I am sorry - "on a more regular basis". Could you just repeat what you were saying then because I missed that.

Mr Douglas: The final four or five matters I indicated - each indicated they wanted a person who came to civic and city functions on a more regular basis.

Hon JOHN FISCHER: Okay, on a more regular basis than the previous CEO. Thank you.

Mr Douglas: After the first meeting of the new council - the elections were on 5 May - two days later the first meeting occurred. The council, by resolution, established a new CEO selection committee. Its formal role, like the previous one, was to oversee the selection of a new CEO. The members of that committee were Mayor Bombak, and, once again, one councillor from each ward with his or her deputy to be the other person from each ward. The relevant minutes are set out in document No 21. Specifically, the members of the CEO selection committee were Mayor Bombak, and Councillors Kadak, Carlos, Nixon, Kenworthy, Walker, O'Brien and Hurst. The deputies were Kimber, Baker, Hollywood, Patterson, Rowlands, Barnett and Mackintosh.

If I could move now to the process of determining the recruitment and selection process. Document No 19 is the letter from Warren Reynolds to Mr Mark Loader dated 27 April 2001. Mr Reynolds set out the proposed steps in the recruitment and selection process. Again, unless you wish me to take you through it, that procedure is set out at pages 1 and 2 of the three-page letter. All the details are set out in the letter. Mr Reynolds also drafted a preliminary action plan dated 26 April 2001. That plan was sent by Mr Loader to the mayor, all councillors and all directors; again, keeping them informed of the process. A copy of that memo and the attachment is set out in document No 20. Again, unless the committee wishes, we can move on.

The CHAIRMAN: Sure.

Mr Douglas: On 7 May Management Recruiters provided a very brief update to Mr Loader on the progress to that point. That is set out in document No 22. Two weeks later, on 21 May 2001, the first meeting of the CEO selection committee was held. The minutes of that meeting are set out in document No 23. The documents tabled by Mr Reynolds and examined by the committee were incorporated in a document entitled "Assignment Specification". That document is document No 24. The assignment specification included draft employment specifications, a draft advertisement, organisational history information and a detailed description of the position and the candidate. At this stage, 21 May, there was still a proposal to advertise the position. Perhaps it is significant that, if you turn to the last page of the assignment specification that sets out the draft advertisement, you will notice - this is particularly significant - that there is no reference in that advertisement to academic or professional qualifications for the position. This is consistent with the city's position throughout. Academic and professional qualifications were not key criteria in the appointment of the person.

Also of significance is that the remuneration package specified in the draft advertisement was set between \$170 000 and \$210 000. At that stage, 21 May, the council has not decided how much the city should be prepared to offer a successful candidate. The issue of the nomination of a salary package is linked very closely with the question of advertising. I will now deal with that. Matters have been raised before the committee by several witnesses and by the minister when he first appeared; that is, the council's decision not to advertise.

Hon JOHN FISCHER: Was this advertisement ever put out or not?

Mr Douglas: No.

Hon JOHN FISCHER: It was not? It was just a draft to show to the committee what you intended to do?

Mr Douglas: Yes.

Hon JOHN FISCHER: Thank you.

Mr Douglas: About the time of the appointment by the council of Management Recruiters, Mr Delahaunty instructed Mr Loader to seek legal advice about whether the city was required under the Local Government Act to advertise the position. Mr Loader sought that advice and the advice from Clayton Utz concluded that there was no obligation to impose on the city to advertise the position of the CEO or any other senior employee. That is, of course, consistent with the committee's understanding of the position now. The Local Government Act does not require a senior officer's position to be advertised. Despite this, Mr Loader wrote to Mr Reynolds on 17 April 2001. That is document No 14. He states in that e-mail -

In order to keep the process as transparent as possible it is probably in the best interest of all concerned that the position be advertised at the national level through the appropriate outlets. We should discuss this with the mayor when we see him on Friday.

Again, that clearly indicates that the decision had not been made at that point but the question of advertising was seriously considered.

Hon KEN TRAVERS: Do we know why Mr Delahaunty had asked for that legal advice at that stage?

Mr Loader: I expressed some concern about not advertising because the decision of council not to appoint Mr Delahaunty was very distressing to me, the way he was treated. One of the things he and I talked about was the possibility of getting as many people interested in the position. That is why.

Hon KEN TRAVERS: At that point you had fears that someone was not going to advertise it?

Mr Loader: At that point there was no thought of not advertising it. It was always the intention until down the track - a few weeks after that - that there was a directive or decision not to advertise.

Hon KEN TRAVERS: I am confused. Mr Douglas is making the clear point that, at this stage, there had been no decision taken not to advertise and everything you were doing was indicating that you were going to advertise. I take it that is the general gist of your submission at this point, Mr Douglas?

Mr Douglas: You can draw that conclusion.

Hon KEN TRAVERS: The language you have been using is that, clearly, no decision had been taken at this stage not to advertise.

Mr Douglas: That is as far as it goes - not that it was proceeding on the basis that it would be advertised.

Hon JOHN FISCHER: Why would you go to Clayton Utz to get advice about whether or not you had to?

Mr Douglas: Because you may be considering not advertising.

Hon KEN TRAVERS: That is what we are asking. Who was considering not advertising at that stage? Clearly it was not Mr Loader or Mr Delahaunty. Who was considering not advertising it at that stage?

Mr Loader: There were some councillors and the mayor who thought it was not necessary to advertise, and also the recruitment agency.

Hon JOHN FISCHER: The recruitment agency at that stage had already expressed to you that they did not believe it was necessary to advertise?

Mr Loader: No, at that stage they had prepared some drafts for the ad. Until that stage they were quite prepared to recommend that the position be advertised. It might have been a few weeks later that it was decided not to advertise.

Mr Douglas: I think the thrust of the documents is that the question was still open at that stage; council was considering the position.

Hon KEN TRAVERS: I think the thrust of the documents is that the agency and the officers were clearly proceeding on the path that it would be advertised. Clearly, something happened that made Mr Delahaunty and Mr Loader believe that there were people who would not want it advertised and that is why they would have got legal advice at that point. That would be my interpretation of the documentation you have presented so far. If I am wrong, I would like to hear how that is not the correct interpretation.

Mr Douglas: It is an interpretation that might be open to you but I think the one I would make is, at that stage, both options were open and being considered.

The next document, No 15, sets out a draft agenda for a meeting with the mayor to be held on Friday, 20 April in the mayor's office. This was the agenda for the meeting proposed between Mr Loader, Mr Reynolds and the mayor. You will see on the second page of the agenda a reference to the second item, "Executive Search and Advertising Strategy".

Hon DEE MARGETTS: Sorry, the second page?

Mr Douglas: Document No 15.

Hon DEE MARGETTS: Document No 15 is just an e-mail.

Mr Douglas: The second page.

Hon DEE MARGETTS: It is document No 16 in mine.

Mr Douglas: Item 2 of that agenda sets out the executive search and advertising strategy. You will see a reference to *The West Australian* and *The Australian Financial Review* - again, clearly indicating that the matter was still on the agenda.

Hon DEE MARGETTS: What was the cost of advertising?

The CHAIRMAN: That is not specific to the documents. If we go off at tangents like that all the time, will never get through the documents.

Mr Douglas: At the first meeting after the May elections, the CEO selection committee asked Mr Loader to seek a legal interpretation of section 5.27 of the Local Government Act in terms of whether the advertisement for a CEO needs to have the exact salary component. The minutes of that meeting are set out in document No 23.

Hon KEN TRAVERS: With the meeting on Friday, 20 April between the mayor and Mr Loader and others, were there minutes taken of that meeting?

Mr Loader: No, it was an informal meeting.

[12.45 pm]

Hon KEN TRAVERS: Mr Loader, do you recall whether the issue of advertising was discussed at that meeting?

Mr Loader: I cannot remember.

Mr Douglas: I refer the committee to document No 23 under the heading of legal advice. The second page of the minutes of the CEO selection committee shows that members of the committee requested the HR manager to seek a legal interpretation of section 5.37 of the Local Government

Act concerning whether the advertisement for a CEO needed to include an exact salary component. This is a critical point to appreciate. If the position were to be advertised and the advertisement had to have an exact salary component, the city would have less flexibility in selecting its CEO; it would not be able to move outside that exact salary component. This issue is critical to the issue of advertising. Advertising had what might be seen as a downside. The downside is that the City could not have the flexibility of the range - as was indicated in the earlier advertisement - of offering to pay between \$170 000 and \$210 000. A point would have to be fixed, and that would be it. Mr Loader sought advice -

Hon KEN TRAVERS: At that point, there had been discussions among some people about not advertising the position even before that point was raised.

Mr Douglas: I do not know whether that is the case. Mr Loader sought advice from Clayton Utz on 28 May 2001. That is document No 27, which sets out the matters I referred to.

Hon JOHN FISCHER: Can you clarify whether that was the first time that you had gone to Clayton Utz to ask whether it was necessary to advertise the position?

Mr Douglas: No. We dealt earlier with the first -

Hon JOHN FISCHER: I thought you had. I wanted to clarify that point.

Mr Douglas: There were two pieces of advice. The first advice dealt with the question of whether the position had to be advertised, and the answer was no.

Hon JOHN FISCHER: I just want it clear in my mind in relation to the questions that Hon Ken Travers asked earlier about whether it was the first time you had gone to Clayton Utz to ask for advice. Thank you. You have done that.

Mr Douglas: That request for advice, as the member will see in document No 27, gives an example that may help. The last paragraph asks whether the city is able to say in the ad that the salary component can range from between \$160 000 and \$180 000, which would then allow the parties to negotiate the final salary component. The alternative was that a particular figure had to be fixed. The advice received from Clayton Utz confirmed that if the position were to be advertised, the total value of all remuneration and benefits would have to be specified.

The CHAIRMAN: Does your submission contain a document from Clayton Utz?

Mr Douglas: We have not provided the committee with legal advice; we have provided it with the outcome. Obviously the city has legal professional privilege. We would need to get the city's approval, through council, to provide that information to the committee. The effect of doing that could be that the city would lose its legal professional privilege over that document.

The CHAIRMAN: What was the advice, in broad terms?

Mr Douglas: The advice was that if the position were to be advertised, the total value of all remuneration and benefits would have to be specified.

Hon KEN TRAVERS: Did it specifically say that a range could not be specified?

Mr Douglas: That was the effect of the advice that was given to the city. The CEO selection committee meeting held on 11 June dealt with this issue. The minutes of that meeting are set out in document No 31. I refer members to the second paragraph under the heading of advertising on the second page. Mr Loader advised the meeting that he had received legal opinion from the last meeting which provided that there was no legal requirement to advertise but that under the Local Government Act, if the position of CEO was advertised, the City was bound to advertise the remuneration package and salary package components. Mr Loader also advised that he had contacted the Department of Local Government and Regional Development and, although it agreed with the opinion, it was considered best practice and good government to advertise the position.

There is a reference to the draft advertisement being prepared by the recruitment consultant. This issue was reported to the full council meeting on the following day - 12 June.

Hon DEE MARGETTS: You mentioned before that the councillors were asked to give their views on the profile in a newsletter, which leads to that advertisement. Did any councillors provide submissions about what they preferred to be included in the profile?

Mr Douglas: The documents refer to the valuable feedback received by Warren Reynolds from councillors. I do not know whether that was in writing, but there certainly was feedback from councillors to Warren Reynolds about the profile of the CEO.

Hon DEE MARGETTS: Documents where?

Mr Douglas: We will come to it.

Hon DEE MARGETTS: Were submissions made either in writing or by phone?

Mr Douglas: I do not know whether they were made in writing. Perhaps Mr Loader can help. There were references in the documents to the assistance gained from Warren Reynolds from his contact with the councillors.

The CHAIRMAN: We are trying to establish -

Hon DEE MARGETTS: It is important. This is the crux of it.

The CHAIRMAN: We may come to something, as Mr Douglas explained. Let us get the full picture first.

Hon DEE MARGETTS: It is necessary to deal with it as we are dealing with the documents. I want to understand the inconsistencies in relation to the process of deciding the important issues about what should be the qualities of a CEO as opposed to what appears to be the open and more accountable process of selecting the recruiters. Is there no specific written documentation about that input?

Mr Douglas: The input from the councillors to Warren Reynolds?

Hon DEE MARGETTS: Yes.

Mr Douglas: As I understand it, as would be usual in that case, they would have communicated orally.

Hon DEE MARGETTS: And there was no process. Was it just a matter of giving them a call if there was something to add about a profile?

Hon ED DERMER: I think Mr Loader may have indicated an answer to the question. It is helpful to answer in a clear yes or no rather than just shake your head.

Mr Loader: The councillors were invited. As I understand it, a number of councillors spoke to Warren Reynolds.

Mr Douglas: I refer to the minutes of the council meeting of 12 June. The minutes of the committee meeting were referred to the full council. I refer to document No 32. On page 149, which is the last page of that document, there is a reference to a notice of motion by Councillor O'Brien that the council consider the advertising content for the position. Therefore, it specifically looked at what should be included in an advertisement. After some discussion, a motion was put and carried that that question be referred to the new CEO committee for further consideration. Again, the matter was still under consideration by the council and had not been resolved by 12 June, and had gone to the full council. On 20 June, Mr Loader met with the mayor, as he very often did. The mayor advised Mr Loader that in his opinion the range of salary remuneration should be somewhere between \$170 000 and \$210 000, as had been proposed in the initial advertisement. It was at this point that Mr Loader became aware that the mayor did not want to advertise the position

because to do so under the Local Government Act would have restricted the city's options and limited its ability to choose the best person.

Hon JOHN FISCHER: What date was that?

Mr Douglas: That was 20 June 2001.

Hon JOHN FISCHER: I refer you to the bottom of page 2 of document No 31 under the declaration of financial, non-financial interests. As I said, at a meeting held on 11 June Mr Reynolds was asked to explain what he meant by "searching for applicants". He advised the meeting that there were a number of initiatives that were usually adopted in this process and he advised the meeting of that process. He also informed the meeting that no officer or councillor had referred any applicants to him. It was agreed at the meeting that should the recruitment consultant not find suitable applicants, the city would advertise the position. That was the week before. Surely Mr Loader was aware that a week prior to that -

Mr Douglas: Is the member referring to document number 31?

Hon JOHN FISCHER: Yes.

Mr Douglas: The minutes of the committee meeting?

Hon JOHN FISCHER: No, I refer to the second page. It does not have a date on it, but I presume that because it is with the committee meeting -

Mr Douglas: Are these the minutes?

Hon JOHN FISCHER: Yes.

Mr Douglas: From where are you reading?

Hon JOHN FISCHER: From the bottom of the second page. You just said that the mayor first advised Mr Loader that the position was not going to be advertised on 20 June. However, on 11 June the meeting agreed that should the recruitment consultant not find suitable applicants, the city would advertise the position; however, this would be determined at the full council meeting. I do not see anything wrong with that except you indicated that 20 June was the first time Mr Loader had found out about it. However, he knew about it at the meeting on 11 June. It cannot be made much clearer than that. The decision not to advertise was obviously made by the full committee that had been selected to look for the new CEO. Eight councillors were present at the meeting, including Mayor Bombak, and the full committee plus Councillors Barnett and Hollywood.

Mr Douglas: Yet on the following day, on 12 June, the council could not agree on that.

Hon JOHN FISCHER: They could not agree on that?

Mr Douglas: No. It was sent back to the committee. There was some confusion at the time. The question was still open at that stage.

Hon JOHN FISCHER: I would like that to be recorded so that we know that that decision was made in full attendance with the committee that was voted to look for candidates for the position of CEO.

Mr Douglas: Yes, I understand the member's point; it has some bearing on the date of when Mr Loader became aware of it. Perhaps it is not entirely clear exactly when that date was. The significance of the 12 June meeting of the full council vote is that a motion was moved to determine what should be contained in an advertisement but that the council could not agree on that motion and sent the matter back to a committee.

Hon JOHN FISCHER: I raised that issue because it seems to me that the biggest problem is the division within the council. I wanted to make sure that that fact was recorded. The full committee that had been elected by the council to select a CEO had already discussed that it was not necessarily going to advise that the position should be advertised. It is not so much a matter of

whether Mr Loader became aware of it on that day or not; it is about the fact that the committee that was set up by the council to look into employing a CEO had already made that decision at that date. The councillors on that committee - if indeed that occurred on 12 June - disagreed with the way the committee was acting.

[1.00 pm]

Mr Douglas: It would be interesting to see the number of councillors at the meeting on 12 June. There was a full attendance at the committee meeting of the previous day.

Hon KEN TRAVERS: Document No 33 sum it up best. The letter from Mr Loader to Mr Lynch the day after the council meeting reads -

Some of the councillors do not wish to advertise the position and some of the councillors do. I think that is the most accurate expression of the position at the time, rather than that it was in abeyance. Clearly, a group of councillors did not want to advertise the position. The committee would like to know which counsellors did not want to advertise the position, and those who did.

The CHAIRMAN: Perhaps Mr Loader can answer that question.

Mr Loader: That is something I cannot recall. I know there was a lot of debate about whether to advertise or not. I guess the fundamental question was if we have to advertise, we have to advertise the position. It is based on that aspect.

Hon KEN TRAVERS: Do you recall any counsellors who might be opposed to the advertising?

Mr Loader: The mayor was.

Hon KEN TRAVERS: Did he give reasons why?

Mr Loader: Essentially, because the total package would have to be put into the ad. They did not want to stop people from being recruited or expressing an interest if the package did not suit their wants or needs, I guess

Hon JOHN FISCHER: Do you recall anyone who specifically wanted to advertise?

Mr Loader: The CEO did. Lindsay Delahaunty did. Mr Turkington did. There were a number of directors who wanted it to be advertised.

Hon JOHN FISCHER: I was referring to elected councillors on the committee.

Mr Loader: No, sir, I cannot recall anyone.

The CHAIRMAN: We have reached one o'clock, when I said we would break proceedings.

Proceedings suspended from 1.02 to 1.29 pm

Hon ED DERMER: Long before we suspended, you suggested that then Mayor Bombak was concerned that advertising would have a restrictive effect on the final package. Can you tell us explicitly which component of the final package Mayor Bombak was concerned not to restrict?

Mr Douglas: When you say restrict the final package -

Hon ED DERMER: I refer to the final contract with the CEO once appointed.

Mr Douglas: It was a restriction on the selection of the CEO; that is, if the city were restricted in nominating and having to fix a salary at the time of advertising, and was unable to go outside the fixed amount, up or down.

Hon ED DERMER: Of the various factors that may be part of the package when you contracted a new CEO, was it the salary that was of concern to then Mayor Bombak or other factors?

Mr Douglas: The advice relating to the remuneration package was that to set the package, as in the example given, between \$170 000 and \$210 000 was not possible in the advertisement. If it had been possible, perhaps the advertisement would have gone ahead. The city's legal advice was that

it had to nominate between that range a particular figure, and would then be stuck with that figure. That was considered to be less flexible in term of its potential options for recruitment.

Hon ED DERMER: Then Mayor Bombak looked for flexibility to go beyond that range in remuneration.

Mr Douglas: He was one of them.

Hon ED DERMER: Were there others who were similarly -

Mr Douglas: There is no documentation of it.

Hon ED DERMER: Do you have a recollection, or does Mr Loader?

The CHAIRMAN: That question was asked before.

Hon ED DERMER: Not specifically this question. In relation to people who were concerned to allow a wider range of possible final salaries, do you recollect who else shared that concern?

Mr Loader: Through you, Mr Chairman, I do not recall who they were. There was a sprinkling of them.

Hon KEN TRAVERS: I have one final question arising from that matter. In terms of the range, did anybody explore the option of advertising it as up to \$180 000, and then being able to negotiate below that figure with the successful candidate? Was that option considered as to whether it met the requirements of the Local Government Act?

Mr Douglas: No legal advice was sought on that aspect. I am not aware of any documentary evidence on that aspect.

Mr Loader: No.

Hon KEN TRAVERS: That would have been one way around it; namely, to have the top amount the city was prepared to pay, and then negotiate in that range.

Mr Douglas: It would limit your negotiating options to have the highest amount set. Yes. It might be something that the committee might like to pick up.

Hon KEN TRAVERS: It might make a recommendation on that.

Mr Douglas: In terms of its recommendation on amendments to the Local Government Act, the issue of a fixed salary or remuneration component being a requirement in advertising is a downside. Perhaps if advertising will be introduced as a mandatory requirement, greater flexibility of remuneration package could accompany that change.

The CHAIRMAN: I am sure it is one area we will look at. Carry on, Mr Douglas.

Mr Douglas: Thank you, Mr Chairman.

The next stage is implementing the recruitment process. I will take the committee to document No 28, which is an update from Warren Reynolds to the city with an update on the recruitment process to that point. It includes confirmation that research was being done Australia-wide through local government, state government and industry sectors to identify candidates for the position. A list of candidates was proposed to be prepared by 7 June emphasising the importance of confidentiality in the process. A matter raised earlier was that he referred to contact being made with individual councillors and stakeholders, which he said provided valuable feedback on gaining an insight into the requirements of the role. He confirmed that interviews with the city's directors had been conducted, which he said was a very worthwhile component of the process in terms of understanding the internal culture.

[1.30 pm]

On 8 June Mr Reynolds provided the city with a list of over 100 potential candidates for the position of CEO, which is document No 30. The potential candidates came from all over Australia

in a variety of industries. Next, at a meeting of the CEO selection committee on 11 June, the committee considered various issues and resolved to prepare a motion to be put to the next council meeting that would authorise a proposed itinerary for Mr Loader and Mr Reynolds to travel interstate to interview what at that stage were 30 possible candidates for the position. Those minutes are in document No 31. At the meeting of full council on the following day, the council resolved to authorise Mr Reynolds and Mr Loader “to travel interstate in the week commencing 25 June 2001 for the purpose of conducting preliminary interviews with candidates who have registered an interest in the position of Chief Executive Officer”. That was document No 32 and page 130 of the minutes. That was one of the documents in particular that the committee asked the city to provide at our last appearance.

Hon KEN TRAVERS: Which one was that?

Mr Douglas: Document No 32, the authorisation of the full council for Mr Reynolds and Mr Loader to travel interstate to interview those candidates. Again, in passing, I refer to document No 35, which is the minutes of the full meeting of council which in turn indicated that the minutes of the CEO selection committee were provided to and noted by the council, and that was a regular occurrence throughout this entire process.

I turn now to interviewing the candidates. Mr Loader and Mr Reynolds conducted preliminary interviews with a total of 14 candidates in Adelaide, Sydney, Melbourne and Brisbane. Following his return to Western Australia, Mr Reynolds then conducted a series of further preliminary interviews with local candidates. From that process, nine candidates were identified as being most suitable for interview by the council. Four of them were from interstate and five were from Western Australia. Of the nine, all were CEOs, five were CEOs in local government and the remainder held comparable positions in other industries. At a meeting of the CEO selection committee on 16 July -

Hon DEE MARGETTS: Are you going to go back to document No 34 at any stage?

Mr Douglas: I expect I will. I do not have it handy at the moment. Is there something about that that you wish to ask me?

Hon DEE MARGETTS: It is very relevant to what you are saying now, given that on page 11 it says, “It is likely the successful candidate will possess tertiary qualifications in an appropriate business discipline, supported by extensive experience at senior executive level, directing the business and financial operations of a large and diverse organisation.”

Mr Douglas: Yes; that is the position throughout.

Hon DEE MARGETTS: It is not actually. Earlier you said that the issue of qualifications did not come up in discussions.

The CHAIRMAN: Only in the draft advertisement.

Hon DEE MARGETTS: No, I am sorry. It is not for you; it is me asking questions of the witness.

The CHAIRMAN: Ask a question then; do not make a statement.

Hon DEE MARGETTS: How can you equate your earlier statement with the fact that the qualifications or the necessity or the likelihood of tertiary qualifications did not come up in the discussions, when at the very top of that document it states that it is likely the successful candidate will possess tertiary qualifications in an appropriate business discipline? How does that equate with the information you gave earlier?

Mr Douglas: If you read the transcript, you will find that it does. There is no inconsistency between what I said earlier and what this document says. The position throughout is that academic or professional qualifications were not an essential criterion for the position. That is a fundamental starting point. The specifications contained reference to them, as you would expect in any job of

this nature. It made it very clear that academic qualifications were not an essential criterion for the position. The evidence we will come to will show that there was no questioning at all throughout the process of any candidate's academic qualifications. That point was established as well by the fraud squad investigation report, and we will come to that.

Hon DEE MARGETTS: You can come to that, but we have been given evidence that individual councillors were not allowed to ask individual questions anyway.

Mr Douglas: We will deal with that. You will understand in the context that it was not the case that individual councillors were not allowed to ask questions and we will deal with that as we go through. I am happy, Mr Chairman, if you want me to deal with that now, but it will follow sequentially if that issue is dealt with when we come to the interviews.

The CHAIRMAN: I prefer that we go through it sequentially.

Hon DEE MARGETTS: This is sequentially. I just wanted to make sure that we did not skim over an absolutely vital part of a document and pick out the bits that argue a particular case.

The CHAIRMAN: Mr Douglas is indicating that that matter will come up at some stage. If it does not, I believe that is the time to ask your question.

Mr Douglas: Document No 35, which was referred to by Hon Dee Margetts, was a report that went to council in which council authorised the expenditure and the interviews by Mr Loader and Mr Reynolds interstate. I dealt with the assignment specifications earlier. Those assignment specifications included the advertisement. There is no question that there was a reference in there to academic qualifications. The key point is that it was not an essential criterion. We will move on to the way it was dealt with at the interview stage.

I mentioned that nine candidates were selected as being suitable for interview by the council. At a meeting of the CEO selection committee on 16 July 2001, Mr Reynolds provided a report to the council, which is document No 37. The minutes of that meeting dealt with various issues. Among those issues was the need to keep the names of the candidates confidential, the arrangement to be made for councillors to interview the short list of candidates on Saturday, 11 August, and that the final decision on the package to be offered would be made once the preferred candidate had been identified. They also contained details of and arrangements for the interview process.

On 20 July Mr Loader wrote to the mayor and all councillors, which is document No 38. He provided them with profiles prepared by Mr Reynolds on each of the nine candidates Mr Reynolds considered were most suitable for interview. There were two profiles for each candidate: one was a summary and the other was more detailed. That appears in the attachment to document No 38. The first page of the attachment is headed "East Coast Candidates". It sets out four candidates on that page. Three of the names have been whited out, but all the details remain. If the committee wants to have those details, clearly we will consider that. Over the page is the list of Western Australian candidates. Again, the simple reason for whiting out the names - it is probably easy enough to identify who they are from the details - is to try to protect the personal details of individuals who have no connection and never have had any connection with the city. It does give an indication of the candidates and the information provided in summary about those candidates.

[1.45 pm]

The next document is a more detailed profile prepared for each of the candidates. We have included the profile for Denis Smith alone. The profile for each of the nine followed this format and was in the same sort of detail. It is an important matter that all councillors were provided with that information, not just those on the CEO's selection committee. The councillors were provided with a summary and full profiles of all nine candidates. The councillors were then asked to make their own provisional assessment of those candidates. They were asked to rank them in order of preference and to advise Mr Loader by 24 July of their assessment.

The CHAIRMAN: It is central to some of the arguments and it is verified in the documents, but would you verify that in document 38 Denis Smith's more detailed CV, as prepared by Management Recruiters Australia on page 3, states his formal education and lists it there as -

Bachelor of Business (Management)

Post Graduate Diploma Environmental & Pollution Studies

Diploma in Town & Country Planning

Certificate of Qualification of Town & Country Planner, Ordinance No 4

Land & Engineering Surveying

Then the abbreviated summary to the councillors states that Denis holds the qualifications of a Bachelor of Business Management, Postgraduate Diploma in Environmental Pollution Studies and a Diploma in Town and Country Planning.

Mr Douglas: That is correct.

Hon KEN TRAVERS: Are you saying that a summary and a detailed profile for every candidate was given out at that stage?

Mr Douglas: Yes, to all of them; that is evident from the memorandum that accompanies these.

Hon KEN TRAVERS: You obviously only provided Mr Smith's on this occasion.

Mr Douglas: That is right.

Hon KEN TRAVERS: But were the profiles of all the candidates presented, plus that summary of them, provided at the start?

Mr Douglas: Yes.

Hon ED DERMER: That is the nine that you are talking about?

Mr Douglas: We have all nine and, again, we can produce any or all of those nine. They follow the same full profiles.

Hon KEN TRAVERS: The key issues are basically contained in the summaries.

Mr Douglas: They follow precisely the same format.

Hon JOHN FISCHER: I refer to item 37, which is the minutes of the committee to select a new chief executive officer held in the conference room on Monday, 16 July. I take you back to the minutes of the previous meeting. I am sorry to take you back to this but I brought this up under item 31, which was the minutes of 11 June. I was concerned to note that the meeting agreed that should the recruitment consultant not find suitable applicants, the city would advertise the position. I think you mentioned that the minutes of 20 June stated that it went to a full council meeting which did not agree, or did not fully adopt, the minutes of 11 June.

Mr Douglas: Yes.

Hon JOHN FISCHER: As far as readvertising goes, which led to the questions we put to Mr Loader, some people were for and some were against advertising. However, I note that on 16 July - which is well after 20 June - Councillor O'Brien moved, seconded by Councillor Kenworthy and carried, that the minutes of the meeting of 11 June be adopted. That would have brought them into force. Do you follow where I am coming from?

Mr Douglas: That is right, the minutes were adopted. The motion that was put to the full council meeting, I think by Councillor O'Brien -

Hon JOHN FISCHER: On 20 June?

Mr Douglas: Yes, it did not get up and was sent back to the committee.

Hon JOHN FISCHER: It was sent back to the committee and the committee came back with a re-acceptance of what it had initially accepted.

Mr Douglas: Yes.

Hon JOHN FISCHER: Which was that the position not be advertised.

Mr Douglas: Unless the recruitment process failed to attract a candidate.

Hon JOHN FISCHER: Unless the recruitment consultant could not find suitable applicants.

Mr Douglas: That is correct.

Hon JOHN FISCHER: I just wanted to make the point that further on into July the committee that was established to select the CEO reaffirmed its original position?

Mr Douglas: That is right.

Hon KEN TRAVERS: I ask a question that you might be coming to: was a decision ever taken not to advertise the position?

Mr Douglas: No. In terms of a full council decision, no. We have not been able to locate a resolution.

Hon KEN TRAVERS: Or of the committee?

Mr Douglas: It is probably more doubtful about the committee because, as Hon John Fischer said, there is a reference in the committee meetings to a decision being made.

Hon KEN TRAVERS: It gets even more confusing in these minutes, because under item 6 Mr Loader was sent away to confirm it. The committee agreed that no resolution had been endorsed under the heading "Advertising". I assume that is advertising of the position. No resolution had been endorsed but Mr Loader was requested to confirm this by considering all the council resolutions in recent months and report back to the next meeting.

Mr Douglas: I think that it is a fair assumption that it covers advertising the position and -

Hon KEN TRAVERS: But then you go on under item 9 to refer to the issue of advertising again.

Mr Douglas: It does appear confused from the minutes.

Hon KEN TRAVERS: Then the same minutes go on to say that the CEO recruitment committee be authorised to conduct interviews for the position of CEO.

Mr Douglas: It is almost as though it got overtaken by events.

Hon KEN TRAVERS: This is all happening at the same meeting. The councillors are discussing whether they have actually decided to advertise it or not and in the same meeting they are saying, "Let's keep going." I do not know whether Mr Loader can give us any more insight as to what happened at that meeting. It has got me completely baffled, I must say, reading these minutes as to what happened.

Mr Loader: I think, through you, Mr Chair, Mr Douglas has given a fair summary of what happened. You are quite right that it was never decided not to advertise.

Hon KEN TRAVERS: But do you recall this meeting? Clearly there was a discussion when you were sent off to find out whether a decision had been made, but later it appears that the meeting proceeded without that advice back from you.

Mr Loader: Mr Chairman, I think Mr Douglas has summarised it very well by saying that events took on a whole new dimension at that stage.

Hon KEN TRAVERS: Was this in that meeting?

Mr Loader: Yes, at those meetings on the selection of the CEO.

The CHAIRMAN: We will move on.

Mr Douglas: While we have document No 38 and the detailed profile, I take the committee to page 8, under the heading “References”, because this matter has been raised in other evidence before the committee. It reads -

The contents of this report have been compiled from verbal information supplied during the interview and in writing by the candidate. In preparing this report and in subsequent reference checks, we will endeavour to ensure the accuracy of this information and will verify it where possible.

It is signed by Warren Reynolds, managing director.

Hon DEE MARGETTS: The paragraph above that, which I think you will agree is a very short paragraph headed “Summary”, is a summary of what are considered to be the most important bits. These people were paid a lot to do this. It says -

Denis is an outstanding Executive with an excellent education and first class experience.

That is the first sentence of a very short summary paragraph. Would you not agree that gives an emphasis on Denis Smith’s perceived formal qualifications?

Mr Douglas: I do not know quite what you are saying. If it gives an emphasis contained in the last page of an eight-page document and it refers to -

Hon DEE MARGETTS: I am saying that on page 8 that we have in front of us is a summary, which is one very small paragraph, and it says in the very first sentence of that very short paragraph -

Denis is an outstanding Executive with an excellent education and first class experience.

Would you not agree that sentence is putting a high value on the stated qualifications of that candidate?

Mr Douglas: I think it is important not to read any of these documents in -

Hon DEE MARGETTS: So, you are not -

The CHAIRMAN: Let him answer.

Mr Douglas: I think it is important not to read any of these documents in isolation. What we are proposing is to give you the bigger picture. Any statement read in isolation out of context may well have a different significance. In terms of what was significant for this and other candidates, clearly the starting point is what the requirements of the role were.

Hon DEE MARGETTS: I understand that, but I also say that you have given us a document that states the candidate required to have skills and strong knowledge of contemporary management principles and practices, a well-developed knowledge of corporate planning principles, a sense of knowledge of human resource management principles, a knowledge of statutory legal and contractual obligations and highly developed written and verbal communication skills. Would you not agree that most people would look to see what evidence there is that the person had learnt those principles in some formal context through some form of tertiary education?

Mr Douglas: I would not presume to assume what most people would do.

Hon KEN TRAVERS: I think each individual councillor would have made his or her own assessment as to what was important at that time, because these documents were provided to them to make their assessment. Clearly the documents that were provided to them, if qualifications were important in their consideration, would have indicated that the candidate had formal tertiary qualifications. It is not for us to make that decision; it would be for each of the councillors when considering this documentation. I got the impression that you were trying to present the view that tertiary qualifications were not an important part of it, but surely it comes down to each of the councillors in the selection process having in their mind at the time what they regarded as

important. This documentation that you have just provided to us clearly highlights on two occasions a summary of educational qualifications. If you were a councillor and you thought that was important, you would be left with the impression that this candidate had qualifications that he has indicated to this committee he does not have.

Hon DEE MARGETTS: May I follow up that question?

Hon KEN TRAVERS: Can I just get an answer?

Hon DEE MARGETTS: Actually I was in the middle of asking a question.

The CHAIRMAN: Hang on.

Hon KEN TRAVERS: I am sorry, I thought Hon Dee Margetts had finished.

Hon DEE MARGETTS: This is vital.

The CHAIRMAN: It always is, but I ask members to keep their questions to the specifics of the documents and not ask questions that go for five minutes with their own interpretation of affairs. I ask Hon Dee Margetts to wait until the witness has had an opportunity to answer the question before she shoots in and cuts him off. I think Hon Ken Travers asked a question. Can you answer that first, Mr Douglas?

Mr Douglas: I think the assessment that the committee would be urged to make is one based on all the material. If we take this or anything else out of context, I think there would be a problem. Once we have finished the interview process, it may well be more appropriate to consider the significance of these words in this document in that process. I do agree though that it was up to each councillor to assess that document, and that is why the document was provided - for the purpose of rating.

Hon DEE MARGETTS: Would you agree, in the context of a short document and the words "with an excellent education" plus a list of qualifications that were not accurate, that the selection panel were asked to make a decision on a misleading document?

Mr Douglas: Something is misleading if it is misleading either intentionally or inadvertently but it misleads the reader -

Hon DEE MARGETTS: It could be intentional; I am not saying intentionally.

The CHAIRMAN: Hang on, you asked the question, let the witness answer.

Mr Douglas: The question is then whether it actually misled the reader.

Hon DEE MARGETTS: Yes, would that not mislead the reader?

Mr Douglas: As I think your colleague indicated earlier, it was up to each individual councillor as to whether or not they were misled. Many councillors have given evidence and those councillors who said that academic and professional qualifications had no bearing on the decision would not have been misled because they would not have taken any notice of it. As the fraud squad investigation concluded, academic and professional qualifications had no bearing on the decision to appoint Mr Smith.

[2.00 pm]

We will come to that later. It is important that the body of evidence is reviewed as a whole rather than individual passages from individual documents.

Hon DEE MARGETTS: I think it is up to the committee to work out what is going to be relevant and not relevant.

The CHAIRMAN: We will do that in due course. Let us just get the evidence at this stage.

Hon ED DERMER: The context of this document is very clear. This would have been the primary document to advise councillors on the selection committee when making their decision. You talk about whether it is misleading or not being a matter for the person who reads the sentence.

If I was to read the sentence saying that the person has an excellent education, that would mislead me into thinking that that person had an excellent education if they did not have one. When that sentence is read in conjunction with the listed qualifications claimed, that would lead me to believe that they actually had the qualifications that they claimed. I think the context is clear. I am concerned that we have consistently received evidence from Mr Reynolds and councillors to say that qualifications were not the most important factor and that employment history was more important. I ask that you say whatever you can say to dispel my suspicions. However, my strong suspicion is that, at the time when this document was being presented to councillors, education was seen as being very important. Later, it became apparent that Mr Smith did not have the qualifications, particularly the business degree that it was claimed he had, when this document was presented. Retrospectively, people have endeavoured to rationalise that by saying that education is now no longer important. The significance of this summary is that at this point in time, Mr Reynolds, in preparing the document, was putting a significant emphasis on education. Subsequently, people endeavoured to rationalise the lack of veracity in Mr Smith's -

The CHAIRMAN: Come on Ed. This is a brief question. You have made a five-minute statement.

Hon ED DERMER: It is very important to make this absolutely clear. The context is clear. The impression that I, as one of the members of this committee, am getting is that the misleading nature of what has been presented about his qualifications were rationalised afterwards. I invite you to dispel that impression.

Mr Douglas: We will provide further material so that that can be considered in the context. I add that the assumption seems to have been made in what you have said that Mr Smith's actual qualifications do not constitute excellent qualifications in the minds of either Warren Reynolds or those who considered this. The assumption seems to have been made that if Mr Reynolds did not have these particular qualifications, then he did not have excellent educational qualification. We were not privy to the evidence given by Mr Reynolds - he may well have given you evidence about this matter, I do not know. However, it would be open, as a matter of logic, for Mr Reynolds and other councillors to reach the conclusion that Mr Smith's actual qualifications constituted excellent educational qualifications. In that case it would not be misleading.

Hon ED DERMER: I understand that you have examined all the public evidence of all the hearings related to this case. On a number of occasions, I specifically remember Mr Reynolds and various councillors saying that the educational qualifications were not an important consideration and that the most important consideration was the on-the-job experience acquired by Mr Smith. When I look back at the time that Mr Reynolds prepared this statement, he puts the emphasis on excellent education. That summation is provided in consort with a list of qualifications that includes the Bachelor of Business degree. Is that correct? Do you agree that that is a correct understanding? My suspicion is that at a later time when it was found out - Mr Smith has now admitted that he does not hold a Bachelor of Business - that people like Mr Reynolds and various councillors at the City of Joondalup have rationalised their acceptance of Mr Smith as a CEO, notwithstanding the fact that he claimed to have qualifications that it was later found he did not have. They have rationalised their acceptance by saying that the qualifications a person may or may not have were not a matter of great importance. I think this document is significant because it indicates that, at the time that Mr Reynolds wrote the document, he saw educational qualifications as being important. Later, he endeavoured to say that they were not important once it became obvious. I am asking you to dispel that as an impression that I, as one member of this committee, holds.

Mr Douglas: You are clearly entitled to hold whatever impressions you wish to hold.

The CHAIRMAN: Quite right. I appeal to committee members more than the witnesses that we are going to be here until this time next week to get through Mr Douglas's evidence if we continue

with observations on every single point. Ask the questions to get the information, then we can work out our point of view on things. I encourage us to let Mr Douglas and Mr Loader provide us with the evidence.

Mr Douglas: In case it was lost, the last point we were making on this submission on page 8 was the statement that, in effect, Warren Reynolds would verify the accuracy and information contained within the document.

Hon KEN TRAVERS: Before you move off that point, it conflicts with the earlier documentation that Management Recruiters Australia provided to the council that you have included as document No 9, does it not? On the page dealing with recruitment methodology and practices and under the heading "Sourcing of Applicants from Records, Files and Database Information" and a further heading of "Screening Applicants" it states -

Upon receiving written applications, we will screen all applicants with regard to their qualifications and attributes for the position for which they have applied.

That says that when they get the written application they will check their qualifications, which is inconsistent with the comment that has now been added, in which I assume you are suggesting that those matters had not been checked at that stage, including qualifications.

Mr Douglas: No, it was not my suggestion at all.

Hon KEN TRAVERS: Why were you drawing our attention to that clause then?

Mr Douglas: The obligation was on Warren Reynolds to verify the accuracy of the material provided. That is consistent with both documents. The obligation fell on Warren Reynolds to verify the accuracy.

Hon DEE MARGETTS: Was anything given to the city that clearly indicated that if the city wished the recruiters to check qualifications, they had to make a separate request to Management Recruiters Australia? Was there anything in writing that you are aware of to prove or back up an assertion - not yours - that if the selection panel expected Management Recruiters Australia to verify any of the information it provided, it needed to make a separate request?

Mr Douglas: No.

Hon KEN TRAVERS: When document No 38 refers to "supplied during the interview and in writing by the candidate", to what interview is it referring? Is that when Mr Loader and Mr Reynolds had visited the eastern States?

Mr Douglas: I did not write the document. I imagine that is one the interpretations that -

Hon KEN TRAVERS: In terms of the timing, these were the documents provided prior to the councillors doing the interview, were they not?

Mr Douglas: Yes, that is right.

Hon KEN TRAVERS: So it must be some other interview. If that is the case, Mr Loader, when you met with the candidate in the eastern States, did you ever discuss qualifications?

Mr Loader: No, we did not. Not when I was present anyhow.

Hon JOHN FISCHER: I refer to document No 37, which is the minutes of the meeting on 16 July, where it was moved by Councillor Don Carlos and seconded by Councillor O'Brien that the CEO recruitment committee be authorised to conduct interviews for the position of CEO. We can say at that point that there was no problem. On the next page there is a progress program that was drawn up by Warren Reynolds and sent to Mark Loader that clearly states that on 6 August -

Two candidates are to be selected from the weekend and formal reference checks will then be undertaken on them.

Reports from the reference checks will then be presented to the selection committee.

Does that then indicate that Management Recruiters were going to go further into it once it came down to that final selection?

Mr Douglas: We will see this, but what is referred to by the reference checks are the referee reports rather than the checking of the professional qualifications. We will come to that.

Hon KEN TRAVERS: However, it was the responsibility of Management Recruiters Australia to check the qualifications?

Mr Douglas: Yes.

Hon DEE MARGETTS: And there is nothing at all in their contract with Management Recruiters Australia that you are aware of that indicated that the city had to go back to them and ask for that?

Mr Douglas: That is right. Three documents are relevant to that question: the one referred to by Hon Ken Travers, the contract that you have just referred to and document No 38. Those are the three documentary passages that refer to this issue of who is responsible for checking the professional qualifications. None of those indicate that the city was required to give a notice of any matter that required to be checked.

Hon DEE MARGETTS: Therefore, the assumption that people should have been aware that they had to ask specifically has no basis that you can think of.

Mr Douglas: There is no documentary basis. I am not sure if Mr Loader wants to add anything -

Mr Loader: No.

The CHAIRMAN: We will try again.

Mr Douglas: The council met on the evening of 24 July 2001. The minutes are found in document No 39. The council resolved at that meeting to authorise a CEO selection committee to conduct interviews, to appoint Mr John Turkington to be the acting CEO from 5 September, and to note the minutes of the CEO selection committee. Following that meeting, Mr Loader wrote to each of the three councillors who were not present at that meeting of full council. Again, this note is significant for the purposes of the proposition that all councillors were kept informed at all times of what was going on. Even those councillors who did not attend the full council meeting had it drawn to their attention what had occurred on the previous evening. The second paragraph of document No 40 is particularly apt and states -

As you were not present at the meeting held behind closed doors last night I have been asked to advise you that they are available for your scrutiny if you wish to have a copy.

That is, the profiles to which I referred earlier -

The condition is that everything remains confidential . . .

It referred to the interviews that were to be conducted on 11 August inviting all councillors to attend. Following the feedback from councillors, the nine candidates were ranked. On 27 July 2001 - this appears in document No 41 - Mr Loader wrote to the mayor and all councillors informing them that six candidates had been short listed for interviews, three of which were from Western Australia and three from interstate. Those six were chosen from the list of nine based on the rankings supplied by councillors. The program was that interviews be conducted all day on Saturday, 11 August, and on the following Monday there would be another meeting of the committee to recommend a preferred candidate to take to the full council.

The CHAIRMAN: In the document you have provided it just mentions Denis Smith's name. I understand that five other names have been whited out.

Mr Douglas: I am sorry, I should have added that. There are six names. One of the six candidates withdrew shortly before the interviews, so only five were interviewed. However, this document in its original form contained six names.

[2.15 pm]

The proposed list of questions for candidates was prepared with input from both Mr Reynolds and Mr Loader. I refer to document No 42. The covering note indicates that there were revisions to those questions. You can see on the second and third pages that changes were made to questions that were initially proposed. There was some redrafting and revision of the list of questions. Significantly, none of those questions referred to or had any connection with academic or professional qualifications. Shortly before the scheduled interviews, a number of councillors responded to the invitation to attend interviews. One was unable to attend because of family commitments and another indicated that he had no interest in the item whatsoever. Interviews were conducted by the CEO selection committee on Saturday, 11 August. The committee members were Mayor Bombak -

Hon DEE MARGETTS: There are a couple of comments and alterations here on the selection committee "Questions for Prospective CEO".

The CHAIRMAN: He explain that a couple of minutes ago.

Hon DEE MARGETTS: I know. I am referring to the document. The comment reads "These are my suggests anyway . . . probably won't talk to me now". Does that indicate anything about whether suggestions were taken very kindly in relation to changes? We are still on document 42, headed "Questions for Prospective CEO". There are some suggested changes but on the final question it reads "These are my suggests anyway . . . probably won't talk to me now". Does that indicate there was a difficulty in Warren accepting suggestions from other people about what should be in those questions?

Mr Douglas: That indicates a high level of rapport between the addressee and the person who wrote this. Perhaps Mr Loader can answer that question.

Mr Loader: The comments are my comments. There was bantering going on between Warren and me. That is all it was.

Hon DEE MARGETTS: Were your comments the only suggested changes to the questions?

Mr Loader: Yes, they were.

Hon DEE MARGETTS: I find that very interesting. Question 12 reads -

What are some of the most significant reports that you have written and what impact did they have?

Mr Loader, was that you who asked for that to be struck out, considering that a high level of written skills was one of the most valuable assets that someone in that position was supposed to have?

Mr Loader: Yes, it was. I asked for that to be struck out because my CEOs do not write their own reports. They usually give them to someone else. In my view, it was not important.

Hon DEE MARGETTS: Pardon me? CEOs take responsibility for what is written in reports. Do your CEOs not write anything themselves?

Mr Loader: They do. These were just suggestions. They were put to the councillors.

Hon DEE MARGETTS: I have asked a reasonable number of questions about written communication skills and I was amazed that they were not in any part of the process. I am more amazed that there was a question to demonstrate the level of written communication skills and you as the HR officer on the shire have said that was to be struck out.

Mr Loader: Yes.

Mr Douglas: Perhaps, for the record, it should be noted that the alternative replacement question in the document is -

Could we ask them about their business dealings in terms of projects that have benefited the local community????

That matter loomed very large among the stakeholders who were consulted by the city in terms of what they regarded as the attributes they wanted in a new CEO.

Hon DEE MARGETTS: Does not that back up my question earlier about how influential the Joondalup business community was in what was or was not included in the selection of the CEO of Joondalup?

Mr Douglas: The stakeholders to whom I referred earlier included all councillors who were consulted. That was one of the primary points that arose from all consultations across the board. In terms of projects that have benefited the community, that was something that all stakeholders, including the councillors themselves, wanted the CEO to have. That is reflected in the proposed question to be asked of all candidates.

Hon DEE MARGETTS: Whose name goes on the bottom of most written documents coming from a city like Joondalup?

Mr Loader: It depends on what the report is for and what the target is.

Hon DEE MARGETTS: I said "on most major written documents". On most major written documents, whose name goes on the bottom, to all intents and purposes, claiming authorship of most major documents coming out of a major city like Joondalup?

Mr Loader: Directors, CEOs and managers.

Hon KEN TRAVERS: I have one last question about the timing. On the attachments to the minutes of the meeting of 16 July - they appear in numerous places, but certainly at the bottom of page 41 of the minutes of 16 July - it says that Mr Reynolds provided a summary of a recent action undertaken in searching for a CEO. He tabled a document providing a brief summary of preferred candidates for the position.

Mr Douglas: Yes.

Hon KEN TRAVERS: Do we have a copy of that document?

Mr Douglas: I think that probably would have been in the summary of the profiles I referred to earlier; namely, the summary paper and detailed profile for each candidate.

Hon KEN TRAVERS: I was looking at that. That document and the detailed one were sent to the mayor and councillors from Mark Loader on 20 July, which would have been four days after that meeting. Was it provided twice? I am trying to clarify that point. That document, which is, I think, item 38, was sent to the councillors on 20 July. Was another summary provided on 16 July to councillors?

Mr Douglas: I am not aware of it. The document that refers to the summary is not dated. It could have been the same document.

Hon KEN TRAVERS: Is it possible it was the covering documentation containing the summary of two pages - without the detailed summary for each candidate that was given at that stage?

Mr Douglas: On 20 July?

Hon KEN TRAVERS: No, on 16 July.

Mr Douglas: I do not know.

Hon KEN TRAVERS: It becomes quite crucial because that summary document is only a very brief summary and lists the current position of each candidate, their previous senior positions, their academic qualifications and their current salary. In the main, they are the three issues covered. I want to work out whether on 16 July candidates were provided with full details or only that

summary, which includes those three items - qualifications, current and most recent senior positions and salary.

Mr Douglas: All councillors were provided with both a summary and the full profiles of every candidate for ranking purposes.

Hon KEN TRAVERS: I understand that. I am trying to work out what was provided to them on 16 July.

Mr Douglas: I missed the point of how crucial this is because if councillors got both lots of documents, they assessed them and gave responses, does it matter whether it was on 16 or 20 of July?

Hon KEN TRAVERS: It would depend on when they sent in their responses.

Mr Douglas: By 27 July.

Hon KEN TRAVERS: I am intrigued to get a time line. If we do not have it, we do not know what was provided on that day. That is fine.

Mr Douglas: On Saturday, 11 August, interviews were conducted by the CEO selection committee, the members of which were Mayor Bombak, and Councillors Kada, Kenworthy, Walker, O'Brien, Carlos and Hurst. Councillors Mackintosh, Barnett, Baker and Hollywood were also in attendance. A total of 11 elected members were at the meeting. Apologies were received from Councillors Nixon and Rowlands. Mr Reynolds and Mr Loader were also present throughout the interviews. Although it was a selection committee, 11 of the 15 possible elected members were present. Before the interviews commenced, a CEO selection committee decided that only four councillors would ask candidates the questions that had been agreed on. The reason was that it was a structured interview and felt that all candidates should be treated fairly by being asked the same questions. It was agreed, however, that any question could be asked by any councillor as a result of the responses provided. Mr Loader's clear recollection is that none of the supplementary questions asked of any of the candidates related to their academic qualifications. He also has a clear recollection that at no time during interviews was there any reference to academic or professional qualifications either in relation to a particular candidate or generally. The four elected members who asked the questions were Councillors Baker, Carlos, Hurst and Kadak. The questions each councillor asked of each candidate appear, from the notations on the form setting out the list of questions, on document No 46. Document No 46 sets out the final list of the questions that were asked. We discussed earlier the amendments to the list of the questions. Alongside each question you can see on the left-hand side reference to a particular elected member. Councillor Carlos's name appears alongside the first question. Councillor Carlos asked that question of each of the five candidates who appeared. Question No 2 was asked by Councillor Kadak and so on. That was the structure of the interview.

The CHAIRMAN: I take it these questions were asked cold and the applicants were not aware of the questions prior to that?

Mr Loader: No, all of the successful short-listed applicants were given copies of the questions because it was not a test of memory but of what they could provide to the city.

Hon DEE MARGETTS: Did you give your prospective applicants a copy of the questions they were to be asked and, as we heard, there was no encouragement - in fact definite discouragement - of councillors to ask questions additional to these questions, and there was no ability to follow up so that people could find out additional information about aspects that had arisen in their answers?

Mr Loader: That is not true; supplementary questions were asked by some of the councillors.

Hon JOHN FISCHER: How many? This is quite important. Obviously, some people were of the opinion that no other questions at all were allowed to be asked. Can you recollect how many? Were those supplementary questions asked of all candidates?

[2.30 pm]

Mr Loader: The supplementary questions were asked by those councillors who wanted clarification or further information on the questions that were answered by the prospective applicants.

Hon DEE MARGETTS: Was it part of the guidelines that they were permitted to ask only brief clarification questions related to the questions that had been asked?

Mr Loader: Yes.

The CHAIRMAN: The insinuation is that councillors on that selection panel were prevented or discouraged in some way from asking further questions. Is that correct?

Mr Loader: That is not correct at all. Some councillors asked follow-up questions about questions that they had not asked. For example, if I had asked a question and the applicant gave an answer, Mr Douglas could ask a supplementary question to that response.

Hon DEE MARGETTS: Mr Loader, is this the way Joondalup usually conducts interviews? Does it usually give its candidates for interview the questions in advance?

Mr Loader: The city does not often recruit CEOs. This is the second part of a two-part process. The first part entailed a 30-minute, or thereabouts, presentation by the short-listed applicant, after which they were asked these questions. As I said before, it was not about trying to trick prospective CEOs; it was about what they could do for the City of Joondalup. The committee considered that the best way to do this was to examine their presentation skills and their skills in communicating to councillors and staff. It was on that basis that the committee considered that the questions ought to be given to the applicants. That practice is encouraged in some parts of the organisation for some other recruitment processes like that. Indeed, members will find that some other positions in other industries do the same thing.

Hon DEE MARGETTS: We know that questions were limited to a large extent -

The CHAIRMAN: We do not know that at all.

Hon DEE MARGETTS: It has been admitted that there were some limitations. We have heard evidence to the effect of the extent of that limitation. Who put forward the proposal to provide the candidates with the questions in advance?

Mr Loader: I cannot recall.

Hon DEE MARGETTS: Do you not know whether it was Management Recruiters Australia or yourself?

Mr Loader: It was not me. It would just be guessing. I do not recall.

The CHAIRMAN: I would not imagine it is an unusual practice. You are involved in employing people in your role as human relations manager. Correct me if I am wrong, but I imagine it is a common practice to provide applicants with a list of core questions.

Mr Loader: Yes, it is.

Hon KEN TRAVERS: If it helps the committee, that is how I have conducted interviews in the past.

The CHAIRMAN: Can we make some ground.

Mr Douglas: Minutes of the CEO selection committee on 11 August recorded how the interviews were conducted. Mr Reynolds briefed the council beforehand on the interview process. Each short-listed candidate was given an opportunity to make a 20-minute presentation on themselves and what they could do for the city, which was followed by questions. At the conclusion of the interview process, each councillor was asked to complete a scoring sheet and submit it for counting. It was then arranged that they would meet on the following Monday to determine the preferred candidate.

The meeting began at 8.10 on Saturday morning and did not conclude until 4.40 in the afternoon. Each councillor, including not only the members of the committee but also the other councillors who attended as observers, completed a written assessment of each of the answers provided by each candidate. I refer members to document No 47. Members will see that for each question that was asked, councillors had to rate the answer from 1 to 5. Each elected member was given a copy of that document for each candidate. Each question was scored and the scores were tallied at the end. Those total scores were tallied, combining the other elected members' scores.

Hon KEN TRAVERS: Did it not matter whether they were a member of the committee? Did every councillor in attendance participate in that process?

Mr Douglas: That is right. As well as the 14 questions that were asked, on the last two pages of the sheet that was distributed, each candidate was also rated by each councillor on presentation skills, communication style, demonstrated knowledge of requirements of the role, appropriate experience and sensitivity to issues and requirements related to the City of Joondalup.

Based on the ratings provided by each of the councillors for each of those 14 questions and five factors, an evaluation matrix was prepared. Mr Smith was the second highest ranked candidate; he was only marginally behind the highest-ranking candidate and he was significantly ahead of the third-ranked candidate. Document No 48 sets out a matrix, with Denis Smith's name at the top. The other four names have been whited out. The totals in the right-hand side show that the leading candidate was referred to as No 1. He is the second last candidate on that list, with a total of 788 point. Mr Smith scored 778 points. He was only marginally behind the leading candidate. The third-last ranked candidate scored 717 points and the other two candidates fell well behind that. There were two outstanding candidates according to the rankings of elected members.

The CEO selection committee met on the Monday evening at seven o'clock. The same councillors who were present at the interviews were also present at this meeting on Monday. The minutes of that meeting are found in document No 49. They record that Mr Reynolds advised the committee that he had contacted the three highest-ranking candidates that morning and all three candidates had confirmed their interest in the position.

Hon DEE MARGETTS: I found this matrix interesting. There are no squares at all to give a rating for the information that was provided in the documentation that was not specifically sought in the interview. Do any of those squares give a rating for the kind of information, such as qualifications, that was provided for positions held previously, to demonstrate the candidates' skills and background? There are no boxes at all in that matrix to score those issues that were part of the summary document.

Mr Douglas: That is a significant point. I omitted to mention the fact that qualifications were not a significant factor in this process at all. Another evaluation criterion under D sets out the candidate's appropriate experience. D would certainly pick up the details provided by a candidate in a CV or application. Similarly, four of the other criteria set out permitted a rating to be given for material other than material provided at the interview. However, as the member has pointed out, there is no box for professional qualifications. However, there is a box relating to a candidate's experience, which is consistent with what the city's position was throughout this whole process.

Hon DEE MARGETTS: If there was no box for personal qualifications, would that not belie the inclusion in the first sentence of a summary about excellent qualifications?

Mr Douglas: I do not know what evidence - I understand it is still private - Mr Reynolds gave about that. He was the author.

The CHAIRMAN: Mr Reynolds' evidence was a mixture of private and public evidence. I take it, Mr Loader, that that evaluation matrix was one major indicator involved in the decision of who to appoint; however, it was not the sole determinant of the decision being made in the end.

Mr Loader: There were another two steps in the process. The reference checks at that stage had not been completed and it was the decision of the council that finally made the recommendation. There were another two steps in the process.

The CHAIRMAN: I presume we are coming to those.

Mr Loader: Yes.

Mr Douglas: I was dealing with the minutes of the meeting on 13 August 2001, which are set out in document No 49. Mr Reynolds stated that he contacted the three highest-ranking candidates that morning and all three candidates had confirmed their interest in the position. The committee then discussed the candidates and agreed to submit a report to the council on the following night as a late item so that the council could determine the preferred candidate. Mr Reynolds provided a report on the following day that was distributed to each councillor for the full council meeting that was held on 14 August. The report sets out the results of his discussions on the previous day with each of the top three candidates. Document No 50 sets out the report by Mr Reynolds to each councillor for the purposes of the council meeting on 14 August. Members will see that reference is made to discussions that Mr Loader had with each of those three candidates.

Hon KEN TRAVERS: Are these summaries of the conversations he had that morning prior to that meeting on 13 August or after the meeting on 13 August?

Mr Douglas: He advised the committee on the morning that he had contacted the three highest-ranking candidates. This document sets out the results of the discussions. I am not privy to whether he had other discussions. Again, the two candidates other than Mr Smith's names have been omitted from that document. All the other details have been retained. Mr Reynolds' conclusion was that he had no hesitation in recommending that Denis Smith be the candidate of choice. This was based on his discussions with the top three candidates as well as the results achieved in the assessment matrix on the Saturday. He also concluded - this is an issue that the committee will need to deal with shortly - that the salaries for each of the three candidates was similar. There was very little difference between what they asked for and what is currently being paid to the current chief executive, Lindsay Delahaunty. As I say, we will come back to that point with documentary evidence that confirms that conclusion. At this stage, the focus is on his recommendation with regard to Mr Smith. It can be seen in his report to the council that Mr Smith was very enthusiastic about the possibility of joining the city. The other details are set out in the document. The minutes of the full council meeting of 14 August resulted in a resolution - this is set out in document No 51 - that the council authorise Mr Warren Reynolds to undertake further discussions with candidates A, B and C in that order of preference as identified in Mr Reynolds' confidential report, with a view to finalising an appointment to the position of CEO. The remuneration package for the position was to be in the range between \$220 000 and \$230 000. Again, that was the decision of the full council on 14 August. Mr Reynolds then conducted reference checks on Mr Smith. Three referees were contacted. One was a former national director of GHD with whom Mr Smith worked directly for six years. This referee confirmed that during his time with GHD Mr Smith held the role of general manager in New South Wales and was the head of the planning operations department. During his time with GHD he was responsible for winning and completing a significant number of major contracts.

[2.45 pm]

As for work performance and achievements generally, he stated that Mr Smith -

. . . was nothing short of brilliant, dedicated to his job, easy to work with and puts in 100% effort. He stated that he was a remarkable worker and achieved a great deal during his time with the organisation.

... Denis has a good strong work ethic and excellent presentation skills ... He was exceptionally well liked by his peers in the industry ... Denis built up a strong team and was well respected by his staff.

As to the second referee, the former Mayor of the Warringah Council, who appointed Mr Smith to his role as general manager of the council - the equivalent of a CEO position - and to whom Mr Smith reported directly, he noted in these extracts that Mr Smith works very well with the mayor and is particularly successful and developed initiatives with environmental issues associated with the council. It was said that Denis has a very good attitude towards work, and he is dedicated in fulfilling long hours of duty to his current role. He is a person with high energy levels and has first-class presentation skills. He is well respected by his industry peers, and is well thought of by the community in general. He is very well liked by the staff and respected for his capabilities. He is a good communicator and works well with people at all levels and is a good leader. He is also able to control matters effectively and achieve objectives.

The third referee was a senior partner with Wiltshire Webb Solicitor, legal advisers to the Shire of Warringah, who stated -

... Denis had excellent commercial legal knowledge and ... was very bright and has enormous drive.

... Denis was stimulating and pro-active to work with and has excellent preparation skills. He has achieved a great deal through effective delegation and has great ability to deal with the politics involved.

... Denis is a delightful person and good with people generally.

He stated that Denis is well respected by his peers, and -

... has drive, intelligence and the ability to achieve the correct options in difficult situations.

... Denis could manage any corporation and has no limits to his future.

Following the reference checks and further discussions with the three top ranked candidates by Mr Reynolds, the CEO selection committee recommended to the full council that Mr Smith be appointed to the position of CEO. The minutes of the council meeting held on 28 August 2001 are set out in document No 64 in volume 2 of the materials. The second page of those extracted minutes on page 52 record the terms of the resolution of the council that it appoint candidate A - that is, Denis Smith - to the position of Chief Executive Officer of the City of Joondalup on a five-year performance-based contract on a commencing total annual remuneration package of \$225 000. The mayor, deputy mayor and Mr John Turkington were authorised to finalise the contract documentation. Council approved a further payment of up to \$20 000 towards the cost of relocation, and agreed to provide a furnished apartment for eight weeks at the city's expense. Eight councillors supported that resolution. Three opposed it. Those supporting were Mayor Bombak and Councillors Hurst, Kenworthy, Patterson, Rowlands, Hollywood, Baker and Kimber. Those opposed were Councillors Carlos, Nixon and Barnett. In our submission, the appointment of Mr Smith was not only lawful and reasonable; it was clearly justified in the materials.

Hon KEN TRAVERS: Who are you speaking on behalf of in saying that?

Mr Douglas: The city. The city made the appointment of Mr Smith. The city's actions in appointing Mr Smith were lawful and proper, and its actions to appoint Mr Smith as a decision as a matter of merit were clearly justified.

I turn now to the employment contracts, about which there has been some discussion. It is apparent from the documentation that some time before the council meeting of 28 August at which Mr Smith was appointed by the council to be CEO, the city had earlier arranged for its solicitors handling this matter - Freehills - to prepare an employment contract for the successful candidate. We have located eight different draft versions of the employment contract. During the course of preparing

these submissions for the standing committee, we discovered four of these drafts among the papers and files kept by Mr John Turkington. Each of the four drafts contain Mr Turkington's comments and suggested amendments, several of which were adopted and are reflected in later drafts and in the final version. I will return later to Mr Turkington's evidence - he repeated this evidence to the committee - that he had nothing to do with the drafting of the contract. We can produce for the standing committee four drafts that bear his notations that were adopted in subsequent drafts and the final version. Early drafts of the employment contract were provided to Mr Smith and to councillors. By way of example, the first of these drafts is document No 55, which, unfortunately, is in the previous volume.

The CHAIRMAN: There is no "draft" stamp on this document. Is that an indication -

Mr Douglas: No, Mr Chairman. It has been a difficult exercise to order these in sequence. If any member of the committee wants to go through that process, I can assure the committee it is difficult. It requires one to look at proposed changes in one version, and then to look at how they relate to the next version. We have ordered them in what appears to be their chronological order. I hope we have succeeded in that attempt. They are successive drafts, each of which has different changes made to them. The first of these is under cover of an e-mail dated 23 August to Mr Loader from Management Recruiters Australia suggesting changes to a number of clauses. Unless there are any questions, I propose to move to the next draft. I did not intend to go through these in detail.

Hon KEN TRAVERS: These changes in document No 55 are from Management Recruiters Australia. Do they follow discussions with Mr Smith or are they its own changes?

Mr Douglas: Perhaps I should have read the first paragraph of the e-mail, which illustrates that matter. It outlines that the points that Warren referred to are highlighted. The assumption would be that certain changes were proposed in discussion between Warren Reynolds and the candidates.

Hon KEN TRAVERS: I ask that question to clarify the matter now, and you can come to it later. Two areas are of concern; namely, the performance review and the mechanism for establishing a committee. A suggested change is clearly made in that document in this regard. Also, the corporate credit card documentary evidence was to go to the mayor as opposed to the council - this is proposed in these changes. Who would have proposed those changes? It is coming from Mr Reynolds, but your view is that this was following discussions with the candidates.

Mr Douglas: That is one explanation. I am not privy to that information. Perhaps Mr Loader has some information. I am not aware of anything in the documents to support or otherwise that proposition.

Hon KEN TRAVERS: I am interested in where those changes came from.

Mr Loader: Through you, Mr Chairman, the changes to the performance review were undertaken by Freehills. We have evidence in the material to show you what they changed. I think we allude to the corporate credit card. Without going through the documents, I cannot remember.

Hon KEN TRAVERS: Will you come to that matter later?

Mr Loader: The performance review? We certainly will.

Mr Douglas: The next draft is set out in the next volume of the documents. I refer to document No 56 in volume 2.

The CHAIRMAN: It is in volume 1 of our copy.

Mr Douglas: I am sorry. This sets out, under cover of an e-mail, that Councillor Kimber sent an e-mail to Mr Reynolds and copies to the mayor and Councillors Hurst, O'Brien and Baker suggesting changes to the draft contract. This indicates that those councillors were involved in the process.

The next contract is document No 57, which is another draft prepared by Freehills incorporating several of the changes proposed in the earlier suggested changes and by Councillor Kimber. It

appears that this draft version of the contract was the model WALGA - Western Australian Local Government Association - contract. The WA local government industry has two model contracts; namely, one from WALGA and another from the Local Government Managers Association. These are quite different in their terms. This is the model WALGA contract.

The next contract document is No 58. Again, another revised draft and accompanying e-mail from Freehills incorporates some of the earlier proposed changes.

Hon DEE MARGETTS: What is the handwritten thing from Warren Reynolds of 24/08/01? Is that document No 57 or is that just there by error?

Mr Douglas: What page is it?

Hon DEE MARGETTS: There is not a page number. I might be just the lucky one. It is a handwritten note saying Warren Reynolds, 28/08/01 - 19 200 and 16 000 underneath.

The CHAIRMAN: It is document No 57. It is an annexure.

Hon DEE MARGETTS: No. I have a handwritten number here. Am I just lucky?

The CHAIRMAN: I have a couple of bits in relation to document No 57 on mine.

Mr Loader: Do you have \$19 200?

Hon DEE MARGETTS: Yes.

Mr Loader: That is the value of the car. I think they are workings out. You must have been lucky.

Hon DEE MARGETTS: I am unclear why it was there in the middle of the annexure.

The CHAIRMAN: Keep going, Mr Douglas.

Mr Douglas: Document No 59 perhaps needs some explanation. It sets out a fax to Warren Reynolds from Denis Smith. Accompanying that fax is a contract of employment signed by Mr Smith. You will see on page 13 that it has been signed by Mr Smith in front of a witness, and each of the preceding pages has been initialled. The fax was dated 28 August, which was the same day that the council met and resolved to appoint Mr Smith.

[3.00 pm]

It appears - this is something that Mr Reynolds may be able to help you with - that Mr Reynolds sent to Mr Smith this version of the contract and asked Mr Smith to sign it. That is not uncommon in the recruitment industry. It shows that the candidate is serious about accepting the position; there is some sort of commitment by having the person's name on the contract before a decision has been made to appoint that person. It appears that that is a likely explanation, given that council met here at eight o'clock, and with the two-hour time difference, it is most unlikely that the document could have been sent to Mr Smith and faxed back the same day. There does not seem to be a time on the fax, so it is not possible to verify that, but that is one explanation.

The CHAIRMAN: I note in passing that this faxed copy signed by Mr Smith is witnessed by Michelle somebody or other, who is clearly a different witness from the witness to the document you referred to earlier in your evidence today.

Hon KEN TRAVERS: There is a time on the document. It says "09.51" on one of the pages in annexure 1.

Hon DEE MARGETTS: Which document are we looking at?

Mr Douglas: That would confirm -

Hon KEN TRAVERS: I assume that if that had been sent back, that would have occurred 10 minutes before the councillors met to consider -

Mr Douglas: I think it is 09:51, so it is in the morning, not the evening.

Hon KEN TRAVERS: It was the meeting of the full council on 28 August.

Mr Douglas: This document was signed before the council met to select Mr Smith. It is a slightly different version from that which was ultimately signed. A further four subsequent draft versions of the employment contract - that is, after the one signed by Mr Smith, which indicated that the one sent to Mr Smith was probably sent some days earlier - contained Mr Turkington's comments and suggested amendments. These are reproduced at documents Nos 60 to 63 inclusive. In document No 61, John Turkington's name appears at the top of the first page. We have the originals of each of these documents. The originals have yellow tabs, which were not possible to photocopy and which also indicate Mr Turkington's markings. If the committee would like to verify the copied versions we have, it is welcome to do it. Obviously we prefer these originals to be returned to us, but they are available. Perhaps I could make arrangements with one of the officers later to arrange that confirmation.

Hon DEE MARGETTS: Can we clarify the point that Mr Douglas is making in relation to that?

The CHAIRMAN: If you leave that document with our staff at the end of the hearing just for verification, we will return the document. Your point is to verify, is it not?

Mr Douglas: Yes. The markings on these yellow stickers, which have not been reproduced in the copies that have been provided to the committee simply because of the way they are set out - and we did not want to interfere with the originals - indicate that Mr Turkington had marked these versions. Mr Turkington gave evidence - we will come to it - on a number of occasions throughout his evidence to the inquiry that he had no role in the drafting of this document. He was provided with the final version, which he was required to sign. These documents clearly indicate that Mr Turkington had a role for some time prior to the final version of the document. They contain his markings on these contracts. Whatever use the committee wants to make of that it may.

Hon KEN TRAVERS: Does that indicate a date?

Mr Douglas: No; but, again, you would need to work sequentially with the contracts to indicate the earlier versions and the later ones. That can be done, and I am sure you will be able to do that; you have all the information before you that we have.

Hon DEE MARGETTS: If Mr Turkington has put post-it notes on it, were any of his views or suggestions taken on board?

Mr Douglas: Subsequent versions incorporate amendments marked by Mr Turkington. They are documents Nos 60 to 63 respectively.

The next issue is the finalisation, and it is a matter that has been raised in evidence before the committee. It is clear from the documents that the final version of the contract had been completed before council met on 28 August. Clearly there were up to eight and perhaps more versions of the contract, but by the time the council met on the evening of 28 August, the final version had been completed. In that context, it makes it clear that when council referred in its resolution to authorising the mayor, deputy mayor and Mr Turkington to finalise the contract authorisation, what they appear to have had in mind was to execute the contract; that is, to obtain the signatures rather than to draft a contract.

Hon KEN TRAVERS: What is your evidence for that?

Mr Douglas: The contract was completed prior to the council meeting. There are no contracts that evidence any changes to the contract after 28 August.

Hon KEN TRAVERS: I understand that, but you have not provided anything that was sent to councillors at that stage, so how would they have known that any of these issues had been going on?

Mr Douglas: The councillors were kept informed of this and we have evidence of that; councillors were e-mailing -

Hon KEN TRAVERS: That evidence is coming later, is it?

Mr Douglas: I have pointed out evidence of e-mails between councillors on earlier drafts of the contracts.

Hon KEN TRAVERS: Very early on, yes.

Mr Douglas: Yes.

Hon KEN TRAVERS: However, the significant changes were made after those dates, were they not?

Mr Douglas: The whole process was one involving all councillors making whatever changes they considered fit.

Hon KEN TRAVERS: I understand that, but the councillors were given a copy of the contract and they proposed changes. Subsequent to that, further changes were made.

Mr Douglas: Yes, that is right, until a point. That was 28 August. There is no evidence -

Hon KEN TRAVERS: At the meeting of 28 August, were councillors given a copy of the contract with all the changes up to that stage?

Mr Douglas: No; I am not aware of any evidence of that.

Hon KEN TRAVERS: How do you make the assumption that the councillors knew that the contract had reached that point and therefore were signing off on and purely authorising the finalisation of the contract?

Mr Douglas: No changes were made and there was no attempt to make any changes after that. Everybody appeared to be aware -

Hon KEN TRAVERS: That is what I am asking you. I am sorry; I should not have interrupted.

Mr Douglas: If any more changes had been needed, they would have been made after the council meeting on 28 August, and they were not.

Hon KEN TRAVERS: Is this the only evidence you have that all the councillors were aware of the final contract form at the meeting of 28 August? I accept that they were aware of earlier drafts. However, with all the changes that were then made, including changes requested by Mr Smith and others, they were not aware of those. I am happy for you to show me the evidence that they were.

Mr Douglas: You need to look at the pattern of changes made. There were no substantive changes after the changes proposed by Mr Reynolds. Minor changes were marked. You will see those in the references made on Mr Turkington's drafts. Perhaps the committee needs to go through those contracts to reach its own conclusion on that issue.

The CHAIRMAN: That is forensic-type stuff that we will need some time to look at.

Mr Douglas: I should go back to a question asked earlier by Hon Ken Travers in relation to the performance review issues and how those changes were made. Document No 57 is this version of the contract. It is clearly a document prepared by Freehills, as indicated at the foot of each page. The performance criteria review is set out in clause 4, beginning on page 6 and going over to page 7. You can see the changes that have been proposed to be made there with the strike-out clauses.

Hon KEN TRAVERS: With all due respect, Mr Douglas, the same changes were made in document No 55, which you have provided to us and which predates that document, on the recommendation of Mr Reynolds after conversations with Mr Smith. I find it interesting that you are now telling us that that decision was made by Freehills when you have just provided us with evidence that predates that. I am interested to know why you would make the claim that it is clearly a recommendation of Freehills.

Mr Douglas: I did not make a claim; what I said in relation to that was that this is a Freehills document evidenced by Freehills -

Hon KEN TRAVERS: You said that this would answer my question.

Hon ED DERMER: Hon Ken Travers. Mr Douglas, you can finish your sentence.

Mr Douglas: If we go to document No 55, referred to by Mr Travers, you can see that there are changes.

Hon KEN TRAVERS: At the top of page 6 of document No 55 it outlines a suggested amended clause, which states that the CEO's performance pursuant to this agreement will be reviewed annually during the term by a select committee comprising the mayor, the deputy mayor and one other councillor to be nominated and mutually agreed upon by the mayor and the CEO.

Mr Douglas: That document 55 is clearly on 23 August.

Hon KEN TRAVERS: Yes.

Mr Douglas: The one we are looking at, document No 57, is on 27 August. I understood that they were presented in a chronological order. The document you referred to, which had come from the e-mail for Mark Loader, was the earlier document, which makes it difficult to understand where the strike-out clauses have come from in this document, because this is clearly dated 27 August.

Hon KEN TRAVERS: That is right.

Mr Douglas: As I indicated earlier, there was some difficulty in trying to work our way through these drafts. It may be that they are not in the right order. One is dated 23 August, and that is why it was given to you earlier. This is dated 27 August. It is over to the committee to make the best use it can of these. We have provided them all.

Hon KEN TRAVERS: I understand that, but you drew our attention to that in answer to my question about where the suggestion came from. The original documentation referred to an annual review by a select committee consisting of the mayor etc. The procedure to limit it to set councillors initially came from Mr Smith. Obviously Freehills was trying to put that into effect in terms of the wording of the contract, but the concept clearly was starting to be discussed in this document of 24 August. Then Freehills put it into action in its document of 27 August. That does not answer the question I had originally asked.

[3.15 pm]

Mr Douglas: It appears in making this decision, those amendments that had been proposed back on the 23rd -

Hon KEN TRAVERS: Had been picked up?

Mr Douglas: Yes, on the 27th.

Hon ED DERMER: I am sorry, gentlemen, one at a time. Mr Douglas.

Mr Douglas: It appears that the amendments that had been proposed on the 23rd, following discussions that Mr Warren Reynolds had with one or more of the candidates, were being reflected in the document on the 27th in the amendments made by Freehills. I do not know what happened between the two documents.

Hon KEN TRAVERS: That is fine, I am not disputing that. I thought you brought our attention to this document of the 27th to answer my question about who had suggested it, and you were indicating that that was Freehills.

Mr Douglas: Yes.

Hon KEN TRAVERS: It would appear that it was earlier than that, on the 24th, that it was first suggested.

Mr Douglas: That is right.

Hon ED DERMER: In the light of that, are you able to make any further comment in answer to Hon Ken Travers' original question about who made that suggested amendment?

Mr Douglas: No, it clearly does not appear from the document, unless Mr Loader is aware of it.

Mr Loader: I am not aware, Mr Chairman.

Hon ED DERMER: So, neither of you are able to offer any further information at this stage.

Mr Douglas: If you turn to the final executed contract, and given the questions earlier today that were asked about the contract dated 29 August -

The CHAIRMAN: The final contract, is that document 63?

Mr Douglas: No, 65. The covering note is probably significant in terms of the questions asked by the committee earlier today. This is a letter dated 3 September 2001 from Denis Smith to Mayor Bombak confirming his acceptance of the position and forwarding to Mayor Bombak a copy of the employment agreement that Mr Smith had executed on 3 September 2001. The agreement that was attached to that letter, I hope, is similar to the one that you were considering this morning when questions were being asked. On page 12 you will see that it was executed by Mr Smith and a different witness, as the Chairman pointed out, than the earlier one he had signed. It is signed by John Bombak and I understand the signature below that is John Turkington's, in accordance with the council resolution that Mayor Bombak, Mr Turkington and the deputy mayor be authorised to execute the contract.

The CHAIRMAN: Why do you assume that is Mr Turkington's signature?

Mr Douglas: Only from what I have been told by Mr Loader.

The CHAIRMAN: Is that correct, Mr Loader?

Mr Loader: Yes, that is John Turkington's signature.

Hon KEN TRAVERS: And that is dated 29 August, is that correct?

Mr Loader: Yes.

Mr Douglas: From what we can piece together, the council made its decision on the evening of the 28th. It was signed the next day by Mayor Bombak and Mr Turkington. The seal was affixed, it was forwarded to Mr Smith, and Mr Smith signed it and sent it back on 3 September. That appears to be the sequence of events, as much as we can put together from the documents.

The CHAIRMAN: That is a significant detail point for the committee to consider. It appears to me, unless I have missed something, that there is some conflicting evidence on that matter, but we will come to that in our deliberations.

Mr Douglas: Mr Loader was present at the signing, so perhaps Mr Loader may want to add something to that process.

The CHAIRMAN: Mr Loader, you were there. For the committee's benefit, we would appreciate a blow-by-blow description of the signing of that document.

Mr Loader: For about a week or so before that, as Mr Douglas has indicated, there were detailed discussions between the successful applicant and Warren Reynolds, who was the driver of the contract, on the changes. It was sent to all the councillors and Freehills for final vetting. The council resolution of 28 August gave authority to the mayor and John Turkington to finalise the arrangements, and the next day final drafts were put together. The mayor signed it, John Turkington signed it, the seal was affixed and it was then despatched a day or so later to Mr Smith.

The CHAIRMAN: Just describe for us the signing. Obviously it came to you with Mr Smith's signature on it and the witnesses' signature. Where was it signed - in Mr Bombak's office or your office?

Mr Loader: I was there with Mr Turkington and Mayor Bombak in the mayor's office, in one of the conference rooms over there, in one of the chambers.

The CHAIRMAN: This document is dated 29 August; is that when the signing took place?

Mr Loader: Yes. That is John Turkington's signature and his date; he wrote the date.

Hon KEN TRAVERS: Is there a register of the common seal?

Mr Loader: Yes, there is.

Hon KEN TRAVERS: I am just trying to clarify the day. Do you have a copy of the register of the common seal in this documentation?

Mr Loader: No, I do not.

The CHAIRMAN: We have 30-odd documents to go; let us keep moving.

Mr Douglas: While we are on that document, another issue that has been dealt with before the committee is the question of remuneration on the contract, particularly in compliance with the council resolution. The council resolution authorised the appointment of Mr Smith on a commencing total annual remuneration package of \$225 000. Clause 5 of the contract dated 29 August on page 6 sets out the remuneration clause consistently with the council resolution that the city shall pay to the CEO a remuneration package equivalent to the same value as set out in the resolution. Remuneration is defined in the contract at clause 5. Paragraph (b) of 5.1 sets out what the remuneration package entails and 5.2 provides a breakdown of remuneration. By way of comparison, given that the total is \$225 000 - again this is a matter that has been the subject of some evidence before the standing committee - Mr Delahaunty's final package amounted to \$207 522. If he had remained in the city's employ on the same terms and conditions, his package at that time would have been \$222 199. The difference between \$225 000 and \$222 000 is only \$3 000. That is what was referred to earlier by Mr Reynolds in his report to the council that there was little difference between the salaries proposed to be offered to the new CEO compared with the incumbent. You will see from looking back at the documents that the salaries requested by the other two candidates, candidates B and C, were in that range as well. The proposition is that there would have been very little difference between those four people at that time. Again, the committee has heard a great deal of conflicting evidence about that. The facts are, in providing a breakdown to the committee by way of our written submissions, that those total annual salary packages were almost identical. I should add that the contract was drafted by the city's solicitors at that time, Freehills, to accord with the terms of the council resolution. So, once again, the council acted on the basis of, in this case, legal advice and professional advice throughout this entire process. It was not until the commencement of the standing committee that the city became aware that issues relating to an apparent or alleged discrepancy between the council resolution and the actual amount paid was an issue at all, or that there was any issue with the matter relating to the execution of the contract. It appears that these issues have arisen as people have poured over the contract documents in the meantime, for whatever purpose but the issues that have been raised since that time.

The CHAIRMAN: I have a last question on that document. The bottom of each page is initialled by what looks like three separate people.

Mr Douglas: Yes.

The CHAIRMAN: Mr Loader, do you know whose initials they are?

Mr Loader: Yes, I do. They are Mayor Bombak's, Denis Smith's and John Turkington's.

Mr Douglas: I move on to another issue; that is, the circulation of the CEO's contract. Again, this is another myth that has been propounded both within the media and outside; that is, that elected members were not given access to the CEO's contract. Document No 66, you will see, is a memo from Mr Loader to the mayor and all councillors of 14 September 2001 enclosing a copy of the attached signed contract and asking for the maintenance of confidentiality.

Hon KEN TRAVERS: Can you advise us whether the attachment to item 66 was actually attached to it, because I do not have the attachment in these documents?

Mr Douglas: We are just trying to save trees!

Hon KEN TRAVERS: I understand that; that is why I am asking whether you can advise us. I do not need a copy of it. Is it in identical terms to the document attached to 65?

Mr Douglas: Yes. It was actually hard to locate the drafts but there was no problem locating the original, and that is what you have.

The CHAIRMAN: The date is 14 September.

Hon KEN TRAVERS: That is right, yes.

Hon ED DERMER: This makes it very clear that it is referring to a signed contract. Is that the contract in the form after it was signed by all the parties who signed the contract?

Mr Douglas: Yes, that is right. It was returned by Mr Smith under cover of a letter dated 3 September. Once it got back to the city and other processes had been taken, the memo was sent out on the 14th. I think any councillor who received a memo without any attachment referring to a copy of the signed contract would have had something to say about it.

The CHAIRMAN: So the actual signing of that final contract by Mayor Bombak and, you say, Mr Turkington would have occurred some time between 3 and 14 September, even though it is dated 29 August?

Mr Douglas: No, Mr Chairman.

The CHAIRMAN: They signed it prior to its going to Mr Smith for his signature?

Mr Douglas: Yes, they signed it on the 29th and then sent it to Mr Smith. There has also been discussion and evidence about the extent to which the public were informed about key aspects of Mr Smith's contract. At the council meeting held on 25 September 2001 - that is, the same month that the contract was signed - a number of the city's residents sought information about the recruitment process for the CEO, his appointment and details of his contract with the city. These questions were taken on notice and written responses were provided. We have given examples of two of the responses provided to two residents. They are set out in document 67. There is a detailed response that you will see to Mr Gannon. Perhaps to save time I will take you also to document 68 to Mr Peter Doherty with a different set of questions and different issues there.

[3.30 pm]

Together, they set out the cost of the recruitment consultants, the details of Mr Smith's remuneration package, including his salary, motor vehicle and superannuation contribution components, provision of telephone and computer equipment, superannuation contributions, additional benefits, fringe benefits and tax provisions. It sets out details of reimbursement, Mr Smith's relocation expenses and details of and comparisons with the remuneration package provided to the previous CEO. Members of the public who sought details of Mr Smith's contract, the recruitment process and comparisons with the remuneration paid to previous CEOs were provided with those details within a month of the contract being signed.

That concludes the material we have with regard to the first set of decisions; that is, the decisions relating to the appointment of Mr Smith. In our submission, the decision to appoint Mr Smith was made by the body with the statutory responsibility and power to make the decision; that is, the

council. It was made lawfully and properly. It was, and remains, appropriate, reasonable and justified having regard to all the material before the council. It is also indisputable that all elected members participated in or were given repeated opportunities to participate throughout the recruitment and selection process. The full council was kept informed throughout the process of the CEO's selection committee's deliberations and actions and it was the full council that made the decision to appoint Mr Smith and decisions relating to and leading to the appointment. The terms of all those decisions are set out in the formal resolutions of the council - I have taken you through a number of those - all of which are available to the public and have been accessible at all times to members of the public. As to the CEO selection committee, its members were selected to ensure a strong representation of all elected members. It was done on the basis of wards, with the alternative being the ward deputy for that purpose. It kept all elected members and the full council informed of its deliberations throughout the process.

As for the academic and professional qualifications of the candidates, it is clear from the materials that these were not an essential part of the appointment. They were given little, if any, attention by any of the elected members, by Management Recruiters Australia, the city's staff, stakeholders or anyone who was consulted on or involved in the recruitment or selection process. They were not referred to in the draft advertisement for the position. They were not the subject of any question or comment by any councillor or anyone else in any correspondence or at any council or committee meeting, including the eight and a half hours at the selection committee meeting on 11 August and the further meeting on 13 August 2001. Nor were they the subject of any comment at the full council meetings on 14 and 28 August 2001 leading to the decision to select and appoint Mr Smith.

In summary, the city's actions and decisions in the recruitment and selection process were comprehensive, thorough and extensively documented. They were conducted in accordance with all relevant legislation, including the Local Government Act, and in accordance with legal advice concerning the proper application of that legislation. They were made with proper transparency, balancing the need for openness and transparency with the need to maintain confidentiality, in the interests of not only individual candidates but also the integrity of the process itself. The process ensured that all councillors were given the opportunity to participate throughout the recruitment and selection process and there was full and open disclosure to all councillors. Members of the public were informed when they requested the details of the recruitment and selection process, including details of the financial package provided to Mr Smith. Those actions and decisions of the city were made in good faith with the overriding objective of selecting the best person for the position in the best interests of the city.

They are our submissions with regard to the first category of decisions on the appointment of Mr Smith. The next part of our submission deals with the decisions relating to the continuing employment of Mr Smith.

Hon ED DERMER: Mr Douglas, I am endeavouring to recollect what you just said. You talked about a lack of emphasis on formal qualifications in the process. I strongly beg to differ with the summary of the information presented to the selection committee, which we talked about this afternoon. I find it difficult to understand how a summary that referred directly to excellence in education can now be interpreted by you as suggesting a lack of emphasis on the formal qualifications held by the candidates. I do not think that those two propositions fit together. I would like to hear your explanation of how you can now say that there was no emphasis on formal qualifications?

Mr Douglas: They are our submissions. We will shortly come to the investigation, which Commissioner Matthews described as a thorough and comprehensive investigation by the fraud squad, which is the only body to have interviewed the elected members on that point. The conclusions of that fraud squad investigation were that the issue of professional qualifications had no bearing on the decision to appoint Mr Smith. That is after -

Hon DEE MARGETTS: That is not what the police said.

Mr Douglas: That is after hearing from each of the elected members. You made the point earlier - it is the correct point - about what is misleading; that is, the question of whether the councillors who had the responsibility to determine this matter were misled. If their view is, as illustrated by the conclusions of the fraud squad, that that matter had no bearing on the appointment, then it is a pretty powerful indicator that the council did not consider academic qualifications to be significant.

Hon ED DERMER: Mr Douglas -

The CHAIRMAN: Hang on, we are not going to retread old ground. We have discussed this before and we are not going to go into our deliberations in front of Mr Douglas. I estimate that we have another two hours to go today -

Hon ED DERMER: I have asked very few questions and I have been very selective when I have asked them -

The CHAIRMAN: Well, make them succinct please.

Hon ED DERMER: I would have thought it reasonable, if I was a councillor receiving a summation from a recruiting agency referring to the excellence of someone's educational qualifications, to assume that those qualifications would be checked. As you pointed out earlier, the statement that the council accepted from the recruiting agency included an undertaking that it would check the facts in the document. In fact, before this matter arose, I would never have imagined that someone would present themselves for a position such as Chief Executive Officer of the City of Joondalup on the basis of qualifications that, in the end, were found not to be.

The CHAIRMAN: That is not a question. Get to the question.

Hon ED DERMER: Again, I raise the matter in terms of what you said earlier about the lack of emphasis on educational qualifications. I do not believe that it was reasonable for people to expect that the information they were provided with was not valid.

The CHAIRMAN: I will take that as a statement. Are there any other questions?

Hon DEE MARGETTS: I would like to return to document No 34 and the paper titled "The Candidate". Is this what was referred to with regard to the profile of the candidate? You have given evidence that there was an e-mail and an item in a newsletter that invited comments and people were thanked for providing those comments. First, can you indicate - Mr Loader might be able to assist - whether it is your understanding that this document titled "The Candidate" reflects fairly on the kind of input that was given when councillors were asked to give feedback on the profile that their proposed new CEO should have?

Mr Douglas: I am not aware of any evidence, documentary or otherwise, where the issue of tertiary qualifications -

Hon DEE MARGETTS: Sorry, that is not what I asked. Each time I ask this question I get an evasive response. Can I simply ask the question; is this document titled "The Candidate" a reasonable and fair reflection of the input that was given by all councillors when they were asked what they thought the CEO's profile should be in the selection process?

The CHAIRMAN: That is the question. Now let us hear the answer.

Hon DEE MARGETTS: I want an answer and not an evasive response.

Mr Douglas: I am not aware of any material, documentary or otherwise, where any person raised the issue or mentioned academic or professional qualifications. When you talk about consultation and feedback, there was no reference whatsoever, as far as I am aware, of anything to do with tertiary qualifications. When you ask is it a fair reflection, the answer may be, well, no, in the sense that it refers to tertiary qualifications and perhaps it should not have.

Hon DEE MARGETTS: There are four categories in this document; qualifications, required skills knowledge, experience and personal attributes. Given that this is the document that I presume is an outcome of whatever process occurred to put together the profile of what the city was looking for in terms of its candidate, I would say that perhaps two out of those four categories are not specifically included in any of those 19 boxes. Why would you then consider that this process is a fair reflection? One of those four boxes does not get a mention in the profile boxes at all and one of them, I think you would have to say, could be included under experience. I argue that perhaps close to two of these four main boxes under “The Candidate” did not even get marked by Management Recruiters Australia in any of the 19 boxes. Is it that perhaps Management Recruiters Australia is acting as a gatekeeper and that the process of interviews and questions has not reflected the reasonable expectation that that statement would indicate was being sought from a CEO?

Mr Loader: I do not think I can add any more.

The CHAIRMAN: Clearly, there are two sections to the submission. We are going to move onto another section. I am going to allow a two-minute break for the witnesses to catch their breath. Are there any other specific questions from any of the committee members on the appointment process at this stage in general?

Hon DEE MARGETTS: Yes, just one further question. Mr Loader, under required skills knowledge are the words “highly developed written and verbal communication skills”. Given that the CEO authors most reports, whatever made you think it was appropriate to strike out one of the only requests for evidence in the recruitment process?

Mr Loader: It was a suggestion and the questions were open to the councillors to decide.

Hon DEE MARGETTS: But you were the only one who appears to have come up with any suggestions to the recruiters. Why was that?

Mr Loader: I cannot answer any further.

The CHAIRMAN: Are there any other questions?

Hon ED DERMER: I have one more question.

The CHAIRMAN: Ask it directly.

Hon ED DERMER: How can it be expected that the council members on the recruiting panel would do otherwise than assume that the information they had been given about Mr Smith’s qualifications were accurate?

[3.45 pm]

Mr Douglas: We will come shortly to that issue. Twelve months later the council considered this issue of qualifications when it had before it both the original version and the accurate version. It was in a position to determine for itself what it thought. We will deal extensively with that issue before the council at that time.

The CHAIRMAN: We will come to that.

Hon ED DERMER: So far, we have dealt with the process by which it came to selection. My question very simply is: how could the councillors, when they were considering applications, be expected to assume anything else other than that the information provided to them was accurate?

Mr Douglas: They would have assumed it was accurate.

Hon KEN TRAVERS: I think I just got the answer. I want to make it very clear. Is it the case that information that was provided to councillors during the application process regarding qualifications was not correct?

Mr Douglas: I understand the committee has been given evidence directly by Mr Smith.

Hon KEN TRAVERS: Is that now the council's view as well. You are representing the council. Is it the view of the council that the information provided to it during the recruitment process regarding Mr Smith's qualifications was or was not correct?

Mr Douglas: This is another one of the myths we will deal with when we come to it. It has been very clear to all councillors since 25 November 2002 that the original qualifications that appear in a document prepared by Reynolds Australia were not accurate. That has been open and clear to the council for more than 12 months.

Hon KEN TRAVERS: It has not been open and clear to the public for 12 months.

Mr Douglas: Because of the way it was presented to the public, it may not have been.

Hon KEN TRAVERS: We can now cover that. I wanted to establish that the council accepts that the information provided to it during the recruitment process with respect to Mr Smith's qualifications was not correct.

Mr Douglas: It has been that position for 12 months.

Hon JOHN FISCHER: Since that time, the council has voted with a big majority on four separate occasions in favour of Mr Smith continuing in the job. Is that correct?

Mr Douglas: Yes, and in full knowledge of all the facts.

The CHAIRMAN: Clearly, there is a second phase to your evidence. I will allow a two or three-minute break for you to catch your breath and we will resume.

This hearing is taking an inordinate amount of time. I want to have the rest of the evidence heard as quickly as possible with the opportunity to ask a few pertinent questions. I ask committee members, Mr Loader and Mr Douglas to be as brief as possible and we will hear the rest of the evidence. Please proceed.

Mr Douglas: Thank you, Mr Chairman. The council's decision to employ Mr Smith was made on 28 August 2001. It was agreed that he would start work on Monday, 22 October 2001. A month before then, on Saturday, 22 October, an article appeared in *The West Australian* - document No 69 - headed "New Joondalup chief is target of bribe claims". It alleges that Denis Smith had been dogged by controversy and allegations of shady behaviour, including claims made in the NSW Parliament that he took bribes. There are two allegations of bribery. It was claimed that he resigned abruptly from his current post. His activities were described in the New South Wales Parliament as intimidatory and nefarious. Last year, there were further allegations that he had misused his council credit card and received bribes from developers. That was on the Sunday. The following day, Councillor Carlos sent an e-mail to all councillors with a copy to Mr Turkington - document No 70. He ends it with the question in bold: do we really want this person to be our next CEO? That was before any response had been given or sought from Mr Smith - simply on the basis of the allegations. Two days later, before the ordinary council meeting, Councillor Carlos sent another e-mail to all councillors, also with a copy to Mr Turkington - it is set out on page 71 - attaching more extracts from the New South Wales *Hansard*. On the same day, Mr Turkington, the acting CEO, responded to a ratepayer who expressed concerns about the article in *The West Australian* of 22 September. That response from Mr Turkington is set out in document No 72. It includes the statement that he had attached a detailed response from Mr Smith, which had been circulated to staff, councillors and the media -

Our Mayor and Deputy Mayor are happy with the response and the Deputy Mayor will make a public statement to that effect at the Council Meeting this evening.

If there are any further questions of Mr Smith we think that it is only just and fair to allow him, upon his arrival, to answer any question personally at Council during public question time.

The detailed response referred to by Mr Turkington addressed each of the allegations contained in *The West Australian* article. That is set out in document No 73, volume 2. Among the points made in that response were that the allegations made in *The West Australian* were simply republished allegations made 14 years earlier in Parliament under parliamentary privilege by Mr Michael Knight, the former member for Campbelltown, who had had a falling out with Mr Smith many years earlier. A departmental investigation had been held by the New South Wales Department of Local Government into the allegations. Mr Knight refused to cooperate with that investigation or to give it access to any documents he claimed to have. The department found no evidence to support Mr Knight's allegations against Mr Smith that he made in Parliament. As for the allegation in *The West Australian* that Mr Smith had resigned abruptly from his current post, the true position was that Mr Smith tendered his resignation to the council and that the council formally resolved that it acknowledges the outstanding contributions by Denis Smith at the council and wishes him well in his future endeavours. The detailed response from Mr Smith supports the conclusions he made that the allegations recorded in *The West Australian* article were baseless and unfounded. It also provided the basis for Mr Smith's reaction of being appalled at the inaccuracies, innuendo and misinformation set out in *The West Australian* article. There is further independent support for those conclusions, which were provided to the council when it considered this matter. A letter dated 5 October 2001 from solicitors Gordon Robilliard Plowman Merton confirms that the 1987 allegations against Mr Smith were investigated by not only the New South Wales Department of Local Government but also the New South Wales fraud squad and found to be unsubstantiated. The other allegations were also unfounded. Council was also referred to research conducted by Councillor Mike O'Brien, who confirmed the findings of Mr Wheeler, the New South Wales Department of Local Government senior inspector, who conducted the inquiry into Mr Knight's allegations against Mr Smith and found them to be baseless. All of those materials were available to the public. They were all available to *The West Australian* at the time the allegations were made and repeated, even though they had been made 14 years earlier under parliamentary privilege.

[4.00 pm]

Hon DEE MARGETTS: You said that the allegations were found to be baseless. Some of those allegations are about people's reputations and are about a person's personal preferences and biases. Are you suggesting that if a court has not charged a person on an issue of reputation and if the allegations have not been found to be specific illegalities, they are somehow removed or are irrelevant?

Mr Douglas: The major claims in the article were bribery claims. There were two separate bribery claims -

Hon DEE MARGETTS: Some of them are about being -

The CHAIRMAN: Hang on. Show a bit of courtesy to the witness. Ask a question and then wait for the answer.

Hon DEE MARGETTS: That is not the case, Mr Chairman. The references were to citations in the Legislative Council. It is stated that over the past decade Warringah Council has demonstrated poor management in relation to environmental matters and has developed the reputation of being controlled by developers. It has been said that the council experienced serious ongoing conduct by the general manager, Mr Denis Smith. Obviously, they are serious concerns about particular aspects of his conduct in relation to the council generally. These may not be illegalities, but are these not serious issues of reputation that any selection committee ought to be advised about?

The CHAIRMAN: Is that your question?

Hon DEE MARGETTS: Yes. They cannot be negated simply by whether these activities were strictly illegal.

The CHAIRMAN: That is a comment, not a question.

Mr Douglas: I do not know whether every selection committee ought to be advised of these allegations. I do not know whether they were available at the time. I am having difficulty following the member's question.

Hon DEE MARGETTS: The question relates to your statement. You said the allegations were found to be baseless and you initially referred to the citations in the Legislative Council. The Legislative Council's statement basically talked about a reputation for being pro-development and anti-environment. Then you said that the statements were subsequently found to be baseless. I am asking you whether you are being selective in what you are saying was found to be baseless.

Mr Douglas: I cannot see anything about being anti-environment.

Hon DEE MARGETTS: I just read it out.

The CHAIRMAN: Hang on. Hon Dee Margetts could help everybody by citing the document.

Hon DEE MARGETTS: I refer to document No 70.

Mr Douglas: It is document No 69.

The CHAIRMAN: Is it a fact because it refers to being anti-environment?

Hon DEE MARGETTS: No.

Mr Douglas: The allegations were contained in an article published on 22 September and is document No 69. They are the allegations I am referring to.

Hon DEE MARGETTS: Including claims made in the New South Wales Parliament.

Mr Douglas: It refers to a \$200 000 bribe and so on. It is headed "New Joondalup chief is target of bribe claims". Those claims were made 14 years earlier under parliamentary privilege and have never been substantiated.

Hon JOHN FISCHER: I think we are coming pretty close to overstepping the bounds of the committee's terms of reference. If we want to go on to this matter, we could refer to the former Warringah Mayor, Peter Moxham, who has vigorously defended the -

Hon DEE MARGETTS: With all due respect, Mr Chairman -

The CHAIRMAN: Hang on. How about letting somebody else have a say without butting in half way through, whether it is the witness or another committee member.

Hon DEE MARGETTS: The witness has already referred to document No 70. He made a comment about e-mails from Councillor Carlos. The witness made a claim that the allegations ought to be investigated. That referred to document No 70.

The CHAIRMAN: I suggest Hon Dee Margetts keep up with the evidence because -

Hon DEE MARGETTS: I am strictly asking a question, which I am entitled to do, about whether the range of issues to which Don Carlos may have referred were not simply all found to be baseless. I believe that is a reasonable question in the circumstances. The questions specifically related to the terms of reference, Mr Chairman.

The CHAIRMAN: You have asked the question and Mr Douglas has responded. You might not like the response, but that is out of my control. Is there anything else you want to respond to, Mr Douglas?

Mr Douglas: The transcript will show that what I said was the detailed response from Mr Smith, which supports the conclusions that the allegation reported in *The West Australian* on 22 September, which is document No 69, were baseless and unfounded. That is what my comments related to.

Hon KEN TRAVERS: Mr Douglas, is the council aware of whether there was a dispute between Mr Smith and the General Manager of Coffs Harbour City Council around the time that he left that organisation?

Mr Douglas: Is the council aware -

Hon KEN TRAVERS: You have just indicated to us that the council is happy that all the allegations were baseless and without foundation. Is the council aware of whether there was a dispute between Mr Smith and the then General Manager of Coffs Harbour City Council when Mr Smith left, which is one of the allegations that was made?

Mr Douglas: It might have been.

Hon KEN TRAVERS: In his response, Mr Smith made it clear that the dispute had not been mediated by the NSW Department of Local Government. The question of whether there was a dispute between the General Manager of the Coffs Harbour City Council and Mr Smith at the time does not seem to have been dealt with. Has the council informed itself of whether that dispute did or did not occur?

Mr Douglas: I do not know whether the council has informed itself of that.

Hon KEN TRAVERS: Therefore, there may be some basis to the claim that Mr Smith left the council after a dispute with the council's general manager. The final statement that it was mediated by the department might not be correct; there might have been a dispute between him and the former general manager.

Mr Douglas: I am sorry, I cannot see that on document No 69.

Hon KEN TRAVERS: At the top of the start of the second column, it says that Mr Smith worked with the Coffs Harbour City Council but left after a dispute with the council's general manager, which was mediated by the department.

Mr Douglas: The point I addressed was the allegation in the first column that Mr Smith left abruptly from the Warringah Council. I did not address the issue related to Coffs Harbour council. If this article were broken down, we would find that it contains probably a dozen allegations. Is the member suggesting that we should look into each one of those to see whether any of them might be true?

Hon KEN TRAVERS: No. You made the claim that there was no basis or foundation to any of the claims made in item No 69.

Mr Douglas: I said that Mr Smith's response provides a basis for his reaction of being appalled at the inaccuracies and innuendos made in the article.

Hon KEN TRAVERS: You have also just recently claimed that there was no basis to the allegations in this article.

Mr Douglas: It supports the conclusion that the allegations were baseless.

Hon KEN TRAVERS: I suggest that means every allegation, or does it mean only some of them?

Mr Douglas: The council looked at the major allegations. Two very serious bribery claims were made in the article. The fraud squad and the NSW Department of Local Government investigated those claims. It is clear that they had no basis.

Hon KEN TRAVERS: Mr Smith's statement, which he provided and which the council distributed, makes reference to the Coffs Harbour matter. That is included in item No 73.

Mr Douglas: I understood that the committee wanted to move ahead with this hearing. It was focusing on the big-picture issues. An article was written in which two major allegations of bribery were made. They clearly do not have any basis. That is the big picture. If the member wants to go into the details and spend a long time on each allegation -

Hon KEN TRAVERS: If your statement is that those two items have no basis, I am happy with that. I thought you made a general statement that there was no basis to any of the allegations referred to in the article. If that is not your statement, I am happy.

Mr Douglas: Perhaps we can move on.

The CHAIRMAN: Yes, please.

Mr Douglas: The council was provided with each of the supporting documents, which I will not go into; perhaps the committee can review those at its leisure. Document No 75 is the minutes of the council meeting of 9 October 2001. That was the meeting that followed the allegations published in *The West Australian*. The document contains copies of letters from the Warringah Council, dated 9 October 2001 and 5 October 2001, a letter from Gordon Robilliard that I referred to earlier is dated 5 October 2001 and the document also contains the results of the research by Councillor O'Brien. They are the major allegations made in the article, which the council dealt with.

In an article in the *Joondalup Community* newspaper of 28 September 2001, a copy of which is to be found at document No 74, it contains a report of the council's consideration of that bribery claim. The purpose of including that is for members to see the news that it attracted at that time. This article was published a month before Mr Smith began work. It clearly shows too that the council, after considering this matter, supported its new CEO. There are references, which I will not go into, from the Warringah Council mayor, who had worked alongside Mr Smith for two years, labelling the allegations as simply muckraking. Councillor Bombak reported that there was nothing new in the allegations and that they have never been repeated outside of Parliament. Deputy Mayor Judy Hurst, who was deputising for the mayor at the time, confirmed the widespread support from the council for Mr Smith.

I would like to draw two particular matters to the committee's attention in relation to that because it has a bearing on future allegations that were made in the media against Mr Smith. The first is from a spokesman from the Department of Local Government and Regional Development who responded that the City of Joondalup was an autonomous and self-governing body that made its own decisions on these matters. The second is from the President of the Western Australian Municipal Association, which is now WALGA, who is reported as saying that Mr Smith should be given a fair opportunity to prove himself at the council and not be subject to a trial by media before he even begins his turn. In the same edition, Councillor Carlos is reported as having told the *Joondalup Community* newspaper that the allegations revealed in the newspaper had come as a huge surprise to him and that he had called for a full investigation into them. This matter will be taken up later with the committee. The legal position is that, unless authorised by the council, an elected member who is not the mayor or a person acting on behalf of the mayor has no authority to make public statements of this type. It is also a breach of the city's code of conduct, which each elected member promises to comply with, for an elected member to make public statements in relation to decisions of the council.

The minutes of the council meeting of Tuesday, 9 October also included a resolution from the council suspending the city's standing orders to allow Mayor Bombak to make an announcement about the new CEO. Tabled with the text of the city's response were various questions ratepayers asked about the appointment of the CEO. These are attached at document No 76. They indicate, given the evidence that has been given to this committee about the consultation and responses provided to the community, the extensive responses to questions asked even at this early stage before Mr Smith commenced work.

Hon DEE MARGETTS: Exactly what are you saying Councillor Carlos has done that he should not have done?

Mr Douglas: It might assist the committee if I come back to this as a separate -

Hon DEE MARGETTS: I want to ask this. You made a statement that you believe Councillor Carlos acted contrary to the Local Government Act. Is that right?

Mr Douglas: That he acted contrary to the code of conduct.

Hon DEE MARGETTS: Exactly what are you saying Councillor Carlos has done by asking via an e-mail for a debate within the council? Exactly what are you saying Councillor Carlos has done that is contrary to the code of conduct in asking to verify the information that was reported in the media?

Mr Douglas: An elected member other than the mayor has no authority to make public statements. Of course councillors can e-mail each other. They should communicate with each other. It is a question of making public statements. The issue is that Councillor Carlos was quoted in the media as having told the media certain things.

Hon DEE MARGETTS: These things were reported in the media anyway. Councillor Carlos asked the council to investigate those matters further. How on earth do you think that this is not in line with what a councillor should be doing to represent his electorate?

[4.15 pm]

Mr Douglas: Under the code of conduct, the mayor or a person on behalf of the council makes comments on the decisions of the council, not individual elected members. I will take you to the code of conduct later.

Hon KEN TRAVERS: I look forward to it. On that basis, I suspect half the councillors have breached the code of conduct on numerous occasions!

Hon DEE MARGETTS: We would never do anything in Parliament if that were the process. That is bizarre, to say the least.

Mr Douglas: Further public statements relating to what was referred to as a smear campaign against Mr Smith and the city are contained in *The Wanneroo Times* community newspaper, extracts from which are in document No 77, and also in the Joondalup community newspaper of 9 October, which is document No 78. The report was that the council had reaffirmed its decision to appoint Denis Smith as CEO at the meeting of 9 October.

Despite the absence of any supporting evidence, and despite the findings of the investigation by the New South Wales Department of Local Government and the New South Wales fraud squad, the media, including *The West Australian*, have continued to re-publish the allegations against Mr Smith. An example of that is set out in document No 79. It is difficult to understand what justification there is for continuing to re-publish allegations made under the protection of parliamentary privilege.

Hon KEN TRAVERS: Can you give the heading of document No 79?

Mr Douglas: It reads "Sydney case dogs chief at Joondalup".

Hon KEN TRAVERS: That is document No 78 on our file. Document No 79 in my file says that the "CEO is squeaky clean". It is quite a difference!

Mr Douglas: The article is headed "Sydney case dogs chief at Joondalup". These allegations were made under the protection of parliamentary privilege 14 years ago. They have never been substantiated. Mr Smith has been exonerated after departmental and fraud squad investigations. The lack of fairness and balance in these report is also illustrated by *The West Australian's* inadequate reference to one allegation and its failure to refer to the other matter at all. As for the fraud squad allegation, *The West Australian* chose to omit entirely from its report the clearly relevant evidence available to it that was favourable to Mr Smith that the fraud squad had investigated the 1978 allegations and took no action in relation to any matters raised by Mr Knight. Regarding the New South Wales Department of Local Government investigation, rather than quoting from the official findings of the NSW local government investigation, *The West Australian*

chose instead to report that Mr Smith had said that allegations were baseless and that the department had dismissed the allegations against him as baseless. The newspaper could have gone to the source, but chose instead to have that information through Mr Smith; therefore questioning his credibility.

Hon KEN TRAVERS: It says at the bottom of the article that the Department of Local Government has dismissed any allegations against him as baseless.

Mr Douglas: Not “has”, but “had”. If you follow the previous paragraph, it follows on from the “Mr Smith had said” reference.

Hon DEE MARGETTS: Do you deny, Mr Douglas, that Mr Smith was dogged by controversy in 20 years in local government in New South Wales?

Mr Douglas: I do not have enough information to know whether he has been dogged by controversy for 20 years. I know on all the information we have, there is no substance to the allegations made.

Hon DEE MARGETTS: That is substance that amounts to a prosecution. Are you denying that if we take the statements that you appear to want to pass over in relation to the New South Wales Parliament about being pro-big business and pro-developers as opposed to pro-environment and pro-community, do you deny -

Hon JOHN FISCHER: There is the problem.

The CHAIRMAN: There is the rub, I think.

Mr Douglas: My comments have been in relation -

Hon DEE MARGETTS: The question is - do you deny it is a reasonable statement that Mr Smith has been dogged by controversy in 20 years in local government?

Mr Douglas: My answer was that I do not know enough about the 20 years or the publications during that time to answer your question.

Hon DEE MARGETTS: Do you not think the selection panel ought to have known such things?

Hon JOHN FISCHER: On a point of order, Mr Chairman. This has no relevance. Whether or not he has been dogged, the question is whether it has any substance. We are not in a position to decide one way or another.

The CHAIRMAN: I am keen to get information relevant to our terms of reference. All the peripheral matters may be very interesting and tantalising for some people, but they are not relevant, frankly.

Hon DEE MARGETTS: If I may, in terms of the choice of a person to be the CEO of a large city, we have talked about the importance of reputation and standing within the community. This is exactly relevant to the kind of information that any selection panel ought to have known prior to making the selection.

The CHAIRMAN: I am sure you will make that point during our deliberations later. Let us move on.

Mr Douglas: Mr Chairman, I was going to give details - perhaps I will come back to them - of the inaccuracy of the reporting of Mr Smith and how it has been repeated over two years. Given the time, perhaps I can come back to those matters.

At the full council meeting of 9 October 2001, the council resolved that the elected members of the City of Joondalup reaffirm the decision to appoint Mr Denis Smith as the new Chief Executive Officer of the City of Joondalup. This resolution was carried by 11 to three.

Hon JOHN FISCHER: Can you please give me the page number?

Mr Douglas: It is document No 76. It is at page 12 of that document.

The CHAIRMAN: It is No 76 in my file.

Mr Douglas: Page 12 sets out the terms of the resolution reaffirming the council's decision to appoint Denis Smith. The resolution was carried 11 to three, and was opposed by Councillors Barnett, Carlos and Nixon - the same members who voted against the appointment of Mr Smith three weeks earlier. On 7 November 2002 - I mentioned the earlier meeting was 9 October 2001, but it should have been 2002 when the council reaffirmed the appointment -

Hon KEN TRAVERS: According to the minutes, it was 2001.

Mr Douglas: I was right the first time. Thank you.

In a sense, that was the end of the controversy with the CEO's appointment for about 12 months. Little happened after the initial flurry based on bribery allegations and Mr Smith's commencement. Almost 12 months elapsed before -

Hon KEN TRAVERS: You narrowed it down to the bribery allegation. There were more substantive allegations. It was not the only allegation. If you read Mr Smith's own letter from Mr Smith's lawyer -

Mr Douglas: My reference was shorthand. The bribery allegation was the headlines. There was a set of them. You have all those allegations.

Hon KEN TRAVERS: One allegation was that he left the Coffs Harbour City Council after a dispute. In his response to the council, he denied that.

Mr Douglas: That was his employer before Warringah, where he came from.

Hon KEN TRAVERS: But he denied that he left after a dispute.

Mr Douglas: There was a series of allegations. I could short-circuit this by saying there was a series of allegations before Mr Smith arrived. They were dealt with. Council reaffirmed the decision to appoint him. After October 2001, things went relatively quiet for about 12 months.

Hon ED DERMER: Some of those allegations were dealt with.

Mr Douglas: Yes. If you want me to deal with them, I can. I had not proposed to. The council dealt with them.

Hon ED DERMER: I want to make it clear. You said that all the allegations were dealt with, but I do not believe that that was the case.

Mr Douglas: The council dealt with the matter by reaffirming the decision. Whether this committee wants to investigate that further is up to the committee. I simply made the point that during the 12 months following appointment things were relatively quiet. I was hoping to move on. If there are other matters -

The CHAIRMAN: Yes, move on.

Mr Douglas: On 7 December 2002, the Minister for Local Government and Regional Development wrote to Councillor Carlos. A copy of the letter is document No 81. The letter confirms that earlier that year Councillor Carlos had met the minister and raised with him what were referred to as "various procedural issues". The minister informed Councillor Carlos -

The Department of Local Government and Regional Development has completed an assessment of various procedural issues that you raised with me at a meeting earlier this year.

... the Department has indicated that it does not believe that a formal inquiry is justified.

The city appears to have no record of any council resolution authorising or relating to an approach being made to the minister nor is there any record of discussion or communication between

Councillor Carlos and Mayor Bombak about Councillor Carlos' approach to the minister. We do not know the various procedural issues raised by Councillor Carlos or the extent to which those issues related to the appointment of Mr Smith. This was the first of several approaches that Councillor Carlos made to the minister. None of them was made on behalf of the city or the council.

Turning to the professional qualifications, it appears that questions about Mr Smith's professional qualifications were first raised about November 2002 - about 12 months after he began work as the city's CEO. As I indicated earlier, the documentary and other evidence appears to indicate that Mr Smith's professional qualifications were not an issue during the selection and appointment process.

We have dealt with the evidence that no councillor or anybody else questioned Mr Smith or any other candidate about their professional qualifications, nor was any reference made during the selection and appointment process to Mr Smith's professional qualifications.

Taking up a matter raised earlier by Hon Dee Margetts, I will deal more extensively with the major investigation by the fraud squad into Mr Smith's qualifications. At this stage I would like to cite the conclusion of that investigation. Commissioner Matthews stated that the investigation has established -

1. Formal educational qualifications were not essential criteria for the position gained by Mr Smith, therefore those involved in the recruitment and interviewing of Mr Smith did not view formal educational qualifications as an essential determinant for selection prior to interview.
2. The lack of essentiality of a formal educational qualification is corroborated by the fact that neither the City of Joondalup (during the interview process) nor its agent (during the short-listing of candidates and their interviews in New South Wales) asked Mr Smith about his qualifications, their relevance to his performance in the position, sighted a copy of them or verified their existence or authenticity.

Hon DEE MARGETTS: Mr Douglas, did you hear or read evidence from a number of city councillors to the effect that they would not have rated Mr Smith as highly if they had known that he did not have the qualifications that he said were his qualifications? Did you hear or read the evidence?

Mr Douglas: I know of evidence given by one councillor.

Hon DEE MARGETTS: Just one?

Mr Douglas: Yes.

Hon DEE MARGETTS: I know I asked the question of more than one councillor.

Mr Douglas: You asked the question - I have given my answer.

Hon DEE MARGETTS: You know that at least one councillor on the selection panel has indicated that Mr Smith would not have been rated as highly if people had been aware that the information was not correct. Why are you not reminding the committee of that while talking about none of the councillors mentioning that view? Evidence given to the committee was that at least one - but my recollection is that there were more - said they would have rated Mr Smith differently if they had been aware that that information was incorrect.

[4.30 pm]

Mr Douglas: That is that they would have rated him differently. Councillor Carlos voted against the appointment of Mr Smith. He was the councillor I am aware of who has said that educational qualifications are important. I do not know how the matter could have affected his decision at all. Presumably, if he voted against Mr Smith initially, he would have voted against him in relation to qualifications.

Hon DEE MARGETTS: It was not Councillor Carlos I was talking about. What was her name?

Hon JOHN FISCHER: Allison Walker. She would have had the chance to vote against the CEO in the vote of confidence if she had wanted to.

Hon DEE MARGETTS: Mr Douglas, did you read Allison Walker's evidence?

Mr Douglas: No, I have not read that part of the evidence.

Hon DEE MARGETTS: Perhaps you should. You have given evidence about only one councillor. I am suggesting that I know of more than one. If you are going to represent all the councillors, why are you not mentioning the fact that more than one councillor indicated that they would have rated Mr Smith differently in that final selection process or that he may not have even reached that final selection process if they had known the truth about his qualifications?

Mr Douglas: That evidence was considered by the fraud squad. The fraud squad -

Hon DEE MARGETTS: No; I am not talking about the fraud squad investigations. I am talking about you representing what the council's views are and what it considered important. You have indicated that you have not read Councillor Walker's evidence; therefore, should you not be more careful about the way you present the importance of the council and the selection panel in relation to those issues?

Mr Douglas: There is conflicting evidence on that issue. The evidence of some councillors has been preferred by the fraud squad - the only body apart from this one to have interviewed anyone. One or more of those councillors have said that they recalled referring to educational qualifications, asking a question about them and so on. Their evidence was not believed by the fraud squad. People who were there at the time have said that no question was ever asked. There is conflicting evidence, but the overwhelming evidence - this is confirmed by the fraud squad's investigation - was that no-one asked any questions about it at any time.

Hon DEE MARGETTS: We actually understand that, and that is not the question I was asking.

The CHAIRMAN: I make the point that the councillor Hon Dee Margetts is referring to is on record as supporting the CEO at a later stage. Mr Douglas and Mr Loader are representing the Joondalup City Council as a corporate entity. It is my understanding that it is not your job to represent any particular councillor or officer. It is your job to represent the due process of the Joondalup City Council and give evidence on that body's behalf to this committee. Is that correct?

Mr Douglas: That is so, Mr Chairman. It does become apparent that, at times, the evidence of the city - the council as a body - will conflict with the actions of individuals. Our task is to represent the city and the council as a body, not individuals. That has been made clear throughout.

Hon DEE MARGETTS: Then, with all due respect, you should avoid using phrases like "at no time" was such and such questioned, when there has been clear evidence to this committee that there were assumptions and that councillors would have voted differently if they had known or had not been misled.

Mr Douglas: My submission to this committee is that the evidence overwhelmingly supports those conclusions. There may be evidence against it. I understand that at least one councillor has reached a different view. That evidence is inconsistent with the evidence given by almost all others and with the view taken of the credibility of that evidence by the fraud squad.

Hon DEE MARGETTS: Do you understand, Mr Douglas, that a number of people who gave evidence to this committee indicated that they had been told by somebody else that the qualifications were as they were presented? Do you understand that even this committee was given evidence by people who had been told by somebody else that the qualifications were not an issue and that the qualifications matched?

Mr Douglas: What qualifications matched?

Hon DEE MARGETTS: Have a look at the evidence, Mr Douglas. Do you understand that many of the people who have voted in terms of their confidence in the CEO in and out of the City of Joondalup were operating on the information given them by somebody else that the CEO's qualifications were not an issue because they had sighted documents that did not prove or otherwise whether he had a degree? Do you understand the problems in relating to councillors who voted one way or the other based on evidence which was not actually verified but which they thought had been? Do you actually understand the difference?

Hon JOHN FISCHER: Mr Chairman, I think we are getting bogged down. Obviously the councillors voted after this issue when they were fully aware that a lot of this material had not been seen.

The CHAIRMAN: We are getting bogged down. Hon Ken Travers had a question.

Hon KEN TRAVERS: I was going to leave this question to the end, but the issue has now come up and I think it is appropriate to try to understand it. You are representing the council. Who instructs you?

Mr Douglas: It is important that we get the terminology clear. We represent the city. The council is, in many respects, the decision-making body for the city. The city comprises the council plus the employees. It is a corporate body.

Hon KEN TRAVERS: In terms of your instructions for today -

Mr Douglas: I have been retained by the council to represent the city for the purpose of these proceedings.

Hon KEN TRAVERS: And to represent the city's best interests.

Mr Douglas: The city; that is right. It may be confusing in that I also had a role in representing individual councillors in relation to the procedural questions that may come up individually. That was limited to procedural issues, not their substantive evidence. When councillors had a concern about what their rights and obligations were as individuals in appearing before this committee, I assisted them, but not in relation to the evidence they gave here, because in some cases there would have been a clear conflict between the interests of individual councillors and the interests of the city.

Hon KEN TRAVERS: In terms of helping you to prepare your case, who gives you formal instructions?

Mr Douglas: As in most cases when any lawyers are instructed by the city, most of the instructions come from the administration. It is very rare for lawyers to act directly on instructions from the council.

Hon ED DERMER: In other words, instructions from the chief executive officer?

Mr Douglas: No; in relation to any matter in which there is a conflict -

Hon ED DERMER: In relation to this matter?

Mr Douglas: No; I have not received any instructions from the chief executive officer in relation to any matter before the parliamentary inquiry.

Hon ED DERMER: Presumably, there is a council resolution to authorise you to act on the city's behalf. Is that the case?

Mr Douglas: I am not sure that that is the case. It is rare that you have a council resolution.

Hon ED DERMER: What was the decision-making process that appointed you to act on the city's behalf?

Mr Douglas: I can get the records. Perhaps that is the best way rather than speculate on them now by recollection. I assisted a number of members of the council in advising them of their rights and obligations to appear before this committee, so all councillors were aware of that at the time.

Hon ED DERMER: I understand that part. If I understand you correctly, your role in representing individual councillors is quite a separate issue. Today you are acting on behalf of the city.

Mr Douglas: That is right.

Hon ED DERMER: I am asking you what was the decision-making process of the city that authorised you to act on its behalf. I think you are telling me that you do not recollect what that process was and that you undertake to provide that information to the committee.

Mr Douglas: Yes.

The CHAIRMAN: Can we proceed? Can you explain the relevance of each of these documents?

Mr Douglas: By way of background to the issue of the qualifications being raised - that was in November 2002 - the city was served with a subpoena seven months earlier, in April 2002. A copy of that is at document No 80. That subpoena was addressed to the city's "proper officer" to attend and produce documents at a District Court of New South Wales hearing. That was a defamation case between two councillors of the City of Warringah relating to statements that had been published in late 1999. The subpoena was issued at the request of the defendant and sought documents relating to Mr Smith's recruitment and employment by the city. That was in April. On 12 November Mr Smith attended the District Court in New South Wales and gave evidence before the judge at that time. Three days later, on his return on 15 November, he sent an e-mail to all councillors, and the e-mail is set out in full at document No 83. That indicated that, during the course of giving evidence, a dispute took place regarding qualifications and where they had been obtained and that *The West Australian* had pursued the issue and submitted some questions to the mayor and himself. He provided the content of those questions and the answers. It also indicated, significantly, that Mr Smith had provided to the mayor in person in the presence of the manager human resources, Mr Mark Loader, a detailed explanation of the matters raised in the court. On the following Wednesday, 20 November *The West Australian* published an article claiming that a lawyer acting for the defendant in those proceedings had accused Mr Smith of lying to the court and prospective employers about his qualifications. That is in document No 84. On 25 November Mr Smith sent a memorandum to the mayor and every councillor. This memorandum is one of the most significant documents we have given you. It is set out at document No 85. The document conclusively establishes that Mr Smith provided to every councillor details of his professional qualifications. It also establishes that he has provided full details of his professional qualifications and that he did so within days of this matter being raised as an issue. Media reports that have been repeated constantly over the past 12 months and evidence given before this standing committee have suggested that Mr Smith did not disclose to the councillors details of his professional qualifications. That is clearly false. On the last two pages of this document a number is listed against every councillor. At the top left-hand corner of page 3 is Councillor Paul Kadak's name. Councillor Kadak was supplied with document No 2. An indication that this document was circulated in that way to all councillors is provided by the next document, No 86. This is an e-mail from Councillor Walker to Denis Smith confirming that she had received a copy of the memorandum, and her copy was No 8. That tallies with the numbers at the back of the document. On 25 November, within a week or so of this matter being raised publicly for the first time, every councillor was provided by Mr Smith with details of the qualifications. You will see in the memorandum that seven qualifications are set out, numbered 1 to 7. In relation to six of them, the qualification was sighted. In relation to the seventh, details of attendance and other documents were submitted. The allegation that has been made and repeated in the public arena that Mr Smith failed to disclose to his employer - that is, the City of Joondalup and the councillors, a lawful decision-making body for the city - full details of his professional qualifications clearly is not so.

Mr Loader was present at the time that Mr Smith detailed his qualifications, and he gave some evidence in relation to that the last time we appeared before the committee. If the committee wanted to pursue any aspect of that particular matter, we can do so at this stage.

[4.45 pm]

Hon ED DERMER: Mr Loader, I have a plain question. I refer to document No 85. Can you give us a cast iron assurance that you have sighted an original document certifying each of the items listed 1 to 7, and a certificate issued by the institution that was providing the education involved?

Mr Loader: I can categorically say that all those qualifications were sighted by both Mayor Bombak and me.

Hon ED DERMER: Original certification from the institutions?

Mr Loader: Original documents.

Hon ED DERMER: Was there not a reference to a qualification from the Royal Melbourne Institute of Technology included in Mr Smith's CV?

Mr Loader: I cannot recall.

Mr Douglas: Are you referring to the second item?

Hon ED DERMER: Yes, thank you.

Mr Douglas: Much of the public's misconception about this issue has arisen because of this fundamental conclusion on which they have been misled; that Mr Smith has disclosed to his employer - the full council - full details of his academic qualifications within a very short time - days - of the matter being raised. That is a fundamental proposition that the public and the minister appear to have been misled about for quite some time.

Hon ED DERMER: The other point at issue, of course, is the claim on Mr Smith's original résumé that he had a bachelor of business. Mr Smith has now made it very clear that that was not the case. That is a point that has been an issue in the public arena, in addition to the question of certifying the qualifications listed in this document.

Mr Douglas: When you say the claim, you need to be careful with those terms. That was not Mr Smith's document.

Hon ED DERMER: Was not his document?

Mr Douglas: The material or his profile that went to his employers - the councillors - was a document compiled by Management Recruiters Australia.

Hon ED DERMER: Based on the résumé signed off by Mr Smith and prepared by his wife, as I understand it.

Mr Douglas: We do not have a record of precisely what that document is. You may have had that from Management Recruiters Australia.

Hon ED DERMER: That is my recollection of Mr Smith's evidence.

Hon KEN TRAVERS: Are you saying that the council does not have a copy of the original documentation provided by Mr Smith to Management Recruiters Australia?

Mr Douglas: I am not aware of it.

Hon KEN TRAVERS: Mr Loader, are you?

Mr Loader: Yes, we got it in April or May this year.

Hon KEN TRAVERS: Thank you.

Hon DEE MARGETTS: I would like to ask a question too.

The CHAIRMAN: Can we make it brief?

Hon DEE MARGETTS: Yes, we can. Is a postgraduate diploma the same as a postgraduate qualification course? Have you actually sighted the diploma?

Mr Loader: If you are referring to point 7 -

Hon DEE MARGETTS: Point 4 first.

Mr Loader: I cannot recall exactly what that constituted, because it happened nearly 12 months ago. All I can recall is that the documents that both the previous mayor and I sighted had all those names on them with a number and were from the certifying institute.

Hon DEE MARGETTS: Okay, but in this list it refers to a postgraduate qualification course. On the summary provided by Management Recruiters Australia it is a postgraduate diploma. It may well be that what you have sighted is evidence of a postgraduate qualification course. The question I am asking is whether you have sighted a diploma. Whether what you have sighted relates to that list is not so much the issue for many people as whether what ended up on the CV or has been the basis of employment is accurate. We have ascertained that Mr Smith did not have a Bachelor of Business Management. I am now trying to ascertain whether Mr Smith has a postgraduate diploma in environmental and pollution studies. Can you indicate whether that is the case?

Mr Loader: All I can comment on is that what we saw in point 4 were those words.

Hon DEE MARGETTS: So he has participated in a postgraduate qualification course. There is no indication there of the word "diploma".

Mr Loader: Not in 4, no.

Hon DEE MARGETTS: What about the diploma in town and country planning? Point 3 states -

Local Government Town & Country Planning Examination Committee granted an interim Certificate of Qualification as a Town & Country Planner, permitting me to practice as a Certified Planner - 14 March 1972.

The word "diploma" does not appear there either.

Mr Loader: I cannot make any comment.

Hon DEE MARGETTS: So it could be that Mr Smith does not have a diploma in town and country planning either, but just an interim approval.

The CHAIRMAN: I think it is a waste of time asking Mr Loader.

Hon DEE MARGETTS: Mr Loader has told us that he has sighted these documents.

The CHAIRMAN: Yes, and you read out the titles. He said that he has sighted that document.

Hon DEE MARGETTS: No.

Hon JOHN FISCHER: You cannot expect him to remember the number on them.

The CHAIRMAN: You are going on and asking whether another series of documents exist.

Hon DEE MARGETTS: No, I am pointing out that the list states "Local Government Town & Country Planning Examination Committee granted an interim Certificate of Qualification". That would not necessarily indicate a diploma, would it?

The CHAIRMAN: We would have to ask an educational institution that question.

Hon JOHN FISCHER: I would like to go to document No 86. The copy of the e-mail from Allison Walker to the CEO is dated Thursday, 28 November and quite obviously states that she has the documents in her possession, so she has viewed them. In other words, it would be reasonable to assume that when Hon Giz Watson asked her question in Parliament in December 2002 all the councillors would have had in their possession a copy of the documents relating to the qualifications of the CEO.

Mr Douglas: That is right.

Hon JOHN FISCHER: Even the one about the environment.

Mr Douglas: Yes.

The CHAIRMAN: Okay, please move on.

Hon KEN TRAVERS: What was the point you were trying to make to us, Mr Douglas, in all of this?

Mr Douglas: Until recently - you can go back to the transcript of the standing committee - members expressed surprise when the evidence was first put that details of Mr Smith's qualifications had actually been provided to every councillor.

Hon KEN TRAVERS: Right.

Mr Douglas: It appears that public perception was based on articles that have been written and public statements that have been made by particular individuals, and that it has been assumed that Mr Smith had not disclosed to the council full details of his educational or professional qualifications.

Hon KEN TRAVERS: Was not the problem for the public that when they sought to find out the answer to that question, the council refused to answer it?

Mr Douglas: There are two questions. I have dealt with one. The question was whether Mr Smith provided to his employer full details of his educational qualifications. That is a matter that has not been disclosed publicly. You will see from the transcript that members of this committee expressed some surprise when that was revealed.

Hon KEN TRAVERS: That was because the strictly private and confidential not-for-distribution document, until we saw it, had never been sighted by anybody other than the councillors.

Mr Douglas: I do not know that that is the full explanation. Part of the explanation is that some of those who had this document expressed themselves in a way that indicated that they had never sighted any details of Mr Smith's qualifications. We will come to that detail.

Hon KEN TRAVERS: But they had not, had they?

Mr Douglas: They had sighted full details of Mr Smith's qualifications.

Hon KEN TRAVERS: They had not sighted the details. They were relying on this document. This document still does not give you a clear indication of what qualifications Mr Smith has relative to the qualifications that he claimed on the CV he presented to Management Recruiters Australia.

Mr Douglas: What the council had before it when it considered this matter - we will come to when it did - was Mr Smith's qualifications set out in the full detail that we have here. The councillors also had before them the profile given by Management Recruiters Australia. They were then in a position, based on those two bits of information - I will come to it again - and having worked with him over 12 months, to assess the situation. They were in an ideal position, as an employer, to determine what significance should be attached to the discrepancy between the actual qualifications and the document that they had been provided by Management Recruiters Australia.

Hon KEN TRAVERS: Would it not be fair to say that one of the difficulties for those councillors is that the document you are referring to was one that they were not able to talk about? They were not to talk about the existence of that document.

Mr Douglas: To the public, certainly.

Hon KEN TRAVERS: You are saying that you are surprised that the committee was of a view that was created because members of the council were creating a false impression in the community. However, those councillors who had concerns about this matter were bound not to talk about this document. They could not talk about what the mayor had or had not done with Mr

Loader on the qualifications for 12 months. People were aware of the problems but no-one from the council was prepared to talk about it publicly or to answer questions about it. Maybe you will get to it.

The CHAIRMAN: I will not allow any more questions until Mr Douglas and Mr Loader have finished giving their evidence. Members will then be able to ask a few questions. I ask them to jot down questions as we go.

Mr Douglas: On 6 December 2002 - a couple of weeks after that memo of 25 November - judgment was delivered in a New South Wales court case in which Denis Smith appeared as a witness. A copy of that judgment is set out in document No 89. There is also a response from Mr Smith to that judgment set out in document No 91 and an article from the *Sunday Times* that appeared on 15 December. Given the time, I will move on. I had intended to go through aspects of those.

The key event is the council's consideration of this issue on 17 December. It was a significant event because it was an opportunity for the council, as Mr Smith's employer, to assess and determine the city's response to the issue of the CEO's professional qualifications. It is critical to appreciate in our submission that the employer-employee relationship was between the council and Mr Smith. It was only the council that had the power and responsibility of determining whether it had confidence in its CEO. Others outside might have a view of what they would have considered, based on the limited material they have, but in the end, like any other employer-employee relationship, it is the employer's view that counts. The council was also in the unique position of being able to consider and assess this issue having regard to Mr Smith's actual performance in the position of CEO over the previous 12 months. In part, the council's assessment was reflected in the outcome of Mr Smith's 12-month performance review, which had recently been completed. This was not a case where professional qualifications were a necessary prerequisite or essential criterion for the position of CEO of the city.

[5.00 pm]

We have heard references in the Press and in this committee to comparisons with doctors and lawyers. Doctors and lawyers and other regulated professions require professional qualifications as a precondition to being employed for the purpose of practising a profession. Media commentators and others have sought to draw comparisons and analogies between these professions and a local government CEO - Mr Smith in particular. The comparisons and analogies are specious and mischievous. In the case of the CEO, the council was entitled, as any other employer in similar circumstances would have been entitled, to regard professional qualifications as an indicator of the person's potential ability to do the job. The evidence establishes that a year earlier the professional qualifications of all candidates were given minimal attention and significance at the time of interviews. More than a year later, when the council considered this, it was entitled to attribute even less significance to professional qualifications. All councillors who worked with him experienced first hand his actual performance, not simply his potential performance. The issue of the CEO's professional qualifications was assessed in the context of the relationship of trust and confidence that had been established between the council and Mr Smith. It is in that context that the council resolved, and was lawfully and properly entitled to resolve in a resolution as set out in document No 92, which reads -

“That the elected Council of the City of Joondalup; hereby declare their strong support for and full confidence in Mr. Denis Smith and his dedicated attitude, work ethic and values to the City of Joondalup.”

The council had all the material before it. The council is the appropriate decision-making body, not an outside observer. It made the decision, it made it lawfully, and it made it properly. That resolution was carried overwhelmingly 12 votes to one. Only Councillor Carlos voted against the motion. Whereas the initial resolution to appoint Mr Smith was carried eight to three, 12 months

later, based on his actual performance, the council had such strong confidence in Mr Smith that it voted 12 to one.

I state at the outset that the State Parliament has given a council the statutory role of making decisions about this, not someone else. It is important that outside bodies respect the lawful decision-making authority of the council. If it makes a decision lawfully and if it takes into account the things it should take into account, as it did in this case, it is entitled to be given respect for the decisions it makes. It may be that individuals are unhappy with the decision, particularly individuals within council, but they have an obligation not to allow their personal interests to conflict with the interests of the city. This should have been the end of the matter with the vote in December 2002. Clearly it has not been, and we will need to deal with the events that have occurred since that time.

I mentioned briefly the CEO's performance review, and I will simply refer to the relevant documents rather than take you through those. Mayor Bombak invited all councillors to raise any matters that they considered might be relevant to the review before it took place; that is set out in document No 82. The review was then conducted by the mayor, the Deputy Mayor Councillor Hurst and Councillor Rowlands. The report was provided by those councillors to the full council, and the report is at document 88. The decision of the full council to declare its strong support for and full confidence in Mr Smith was made and published on 17 December 2002. Three days after that, Councillor Carlos, the only one who voted against it, wrote a lengthy letter to the Minister for Local Government. The letter, dated 20 December, referred to the council's resolution and informed the minister that Councillor Carlos had objected to this motion and had spoken strongly against its adoption. He added that his plea was rejected by the other councillors and that now there was no other option open but to seek the minister's intervention. He urged the minister to consider sacking the entire council and appointing commissioners. I go back to the statement that there was no other option but to seek the minister's intervention.

Hon KEN TRAVERS: Where is that?

Mr Douglas: Document No 93.

Hon KEN TRAVERS: Yes, but where in the document does it refer to intervention?

Mr Douglas: Halfway down the second page, after he refers to the motion that was put and carried by the council. He does not mention the votes. The next paragraph then states -

I objected to this motion . . . My plea was rejected . . . now there is no other avenue but to seek your intervention.

Hon KEN TRAVERS: Where does it say "sack the council"?

Mr Douglas: In the last paragraph on page 2, the second line states -

. . . you may wish to consider sacking the entire Council and appoint Commissioners.

I would like to deal with the proposition - because it is a fundamental one - that when a vote goes against a particular elected member the only option is to seek intervention and sack the council. There are other options. One option is to accept the decision of the lawfully constituted decision-making body of the city. The second one - and those familiar with cabinet responsibility will appreciate the significance of this - is that if you cannot accept it and support the decision, you resign.

Hon KEN TRAVERS: That is Cabinet, not council.

Mr Douglas: Good governance requires a decision-making body to accept the decisions of the council. I will come to the code of conduct later, which emphasises the duty of fidelity to the council. The duty of fidelity to the council is crucial, and that is why it refers to things such as going public contrary to the decisions of the council. They are things that are unacceptable to local government. They may be acceptable as part of State Government, but not in local government.

There are other options than to sack the council if a decision goes the other way. As I said, the two options are to accept the decision and act in accordance with the code of conduct and the law, or resign. Councillor Carlos then asked the minister in this letter to give him the opportunity to discuss with him all the concerns that he had about the City of Joondalup. He provided the minister with his home and mobile telephone numbers. The minister's office responded to Councillor Carlos on the same day - that is, 20 December - and the minister responded personally on 24 January 2003; that is document No 96.

The CHAIRMAN: Which document is that?

Mr Douglas: The first is 94 from the minister's office and the second is 96. The letter from Councillor Carlos to the minister was sent only six weeks after the minister had written to Councillor Carlos rejecting what appears to have been Councillor Carlos' earlier call for a formal inquiry into the city; I refer to document 81. In his letter of 20 December to the minister, the long letter that I have just been referring to, document 92, Councillor Carlos told the minister that he was on the council selection committee which evaluated all applicants. He stated -

Mr. Smith's CV stated he had three professional qualifications. It is my contention that Mr. Smith would not have been selected for interview if the professional qualifications had not been included on his CV. I specifically asked each applicant about his professional qualifications during the interview process.

As to the first part that Mr Smith would not have been selected for interview if his professional qualifications had not been included on his CV, there is no evidence, apart from Councillor Carlos's -

Hon JOHN FISCHER: What page are you reading from?

The CHAIRMAN: Are these your notes?

Mr Douglas: I am sorry, I am reading from my notes of the document. This is in the second last paragraph of the first page of the letter of 20 December, document 93. There are therefore two propositions: one that Mr Smith would not have been selected if the professional qualifications had not been included on his CV; and the second that Councillor Carlos specifically asked each applicant about his professional qualifications. As to the first, there is no evidence, apart from Councillor Carlos's statement, that those responsible for selecting Mr Smith for interview would not have selected him if he had not stated those qualifications on his CV.

Hon DEE MARGETTS: Would you care to qualify that, given that we know that Councillor Walker, and if I recall correctly Councillor Hollywood, gave the same response. When you say there is no evidence, would you like to qualify that now?

Mr Douglas: No, because what I said was that there was no evidence that the council would not have selected him for interview.

Hon DEE MARGETTS: I am sorry, you said that you did not look at Councillor Walker's evidence. Do you recall Councillor Hollywood's evidence?

Mr Douglas: Yes, I do; it related to the appointment, not the selection for interview.

Hon DEE MARGETTS: It is coming back to me a bit now, but do you recall asking Councillor Hollywood whether he would have short-listed Mr Smith if he had known -

Mr Douglas: I do not recall that but -

Hon DEE MARGETTS: Okay, are you prepared to qualify that statement now?

Mr Douglas: Certainly. From the evidence that I am aware of, there is no evidence. It may have been -

Hon DEE MARGETTS: So, if three of the selection panel have indicated, at least to this committee, that they would have indicated differently about short-listing if they had known the truth about the qualifications -

Mr Douglas: I am not sure that the questions asked of them were whether -

Hon DEE MARGETTS: They were questions I asked of them.

Mr Douglas: I am not sure whether the questions asked of them referred to the qualifications that Mr Smith actually had compared with those that were on the CV.

Hon DEE MARGETTS: I asked them; go back and check it. If you are not sure, that is fine, but I am suggesting to you that you ought to at least qualify that statement before making a statement to this committee of that nature.

The CHAIRMAN: Let us hear the evidence.

Mr Douglas: They are my submissions; you can accept or reject them.

Hon DEE MARGETTS: Yes, but they should be based on the evidence that has been given.

Hon KEN TRAVERS: Surely in that statement the key words are "it is my contention"; it was Don Carlos's contention. He is not suggesting that it is anybody else's view. Had it been known at that time, Don may have been able to put an argument to the other councillors that the person should not have been interviewed. Is that a fair statement?

Mr Douglas: He can have whatever contention he likes.

Hon KEN TRAVERS: So this statement is absolutely correct -

It is my contention that Mr. Smith would not have been selected for interview if the professional qualifications had not been included on his CV.

Mr Douglas: My response to that is qualified in the way that Hon Dee Margetts suggested: apart from the evidence of one or two councillors, there is no other evidence that any councillor would have excluded him from interview if his actual accurate qualifications had been disclosed to the council.

Hon KEN TRAVERS: I accept that, but I think you must accept that if Mr Carlos had been given the opportunity to put the case and, in fact, if Mr Carlos had been in a position to advise the council that that was a misleading statement on the CV, I suspect he definitely would not have been given an interview at that time.

Mr Douglas: You can speculate if you like.

The CHAIRMAN: That is an opinion that has been put; it is not a question.

Hon JOHN FISCHER: Three days before the council voted 12 to one in favour of him.

Mr Douglas: Knowing all the facts.

Hon JOHN FISCHER: Knowing all the facts.

Hon DEE MARGETTS: No, not knowing all the facts.

Hon JOHN FISCHER: No, knowing all the facts.

Hon DEE MARGETTS: No.

The CHAIRMAN: Let us discuss that point later. Let us hear from Mr Douglas.

Mr Douglas: The professional qualifications issue had no bearing, of course, on Councillor Carlos because he voted against Mr Smith throughout; so it obviously did not affect his position.

The CHAIRMAN: I think you were coming to the second part of that.

Mr Douglas: The second part was his assertion that he specifically asked each applicant about his professional qualifications during the review process. Again, that evidence conflicts with the overwhelming evidence available to us and the conclusions of the fraud squad, which had the opportunity to interview the councillors about this matter. The fraud squad's conclusion was unqualified. It did not say "subject to what Councillor Carlos said" or "there may have been one or two". Its conclusion was that this was not a matter that was considered throughout the interview process.

Hon DEE MARGETTS: Did the fraud squad interview Councillor Carlos?

[5.15 pm]

Mr Douglas: Yes.

The CHAIRMAN: Let us wrap this up if we can.

Mr Douglas: The Western Australian fraud squad's conclusion to its investigation states -

... the fact that neither the City of Joondalup (during the interview process) nor its agent (during the short-listing of candidates and their interviews in New South Wales) asked Mr Smith about his qualifications ...

The fraud squad found as a fact that that did not happen. That was its conclusion based on the witnesses and their credibility. Incidentally, the media has continued to report Councillor Carlos's views on this issue rather than the conclusions of the investigation, which was being conducted by the fraud squad. The impression given to the public on this issue is that the applicants were asked during the time of the interviews about their professional qualifications. Councillor Carlos concluded in his -

Hon KEN TRAVERS: Have you got an article that you can refer us to that highlights that point?

Mr Douglas: I was attempting to give it to you. There were eight annexures in the letter from Councillor Carlos to the minister. Annexure D was written questions regarding Mr Smith's qualifications. There is no reference or indication from Councillor Carlos that Mr Smith had actually provided his professional qualifications to the council. It was open to Councillor Carlos, without producing the document, to say that all councillors had been provided with full details of the professional qualifications at this point. In fact, it was only a month earlier, so you expect that it would have been clearly in his mind at the time.

Following the letters from Councillor Carlos to the minister and, as foreshadowed by the minister in his response to Councillor Carlos, the Department of Local Government and Regional Development commenced an investigation into the allegations relating to the selection and appointment of the CEO. It may not have been made clear during the evidence given by the minister and departmental representatives - I was there at the time - that an assessment that is being conducted is an informal assessment. There are two formal inquiry avenues under part 8 of the Local Government Act. An assessment is an informal investigation that does not have any statutory basis. In a number of instances evidence was given to the committee that the minister and the department had no power to require a local government to produce. I touched on this briefly in the first appearance before the committee and referred you to section 8.2 of the Local Government Act, which empowers the minister or the executive director in a written notice to require a local government to provide information of any kind specified in the notice about its operations.

On 23 January 2003, one month after Councillor Carlos's letter to the minister, an investigations officer of the department wrote to the city requesting that it provide various documents for the purposes of its assessment - that letter is document No 95. Two weeks later the city provided the department with a large number of documents that had been sought. The city did not have any contact with the department for the next three months. On 15 May, the department sought further documents from the city, copies of which are provided in a separate volume of documents that have

not yet been finalised. I will refer to the document number now because it is the number that this document will be given. That particular document is No 123. The next week, the city provided the department with further documents but blanked out parts of those documents on the basis of the city's confidentiality and privacy concerns for individuals, particularly individuals who were not elected members or employees of the city. On 27 May, the council resolved to seek legal advice related to its obligations to protect confidentiality. The department responded in a letter dated 11 June, which is document No 131. In that letter the department warned the city that if it did not provide the documents to the city with all the personal details disclosed then the option for the department was to use its powers under section 8.2 of the Local Government Act 1995. Clearly, the department is aware of that power because it threatened to use it against the city.

The CHAIRMAN: What was the date of that please?

Mr Douglas: It was dated 11 June 2003. On the contention that the department and the minister do not have power, and this appears from the evidence that was given on that day that there may be a deficiency in the Act, I submit to the committee that the powers do exist for the minister and the director general to require local governments to provide information about any aspect of their operations. They are compulsory powers that are contained in section 8.2 of the Act, regardless of any formal inquiry under either part 1 or part 2 -

The CHAIRMAN: I am not sure we have that last document that you referred to.

Mr Douglas: I mentioned earlier that that is document No 131. A third volume of documents is currently being prepared. I simply indicated the number for the purposes of the transcript.

On 17 June the city responded to that letter - six days later - in effect calling on the department to use its powers under its compulsory powers, which would then have overcome any difficulties that the city had with confidentiality. If you are required to produce something under compulsion of law, then issues of confidentiality and privacy do not arise. It has been five months since that letter and the city has not received any communication from the department about this matter. In summary, the department's investigation commenced in January 2003 and is still continuing. During those 11 months, the department sought information from the city on three occasions. On each of those occasions, the city responded promptly and certainly within two weeks. The city has provided the department with a very large number of documents. In respect of a relatively small amount of information, it has outlined the reasons for its concerns about its obligations, legal and ethical, relating to confidentiality and privacy.

The next issue I will deal with is the following meeting of the council. After the council reaffirmed its full support for the CEO in December 2002, the next council meeting was held in February 2003. As I said, it might have been expected that that would have been the end of the matter. A press release occurred about that time from the CEO setting out projects that the city was to be involved in for the following year, which is set out in document No 98. I will not take you through the detail of that, but, essentially, the CEO was expressing the wish that the council would get on with the business of governing, setting out what its projects were and hoping that the political agenda that had dogged it the previous year would be put to bed. That was not to be the case. The first council meeting for 2003 had before it a notice of motion from Councillor Carlos, which is document No 99. It is two pages of a confidential notice of motion proposing that Mr Smith stand down from his position as CEO until such time as the council has received and considered a report from an independent investigator into the allegations against him. It then set out 14 allegations that Councillor Carlos wanted to have investigated by the retired assistant commissioner of police. A copy of that confidential notice of motion was leaked to the media and was the subject of a front page article in the community newspaper on 13 February, which is document No 103. All councillors were informed by Mr Smith that the newspaper would not reveal how it received the confidential document but it did confirm that it was identical to one being considered by the council. It appears from the article in the community newspaper that a copy of the confidential

document was also leaked to a former councillor of the city, Mr Steve Magyar. Mr Magyar was reported to have asked Mr Smith at a briefing session whether he had received any notices of motion that were not on the briefing session. Two days earlier, Mr Magyar sent Councillor Carlos an e-mail giving Councillor Carlos advice about his notice of motion. It is evident from that e-mail, which is document No 100 -

The CHAIRMAN: It might be No 99 in our volume. Document No 100 is the council confidential note.

Mr Douglas: It is an e-mail dated 9 February 2003. The first one states -

Dear Don,

Are you ready for the fight of your life.

Hon ED DERMER: That is document No 99 in our volume.

Mr Douglas: On the second page of that document there is an e-mail to Denis Smith, of which a copy was sent to Mike Smith about the notice of motion from Don Carlos and attaching the notice of motion. It appears from that e-mail that Councillor Carlos sent a copy of that e-mail enclosing the confidential notice of motion to Mr Magyar. The legal obligations and liability of the council with regard to the unauthorised disclosure of confidential information I will deal with shortly.

Before that, I will deal briefly with the council's consideration of this motion. It was dealt with at the meeting of 18 February and defeated by 12 votes to two. This time Councillor Walker supported Councillor Carlos in opposing the motion. The council also resolved at that meeting that the councillors of the City of Joondalup hereby again reaffirm their full confidence in our City CEO and congratulate him on his many achievements, including - I will not take you through them - a number of achievements set out in the resolution. That resolution was carried by 13 votes to one, again, with only Councillor Carlos opposing the motion. The council also resolved to censure Councillor Carlos -

For his ongoing and repeated attacks on our CEO, current and former Council staff and the Mayor, for his ongoing attempts to bring the City of Joondalup into disrepute.

(Original of quotes not sighted by Hansard)

This was the council's first formal censure of Councillor Carlos. The council also resolved to authorise the CEO to obtain legal advice relating to the allegations made by Councillor Carlos, the reason for which was that -

The significant damage being caused to the image and reputation of the City and its senior officers.

(Original of quotes not sighted by Hansard)

That is found in document No 105 at page 171.

Following the council's resolution, the CEO again wrote to all staff of the city expressing his hope that this matter, after being overwhelmingly resolved by the council, would be the end of matter and it could get on with doing its job. The full details of that are set out in that memo in document No 106, and, given the time, I will not take you through that. On the same day, the mayor issued a press release informing the public of the council meeting and expressing the wish that the media campaign that had been perpetrated against Mr Smith would cease, which is found in document No 107. Councillor Carlos responded by sending his own e-mail to all staff and councillors listing various newspaper articles and letters to editors of various newspapers criticising the city and the CEO, questioning again the professional qualifications of the CEO and stating that he had been -

Harassed by the Mayor, Mr Smith, his lawyers and some councillors who want to gag me from finding out the truth.

(Original of quotes not sighted by Hansard)

He also announced his intention to stand for the position of mayor at the forthcoming election, which is found in document No 108. Mayor Bombak wrote to Councillor Carlos on 7 March inviting him to apologise to Mr Smith and hoping that he would work collaboratively with Mr Smith and his fellow councillors for the mutual benefit of the community, which is document No 110.

[5.30 pm]

I will deal now with the legal obligations affecting disclosure of confidential information. The leaking of Councillor Carlos's confidential notices of motion illustrates a pattern that has been an unfortunate feature of this entire episode. Much of the city's information relating to this has been selectively leaked, often so as to be misleading to the detriment of the city, the CEO and the public generally. This is not simply an issue of good governance or ethical behaviour. Councillors have various legal obligations that prohibit them from disclosing confidential information. Among these obligations are those contained in section 5.93 of the Local Government Act, the City of Joondalup standing orders, the city's code of conduct and the laws of defamation. As well, the city has obligations as an employer for duty of care to its employees under the Occupational Safety and Health Act. The most serious of those provisions is section 5.93 of the Local Government Act. It provides that a person who is not a council member, committee member or employee must not make improper use of any information acquired in the performance by the person of his or her function under the Act or any other written law either to gain directly or indirectly an advantage for the person or other person or to cause detriment to the local government or any other person. On its face, a councillor who discloses to a person who is not a fellow councillor or employee of the city a confidential notice of motion -

Hon DEE MARGETTS: No; it is his intention to move the motion. Is that not what he was doing? He disclosed his intention to move the motion.

Mr Douglas: He disclosed a document that sets out the notices of motion.

Hon DEE MARGETTS: No; he was disclosing his intention to move a motion.

Hon KEN TRAVERS: Had he moved the motion at that stage?

Hon DEE MARGETTS: Of course not.

Mr Douglas: Perhaps we should go back. The e-mail you saw enclosed as an attachment the notice of motion. It is a document.

Hon KEN TRAVERS: Had he formally moved it? I assume there is a formal process for lodging it at the council. Had he done that at that time?

Mr Douglas: That was done. According to this e-mail, Councillor Carlos copied to someone outside the city - a ratepayer - with the notice to Mr Smith, enclosing a copy of the notice of motion. That was disclosing to an outsider a confidential document of the city. I will come to the standing orders.

Hon KEN TRAVERS: Had it been declared confidential?

Mr Douglas: I will come to that point and make it clear in a moment. A councillor who discloses to a person who is not a fellow council employee a confidential notice of motion makes improper use of that information. Its disclosure to selected ratepayers and the media clearly caused detriment, in this case to the CEO and the city. Any person can commence proceedings for an offence against the Local Government Act. This particular offence is regarded so seriously that there is no time limit. Often there is a two-year time limit. However, with this offence, it can be commenced at any time. The penalty for a breach is a fine of \$10 000 or imprisonment for two years. The conviction of a councillor for an offence under section 5.93 also constitutes the conviction for a serious local government offence under section 2.22 and regulation 4 of the Local

Government Constitutions Regulations 1996. A conviction would result in a councillor being disqualified from membership of the council for five years following the conviction. These provisions make very clear the seriousness with which the Parliament regards improper disclosure of confidential information by elected members. The standing orders also deal with this issue. Clause 7.2 of the city's standing orders provide that every matter dealt with or brought before a meeting behind closed doors should be treated as strictly confidential and cannot be disclosed. In the second paragraph it provides that all documents of a local government, whether brought before the council or a committee of the council or not that are marked confidential or not for publication at the head thereof, are confidential to the council and shall not be published, copied or reproduced in whole or in part in any manner whatsoever without the express permission of the council or the chief executive officer.

The notice of motion shows that it is marked confidential at the head and on every page. In fact it is marked twice. This is a document of the local government, whether brought before the council or not, that is marked "confidential" at the head. Publication of that is an offence. It is also a breach of the Local Government Act, for which the penalty is two years imprisonment. This is a serious matter. There are reasons Parliament has seen fit to prohibit the disclosure of confidential information in these circumstances.

The CHAIRMAN: Has the City of Joondalup referred this matter to the department?

Mr Douglas: I am not sure whether it is yet aware of it other than through these submissions.

Hon KEN TRAVERS: You are the council. How can it not be aware of it?

Mr Douglas: I am simply producing the documents provided to me. You have the documents here, as I was provided with them. The committee can draw its own conclusions about any of these matters.

Hon DEE MARGETTS: It is about the process of calling it confidential. It was not a confidential document at the time. If I intended to put a notice of motion to the Legislative Council or even a committee, and I were to say to someone that I intended to move a notice of motion, my intention would not be considered confidential until after the notice of motion had been received. At that stage, there was no indication it had even be received.

Mr Douglas: Part 6 of the code of conduct contains various provisions that are relevant to the disclosure of confidential information by elected members. I will deal with them briefly. It prohibits elected members from using confidential information to gain improper advantage for themselves or another person in ways that are inconsistent with their obligation to act impartially in the public interest or to improperly cause harm, detriment or impairment to any person, body or the council. You will see when you have the opportunity to read the notice of motion that it is highly critical of Mr Smith.

Hon KEN TRAVERS: Are you saying that Mr Carlos circulated document No 100, which we have here - the actual confidential notice of motion - or that he circulated a copy of that motion?

Mr Douglas: I am providing the documents I have. If a confidential notice of motion was copied, I simply have the documents I have produced.

Hon KEN TRAVERS: You made the claim earlier about selective quoting. You need to be very careful about what you are putting to us. Are you suggesting that if Mr Carlos sent a copy of his motion to someone before he lodged it with the council and it was declared confidential, that was a breach of the Local Government Act and the City of Joondalup standing orders, or is it only that he sent it after he had provided it to the council and the council declared it confidential?

Mr Douglas: It depends which provision we are talking about. If we are talking about the standing orders, the document that is disclosed must have "confidential" marked on it. If you are talking

about section 5.93 of the Local Government Act, different rules apply as they do to the code of conduct.

Hon KEN TRAVERS: What claim are you making to this committee? I am confused.

Mr Douglas: There is no claim. The documents have been produced.

Hon KEN TRAVERS: You were clearly trying to imply something earlier and I am trying to work out what it was.

Mr Douglas: The submission is about the importance with which Parliament and the law regard the unlawful disclosure of confidential information.

Hon KEN TRAVERS: I do not disagree with you on that point. Perhaps I misunderstood you. I thought you were implying Councillor Carlos had done that.

Mr Douglas: That is a situation that someone else might need to look at. I am producing these documents that are relevant to the committee's deliberations. If there is an issue about confidentiality, these are the provisions. There is no conclusion about what should happen regarding these matters. That is for the committee to determine if it wishes to. An issue has existed over the past 18 months of confidential information being leaked to the public. That issue has caused great harm to the city as a body. It has also caused great harm to local government in this State. It should not happen. There are legislative provisions that require that it not happen. I am alerting the committee to those provisions. That is as far as the submission goes.

Hon DEE MARGETTS: Do you understand the difference between council confidential documents and a councillor seeking advice from a former councillor at the time he intends to put a motion to the council before it has even been received by the council?

Mr Douglas: I understand there is a difference.

Hon DEE MARGETTS: Good.

Mr Douglas: I refer the committee to the provisions of the standing orders that refer to documents of a local government. When a councillor acts, his or her documents are "documents" of local government. There is no requirement that all documents of local government, whether brought before the council or not, need to be produced to council to be covered by this provision. You might not like the provision but that is the provision that applies.

Hon ED DERMER: You said earlier that the e-mail exchange between Mayor Carlos and Mr Magyar was provided to you. Who provided those documents?

Mr Douglas: The city. Thousands of documents were provided to us for the purpose of investigating this matter.

Hon ED DERMER: It appears that it is correspondence between the mayor and Mr Magyar as a ratepayer of the City of Joondalup. You are saying that the city provided it to you. Can you be more specific than saying that the city provided it to you?

Mr Douglas: It was within many files, probably a dozen lever arch files full of documents relating to the matter.

Hon ED DERMER: Provided to you by who?

Mr Douglas: By the city.

Hon DEE MARGETTS: Was the permission of either of those parties sought?

Mr Loader: Document No 99 was sent to Mike Smith in the city. He has his address on there, so obviously it was a council document.

The CHAIRMAN: Who is Mike Smith?

Mr Loader: He was the manager of marketing and communications.

The CHAIRMAN: He is a manager of the Joondalup administration.

Mr Loader: Yes, he is.

Hon DEE MARGETTS: The first motion was sent to Mike Smith, but he was not the recipient of the second e-mail.

Mr Loader: I cannot talk to that one.

The CHAIRMAN: Let us keep moving. How much more information do you estimate you have, Mr Douglas?

Mr Douglas: There was an organisational review I wanted to mention briefly. There were council elections on 3 May, further corruption allegations were made and rejected, and important council meetings were held on 17 and 24 June and 9 September that also relate to this issue. Allegations were made of gagging and must be dealt with. Fraud squad investigations were made which I want to provide the committee with some details of.

The CHAIRMAN: Can you undertake to provide the rest of that evidence in writing to the committee?

Mr Douglas: Yes, we can do that. Perhaps this can be done relatively quickly. There are some matters that we do not have in writing; namely, responses to evidence given by Mr Turkington. A large part of the response I wanted to make to the minister and departmental officers has been covered but there is one more aspect of Mr Turkington's evidence that it would be more appropriate to give orally than in writing.

The CHAIRMAN: Are you not organised to do that currently.

Mr Douglas: Yes.

The CHAIRMAN: How long will that take? We are wearing out our welcome here. Six o'clock is the absolute deadline I am setting on this hearing.

Mr Douglas: I think we can cover it by then.

[5.45 pm]

Mr Douglas: There were two aspects of Mr Turkington's evidence that were critical of the city. One related to the contract of employment. We have dealt largely with that matter. You have a copy of the contract. The second one related to Mr Turkington's claims regarding the termination of his employment. Mr Turkington's evidence attracted a good deal of publicity. It was of particular concern to the employees of the city to read the reports of Mr Turkington's evidence with regard to the reasons for his departure from the city. This is not a matter that we would deal with in this way, in that there is a deed of release - which Mr Turkington referred to - that was signed on 3 July 2002, just before Mr Turkington's departure. That deed binds the city and Mr Turkington to keep the deed and settlement confidential and not disclose it to any other person. Mr Turkington chose, despite being informed by the committee that he was not obliged to do so, to reveal details of his departure from the city and to make allegations about the CEO and the city that attracted prominent media attention. For that reason, it is necessary for the city to respond to those allegations. Mr Turkington is also obliged under that deed of release not to make any adverse statement, publicly or otherwise, about the city.

There are certain key aspects of Mr Turkington's evidence on this issue that we want to address. The first is that the initial complaints of bullying and harassment by Mr Turkington came from seven staff members. Since the publication of Mr Turkington's evidence, more material has emerged on the actions by Mr Turkington that led to his departure. The initial complaints were made to and handled by Mr Mark Loader as the human resources manager, not Mr Denis Smith. One of the key allegations by Mr Turkington is that he was forced to resign because of his views about Denis Smith. The thrust of the allegations was that Denis Smith in effect forced him out

because he knew too much. The documents establish that it was Mr Loader who had the conduct of this matter, not Mr Smith. There were formal letters from Mr Smith, but all of those letters were either on the basis of Mr Loader's advice or on the basis of legal advice. Legal advice was obtained throughout the course of this episode. Mr Smith did not act otherwise than in accordance with the advice that he had received from Mr Loader or from the city's lawyers. Mr Turkington gave evidence that he believed his actions were simply political incorrectness or an outdated management style. A very different view has been taken by the staff who were affected by and subject to Mr Turkington's behaviour. A different view is also taken by the city's legal advisers.

The matter began after the complaints were made to Mr Loader, with an e-mail memorandum from Mr Loader to Mr Smith, in which he states -

I have spoken to seven staff members and they all concur that John is intimidating and a bully. It appears he has little time for the female staff members in his Directorate and favours one particular male staff member. He offers no encouragement to the staff and appears to treat them with disdain. No-one, it appears, can do anything right and he thinks their performances are dismal.

Now that staff have come forward and reported to me these allegations, the City needs to act promptly without fear or favour in progressing the allegations. I have a concern that the City is open to potential litigation in a number of jurisdictions should the staff feel aggrieved that the City management does not act swiftly. Indeed, I have a view that we would already be hard pressed to successfully defend any litigation.

While there is no intention of acting maliciously, it is now our responsibility to take further action in this matter.

That was the advice from Mr Loader to Mr Smith that began the action. Legal advice was then sought on the nature of the allegations. That legal advice confirmed that the matters raised serious misconduct that may justify termination - the dismissal of Mr Turkington.

Hon KEN TRAVERS: You have said that you had had seven complaints. The document that you have just read states that Mr Loader had interviewed seven people. Had they all made a complaint prior to the interview?

Mr Douglas: I am sorry. If I said seven complaints, it was not. I was referring to the interview of seven staff.

Hon KEN TRAVERS: What prompted the interview of those seven people, Mr Loader?

Mr Loader: I originally brought this to the attention of the CEO. He asked me to do an internal investigation.

Hon KEN TRAVERS: Brought what to the attention of the CEO?

Mr Loader: The harassment and bullying by Mr John Turkington.

Hon KEN TRAVERS: What prompted you to bring that to the attention of the CEO?

Mr Loader: The staff had asked me to.

Hon KEN TRAVERS: The staff? All seven of them?

Mr Loader: No. There were three senior people, and one or two others, who asked me to do something about it.

Mr Douglas: After legal advice had been obtained, Mr Smith, on legal advice, wrote to Mr Turkington setting out details of the allegations and complaints and asking Mr Turkington to respond. Mr Turkington responded, in effect acknowledging the thrust of the allegations, but also responding that they were more a matter of political correctness and did not constitute a serious matter. Further legal advice was obtained. Mr Smith then wrote to Mr Turkington setting out that

he basically had two options - accept a negotiated termination of employment, or have the matter investigated further. I should mention with regard to the city's legal advice that the advice was expressly based on the need to balance two things: the right of the city's employees to a safe and non-threatening workplace, in which bullying and discrimination are not tolerated, and the fair treatment of a director who was a man at that time aged 57 who had given 14 years' service to the city. The background documents to this matter indicate that there was a fair and balanced approach throughout. There was no intention at any stage of targeting Mr Turkington. This was very much acting on the basis of complaints from concerned staff. Mr Turkington, after being given those options from the CEO, indicated that he was not willing for the matter to be investigated and preferred to have a mutually-agreed termination. Two days after being provided with that option, Mr Turkington submitted his letter of resignation. Mr Turkington's attempt to link his departure with a claim that he knew too much about the background of Denis Smith simply has no support from the documentary material. In fact, there has been a very strong reaction from the staff of the city following the publication of the report of Mr Turkington's evidence. That is a matter that has involved Mr Loader, because many complaints have been made directly to Mr Loader.

Hon DEE MARGETTS: With regard to the staff who made complaints and were interviewed, were they staff who had been employed recently by Mr Smith or were they staff who had been around for some time?

Mr Loader: Most of the staff had been with Mr Turkington for some years, so no. I have copies of some e-mails that have been sent to me as a result of staff seeing John Turkington on television recently. The indications from the staff are quite upsetting. I will read extracts just to give you an idea of the feeling of those staff members. I will not give their names. They are from the people who had previously had the matter brought to my attention. Some of what they expressed is as follows -

Hello - I saw a buffy beast monster on TV . . .

He forgot to mention the "Menopausal Castle", "dead from the shoulders up", "you're all just idiots" and so on and so on . . .

You actually liked him when he was bullying someone else, you were just so grateful that he wasn't beating you over the head then it would be your turn.

This person goes on -

I'm sick of just sitting back and listening to the crap that is being said about the CEO and the City. I think we should also tell the councillors of the abuse we put up with . . .

This same person says also -

I'm so angry at what he did, he was the bastard to us. Dennis Smith just protected us and defended us along with you - I can't just sit back and watch this anymore . . .

Another person says -

However, his comments reported in the paper, seem to indicate that he still believes that his bullying actions towards staff, were acceptable codes of behaviour. It concerns and worries me that he has not one ounce of remorse, only anger. It has been discussed/joked about, that it seems that he wants to do as much harm to the CEO as he can, so that he can come back & work with Don Carlos.

Another person says -

After reading John's comments in The West Australian on Tuesday, I was appalled to read that he actually believes he was doing the right thing by his staff in calling them "useless, dead from the shoulders up, hens city" etc. And those were the good comments!!

I now feel frightened and very vulnerable at what else he can do to hurt and bully us.

These are some of the responses that I received. Another person says -

I would just like you to know that this week has been very hard for me. It took a long time to get over JT when he left. As you know JT made specific threats to the people that you talked to and threatened us in a very aggressive way.

The person says also -

When I saw JT on television and then read the subsequent newspaper articles I felt a mixture of anger and dread. It also seems apparent from JT giving evidence that JT is being supported by some councillors and the Mayor and that distresses me the most. JT bullied lots of people, and said worse things than what has been reported . . .

“Menopausal Castle” - after one woman had a hysterectomy and another had a lump removed from her breast.

“Last bastion of the sheltered workshop” - directed at the Ratings Officers implying that they were mentally challenged in some way.

“It will be the last time you ever work in Local Government” directed at a couple of staff members when they wanted to escape from the business unit and work somewhere else.

This person says also -

His apparent lack of guilt, remorse or even acceptance that his behaviour was unacceptable is simply disgusting to watch and read. He used to take great delight when people told him that he should be careful of what he said. He seemed to love watching others cry or be upset.

The CHAIRMAN: Are you prepared to table those e-mails? You can table them with a request that they be kept private, and I am sure the committee would consider that request.

Mr Douglas: Would it be acceptable to simply delete the names for the protection of those involved?

The CHAIRMAN: If you wish.

Mr Loader: I can provide copies.

The CHAIRMAN: I will now wrap it up. We have had a pretty lengthy session today. There are probably a lot of other things that you want to say, and I am sure there are a lot of questions that committee members want to put to you. However, we have had a more than adequate session today. I invite you to submit anything further in writing to the committee in the near future so that we can consider it with our report.

Mr Douglas: We will be making a written submission detailing all of the matters that we did not cover today, as well as others. I ask the committee that that submission be made public. As I indicated at the outset, this is an important opportunity - perhaps the only opportunity that the city has - to put its case and its documents on the public record.

The CHAIRMAN: Are you requesting that all your documents be made public?

Mr Douglas: The request is for the submission that we will be providing. We will be providing a detailed written submission covering the matters that we have dealt with today. It may be more difficult logistically for the committee to publish the entire three volumes of material that we have provided to the committee, but that is open to the committee.

The CHAIRMAN: That is something that we consider with regard to all evidence.

Hon KEN TRAVERS: I suspect that we will need to be cautious, Mr Douglas, because although I think you have tried to delete the names of other candidates from that list, there are a couple of occasions on which the full names appear, and you might not want that to be made public.

Hon ED DERMER: You might want to consider giving us a more detailed recommendation as to which parts of the documents that you have provided us with today you want to be made public.

Committee adjourned at 6.00 pm