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CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA

COMMISSIONER JOHN McKECHNIE QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 27 APRIL 2018, AT 1.59 PM

COUNSEL ASSISTING:

MS K. NELSON

MS T. CHUNG

WITNESS: MALCOLM HACK EDWARDS

THE COMMISSIONER: Please be seated.

EDWARDS, MALCOLM HACK called:

THE ASSOCIATE: Mr Edwards, before we begin if I could ask you to take another oath. Take the Bible and card in your hand and read the oath out aloud.

EDWARDS, MALCOLM HACK sworn:

THE ASSOCIATE: Thank you. You may be seated.

THE COMMISSIONER: Mr Edwards, I'll appoint Ms Nelson to assist me by asking questions on my behalf. Mr Williamson?

WILLIAMSON, MR: May it please you, commissioner, I appear for Mr Edwards.

THE COMMISSIONER: Thank you, and I will give you the opportunity at the conclusion, should you wish, to ask any questions you would wish.

WILLIAMSON, MR: Thank you.

THE COMMISSIONER: Ms Nelson.

NELSON, MS: Thank you, commissioner.

What is your full name please, Mr Edwards?---Malcolm Hack Edwards.

You're the shire president at the Shire of Halls Creek?
---That's correct.

How long have you held that position?---12 years.

What do you view as your primary duty as the shire president? What's the function that you perform?---To liaise with the CEO and my councillors.

Given that you've had the benefit of listening to Mr Kerr-Newell's evidence over the last two days, are there any concerns that you'd like to raise with the commission before I ask you any specific questions?---No, I can't think. I think you'll probably bring it up in my questioning, I think.

If we take the first subject, being the recruitment of Ms Bronwyn Little, when did you find out for the first time that Mr Kerr-Newell was in an intimate relationship with Ms Bronwyn Little?---It happened within - he told me within the last month.

What was the occasion that brought him to tell you that?
---He had - he was under the impression that this, that item may be one of the items to be investigated by the - by the Crime and Corruption Commission.

Given the evidence that you have heard over the last couple of days, do you have any concerns about the way Ms Little was recruited to the position she holds in the shire?

---Yes, I do.

What are those concerns?---Well, the concerns are that firstly she was given the task of drawing up the job description and also Mr Kerr-Newell failed at the - at the outcome not to declare that he was in an intimate relationship with her.

By the end of 2013, what was the need at the Shire of Halls Creek for a strategic planner?---On the advice of the CEO, he - he indicated to me that there was a need for a planner because the planning documents weren't up to standard.

Did you have anyone in any capacity performing that role at the shire prior to that?---No, only a consultant.

What was the remit of the consultant, what was their job?---Well, to do the planning for the council; strategic plan, town planning scheme.

Did you see that they were performing that in any way that wasn't up to standard?---No. It's only when Mr Kerr-Newell told me that in his view that they weren't functioning, we were paying a fair bit of money and we weren't getting value. So I went on his advice.

When did you become aware that a position for a strategic planner had been advertised?---Well, I know we were advised that he was going to fill the position and it was going to be advertised but I - all I can think, I think that was in January two thousand and - yeah, I'm not sure. I'm not sure of the actual date I'm sorry, but he did - he did tell us that he was going to advertise the position.

Did you have any input into the position description?---No.

Did you see the position description document at any stage?---No.

In relation to the appointment of Ms Margaret Glass, when did you become aware that she was or have you ever become aware that she has had a friendship with Mr Kerr-Newell?---I think he has mentioned it after appointment, that he did know her previously.

Did he say in what context he knew her?---No.

What was your involvement, if any, in the performance review process of shire directors such as Ms Little and Ms Glass?---None.

Did Mr Kerr-Newell discuss with you their salary increases?---No.

Were you at any time aware of the specific amount of salary increase that they were being awarded year by year?---No, I wasn't.

What discussions did you have with Mr Kerr-Newell about salary increases generally for staff?---It was decided - he discussed prior to bringing up the budget, he would ask me what I thought the increase should be. He might come up with a figure like three per cent or two per cent, whatever that was and if I thought that was reasonable then I'd agree with that and then that'd be - go into the budget for the council to agree on.

Was it your understanding that the figure of two or three per cent or whatever was decided, was to be a global figure for all of the salaries or was it to apply individually to each person?---I thought it applied to every - all the staff.

Did Mr Kerr-Newell ever come back to council and seek leave to increase any particular person's salary above the agreed percentage - - -?---No, he did not.

- - - that was in the budget?---No, he did not.

Were you ever aware of whether the global salary for all the staff went beyond the percentage increase that had been agreed in the budget papers?---No, I wasn't.

Did you ever make those inquiries of Mr Kerr-Newell?---No.

How long before a council meeting are agenda items circulated to councillors?---On the Friday, the week before. The meeting's on the Thursday, so the Friday before council agendas are delivered to council.

Is that Friday the first opportunity that you have as shire president to see an agenda item or report?---No, I see the agenda the day before. We have a meeting at 4 o'clock on Thursday afternoon and the shire clerk, the CEO, goes through the agenda with me at that stage.

And at that stage of the agenda are the reports fixed or do they change overnight before they're distributed the following day to the other council members?---Only if me and Mr Kerr-Newell agree with any changes.

Is that something that happens regularly or is it an irregular occurrence?---It's regular.

Regular for it to change overnight?---No, there may be no changes but we always review the agenda, me and the CEO, on the Thursday before.

And apart from you and the CEO, is there anyone else in the room taking any minutes?---No.

Mr Kerr-Newell referred to those meetings on the Thursday

being minuted by him?---That's correct.

Do you have an opportunity to review his minutes of the meetings at any stage?---Yes, I do. They - they're typed up and emailed to me and I think they're emailed to all the councillors.

Are you aware of whether they're emailed to the rest of staff?---No.

They're not?---I don't know if they are or not.

THE COMMISSIONER: You're not aware?---I'm not aware of it, sorry.

NELSON, MS: You've heard extensive evidence about the tender process for the acquisition of the six new shire vehicles in 2017?---Yes, I have.

Do you have any concerns that you want to express to the commission about that process?---Yes, I have. Well, I'm hearing that the - the figures were changed without consulting with Broome Toyota. I think that shouldn't have happened. I think it was - I'm not too happy about the fact that they went to Delia Baz to gain all the information in regards to the vehicles.

Why aren't you happy about that?---Well, it's I suppose seeing - seeing what happened, the outcome of that makes - it becomes a concern. That's all.

When did you first become aware that they had consulted with Ms Baz about the specifications for the vehicles?---Only at this meeting down here at the - at the Crime and Corruption here.

So if there was any suggestion that you knew by 20 April 2017, would that be false?---Yes. I don't know how they obtained the figure that we decided on, the budget, that variation. I don't know how they arrived at that figure. We weren't advised.

When you were shown that agenda report of 20 April 2017 that had that figure of 337-odd thousand, did you make any queries of Mr Kerr-Newell as to how they had arrived at that figure?---No, I didn't.

When did you become aware of who had actually put in tenders for that particular tender?---At our meeting on 18 March there was two tenders.

18 May do you mean?---18 May, sorry; 18 May, sorry, and there was - we had a tender from Broome Toyota and a tender from Halls Creek Toyota, and I think we were informed at that stage that the Kununurra tender had been omitted because it didn't meet the - meet the tendering requirements.

Did you follow your usual practice of meeting with Mr Kerr-Newell on the Thursday, the week before that 18 May meeting of council?---Well, I - I - if I'd have been here, I would've. I can't remember.

Do you recall whether there was any discussion amongst the other councillors about the 18 May report on the tender? ---No, I can't remember any questions from council. What happens at our council meetings is prior to the council meeting. We have a staff and councillor briefing. This is a really informal session where staff brief us on each agenda item and council has the opportunity to ask questions. I cannot remember - I know Rodger Kerr-Newell actually spoke about the item and I cannot remember any councillor asking questions because it seemed rather - just the figures we had in front of us indicated that Halls Creek Toyota had the better price.

And what was your understanding of the application of the regional or local pricing preference when it came to procurement in Halls Creek?---I know - well, I - I thought it did include the vehicles and I've found out since, meetings I've been here, that it doesn't so - and I think that all staff and all councillors thought that the vehicles were subject to that policy.

THE COMMISSIONER: So it wouldn't have been a surprise to you to have seen that reduction in the Halls Creek - - -? ---No.

NELSON, MS: I'll give you a copy of this folder so that you can look at the budget amendment for 20 April 2017, which is document 0428^, and it's in the latter folder, commissioner.

Looking through that budget amendment report for 20 April 2017 was there any reference in that to the regional or local pricing preference as being applicable to the tender?---No, I can't see it.

So given that, how is it that you thought that that might apply?---I suppose with every local purchase, every tender that we've had, I thought it applied.

Was it ever discussed with you by Rodger, the fact that it would apply to this particular tender?---No.

Was it a question that you discussed with other councillors?---No.

Do you visit Ms Baz to get fuel for your vehicle or get your vehicle maintained by her?---No.

Do you have any type of relationship with her outside a professional working relationship?---None.

And when you approved the tender being awarded to her on 18 May 2017 were you aware that she had contracts with the

shire for the maintenance of vehicles and the provision of fuel?---Yes.

How had you been made aware of that?---By - by accounts for payment plus I've seen Rodger actually fuel up there.

Okay, thank you. That can be taken down.

You also would have heard evidence about additional items transferred or put onto Rodger's new car - - -?---Yes.

- - - in July 2017 which were either new items purchased by the shire or old items from his previous vehicle transferred over?---Yes.

Were you aware that that was the intention of the CEO, to transfer old items from his previous vehicle?---Yes.

When did you become aware of that?---Well, I - I - I - he would've mentioned it to me. That's all. I can't remember when but he mentioned it to me around about that time.

What was your understanding of the need to purchase six new vehicles at that stage and out of the budgetary cycle?
---Okay. Well, the main reason was that the state government was intending to increase the charges, to impose new charges on local government and to avoid that cost, if we bought these vehicles prior to 30 June, we would avoid those costs which was, if I can remember, something like \$48,000 on the six vehicles.

If you could just turn over to the next tab, which is 0430^, it's also in the folder in front of you if you want to look at it in hard copy. There's no necessity - so this is the report of 18 May. I just want to go to the spreadsheet at the last page. Were any questions asked as to why Kununurra Toyota weren't - their tender wasn't evaluated as part of this schedule?---No, there was no questions asked.

And were there any questions asked by you or the rest of the councillors as to why none of other tenderers, apart from Ms Baz, could meet the delivery time for the vehicles?
---No. There was no questions, no.

Had you been told the reason why that was by 18 May?---The reason why they had to deliver by 30 June?

No. The reason why Broome Toyota or Kununurra Toyota were unable to meet that date of delivery?---No, I don't know. I don't know why they couldn't meet the date and Halls Creek Toyota could.

That wasn't a question that you asked?---No.

And it wasn't obviously pointed out to you?---No.

Thank you. That can be taken down. Now I just want to ask

you about your approval on occasion of Mr Kerr-Newell's leave. What was your understanding of his entitlement to time in lieu or rostered days off?---I thought he was entitled to that and - because it appeared on the forms and the reason I thought he was entitled.

Is that the sole reason you thought he was entitled to it? ---Yes.

You were the shire president when he entered into his first contract in August 2013?---Yes, I was. Yeah.

And presumably you had occasion to read that contract and understand what the terms of his engagement were?---Yeah, at first - at first the contract was handed out to us by Warren Olsen, the previous CEO, and after reading it in the chambers we had to hand it back, which was - I wasn't really satisfied with that but I later on did ask for a copy and was given one and I did read it through but it's some years ago now and - the last time I read it. I just can't remember the - well, yeah, I'm just not aware that that time in lieu wasn't - was not allowed.

So you say you were given a copy in the chamber?---Yes.

So that's during a council meeting?---I think it was.

Was it the meeting in which Mr Kerr-Newell's appointment was resolved by council or passed, the resolution was passed?---Yeah, it might've been. It's some years ago now but I - I know Warren Olsen gave us a copy of his contract for us to look at. I can't - I can't give you the date.

How long did you have to look at the contract?---I don't know. I think about half an hour.

Was there any discussion that you recall about the terms of engagement?---Not that I can remember.

When you were asked to give it back did you ask any questions as to why that was?---They said they didn't want these documents hanging around; like people taking them home and leaving them lying around, because of the confidentiality of it and the information in it.

You say you asked at a later stage to see a copy of it? ---Yes.

How much later was that?---I can't remember. It was some - some time later on.

Are we talking weeks or months or years?---Months.

Months?---Months.

Why did you ask for a copy of it months later?---Because I hadn't really had a proper read of the original contract.

Did you obtain a copy at that stage?---Yes, I did and I did read it through.

At that stage did you understand from reading it that he may not have been entitled to time in lieu?---Yeah, I'm sorry I didn't realise at that stage when I read it: no.

When did you come to the realisation that he wasn't entitled to that?---Today.

I just want to ask you about the process in which you approved the time in lieu. What was the usual process by which you were informed that Mr Kerr-Newell wanted to take time in lieu?---At our meetings on the Thursday he would just produce the document that you've seen on the screen, and ask me to sign it.

Did he produce anything else to assist you in forming a view that it was something you should approve or not approve?---No, he didn't.

Did you ever refuse an application for leave?---No.

THE COMMISSIONER: Did you trust what he was putting before you as accurate?---I did, yeah. I trusted him, I thought, yeah.

NELSON, MS: On some occasions that we've seen, you appear to have failed to have dated when you've signed a document approving them?---Yes, I've noted that on the thing. Yeah.

I'll just show you an example, 0332^, this is an application for annual leave from 25 November 2016 until 2 December 2016 and this one, is that your signature at the bottom?---Yes, that is.

So you have dated that one. If you would turn over to page 2 thank you, 22 December 16 to 15 January 2017, Mr Kerr-Newell has asked for 14 days' time in lieu. That's only a year or so ago. Do you recall what that was for? ---No, I can't recall what it was for.

Did you ever have any discussion with him about the fact that he was not taking annual leave but he was taking time in lieu?---No, I didn't. No.

If we could go to page 3, one day annual leave and this I think has been approved by you. If we could scroll up thank you, Madam Associate - is that your signature?---Yes.

But you've neither recommended nor not recommended?---Yeah. It must be an oversight by me, I'm sorry, yeah.

And you haven't dated the document?---That's correct.

Then over the next page, similarly for three hours' annual leave. Is that your signature? If we could scroll up, thank you. Is that your signature?---No.

Do you know whose signature that is?---No, not really. It could be Rodger Kerr-Newell's but I'm not too sure.

If we could go to document 0336^ page 2, do you recall on 13 March 2014 approving 15.2 hours' time in lieu?---I know - I know my signature's there but I - I can't remember, actually I can't remember signing that but I obviously did.

THE COMMISSIONER: It's unsurprising, but would that form have been produced to you like that, just ready for your signature?---Yes. Yes.

Or would you have created it?---No, I didn't create it. It would've been given to me to sign.

NELSON, MS: If we could go to page 5 thank you, and scroll down. That's your signature?---Yes.

You appear again to have failed to make a recommendation and to date?---And the date, yes.

And the next page thank you, is that your signature at the bottom?---No.

Go to page 9, thank you, and if you could just scroll to see the signature. Is that your approval - - -?---Yes.

- - - on 13 November?---Yes.

When you approved this were you also aware that it was approving Mr Kerr-Newell to be paid an airfare allowance?---No, I cannot remember that written there.

Are you aware of whether Mr Kerr-Newell was entitled to such allowance in February 2015?---No, I wasn't.

If we could go to page 12 thank you, and this one is for leave for six days of annual leave, signed and undated by both you and Mr Kerr-Newell. Is that correct?---Yes, that's my signature.

Was it ever your practice to pre-sign some leave application forms to be left with his - - -?---No, I never did.

I want to ask you about the secondary employment letter of 14 January 2016 which is 0331^ thank you, Madam Associate. Do you recall seeing this letter, Mr Edwards?---Yes, I do.

Did you see it on 14 January 2016 or sometime earlier or later?---I think it would've - well, I think that would be the date. It was a Thursday from when you - I think.

It starts off, "Following on from our discussion"?---Yep.

What was the discussion you had with the CEO?---He told me

that he'd been offered directorship of the Windfarms and that this was in New Zealand and he said that it was more or less what it says here, and there was no possible conflict. I then asked him - and he wanted to know whether I had any problem in taking up this position. I said, "Well, providing it has no impact at all on your position as CEO, I don't see a problem with it. So then this letter was produced.

Was it produced immediately or did it need to be typed up by someone?---I - I think the discussion was prior to that date, the actual discussion, I think, and then on that date that letter was produced.

THE COMMISSIONER: Both that letter and your response?
---Pardon?

Both that letter and your response to the letter, were they both produced to you at the one time or did you dictate or prepare the response?---No, I didn't. I didn't dictate the response but I - yeah, I don't know if they were received at the one time. Has the response got the same date?

NELSON, MS: It's on page 2 but I'll give you a hard copy because it's probably easier?---Okay. Yes, I remember - yeah, I remember this. Yeah.

You remember the front page?---Yep, and I remember him giving me this letter for me to sign. It was already pre-typed.

Did he give it to you at the same time he gave you the first page?---Yes, but I think the discussion was actually before that date.

In that discussion was there any explanation as to the type of work that New Zealand Windfarms did?---No. I can't remember anything, other than what's stated there.

Were you aware of what type of company it was or whether it was a company?---No; not really, no.

Did you ask him what his duties or role was going to be as a director?---No, I didn't.

Did you make any of your own inquiries about the nature of that company?---No.

Since 14 January 2016 have you made any inquiries as to what type of company it is?---No, I haven't.

Have you had any further discussions with Mr Kerr-Newell about his role in that company?---No, I haven't.

When did you become aware that he took up a chairmanship of the board of that company?---Since I've been here at the Crime and Corruption Commission.

When did you become aware that he was receiving an income from his role as a director and then a chairperson of that company?---Since I've been attending the Crime and Corruption Commission here.

Did you ask him on 14 January or earlier on during your discussion, whenever that occurred prior to that, about whether he was receiving any income?--No, I did not.

Why did you not do that?--Well, I thought in a sense it wasn't - that was a rather personal matter. I didn't - it was none of my business, that's what I thought at the time.

If we could go back to page 1 thank you, Madam Associate. You can see in the last paragraph it says, "Further, there will be no impact on my activity as CEO of the shire, as any company activity will occur in my own time." How could you be satisfied that it was going to occur in his own time if you had no awareness of what the company activity was, Mr Edwards?--I just took it as a matter of trust, I suppose. I just thought that he - he would do the right thing.

Were you aware of how often he was visiting New Zealand, particularly during 2016 and 2017?--Yes, because I signed the forms for him.

What did you think the purpose of those visits to New Zealand were?--Well, mostly I didn't actually know the reasons for his leave. He didn't always tell me but I presumed that some of them was for his business in New Zealand but he didn't actually convey that to me.

THE COMMISSIONER: So he'd produce you a form for leave?
---Yes.

Do I understand your evidence that he would not necessarily tell you what he was going to do during that leave?--No.

Thank you.

NELSON, MS: Did you consider any of the Shire of Halls Creek policies in relation to use of shire resources or secondary employment in the context of this request of you to approve his leave form?--No, I did not.

Did you consult his contract to see if that was going to be an impediment?--No, I did not.

Why not?--I think I just trusted his judgment. That's all.

What was it about him that made you feel that you could place such trust in him?--Well, I - I thought that actually he'd been open and honest with me on all matters so I thought - that's what I - the impression I got.

When you came to renegotiate his contract in 2017, sorry

16?---16.

Did you have cause to revisit this issue of his secondary employment?---No.

Were you aware that in June 2015 there was a shire policy that was drawn up in relation to secondary employment?

---No, I wasn't. No.

Did you consider whether his continuing secondary employment was a matter that should be reviewed during the annual performance review process?---No; and it didn't come up, no.

Did you ever discuss with him about whether there'd be any ongoing discussions about the impact his activities would have on his work as the shire CEO?---No, I did not.

How was it that you could assess there'd be no ongoing impact if you didn't put in place any mechanism to continually review that, Mr Edwards?---Look, I - I was happy with his performance as - as the CEO. I didn't think of any reason to question anything. The shire had - the financial state of the shire had improved and the assets that he'd - all our assets had been maintained and everything was - what he's achieved in the last four or five years was I considered to be substantial. I was quite happy with his performance so I didn't think there was any reason to do anything else other than of - if there'd been wanting in that area, then I would've obviously looked further.

Did you inform the rest of the councillors that he had secondary employment?---I think there's only two of the councillors I know for sure would know, but the rest of them - we got three new councillors, they probably may not know.

Would it surprise you that two of the older councillors have told the commission that they had no idea?---I would be surprised, yeah.

Were you aware that he was using his shire-issued telephone to make international calls to conduct Windfarm business?

---No, I wasn't aware of that.

Is that something that you would've found acceptable and within the terms of his reasonable use of that phone?

---Well, I don't think - from what I've heard here it's not reasonable use so, no, I wouldn't have.

Have you formed an intention of how you're going to deal with this issue on an ongoing basis after today?---Yes, I've got a lot to talk about with my council when I get back. Yes.

The annual performance reviews of the CEO, is it the case do you agree with Mr Kerr-Newell that you would usually

employ a consultant to conduct those?---Yes. We had the option of doing it ourselves or employing a consultant, so each time we opted for the consultant.

Is there any reason why that consultant could not also have been employed by the shire to conduct performance reviews of directors if there was a conflict between CEO and that director, a conflict of interest?---That's a possibility, that could have happened.

Would that have been something that you would have approved of - - -?---Yes.

- - - if an application had been made to you for that to occur?---Yes.

THE COMMISSIONER: And if you had known what you know now about the relationship between Ms Little and the CEO, is that something you would have taken into account?---Yes, I definitely would.

NELSON, MS: And knowing what you know now about the extent of Mr Kerr-Newell's exposure to New Zealand Windfarms, would you have approved his secondary employment to do that?---Well, I suppose not, yeah.

Is it a matter that you considered taking to the rest of council?---Yes, I will.

When you approved it in 2016, was it a matter that you considered that the rest of council might wish to be apprised of?---I didn't at the time, no. I didn't think it - - -

Could I have document 0993^, thank you. If we could just scroll down a bit further please, this is the latest contract of Mr Kerr-Newell?---Okay.

But it has been marked so that in a yellow highlight the clauses that have been changed from the 2013 contract are apparent so if we could just slowly scroll thank you, Madam Associate. Thank you, if you could stop just at that.

So the remuneration package, are you aware the Salaries and Allowances Tribunal defined the upper limit of a CEO's total remuneration package allowable by region?---Yes, I do.

Are you aware that Halls Creek is region 3?---Yes, I am.

From looking at that remuneration package, did you form a view in 2016 as to where it sat in terms of the range allowed for a band 3 CEO total reward package?---We knew it was on the maximum.

If you could keep scrolling; thank you, stop there.

The highlighted portion has been added in to the 2016 contract. It was not in the 2013 contract. Can you recall why this was added in?---It's - I vaguely remember. It's something to do with the region, the region index for The Kimberley.

Who was it that agitated for this change to be made?
---Well, I'm not too sure of that but I just presume it would've been Rodger Kerr-Newell.

Do you agree that the effect of that sentence is that when you do an annual review, the base salary is to be increased by the CPI as described in that clause?---Yes.

And of course the salary is subject to the salary capping provisions?---Yes.

Do you recall in the 2017 annual review, performance review, that you increased Mr Kerr-Newell's salary?---Yes.

By how much?---I thought it was \$10,000 actually.

Did you make inquiries as to whether that was an amount determined by the CPI, as described in 12.2.1?---I asked the consultant that did the increase - was still not over the capping provision, of the SAT salary provision. He advised me that it wasn't.

Are you aware of by how much it doesn't go over the cap?
---No, I'm not.

The recruitment consultant who did the performance reviews for you, did he have any particular type of relationship with Mr Kerr-Newell that you observed?---Not that I know of.

If we could keep scrolling, thank you. The superannuation was increased from 9.25 per cent to 9.50 per cent?---Yes.

You're aware of that?---Yes.

Keep scrolling, thank you - the annual leave airfare allowance, a cash benefit of \$4000 which is grossed up. In the 2013 contract the allowance was to be an economy class airfare to Perth grossed up, and it required one week's annual leave to have been taken. Why is it that provision was removed from the 2016 contract?---I don't know.

Thank you, if we could keep going. The 2013 contract had referred to a motor vehicle/Prado. Was there any particular reason why the type of motor vehicle was changed and the specifications were added to this contract?---The Toyota LandCruiser that he presently drives due to this, is a lot more robust than the Prado and these actually stand up to the harsh road conditions of the Tanami and Duncan Road. It'd be better suited to those conditions than the Prado.

Thank you, and down to the bottom of the page. Stop there thank you, Madam Associate.

12.12.1.6 refers to unlimited private use of the motor vehicle in Western Australia and the Northern Territory?
---Yep.

In the 2013 contract the CEO had to pay fuel costs where the fuel was purchased outside the shire and he was travelling for private purposes, but that proviso has been removed in his contract. Why was that?---We've had a lot of recent negotiations with the Northern Territory. What we're trying to do is - I mean, one of the things that I've asked the CEO, one of them is to pursue the bituminising of the Tanami Road which links Halls Creek to Alice Springs. I think that's, yeah, a huge advantage to our shire and that involves a bit more consultation with the Northern Territory so we've been to Alice Springs, we've been to Darwin and we will be going to Alice - it's not long and we'll be actually in Alice Springs for a conference and the reason why, that's the reason why that was included.

Thank you. If we could go to page - - -

THE COMMISSIONER: This question has nothing to do with anything: how long does it take to drive from Halls Creek to Alice Springs ?---12 hours.

It's along the Tanami?---Yes.

NELSON, MS: If we could go to page 13, to the bottom, at the beginning when this was signed in April 2016, you left his entitlement to six weeks' paid annual leave. In April 2016 were you aware of how much leave Mr Kerr-Newell had accrued, annual leave?---No, I haven't. No.

Was that an inquiry that you have ever made?---I did ask him not long ago how much annual leave he had left. He said that I could inquire with accounts, which I haven't done so.

You've heard evidence that he has over 600 hours, at least, of annual leave accrued?---Yes; I have now, yeah.

Were you aware of that figure?---No.

The size of it?---No.

If we could go to the bottom of page 14 thank you, why did council see fit to increase the termination period from three months to 12 months?---I suppose Rodger Kerr-Newell would've put that in. All I can think of is that I suppose he - he must have needed more protection than - that's all I can assume. Someone coming - a new council coming in may wish to remove him. That's all I can think about.

Mr Edwards, you as the head of the council agreed to that change?---Yes.

Was there any debate about that?---Not that I can recall, no.

Was there any discussion with the consultant, the recruitment consultant who negotiated this contract about that?---I can't remember. Yeah, probably - he would've mentioned it but I can't remember if there was any debate over it. I can't remember.

The recruitment consultant, when he was negotiating this contract was he acting for the shire or for Mr Kerr-Newell?---Well, I think he's acting for the shire. It's a difficult - it's a difficult question to answer actually because he does - he does also meet with Rodger Kerr-Newell, meet with him and then from that meeting he'll come to us so it's - but he is also - I know he is acting for us but he's also liaising with the CEO, so.

Did you or council get any independent advice about the terms of the contract of engagement of the CEO?---No.

If I could please play call 0791^.

Start of TI transcript, T0791^:

KERR-NEWELL: Hi this is Rodger Kerr-Newell. I'm sorry I'm not here to take your call at the moment, but please leave a message and I'll get back to you as soon as I can. Thanks.

FITZGERALD: Hi Rodger it's Mike Fitzgerald, I'm ah just waiting to pay my respects to the most revered CEO that the Shire of Halls Creek has ever seen. Ah before I leave town and head back to my abode in Canning Vale. Ah let me know where you are and if we can catch up mate. Cheers.

End of TI transcript.

NELSON, MS: This was a message left by Mr Mike Fitzgerald on 22 September 2017. Who is Mike Fitzgerald?---He's the consultant that does the CEO's appraisal.

The same consultant who was negotiating the terms of his contract?---That's correct.

Are you surprised at the familiarity between him and Mr Kerr-Newell, or was that not a surprise to you?---It's not a real surprise, no. I - he'd be on fairly good terms with him, I suppose.

Thank you, that can be taken down.

During the performance review on 22 September 2017, council also resolved at the September council meeting to increase the CEO's leave entitlement from six weeks per annum to seven weeks per annum. What was the reasoning behind that,

Mr Edwards?---I can't recall, no.

That was only about six months ago, wasn't it?---Yeah, I just - yeah, I'm sorry I can't - just can't recall that.

Do you think that was an appropriate course of action given that Mr Kerr-Newell had already had six weeks' leave from his 2013 contract and had accrued many hundreds of hours of annual leave?---Yeah. Well, I wasn't aware he'd accrued those hours.

Who was it that suggested that this recommendation could be put to council for their vote?---I don't - I don't - don't know.

Was increasing his annual leave a way of getting around the salary cap from the Salaries Allowance Tribunal?---Yeah. Yes, I think that was it. Yeah, yeah. Come to think of it, I remember, yeah, now it was, yes.

What is it that you remember about any discussions on that point?---I just - because we'd nearly reached the maximum salary cap, to - to increase any benefits to him was to provide another week's - I just remember that being brought up, another week annual leave - now that you mention it, yeah.

Who brought it up?---No, I don't know who brought it up.

THE COMMISSIONER: Was it a member of council or a member of staff, or Mr Fitzgerald?---No, I can't recall.

NELSON, MS: And the resolution was moved 6:0, so everyone was in favour of it?---Yes.

Was there any discussion about the terms of his improved salary package?---I can't recall. I don't think there was.

Did you consider whether increasing his package by that amount was contrary to the terms of his employment? If you recall at 12.2.1 it says, "The review each year shall result in the base salary being increased by an amount determined by the CPI." There's no reference to increasing his annual leave loading?---No, I wasn't aware of that. No.

Not something you considered?---No.

Nothing further thank you, commissioner.

THE COMMISSIONER: Mr Williamson, do you have any - - -

WILLIAMSON, MR: No, commissioner.

THE COMMISSIONER: Thank you, Mr Edwards, for your attendance during the week and today. When did you first find out that Salerno no longer acted for the shire?---When you told me, sir.

If you will take a little bit of advice, I think it would be advisable for council to seek the advice of a lawyer who is versed in local government law and procedure?---Okay.

But we will now adjourn and thank you for your attendance.

(THE WITNESS WITHDREW)

AT 3.02 PM THE MATTER WAS ADJOURNED ACCORDINGLY