



CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, CHAIRMAN

No 5 of 2005

PUBLIC HEARINGS INTO GOLD COAST CITY COUNCIL

BRISBANE

5 OCTOBER 2005

At the preliminary hearing on 23 September 2005, Mr J Webb of Counsel sought leave to appear on behalf of the Gold Coast City Council. Mr Webb produced written submissions in support of his application and made further oral submissions.

On 23 September I indicated that I was minded to grant leave for the Gold Coast City Council to be legally represented at the hearing for the second bracket of evidence proposed, namely that section of the inquiry that would deal with Term of Reference No. 2 relating to the adequacy of existing legislation in relation to the conduct of local government elections and certain local government business.

I indicated that I would consider my decision in relation to the application to be legally represented at the first bracket of evidence and advise the Council in writing.

With my leave, subsequent to that day Mr Webb provided further written submissions.

The question of the grant of leave to appear at the hearing to a person who is not giving sworn evidence at the hearing is dealt with in s. 181(3) of the *Crime and Misconduct Act 2001*. That subsection says –

The presiding officer may allow a person who is not giving sworn evidence at the hearing to be legally represented at the hearing if the presiding officer considers there are special circumstances.

In his written submissions, Mr Webb sought leave to appear on behalf of 'the Gold Coast City Council being the body corporate, which is both the executive and administrative arms, which includes all Councillors and Council officers'.

In his oral submissions, Mr Webb made it clear that he was not seeking to appear in respect of those councillors who would be appearing at the hearing as witnesses. At present, the Mayor and 8 of the 14 Councillors have been served with Notices to Attend as witnesses.

Mr Webb indicated that his instructions would come from the Chief Executive Officer of the Council.

The Gold Coast City Council is a body corporate under the *Local Government Act 1993* [s. 35(a)]. That body corporate consists of the Mayor and other Councillors [s. 32]. The administrative arm of the Council is not part of the body corporate, but exists as part of 'the corporate structure appropriate to the conduct of its affairs' [s. 1127].

The Chief Executive Officer, who is charged with managing and overseeing the administration of the local government, has the role of implementing the policies and decisions of the Mayor and Councillors [s. 1131].

It is difficult to see how Mr Webb can realistically appear to represent the interests of a body corporate constituted by 15 persons when he quite properly indicates that he would not be representing the views of at least 9 of those 15 persons and would be receiving his instructions not from the body corporate itself but from the administrative officer charged with implementing the policies and decisions of that body.

In reality, Mr Webb would be representing the views of the CEO.

Mr Webb submits that the 'Council' is vitally interested in the outcome of this inquiry, as the Minister for Local Government, the Honourable Desley Boyle, has been quoted in the media as saying that if the CMC's probe into the Council found evidence of corruption the Council would be sacked.

There are two things to be said to this submission. First, any question of dissolving a local government is not a matter for the CMC and, if that issue were to arise, the proper person to make submissions to on that issue would be the Minister.

Secondly, any such dissolution of a local government under s. 164 of the *Local Government Act* affects the positions of the Mayor and Councillors, but not the employed officers of the Council. The Mayor and Councillors already have the right of representation or alternatively can seek leave to appear at the hearing.

Mr Webb, as part of his submissions, raised the possibility of evidence emerging during the hearing which might concern a senior officer of the Council. If evidence is to be lead which raises any allegation of misconduct on the part of any officer of the Council, Counsel Assisting would be required to advise, where possible, that officer prior to the leading of the evidence. That officer would then have the option of seeking leave to be represented at the hearing.

The final matter of note raised by Mr Webb relates to the provision of assistance by the Council 'in a timely way' to the inquiry. It is suggested that witnesses may make reference to Council procedures and practices in ways that are not, or not fully, accurate and that Council could provide information to correct any such inaccuracies.

The provision of any such assistance by the administrative arm of the Council, if allowed by the Mayor and Councillors, would be appreciated. However, it is difficult to see how such assistance could only be given if the Council had leave to appear before the hearing.

In all the circumstances, I am not satisfied that there exists special circumstances to warrant the body corporate of the Gold Coast City Council to be legally represented at the hearing during the first bracket of evidence.

Of course, if circumstances were to alter during the hearing, the Council could seek to renew its application.

In his final set of written submissions Mr Webb sought, if leave was not given to the Council to be represented at the investigative bracket of evidence, leave to appear on behalf of the CEO of the Council personally.

Mr Webb referred to a number of provisions in the *Local Government Act* which impose duties and responsibilities upon the CEO of the Council. In particular he referred to the CEO's responsibility with respect to returns of electoral gifts and under s. 38 of *Crime and Misconduct Act 2001*.

In addition, Mr Webb advised that the CEO was the Returning Officer for the 2004 election for the Gold Coast City Council and is called upon to give advice to Councillors about the potential conflicts of interest or material personal interest. All these duties and functions of the CEO are directly relevant to issues which will be examined under Term of Reference No. 1. In these circumstances, I consider that special circumstances exist which justify the grant of leave to Mr Dickson, as Chief Executive Officer of the Gold Coast City Council, to be legally represented at all stages of the hearing.

A handwritten signature in cursive script, appearing to read "Graham".