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CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA

COMMISSIONER JOHN McKECHNIE QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 26 APRIL 2018, AT 9.34 AM

COUNSEL ASSISTING:

MS. K. NELSON

MS T. CHUNG

WITNESS: RODGER JOHN KERR-NEWELL

SWORN AT 10.03 AM

THE COMMISSIONER: Please be seated.

THE ASSOCIATE: The commission is about to conduct a number of examinations for the purposes of an investigation under the Corruption, Crime and Misconduct Act 2003. The general scope and purpose of the commission's investigation is to determine if any public officer employed by or elected to the Shire of Halls Creek engaged in serious misconduct in the performance of their functions of office or employment.

THE COMMISSIONER: I have considered whether an examination should be held in public in relation to each witness that has been called or will be called for slightly different considerations in respect of each. For each witness to be examined in public there is obviously a potential for prejudice and an infringement to privacy. Moreover, unlike adversary proceedings there are limited opportunities for a witness to publicly challenge another witness who may give adverse evidence.

Following Court of Appeal decisions in *A v Maughan* (2016) WASCA 128 and *AV v the CCC* (2013) WASCA 288, I am satisfied that the potential prejudice does not outweigh the benefit of the public examination. Specific considerations to which I have had regard are the fact that the examinees are public officers, the people of Halls Creek are entitled to know the details as to how the council is managed, openness avoids suspicion and rumour. It can build trust and confidence.

Publicity can change community attitudes about what may be acceptable conduct and other local governments may learn from the examination. A commission function is to provide information to public authorities about ways to prevent serious misconduct. Public examinations may also encourage others who may be aware of information to come forward and, finally, the commission's processes itself should be open to public scrutiny where appropriate.

So having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, I consider it is in the public interest to open these examinations to the public. However, at any time I may close a public examination and continue that examination in private either for a period or until its conclusion.

THE ASSOCIATE: Witnesses may be called for examination before the commission for all sorts of reasons. Many witnesses are called whose own conduct is not in question. They may be called because they can assist the commission by giving information about events, circumstance, systems, procedures or the activities of other persons. The examination of a person before the commission is but one part of an investigative process, the purpose of which is to get to the truth of a matter.

The commission is not bound by the rules of evidence and can exercise its functions with as little formality and technicality as possible. It will conduct its examinations as an investigative inquiry and not as an adversarial context, such as applies in a court, and may inform itself on any matter in such manner as it thinks fit.

An examination is an open-ended and very often unpredictable process and is essentially one that is intended to be instrumental in discovering facts which, once assessed by the commission in conjunction with other material available to it, forms the basis for its subsequent opinions concerning misconduct and any recommendations it might make.

All mobile devices must be off while an examination is in session unless directed otherwise. For reasons of fairness to witnesses, as well as the safety of those in this part of the building, the media will not be permitted to use cameras or to conduct interviews in the precincts of the hearing room.

These examinations will be live-streamed on the World Wide Web, on a link through the commission's web site. The commission may make nondisclosure orders from time to time. Compliance with them is essential in maintaining the integrity of the commission's work, thus the commission will view any contravention of these orders by the media as serious. The commission will take whatever action is at its disposal to ensure that non-publication orders are complied with.

THE COMMISSIONER: For this series of investigations and examinations, private and public, I have appointed Ms Kirsten Nelson and Ms Tracey Chung as counsel assisting the commission and I will invite Ms Nelson to make an opening statement.

NELSON, MS: Thank you, commissioner. These examinations concern possible serious misconduct in the performance of the regional local government at the Shire of Halls Creek. In recent history, commission investigations into local government have concerned either allegations of misconduct of elected members, or serious misconduct by certain shire officers. These examinations will focus on allegations of serious misconduct by both shire officers and elected members.

The commonality between all commission local government investigations is weakness in governance, leading to abuse of power. A well-functioning local government requires neutral accountability and governance from both the elected members and the shire officers. Councils that operate well and govern to a level that meet community expectations promote transparency, integrity and accountability in their decision-making.

The elected members, as council, represent the interests of

the ratepayers and are accountable to the community for ensuring the local government is efficient and effective to meet the present needs and future generations of the shire. The council must ensure that the CEO is as accountable in the management of shire resources, as any other shire employee. The obligations of elected members and the CEO are detailed in the Local Government Act and these examinations will test where those obligations may have fallen short in the administration of business at the Shire of Halls Creek.

The council is responsible for the performance of the local government functions. It does this by overseeing the shire officers' allocation of finances and resources. It also does this by determining the policies of local government. The shire president plays a key role in providing leadership and guidance to the community, and the shire president liaises with the CEO in order to do this.

The Shire of Halls Creek is both large and remote, occupying over 140,000 square kilometres of The Kimberley. The town of Halls Creek is a busy service town for local Aboriginal communities, pastoralists, and travellers exploring northern Western Australia. Halls Creek town has only 1500 residents and the local ratepayers pay the most expensive council rates in regional Western Australia.

The town of Halls Creek is the home base for the shire management. The shire is managed by the president and a council of six elected members. Elected members are advised, assisted and informed by the shire chief executive officer and his staff. The role of the shire CEO is to provide a framework for the administration and financial management of the local government, however ultimately the community expects their elected members to make the decisions as to how to wisely use ratepayers' funds for the benefit of all.

The CEO's role is one of advisor to council. The CEO must provide the information necessary for council to make informed decisions. The CEO may make recommendations to council, but his role is not to direct council to act in a particular way. One of council's important decisions is the employment of the CEO. The total amount he can be paid is determined by the Salaries and Allowances Tribunal, but the terms of the individual contract is determined by negotiation between council and the CEO.

The commission will be asking questions about the employment contract of the Shire of Halls Creek CEO, Mr Rodger Kerr-Newell. The commission investigation is exploring the possibility there has been a lack of governance by the council over the performance of Mr Kerr-Newell and other local government officers.

During these examinations, the commission wishes to explore allegations that the CEO has misled council, has not been accountable for his time and shire resources, and has

abused his position for personal benefit. In particular, there have been identified possible serious irregularities in the recruitment of executive staff, the remuneration levels of executive staff including the CEO, and the award of tenders for the procurement of major shire assets.

One of the functions of a CEO is to ensure that advice and information is available to the council so informed decisions can be made. The commission will hear evidence during the examination that may suggest council were not always well informed as to the activities of the CEO and the whereabouts of the CEO during ordinary business hours.

Another function of the CEO is to be responsible for the employment of shire employees. This involves following principles of merit and equity in selecting and promoting employees. There are questions to be asked concerning the process of employment of some shire executive officers. A CEO is responsible for ensuring the local government has proper record-keeping practices in place to support the important decisions made by council and the shire.

A CEO is responsible for ensuring the shire has clear policies guiding the management activities of shire officers. The commission investigation will be exploring these issues. A CEO is expected to have a clear understanding of his obligations as an employer and financial manager. In particular he must identify and manage potential conflicts of interest. If these obligations were deliberately avoided it could amount to an abuse of office.

When procuring major purchases for the shire the council is required to approve and oversee a fair and transparent tender process. The compliance standards that apply to the procurement of goods and services are for the purpose of ensuring clarity as to exactly what is to be purchased, set clear deadlines for the provision of the goods and ensure the shire receives the best possible value for money.

The tender process itself is very important, important because the process is part of compliance and regulatory requirements for government organisations but also because the process itself ensures a competitive marketplace. The commission is investigating the possibility that the shire officers deviated from the required public tender process when they arranged the purchase of six new vehicles. The new vehicles were for the shire executive officers and were purchased from Halls Creek Toyota in 2017.

The policies that govern public expenditure emphasise the need for proper planning before a tender is launched. In that way the true cost of a purchase is discovered. For tenders of the size of the purchase of six vehicles, council be given the opportunity to vote on whether to make the acquisition, determine the criteria against which the tender is to be judged and approve the total expenditure, and this should occur before the tender is put to the

market.

The commission has concerns that the tender process entered into for the acquisition of six shire vehicles may not have been competitive. The commission will explore the possibility that the tender was fixed because one bidder had an advantage. In a regional community such as Halls Creek there is no room for any public officer to take resources for granted or to act with a sense of entitlement when accessing those public resources.

These examinations will be concerned with some major themes of responsible conduct expected of public officers, the disclosure and management of conflicts of interest, possible misuse of leave entitlements and possible mismanagement of procurement processes. The community has a right to expect that public officers at all levels perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest, private affiliations or the likelihood that they will personally financially gain.

The perception that a conflict of interest has influenced an outcome can undermine public confidence in the integrity of the organisation and the individual. Unresolved or badly-managed conflicts of interest can actually lead to corruption or abuse of public office. Factors that can put a public officer at risk of a conflict of interest includes secondary employment commitments and significant relationships with staff. Concealment of a conflict of interest is not a management strategy.

These public examinations will provide the ratepayers and residents of Halls Creek with an opportunity to hear about decisions and behaviour of some officers of the shire entrusted to manage their resources. The commission has determined that it is important to hold the examinations of two public officers in public. The issues involved are capable of having an impact on public confidence in decision-making and good governance in the Shire of Halls Creek. Public hearings will enable government bodies to take action as they see fit and in an expeditious way.

The examination hearings are only a part, although an important part, into the continuing investigation into the Shire of Halls Creek. The matters to be raised will be those where there is a reasonable basis to suspect serious misconduct may have occurred. It is not intended to air allegations that have no substantiation. The conduct being investigated involves both public and non-public officers. However, the examinations open to the public will only involve two public officers and this is in line with the commission's jurisdiction.

It is important to have a clear understanding of the type of misconduct that can be the subject of a commission investigation. It must be serious misconduct which has a specific meaning for these purposes. Serious misconduct is

defined in section 4 of the Corruption, Crime and Misconduct Act. It provides that serious misconduct occurs if a public officer acts corruptly, corruptly takes advantage of his position to gain a benefit for him or herself or another, or commits an offence in the course of public office.

The jurisdiction of the commission is not confined to matters that constitute criminal offences. The conduct of public officers while they are on the job is the focus of commission investigations such as this. Thank you, commissioner. The first witness is Mr Rodger Kerr-Newell.

THE COMMISSIONER: I'll rise briefly and people can organise themselves.

THE COMMISSIONER: Please be seated.

KERR-NEWELL, RODGER JOHN called:

THE ASSOCIATE: Commissioner, we're not actually streaming yet.

THE COMMISSIONER: Is there any magic you can weave?

THE ASSOCIATE: It's on, but I get a little light.

THE COMMISSIONER: We'll carry on.

THE ASSOCIATE: Mr Kerr-Newell, before we begin it's necessary for you to take an oath. If you could please stand, take the Bible in your right hand and read the oath out aloud.

KERR-NEWELL, RODGER JOHN sworn:

THE ASSOCIATE: Thank you, you may be seated.

THE COMMISSIONER: Mr Kerr-Newell, before we start I see that you have signed the notice to witnesses?---Yes.

Did you read it?---Yes, I did, commissioner.

And did you understand it? And did you understand it?
---Yes, I did understand it. Can I say - I'm not trying to be difficult, I am hard of hearing and I found it hard to hear you even in that statement.

We'll do the best we can. Ms Nelson has a loud voice?
---Please feel free to shout. I'm the last person who will be offended about it.

Don't take it amiss if people shout at you, then.
Mr Vandongen?

VANDONGEN, MR: Commissioner, with your leave I seek leave to appear on behalf of Mr Kerr-Newell, together with Ms Salerno.

THE COMMISSIONER: You don't need leave, Mr Vandongen, and it's always a pleasure.

VANDONGEN, MR: Thank you.

THE COMMISSIONER: But the commission had correspondence indicating that Ms Salerno is the solicitor for the Shire of Halls Creek. Is that still the case?

VANDONGEN, MR: No.

THE COMMISSIONER: Because that answer came as some news to Mr Edwards this morning.

VANDONGEN, MR: That Ms Salerno no longer acts for the

Shire of Halls Creek?

THE COMMISSIONER: Yes.

VANDONGEN, MR: I had seen correspondence with the commission from Ms Salerno's office, advising that she no longer acted for the shire.

THE COMMISSIONER: No; no, she's advised us. Has she advised the shire?

VANDONGEN, MR: I don't know that. I don't know.

THE COMMISSIONER: Very well. Anyway, at this stage she no longer acts for the shire?

VANDONGEN, MR: That's correct..

THE COMMISSIONER: Very well. Thank you.

VANDONGEN, MR: Thank you, commissioner.

THE COMMISSIONER: And, Mr Vandongen, of course at the conclusion of the examination you will be given the opportunity if you wish, to ask any questions you wish.

VANDONGEN, MR: Thank you, commissioner.

THE COMMISSIONER: Ms Nelson, please yell.

NELSON, MS: Thank you, commissioner.

What is your full name, Mr Kerr-Newell?---Rodger John Kerr-Newell.

Is your surname the double-barrelled Kerr-Newell?---It has by practice become so, yes. You've asked me to bring a birth certificate. I have done so.

On your passport I understand that the surname is just Newell. Is that correct?---Yes.

Where do you live?---In Halls Creek, in Jinggul Street.

That's a shire property?---Yes.

Is it leased to you by the shire?---Is it?

Leased to you?---It is supplied to me by the shire as part of my remuneration.

Have you not entered into a tenancy agreement with the shire?---I'm sure I have.

You are the chief executive officer of the shire?---Yes, I am.

When did you take up that role?---In November of 2013.

Is it the situation that you were contracted to the shire earlier, in about mid-2013?---I was appointed in August, as I recall, of 2013. I came to the shire for a period of time in September of 13 to undertake some public consultation which needed done, and then took up my appointment as chief executive designate in November of 13 and formally took over either immediately before or immediately after - I think immediately after Christmas.

Does 17 December 2013 - - -?---Yeah, that could well be the formal date, yes.

As CEO designate as you described it, did you have all the powers of a CEO but you were not formally taking over the role until the other CEO had retired?---I wouldn't have said so. But the former chief executive was there and we did things in consultation so I would have presumed up to that date it would have been done on his authority rather than mine, but certainly after that date it was on mine.

Were you paid by the shire as CEO prior to 17 December?
---Yes.

When did payment start, salary payment start to yourself?
---I'm sorry, I can't hear you.

When did you first start to be paid by the shire?---I can't remember. It would have been around that period. I don't - I think they put me on the books, so to speak, probably in September and would have paid me for the period of time I was there in September.

Immediately taking up that position at the shire, what job or responsibilities did you have?---I was a self-employed consultant of my own company.

What company was that?---i93.

What type of consultancy did you run through i93?---I did work which was associated with policy, with governance; with those sorts of things.

You have a background in leadership of councils?---Yes.

What councils have you been CEO of?---In reverse order: District of Rodney District Council in Auckland; prior to that of New Plymouth District Council, prior to that Hutt City Council.

So over what time period have you been a CEO of a council either in Australia or New Zealand?---How long have I been a CEO of?

A council, taking into account all the councils you've listed?---A very long time; in excess of 30 years, I suspect.

When you started at the Shire of Halls Creek, were you given an induction handbook?---I was inducted by my predecessor and that included the handbook.

I'll show you a document, it will come up on the screen in front of you - 0904^ thank you, Madam Associate.

You can see this is a 62-page document. Is that the induction package that you recognise as having received? ---I couldn't tell you whether that was what it - I'm sure it changes from time to time. It certainly has in my time. If that's the precise one, I couldn't tell you. There is a 2013 version. If that's it, then that's the one I got.

Well, perhaps if I could show you page 4, thank you, Madam Associate, and if we could scroll just to the bottom of that page?---I saw - yes, I - I think it very likely that's the one I got.

And attached to the handbook, were you given a copy of the code of conduct at the time that operated in the shire? ---I'm sure I was.

If we could just look at page 34, thank you, Madam Associate.

So this is an appendix to the induction handbook. What was the expectation when you started work of the hours that you would be working as CEO?---My expectation - I took - the expectation was that I would work sufficient hours to ensure that the job got done.

If we could have document 0903^, thank you, Madam Associate.

This is just a stand-alone copy of the code of conduct in operation at the time that you started as CEO. You can see at the bottom right corner it says 20 March 2008. Do you recall reading that document when you started as the CEO? ---I don't recall that document. Was it attached in the induction pack?

It was attached?---But I - I don't particularly recall that.

Since you've become CEO have you had occasion to revise this document?---That's been - not me personally but, yes, I have caused it to be revised.

And why did you do that?---Because these documents need to keep up with time.

Who did you ask to do that job for you?---Variously it would have been Heather Perkins or Kellie Gill.

At the time you started as CEO were you given certain delegations by council?---Yes, I was.

Can I have document 0862^, thank you.

Do you recognise this document?---I recognise the delegations here. They are reviewed annually.

And who does that review? Who does that review?---Who does that review?

Yes?---It's a matter that is reported to the council.

So do you - - -?---I would do the review with all of the senior staff, um, as - the shire's a very small organisation. Effectively we have eight people who do everything. There are - there are other people who work in the shire but there are only eight people - so the delegation - and I don't pick a specific memory but as we do it annually, one of the things that I will raise, if somebody else doesn't raise it, at our weekly management meeting is, "It's time to review the delegation. Is there anything that's not working? Is there anything that's changed? Is there anything new?", and we will discuss it and we will address those issues, then that's presented by way of a report, identifying any changes and the reasons, to the council for their adoption or not.

And those changes, would they occur, as you said, only annually or more frequently?---Honestly I can't recall if we did it outside of the 12-month cycle. It's not in my memory that we have. It would - would have been done at least annually.

Before we go into this delegation document, can I ask you - you've mentioned a Monday management meeting?---Yes.

What happens at those meetings?---We discuss the business ahead of us in the week, matters which need to be addressed or dealt with, the agenda that's coming up, things which are relevant to the shire's business.

And who would be in attendance at those meetings?---The senior - all of the senior staff.

Can you name those people please?---Um, the CFO, Teresa Foster, the youth and community person, Margaret Glass, Bronwyn Little, Musa Mono, Phil our infrastructure manager, that's five. Who I am missing out? Kellie Gill, six. Who - who have I missed?

You mentioned earlier that there were eight people - - -? ---Yes.

- - - that basically ran the - - -?--- - - - myself, seven, um, our economic development manager, eight.

So there's no human resources manager as such?---So?

There's human resources manager?---Kellie Gill does that.

Kellie Gill. Now, you can see at the top paragraph here, 1(a), that you are primarily responsible for the appointment and management of staff. Do you agree with that?---Yes, I am.

And the only - would you also agree that the only fetter on your discretion there is that you have to act in accordance with the code of conduct?---It doesn't say that. It says precisely what it says but you would assume that the code of conduct had some impact on my thinking, along with a number of other things.

And would those other things also include your responsibilities under the Local Government Act?---Yes, they would - - -

If we could just - - -?--- - - - and good management.

Good management, yes. If we could have the Local Government Act, 0855^, page 3, thank you, Madam Associate.

This is just an excerpt of that very long act. If we could have clause 5.40, probably around about page two hundred and - or page 156, around about, thank you.

Do you have reason ever to consult - - -?---Yes.

- - - paragraph 5.40?---Yes.

Underneath that, 5.41, your functions as CEO are very prescriptively set out there. Would you agree?---Yes.

Thank you. If we could go back to 0862^ and paragraph 1(b).

What do you understand to be your delegation in relation to procurement?---The delegation is for the process of supplies, services or assets in accordance with the budget and the policy.

Would you agree that you can call tenders but not decide them?---I can call but not determine anything over a hundred and - currently \$150,000. Previously it was a lower number but - and it is determined by resolution of the council.

Under 1(g) you also had the delegation to prepare and execute the documents that are to go to council for those types of resolutions?---1(d).

1(g)?---(g). Yes, all right; yes.

Have you delegated that delegation to anyone else?
---Yes - - -

Who have - - - - - and that's all encompassed within the - my Delegations to Others register.

Where do you keep that register?---Where does?

Where do you keep that register of your delegations to others?---Of my sub-delegations is kept in the shire office.

Over the page on page 2, at 1 subparagraph (p) - - -?
---1 subparagraph?

(p) for people?---(p)?

(p)?---Yes.

You have the authority to appoint an acting CEO?---Yes.

Do you ever exercise that authority? Do you ever exercise that authority?---Yes, I do. On occasions when a decision may be made - there are many decisions that need to be made statutorily from time to time for the avoidance of delay for our customers, I always exercise that delegation.

So in what circumstances would you appoint an acting CEO specifically?---I would appoint that person in - principally I have appointed Mr Mono in that role because he's a senior and experienced employee. I have increasingly started to appoint other members of the management team, particularly for a short term or if Musa is not there.

You mentioned that you would do that because there are many statutory delegations?---There are lots of things which may need to be resolved on the day. Frequently we can talk about it but if ink is required on paper, then there should be a trace.

Do you ever do - do you ever exercise that delegation when you are physically in the shire?---Do I ever exercise that delegation when I'm?

What are the circumstance in which you would appoint Mr Mono - - -?---Mainly when I'm absent from the shire.

So how often would that occur?---Regularly. Everything that happens in the - the shire happens somewhere other than Halls Creek, if you see what I mean; a zone meeting, anything to do with local government meetings, anything to do with state government, to do with the territory government, the federal government, it means that I'm out of Halls Creek two or three or four - whatever number of days at a time.

Do you appoint an acting CEO every time that you're going to be away from the shire?---For a period of time, yeah. I cannot remember a circumstance where I wouldn't have done, I may not - - -

How do you make that appointment? Is it - do you put it somewhere in writing or is it done - - -?---Yes.

- - - orally?---Something in writing.

It's always in writing?---As far as I remember, yes.

And who do you notify of that decision?---I don't notify anyone - - -

Do you tell - - - ?--- - - - but all the management staff are aware of it.

So apart from the person who's acting and the rest of the management staff, it may not - - -?---Would know about it, yes.

- - - it may not be known. Is that the situation?---I don't publish a notice.

THE COMMISSIONER: Do you council know?---No. It is purely an administrative thing. The only time when it would arise was when I was absent on holiday and I would have - previously have told the shire president I - because I always ask the shire president to sign off my holiday and would've said, "I'll be away from X to Y and Musa or whoever will be acting in my capacity." As I said, I don't publish a notice. This is done simply for administrative convenience and is for a few days. If it's a week, then the shire president will know because I will be absent from a meeting we regularly have and so I will have told him and retrospectively, I guess, the councillors could be said to know simply for the reason as a minute of those meetings which goes to all councillors.

NELSON, MS: So is it the situation from that answer you just gave that if you're going to be away from the shire for a week, you will tell the shire president?---If I'm going to be away from the shire on holiday, I would tell the shire president in advance. If I was going to be away for a few days, if it didn't include a Thursday or another meeting we'd arranged, no, I wouldn't. As frequently the shire president and I are away together, yes, he would know because we'd be together.

And do you consider telling the shire president that you have exercised that delegation to be a sufficient instruction to the whole of the council?---Yes. I've got - I've also got to say I don't think a delegation has ever been utilised in the sense of, you know, something was signed. I'm trying to think of an example where it would have been. It's a backup in case and whether I'm on holiday or I'm in Perth or wherever, whoever was backing me obviously I would discuss a matter if it was of import. So in one way I - I'm always at work. That's the nature of the job.

Thank you. Now moving further down the page, subparagraph (u) for umbrella?---Subparagraph?

(u)?---(u)?---Yes.

You have the sole delegation for signing off when
your - - -?---Yes.

- - - staff have expended money on the shire account?
---Yes.

And you also have the sole delegation for making
submissions for grants to the state and Commonwealth
government?---Which is at?

(v)?---(v)?

Victor, v for Victor?---Yes. Again, as I'm sure you know,
I don't personally necessarily execute all of those things.
Part of that role would inevitably be included in the role
of the CFO, of the assets manager and so on and so forth,
or the youth and community manager or whoever.

If we could go to page 5, thank you, and specifically
paragraph 4 on page 5?---Paragraph?

4?---4?

Which is on your screen now?---Yes.

So you would agree that you have exercised the delegations
in accordance with the code of conduct and policies?---We
agree that I am to exercise those delegations fairly and
for the good government of the shire in accordance with -
et cetera, et cetera.

Thank you. Now, at the time you started working as CEO
designate, say, from September 2013 at the shire - - -?
---For a period of approximately two weeks.

Right, and then you came back I think you said - - -?
---Yes.

- - - in November and took up the appointment solely in
December 2013?---Yes.

So we're talking about that period of time. What was your
relationship with Bronwyn Little?---It's a longstanding,
ongoing personal relationship - - -

How long have you known her?--- - - - of an intimate
nature.

And it was at the time that you took up the position of
CEO?---It had been for some time before that.

How long had you known her?---A very long time. I first
would have met Ms Little - let me think - I would probably
have met Ms Little as early as the 1990s. It's a
longstanding relationship.

You employed her as a strategic planning manager?---Indeed I did.

Do you recall when it was that you employed her?---Shortly after - very early in 2014.

I'll just show you a document to refresh your memory - 0901^ thank you, Madam Associate, and if we could have page 3, thank you?---16 January, yep.

She's referred to here as Bronwyn Glasson. Can you seen on the page there that it's a contract between the Shire of Halls Creek and Bronwyn Glasson?---It does too. Incorrect, it should be Bronwyn Little. I can't imagine why that's the case. I think they're the same person.

When you say I think, is it you don't know for sure?---I know for sure.

THE COMMISSIONER: Then don't play with me?---I'm sorry.

Then don't play with me.

NELSON, MS: If we could go to page 6 thank you, Madam Associate, the responsibilities of her position are set out there over three pages and under 6, Specific Responsibilities. Do you recall that?---Yes.

What was the need at that time that had been identified for a strategic planner at the shire?---When I - when I was appointed and subsequently when I visited, it was very clear there was a degree of disarray in the shire, particularly in the policy space and the financial space, I guess, and one of the things which - and I'm now speaking specifically about this job, one of the things which had been neglected was the suite of plans which had just been introduced in WA Local Government Act and they related to the planning environment in the wider sense which starts with a community plan. Way prior to my appointment, the council had actually adopted a community plan but they were very unhappy with it and appeared to have adopted I was told, adopted it to ensure compliance rather than because they believed it. One of my early responsibilities was to deliver in that plan, in other words to revisit, and in fact it's why I even came in the September period to go through a process of validation, public consultation, which I did with a contractor because one of the issues had been the practice of the shire only on the town side of Halls Creek, when in fact it's much wider. What emanates from that if you get that right, then a whole bunch of other things suddenly start to get a little easier because it links to the local planning strategy. It's very hard to have a local planning strategy which isn't related to the community plan. The shire needed a local planning strategy. It had been trying to write one for a great deal of time. It had hired a consultant to undertake that work, who appeared to spend most of their time cutting and pasting statements from Wikipedia about the shire which

were fundamentally incorrect. I actually subsequently sacked that particular consultant. Also, because - because there's a whole planning set so if you get the community plan right, then you can do the strategic planning one, you can start work on the asset management plans and so on leading down the track but none of that practically existed at all.

Was there a plan for the strategic planner that you were to employ to also be a financial person?---There are many inputs to that, but they - the strategic - the strategic community plan is about articulating and having agreement from the shire to the ambitions of a community.

When did you first discuss this need with the shire president?---Well, it was identified to me either during my interview or shortly afterwards because like you asked me about it, it was blatantly obvious, one of the then councillors raised it with me directly, who was the one who was most upset about the - what she perceived to be a poor strategic plan. But the other thing which was driving it was that Western Australia particularly thinks in hierarchical planning structures and there was no basis for the arguments which we needed to make to the West Australian infrastructure plan, to the then arising plans which were being formulated by way of a White Paper for Northern Australia, for the subsequent Northern Australia (indistinct). None of that planning environment had been articulated.

So there was a clear and present need at the time - - -?
---There was a clear and present need to address those issues and at the same time as that was happening, previously the town planning scheme, plan - no, scheme, got to get the country right here - had changed because previously that applied singularly to the town site of Halls Creek.

I'll just stop you there?---It was expanded to include the IDO area.

Thank you. If we could we go to page 10 and you can see there that she was employed on a cash salary of a hundred thousand dollars?---Yes.

There was also provision for performance reviews?
---Annually, yes.

Now if we could have document 0902^, Ms Little's next contract that she entered into was on 1 August 2016. Do you recall that?---Yes.

It says that she's now a director of strategic planning. What was the reason for the change in title?---We changed all of those senior roles to the preferred nomenclature of "director"; other than that, of the CFO who favoured the term chief financial officer. It was simply done to align the naming strategy in the organisation. I considered it

to be a very minor matter and if people prefer one name over the other, I've always thought that was cheaper than giving them a pay rise or as large a pay rise as they might wish.

It was cheaper to change the title?---Changing titles is almost no cost at all.

If we could go to the salary at page 10 thank you, Madam Associate, you can see - - -?---It is 117.

Yes, in 2016. Thank you. Going back to 2013, did you have input into the advertisement for the position of strategic planning manager?---I would certainly have talked to the person who placed it, yes.

The position was advertised on 16 December 2013 and the applications were to be received by Monday, 20 January 2014. I'll just show you the advertisement, 0632^?---Yes. I don't recall the particular - yes, it looks like the advert.

And if we could have page 2, the advertisement actually says, you can see there under About the Opportunity - - -? ---I'm sorry, I - - -

If you look at about the middle of the page on your screen, I just want to point out to you that the position in the advertisement says that it's to report to the corporate services manager. Who was that at the time?---Yes?

Who was that at the time in December 2013?---I'm sorry, I still can't hear you.

Who occupied that position in December two thousand and - - -?---It didn't exist.

It didn't exist?---No, and which was perhaps the reason that one of the work had been done.

Who drafted the position description that was to accompany this advertisement? Who drafted the position description for - - -?---Well, it was a - - -

- - - the planning manager?---It was a position description of the shire but I drafted it and asked Ms Little, for the avoidance of doubt because she knew about that, to draft it even though she was not an employee as a favour for me.

When did you ask her to do that?---In December of the previous year.

Do you mean December 2013 or - - -?---Yes.

Is it possible that you asked her to do it a bit earlier than that?---Quite possibly. It was certainly in my mind from the moment I got back, so it could've been November. If you have an email which has a date on it, I'm quite

certain you are - I don't have perfect recall.

At the time you asked her to draft the position description, what instructions did you give her about that?---I gave her no instruction but I asked her because she had skill in that area and I was trying to find a solution to draft it around the need to produce a suite of plans, to be able to do it within the context of an indigenous - a significant indigenous population group, to do it within recognising it was within a policy context. Those things are reflected in the - - -

At the time that you asked her to do that, had you already formulated in your mind that she might want to apply for this position?---Oh, I suspected as much, yes.

How is it that you could ask a prospective applicant for a position to draft the position description that they would be applying for?---Because I could think of no-one better and there was no support capacity to do that within the shire.

Was that not a job you could do yourself, Mr Kerr-Newell? ---I was doing many other jobs at the time. As I said, there was a degree of disarray. I had next to no senior staff. We had just gone through the process of finding a new CFO. I did mean to address the planning ones we've already discussed. I was also in the process of appointing, um, Ms Glass to look after youth and community.

I'll ask you about that - - -?---I was simply finding the quickest way to get a piece of paper ready because unless we asked for people to apply, it was never going to happen.

And this was a position that we've established did not exist at the time you asked her - - -?---Yes, we did - - -

- - - to draft it?---It should've existed but it didn't.

Is it the case that she drafted it from scratch?---I gave her a frame, as I recall, to work around.

What was the framework? What type of form was that in? Was it a document?---Yes.

At the time you did that, was there an understanding between you and Ms Little that she would at some point come to live in Halls Creek?---Ms Little was of the view that she wished to do that. I was certainly happy with that. That's correct. There was no understanding that I would automatically give her a job.

No, I'm not asking you about that at this moment. I'm asking you was there an understanding on your part that she would come and live in Halls Creek? Was that a goal that you and she had?---That was our ambition, yes.

When did you form that ambition?---Whenever I decided I was

moving to Halls Creek.

You would have formed that ambition prior to August 2013 then when you went into the contract with - - -?---We had formed the view it would be convenient and pleasurable to live together.

Is it the case that you had that ambition since at least June 2012?---At least.

When you were living in Auckland - - -?---Auckland, yes.

- - - and she was living in Wellington?---Yes.

In furthering that ambition, did Ms Little apply for other jobs in the Shire of Halls Creek prior to applying for the planning one at the time you were - - -?---Not with the shire that I'm aware of.

Did you give her some assistance in getting her CV up to scratch?---I don't recall that I did. I may have commented on it. It's always possible and it may not have been written but I'm sure we would've talked about but she's a very competent writer. I wonder if she would've asked me for my contribution to her writing skills. It's unlikely.

If I could have document 0960^, thank you.

The first page is all the metadata behind an email that has been taken from a silver Apple laptop and we can see that the third line down, the email is from Bronie at an email address. Is that Ms Little's email address?---Yes, yep.

To you at an email rknwork@gmail.com?---Yeah, that's true.

It was sent from Bronie to you on 26 September 2013?---Yes.

By that stage you had accepted the position - - -?---Yes, I had.

- - - of CEO and had already been working in the shire and if we go to page 4, this email is a chain of two emails. The first one is the one that's on the lower half of the screen, so 25 September at 11.29 pm, Bronie wrote to you a paragraph that started "Development process"?---Yes.

Do you recall getting this email? Do you recall receiving this email, Mr Kerr-Newell?---Yes, I got it.

And you replied that she should omit one word. You see at the top of the page there's your reply?---Yes.

Then approximately three weeks later on 15 October 2013, if we could have document 0938^, you can see that this is an email sent on 15 October 2013. Is your screen flickering?---Yes.

That's also an email sent to you rknwork@gmail.com?---Yes.

And attached to that email at about page 7 - - -?---Yes.

- - - is a four-page document and it's a submission for selection criteria from Bronwyn Little?---I'm sorry?

A submission from Bronwyn Little?---Yes.

Did you look over that submission for her, Mr Kerr-Newell?
Did you look over that for her?---I'm sure I did, yes.

And that was with the purpose of her getting a job somewhere in the Shire of Halls Creek area?---Yes, at the Department of Housing.

Yes, to be fair, she initially applied for a job at the Department of Housing for the area manager remote north which has nothing - - -?---She was seeking employment - - -

- - - to do with the shire?---She was seeking employment in Halls Creek.

Sorry?---She was seeking employment in the Kimberley.

And why was she seeking employment there?---Because she wished to come to the Kimberley.

Why did she wish to come to the Kimberley?---Because we had a relationship.

The commission is in possession of two emails sent on 24 November, so this is before the position has been advertised for the position Bronwyn was given, 24 November 2013, in which Bronwyn has sent you a draft of the position description for a strategic planner at the Shire of Halls Creek and it's - document 0942^ is the first of the emails?---Yes.

So that's sent at 6.05 in the evening from bronwynlittle@gmail.com to your gmail account?---Yep.

Do you agree with that, and at page 4 please, Ms Little says that she will send you the rest of the document that she has drafted tomorrow night - - -?---Yes.

- - - but we can see what she has sent you then two pages over, thank you, Madam Associate, page 7, and this goes for all pages. Do you recall receiving this document? Do you recall receiving this document from Ms Little?---Yes.

And why has she sent it to your gmail account?---Because that was how we communicated it.

Why did she not - - -?---We communicated through gmail.

Why did she not send it to your shire email account?---I can't comment on that. It made no difference. It both came to me, and I think I sent it on. I honestly can't

remember but I'm sure I would've sent it on to my shire account, and I'm pretty certain you've got all my emails, so you must - - -

Was it a - - -?---I would be very surprised if I didn't send it to my shire account because that's the way it would get into the system.

Do you accept, Mr Kerr-Newell, that you sending it from your personal gmail account to your shire account would not raise the level of suspicion of Ms Little sending it straight to your shire account?---All of my devices have both. All of my email accounts are on it. I understand the point you're making.

So who at work had access to your work email account?---Everyone - no, that's not true. At the very least it would have been whoever was my PA and whoever fulfilled the role of executive services. I don't think there was anyone else.

Did they also have access to your gmail account?---No. They would've only had access to - - -

If we could have document 0633^. This is the final version of the position description that attached to the advertisement?---Right.

And the highlighted portions are those portions that were changed from the version Bronwyn sent to you. Do you understand what I mean?---Sorry?

The yellow highlights on the screen in front of you - - -?---Yes.

- - - are the changes in words that have been made at the Shire of Halls Creek from the version that Bronwyn has sent through?---At least one of them is wrong. It didn't report to the management of corporate services yet. Yes, I understand.

So you can see that the final position description had the words "planning officer" changed?---Yes.

"Manager corporate services" changed?---Yes.

And so on, if we could just scroll slowly through the document?---I'm presuming you've identified any differences - - -

Correct?---Right, yes.

So that's a difference from Bronwyn's version?---Yes.

It's dated 5 December 2013, the final version. Would you accept that the vast majority of this document that was the position description for the advertisement was drafted by Ms Little?---Yes, I asked her for the avoidance of doubt.

Do you accept that that put her in a distinct advantage when she applied for that position, Mr Kerr-Newell?---No. She was not disadvantaged by being part of it. That - but - I concede or I agree - - -

No. She - - -?---Is she advantaged by it? I don't think so. She's doing it to - as a favour for me on this occasion. She is doing it - describing the job as I wished to execute it.

But at the time you asked her to do that, you had an ambition, in your words, for you both to live together at the Shire of Halls Creek?---I'm well aware of - when I said yes - nonetheless I was only ever going to appoint someone who had a capacity to deliver the things the shire needed. In retrospect I wish I hadn't asked her to do it but I had a substantial volume of work to undertake at that time and that was the - the strategy I used to achieve it. As I said, a strongly under-resourced organisation. I wished to ensure that I met my commitments to the shire to deliver on all the things they needed.

Would you agree she was put in a position where she could craft the description of the job she was eventually to be given so that it suited her - - -?---She could have done that.

- - - it suited her ambitions for the job but also it suited - - -?---They were nonetheless the description for the job that I sought.

Ms Little's application was submitted electronically from New Zealand because at that time she was still living in New Zealand. That's correct, isn't it?---Yes.

And prior to her submitting it which occurred on 22 December in the late evening, did you have a chance to look over her final submission?---I don't recall doing so.

Just to refresh your memory, the commission is aware that you arrived in New Zealand in the early hours of that day, 22 December 2013?---I must have done it, true. I went back for Christmas.

Did you see Bronwyn over that Christmas period in New Zealand?---I don't think so. It's very likely. Honestly I'm sure I would've seen her sometime during that Christmas period, I think, but certainly we had a family Christmas with the children and I'm pretty certain she would've gone to her family.

Did you have an opportunity to discuss with her the application she was going to submit for the position, the final - - -?---Over that period of time, I don't think so.

But it's possible?---It's - anything - yes, it's possible. I have no clear memory that that ever happened, and my

memory is reasonably good.

When did - - -?---This is a period, what, nearly five years ago.

When did you decide to interview Bronwyn for the job?---Um, immediately I came back, I wanted to get on with things because it was one of the key jobs. The three people who made up the interview panel, that is myself, Musa - Musa Mono - Musa Mono and Heather Perkins, we all had reviewed the people who had applied. We used the recruitment organisation, who went through a pre-screening process. They had, you know, key questions that we ask people to respond to. I suspect that if it had gone to Heather, she would've distributed them to Musa and myself. We would all have reviewed those. We came together. We agreed there was a shortlist and the shortlist was singularly of only Ms Little.

You say you did that immediately on your return to the shire?---I can't remember which day I did it. It - well, not - probably wasn't immediately but certainly very shortly after my return.

You flew back in from New Zealand on 3 January - sorry, you left New Zealand on 3 January and flew back into Sydney - - -?---I would've back - back the following Monday, whatever date that was.

So you flew back into Sydney, arrived on 4 January, so is it reasonable that you were in the shire by 6 January?---I would've thought so.

On 7 January, Ms Little was sent an itinerary for her to attend for her interview?---Yes.

I previously told you that the application period for that job was open until 20 January. How is it that you were arranging the interview of one applicant on 7 January?---Because there had been no other applicants. I wanted to get on with things.

But the applications were still open. You could still submit an application up until the 20th?---And no other applications were received. You get a rush at the beginning of it and - - -

THE COMMISSIONER: But you don't know that. You don't know that. Until the application period has closed, you don't know - - -?---My experience - - -

- - - what you might - - -?--- - - - tells me that you're going to get all the good applicants first. As it - the reality is that there was no other application after that date. However - - -

The reality might be that, as it turns out, but at the time when you are arranging for her to come - - -?---I was

taking a risk in doing so.

You weren't taking a risk. You were deliberately arranging for her to come before applications even closed. How can you justify that?---I personally don't recall what date they closed. If you tell me it was - - -

20 January?---Oh, I accept what you're saying.

Well, it's what I said. I said how can you justify - - -?
---Oh, what I did.

Carry on, Ms Nelson.

NELSON, MS: Do you recall how many applications you received for this position?---Eight or 10.

No, there were actually about 16 and on 16 January 2014, so four days before the close of the application period, you received an application from a Ms Stella Goldwyn. Did you ever look at that CV?---I'd need to look at it, no.

Can I have document 0872^.

You can see from the metadata on the front there it was sent on 16 January to sso@hcshire?---Yeah.

Which was the - - -?---I don't recall the name but if you show me the CV, I'm likely to remember.

Page 3, thank you?---We would need to go to the CV.

Go to page 4, thank you?---Well, sorry, could you go back a bit? It may well have been there, yeah. It looks mildly familiar. I couldn't say with absolute certainty it was there but it looks like it was sort of the CVs we received.

She was a government business manager for the Department of Family, Housing, Community Services and Business Affairs, responsible for implementing the Northern Territory Response Act 2007, involved in the Council of Australian Government's Closing the Gap, et cetera, et cetera?---Yes.

Has demonstrable experience interacting with Aboriginal and Torres Strait Islander people, worked for the Northern Territory and Queensland governments. Is this not someone that might you at least be interested in interviewing, Mr Kerr-Newell?---Given the cost of interviewing and the strategy we had adopted with interviewing, no, I didn't think that person had sufficient experience in statutory planning nor, yeah, in the delivery of what was in Western Australia quite a new planning framework.

THE COMMISSIONER: Did Ms Little have that experience coming from New Zealand - - -?---Um, I thought she did.

- - - in the West Australian model?---It's very - - -

You just rejected - - -?---similar.

- - - this woman for that reason?---Sorry.

You just rejected this woman for that lack of experience?
---Yes.

Well, think about it and read this over the break that we will now take because I would like to know from you why this woman wasn't suitable for interview with her experience and what qualities Ms Little had from her experience that justified her being interviewed and this woman not being interviewed. You can think of that over the break. We'll take 15 minutes.

THE COMMISSIONER: Please be seated.

NELSON, MS: Mr Kerr-Newell, would you agree that Mr Goldwyn's experience in town planning, in Aboriginal communities might be a reason to at least interview her for the position at Halls Creek?---No, I would not.

But isn't it the situation at the time that you received that application, you had already entered into the contract with Ms Little?---That's true.

So in fact it was irrelevant what experience she may or may not have had; I mean, Ms Goldwyn, because - - -?---You asked me whether or not I would've interviewed her. The answer is no, she had insufficient experience.

But isn't the point that you could not even consider her application because you had entered into a contract already with Ms Little?---That, I agree, makes it more difficult. However, that person would not have got that.

THE COMMISSIONER: What experience did Ms Little have with Aboriginal communities? Not Maori communities, but Australian Aboriginal communities?---She had none.

Thank you?---But that - if I may continue, Mr Commissioner?

No, you've answered my question and Mr Vandongen will no doubt have noted it. Carry on.

NELSON, MS: Isn't it the point, Mr Kerr-Newell, that it's not so much about whether Ms Little can do the job or she can't do the job, it's how she got into the job that is the problem? Do you understand that?---I understand what you're saying, yes.

I'm not standing here saying that she cannot do the job and do it well?---I understand that.

I'm saying that the process by which she was put into that job was flawed. Do you accept that?---I don't accept that.

The process with which she was put into the job was one driven by time and necessity. In this occasion and on other occasions we interviewed immediately we get towards the end, simply because we need people and it takes a long time to get there. I was confronted in that - in my then new appointment with a need to start changing something. It is not a - - -

Well, you - - -?---I agree it is not a perfect process. I wouldn't say it was flawed. I would say, though, it is not perfect.

Mr Kerr-Newell, you had the management responsibility as CEO to employ people?---Yes, I did.

You could instruct your staff as to how long a period an application was to be available on the recruitment web site?---I'm sure I did.

You actually employed recruitment consultants to do this - - -?---Yes, I did.

- - - particular position advertisement. You could have instructed them to make it a shorter time frame if time was of the essence as you say, couldn't you?---In retrospect, I wish I had.

You had already by 7 January decided that you were only going to interview Ms Little, hadn't you?---There was no other candidate in my opinion, and in the opinion of the two other people who were involved in the short-listing, who could meet those tests.

And those two other people were Ms Perkins - - -?---Sorry?

The two other people included Ms Perkins?---And Mr Mono.

What was Ms Perkins' role at the shire?---She was executive services manager and as is common, or maybe it's not, we had very few staff: people have multiple roles.

Did you tell Mr Mono and Ms Perkins that you had a prior relationship with Ms Little at the time that you decided to interview her?---I told them prior to the interview.

What did you tell them?---I said I had a long and close personal relationship with Bronwyn, extending over many years. I suppose if they had known my CV, which they may not, they would have observed that we worked at the Hutt City Council 20 years previously and I have continued to know her since that. But I made it clear prior to - I said a number of things at the beginning of the interview, I said that we had agreed there was only one person who looked as if they were capable of doing the job, that we should proceed and interview that person. I said that I had a long and close personal relationship with Ms Little. Did I say I had sex with her - and I'm sure I shouldn't have said that at that moment - I didn't. These are people

I've known for two weeks but I made it clear we had a long and enduring relationship. I said because of that, that I would not be taking part directly in the interview; rather, that that task would fall to Ms Perkins and Mr Mono and I would accept their view. The question that needed to be addressed was: was Ms Little capable of undertaking that job and the answer to that could either be yes or no. If it was no, then we would - we would re-advertise the job.

THE COMMISSIONER: But you hadn't finished the applications for this one, let alone re-advertise?---That was if Ms Little, in the opinion of the other two, did not - - -

But I come back to the fact that I cannot understand how you fly someone over, interview them and give them a job before the application period has closed?---Because I'm not saying that the process is perfect.

I'm not saying it's perfect?---I am sitting 3000 kilometres up in the bush - - -

I'm asking you - - -?---I'm trying to make a difference.

I am asking you whether the process was corrupted by you? ---I believe not.

Carry on.

NELSON, MS: I want to show you a document, 0956^. This is an email headed Deliverance, sent on 20 June 2012 and if we could go to page 3, do you recall receiving this email? ---Yes.

Who drafted it?---I don't know. I presume Ms Little.

If we could scroll down please to page 5, so in 2012 Ms Little is looking for a new job involving planning in a council, a consultancy, or perhaps not planning?---Yes.

Why was she looking for a new job?---I'm sorry?

Why was she looking for a new job?---I don't know what she was thinking at the time.

Was it because you had moved to Auckland and she wanted to be near you?---Yes. Yes.

If we could go over to page 6 and to the bottom of that page, and under the heading Rest of Family, subparagraph (c), "Need a story for living in Hackett Street." Who was living in Hackett Street? Was that your address?---Yes.

"Lodger okay, but need to establish a space in the house to make it believable"?---Yes?

When you and Ms Little had the ambition to live

together - - -?---Yes.

- - - was it something that you discussed, that you would keep the true nature of your relationship covert?---No.

What about in 2012, was that something that you discussed? ---I don't understand what you mean by covertly.

Under wraps, so it wasn't apparent that you were in an intimate relationship?---No. By its very nature my wife knew about it.

But for the rest of the world, did you want to keep it a secret?---I had no thought of that matter.

What I want to suggest to you is that Ms Little at the very least still had this thought when she came to the Shire of Halls Creek and that you and her kept the nature of your relationship secret for quite a number of months, if not years, after she arrived there?---My view is we were neutral about the relationship. It was very clear we lived in the same house.

But when you told Ms Perkins and Mr Mono at the time of short listing for applications that you had a close relationship with Ms Little - - -?---Long and close relationship.

Close personal relationship, you said you didn't tell them that it was an intimate relationship?---No, I did not.

So from their point of view, they could have thought it was just a close working relationship?---I said a long and close relationship. Yes, I suppose they could have thought that. I don't know what they thought.

Wasn't it incumbent on you, Mr Kerr-Newell, to declare the true nature of the relationship and to step back from the whole recruitment process of Ms Little?---I think it was incumbent upon me to declare the nature of the relationship. I think that the process which we adopted in that set of circumstances was not an ideal one but it was one which allowed me to step back and it gave the power of decision making to the other two interviewers and I said as much to them.

THE COMMISSIONER: Was that recorded in writing anywhere? ---I'm sorry?

Was that recorded in writing anywhere?---Was that before - - -

Was it recorded in writing anywhere? Normally when you have a job application, it would be written up?---If it was, it would've been in the interview notes and I doubt if they exist anymore.

Very well?---I accept that I have not got a piece of paper

to support it.

NELSON, MS: Did you tell Mr Mono and Ms Perkins that Ms Little was staying with you when she came over to - - -?---Yes.

- - - Halls Creek for the interview process?---Yes, for the reason that anyone who comes - came, comes to an interview would have to be accommodated somehow and we would have traditionally put them in the, um, local hotel, so I would have said, I have no doubt, "Heather, there isn't a need to make that booking. She's my close personal friend and she'll stay with me".

She arrived in - yes, in Kununurra on the day before the interview, 15 January 2014?---That sounds right. It would have been arranged that she would have - because getting to Halls Creek's a challenge. I can't remember which route she came, whether it was through Sydney, Darwin or Perth, Kununurra. She would have flown there. We or the recruitment company would have provided a vehicle, a rental vehicle for her to drive though.

In the itinerary that she was sent on 7 January 2014, it has accommodation booked for her in Halls Creek at the Kimberley Hotel?---And she didn't stay say there, so that would have been amended. It may well have been at that point the accommodation would've been booked because it looked like a standard issue, um, I between the date - the two dates would have made it clear that that booking was not required because she didn't stay at the hotel.

How long before the interview took place, which was on 16 January, did you tell the other panel members that you had a close personal relationship?---I didn't do that until the date of the interview.

How long in time before the actual interview did that occur? Was it as you were walking into the room?---We would have assembled together to do the interview. I would have said it at the time because I wasn't planning to ask any questions, which is why I passed it to them.

And had you formulated the questions with them that were part of the interview?---I - I doubt that I did. The questions were probably formulated by Heather Perkins and if not by her, by the recruitment company possibly.

When you made that disclosure to Mr Mono and Ms Perkins, what was their reaction?---They said "Fine" and we carried on.

Did they ask you - - -?---The interview took place.

Did they ask you any specific questions about the nature of the relationship?---I can't remember. We're speaking about a time four and a half years ago.

What did you do after the interview with Ms Little?---I asked the other two whether or not she was appointable, um, they were of the view she was. I accepted their decision and I was not displeased with it.

And presumably you had had Ms Little to stay with you in your house the night before the interview?---Yes, she did.

Did you discuss the interview questions with her?---No.

Are you sure of that?---It's a long time ago. I have no memory of it.

Can you see, Mr Kerr-Newell, how it might be perceived that you had an actual conflict of interest in being involved in the recruitment of - - -?---I - - -

- - - someone whom you had an intimate relationship with?
---I understand the point you're making.

Do you agree that you had an actual conflict of interest?
---I believe there was a conflict of interest and I believe that I addressed that conflict of interest by not taking part in the decision making around her appointment.

You addressed it by not taking part in it. Is that what you said?---In effect, yes, because if I say to the people who were party to the interview, "This is the only candidate. The decision we have to make is whether or not to appoint her or re" - and if we don't, because we had by that stage agreed that the short list is only one, then we would have to re-advertise the job, um - - -

But you were part of the short listing discussion. You were part of the short listing discussion?---We were all part of it.

And at that time, Mr Mono and Ms Perkins did not know that you had a close personal relationship with Ms Little?---I had not disclosed it to them, no.

Can you see - - -?---As I said, the time that I disclosed it was as I have described.

So at the time that you were discussing all the applications that you had at that point, Mr Mono and Ms Perkins had no idea about your prior relationship or current relationship with Ms Little?---The process we used to identify the short list was that we would all have had access probably via Ms Perkins to the file which from time to time was downloaded from the recruitment company.

So you had influence over who was going to be interviewed?
---Yes, I did.

And at that time - - -?---It's inevitable.

- - - you had an actual conflict of interest, didn't you?

---Because we're not making an appointment, I don't think we've arrived at the point of conflict.

Mr Kerr-Newell, I will just read from the code of conduct that was in place at that time:

Council members, committee members and staff who exercise the recruitment will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.

Should you not have disqualified yourself?---The process I used had the effect of disqualifying me from the decision making.

THE COMMISSIONER: Sorry, that doesn't make any sense to me. That doesn't make any sense to me, the process you used when you were a part of the short listing, were present at the - - -?---Interview.

- - - interview and acceded to the views of the others. How did you disqualify yourself?---I didn't.

Carry on.

NELSON, MS: Because you understand what a conflict is, don't you, Mr Kerr-Newell?---I think so.

I'm going to take you to your evidence before the High Court of New Zealand which is at 0212^ and page 30. Do you recall giving evidence in the trials of Mr Borlase and Mr Noonan?---I do.

At paragraph 15 you're asked:

And what you said, which I don't think was mentioned in evidence-in-chief, was that it is not illegal or inappropriate to have a conflict of interest, providing it is declared and managed?

You answered:

That is so. This is New Zealand. It's essentially a small country. There are a limited number of people there. Conflicts pop up from time to time. The way you deal with a conflict of interest is to declare it, and then you can determine the course of action you take. If the conflict is inappropriate, you cease one side or the other?

---Yes.

You did not do that in this case did you, Mr Kerr-Newell. You did not declare the conflict at the appropriate time?---I believe I did.

What, walking into the interview: walking into the

interview?---At the beginning of the interview, yes.

Was Ms Little in the room at the time that you made this declaration?---No, she wasn't. And had either of the other two interviewers sought to include people in the shortlist, they would have been included. I - I have, and see no role in limiting a shortlist.

But at the time, if they had known that you were in a close personal relationship when you short-listed the applicants, they might have sought to put in extra people, mightn't they?---It - I can't comment on that.

And indeed if they had all the applicants' applications at the time that you did the short-listing, it also might have been the situation that there were more people to be interviewed, mightn't they?---They may well have done.

Previously I showed you section 5.4 of the Local Government Act which was about the principles affecting employment by local governments and I'll just read you paragraph (a):

The following principles apply to a local government in respect of its employees. Employees are to be selected and promoted in accordance with the principles of merit and equity.

Would you agree that you departed from those principles when you recruited Ms Little?---I bore those in mind.

Ms Little came to work at the shire in February 2014 and she immediately commenced living with you, didn't she?
---Yes, we shared a house.

At that time did you tell the shire president or the rest of council that you were in a relationship with her?
---Well, of course I was in a relationship with her, so yes. Did I tell them that I was in a close personal and by that I presume you mean sexual relationship, no.

When it came to doing Ms Little's performance reviews did you see fit to have those conducted by an independent person, given your relationship with her?---No, I didn't.

Why not?---There was no easily available independent person. It is quite an isolated place.

Her contract actually provides for a person to be appointed to do annual performance reviews, doesn't it?---For me, yes.

It also provides - - -?---As indeed we do have, well - - -

If we could have 0901^ thank you, page 9, or at the bottom of page 8 going on to page 9: "8.1, Annual performance reviews; 8.2, 10 working days' notice; 8.3, You may choose to get an external facilitator"?---Yes.

So there's provision, express provision in her contract for that to occur, Mr Kerr-Newell?---Yes, there is.

But you declined to do that?---I chose not to do that because the only person who I have come across who is practised and skilled in those things or anyone who's practised and skilled in those things are based in Perth. The shire cannot, sadly, afford to move those people up to do that.

They do it for you don't they, Mr Kerr-Newell?---Yes, they do.

Could you not do it as a job lot? Could not that person do all the performance reviews in the situations where you have a conflict?---Our performance reviews are done throughout the year. I personally mediate, moderate or conduct performance reviews for every member of staff, so therefore we do approximately one a week and we do it around about the anniversary of their appointment.

So annually?---Yes, formally annually. Our performance review occurs every week for everyone at our management meeting.

I'm talking about the formal annual review?---Yes, I understand that.

Now looking at the first performance review, it's document 0963^ thank you, Madam Associate, Ms Little commenced in the position on 24 February 2014 and the first performance review you can see is 11 September, the six months' leave review?---Yes.

If you could just slowly scroll through the document until the last page thank you, Madam Associate. Sorry, could you stop just at page 5 thank you.

Is that your writing there? Is that your writing on the page, Mr Kerr-Newell?---Most of it is, yes.

The lighter writing is that yours, or the darker writing? ---Sorry?

The lighter pen or the darker?---The lighter pen is mine.

Thank you. If you could go over to page 7 and what is it that you have said there?---What is?

What have you said in her concluding remarks for her performance review?---"Excellent start; \$5000, with effect from six-month anniversary."

So given that she started on 100,000, she's now earning 105,000 within six months?---That's correct.

If we could go to 0964^, this is a directive from you to the payroll officer on 31 March 3015?---Yes.

In which you've increased Bronwyn's salary up to \$112,000?
---Yes.

So in the first year of her employment her base salary has in effect gone up \$12,000?---That's correct.

Then if we could go to 0965^, this is the performance review for 1 March 2016 so one year later?---Yes.

If we could go to the last page, what is it that you have concluded there?---I'm sorry?

What have you concluded for her performance review there?
---"Excellent year, particularly the post LP" - the local planning strategy - "and the execution of the resolution of the post office issues and the opening of the post office.

And you've increased her salary by another \$5000?---Yes, I have.

And then if we could go to 0966^?---Yes.

By May 2017 you've increased her salary again to \$124,000 - - -?---That is correct.

- - - which was, in effect, a \$7000 increase. If we could go to the last page of this document, thank you, Madam Associate?---All of those increases that - yes.

What have you concluded there?---"Excellent year. I accept other work substituted for the IPF" - can't remember what that was at the time - "and that the IPF was going to become" - I can't remember what the IPF was - "that it should be the focus for the coming year." When I made the decisions about people's remuneration - not just Ms Little, I mean, all of the senior staff - in the main they start on very low salaries for the tasks they were employed to do and that for me is an element of risk-sharing with the employee. If you're that good, your salary will increase. My decisions about the total level of remuneration which really is a cash salary because the remainder of it - airfare allowance - the remainder of it really is puffery around houses and the like as informed by the survey of local authority remuneration levels across Australia, Macarthur.

You also consulted your council about pay increases, didn't you?---No.

What they would accept?---No.

Isn't it the case that the council agreed to two per cent pay increases for shire staff?---No.

That's never seen the case?---No.

If we look at Ms Little's remuneration in comparison to the

other shire officers - 0869^, thank you, Madam Associate.

So this is a comparison of the other directors including Ms Little?---Yes. I'm not quite certain why Rachel Donovan, Perry Kearney are there; however they are.

And you can see that it has got - the first column of numbers is the base salary of each of those employees?---Yes.

And then it indicates the new base salary and the last column is the percentage by which the two vary?---Yes.

What can you see about Ms Little's percentage?---I see that it's higher than other people's but I'm not surprised by that.

Considerably higher, isn't it, Mr Kerr-Newell?---Yes, it is. It represents her engagement and delivery on the job. As I said, everyone has got a relatively low rate. I think looking at various percentages is in itself misleading. If you look at the new base salary line, you will see there is a reasonably level of comparability splitting the two I've identified across the organisation. I don't think there's anyone on that list having in fact personally recently reviewed the survey remuneration rates across Australia and WA and small local authorities in particular. All of those remunerations are at or under the median value.

Mr Kerr-Newell, you could go on for 30 minutes explaining why Ms Little should get a 5.98 per cent variance between her base salary and what she's getting now but the issue is that there is a perception of a conflict of interest due to the nature of the relationship you have with her, isn't there?---I hear what you're saying.

THE COMMISSIONER: Well, that's not an answer to counsel's question. Do you agree or not?---I'm sorry?

That's not an answer to counsel's question simply to say, "I hear what you're saying." Do you agree with it or not?---I don't agree with it.

So you don't agree there's a perception of a conflict of interest in giving - - -?---I don't think - - -

- - - giving a person with whom you have an intimate relationship a pay rise which is higher than anybody else's? You don't see that as a perception of a conflict - - -?---It happens to be higher in that year. There were other years it would've been lower.

We have the other years but you don't see a perception - I just want to be clear - - -?---I don't see that perception - - -

Very well?--- - - - given the situation in which it has to be dealt with.

Very well?---It is still a long way from perfect. It's 3000 kilometres in the bush.

I know precisely where Halls Creek is. Carry on.

NELSON, MS: Mr Kerr-Newell, you don't have to give her a pay rise. Can you see it's a discretion that you can exercise or you can withhold?---Yes, that's very true. However, as a good employer, I need to remunerate people fairly.

But in doing that, as you say fairly, you need to follow the shire's own code of conduct - - -?---Indeed.

- - - which says quite categorically that you shouldn't be exercising such a discretion with a relative or close friend and should disqualify yourself?---You're right.

THE COMMISSIONER: Well, "You're right," is not an answer. It may be right - - -?---Yes.

- - - but what do you say about it? Do you accept that you should have disqualified yourself or not?---I'm sorry, I - - -

It's my fault. I mumble. Do you accept now that you should have disqualified yourself in conducting reviews and awarding pay increases for Ms Little?---Within the context you're putting it, yes.

Well, is there any other context?---I have no other option but to proceed that way because of lack of staff, and I also take into account the fact that those are not secret numbers. They are ones well known certainly to my CFO, who I've no doubt would draw it to my attention, as it is to Ms Gill and all the pay officer staff. It is not a secret thing.

And to council?---I don't report those things to council. I have no, as I understand it, obligation to do so. They are reported in total for the organisation and, as I recall, as we prepared the budget this year, the payroll of the organisation has gone down by approximately half a million.

That last - seems to be totally irrelevant but carry on, Ms Nelson.

NELSON, MS: So in conclusion, Mr Kerr-Newell, we have a situation where you had a longstanding intimate relationship with someone who you got to write their own position description. Correct?---They were strongly engaged in it. Correct.

You helped them to get their CV together for jobs in the shire?---I commented on it, yes.

You approached a short-listing exercise for that position with the two other panel members without disclosing to them at that stage that you had a close relationship?---I did disclose that to them.

But not until the interview process was your evidence?
---Sorry?

You didn't disclose that until the interview. Correct?
---That's true.

So at the time of short-listing you did not disclose it?
---Everyone was entitled to short-list those people they thought were appropriate. They were not disqualified from short-listing someone else.

THE COMMISSIONER: That was not an answer to the question of counsel?---But I'd answered the question previously, I had not disclosed it until the interview.

NELSON, MS: Mr Kerr-Newell, I think you're being deliberately obtuse here. You have decades of experience as a CEO in local government. We know that you have a good understanding of what a conflict of interest is and that understanding extends to the fact that you have to declare it for it to be managed, and perhaps even step away from it?---Indeed.

They were your own words to the High Court, and yet you are failing to agree that where you have employed your lover without disclosing that fact, that is perhaps not something that should come to anyone's attention at the time. It seems a ridiculous proposition for someone of your standing, Mr Kerr-Newell, to take that stand?---What I have said is I had declared it. I did not declare Ms Little as my lover; you're absolutely correct, I agree. Prior to the decision-making process around her appointment, I had declared that. I took - and you're right I have said exactly what you're saying in a prior time and then managed it in my - in my opinion as effectively as I was capable of. Could I have managed it more effectively? Of course I could.

I suggest to you that you have failed to manage it on an ongoing basis by continuing to do her performance reviews?
---Indeed.

In 2014 the Department of Local Government did an inquiry or they did an investigation, sorry, into the recruitment of Ms Little, didn't they?---I'm sorry?

In 2014 the Department of Local Government did an investigation into the recruitment of Ms Little?

You don't recall that?---I recall they did an investigation. I can't recall specifically what it was about. I think it may well have been about - - -

It was about, and I'm using their words, the allegation was that you had "manipulated the shire recruitment policy, allowing you to employ your friends from New Zealand in senior positions at the shire"?---Yes.

You now recall that investigation?---Yeah, I - yes, I do recall the investigation.

In response to questions from the department you wrote them a letter on 16 September 2014?---Yes.

I'll show you that letter, that's 0971^ at page 13. Does that letter look familiar? Perhaps we could just scroll slowly - - -?---Yes. Yes. Yep, I - I recall this.

If we could go over to page 14 when an address it addresses Ms Little's recruitment?---I'm sorry?

If we could just go to page 14, next page?---What am I looking at?

You're looking at the second page of your letter to the Department of Local Government?---Yes.

THE COMMISSIONER: It's where we were: page 14.

NELSON, MS: Yes.

Thank you. In the first paragraph under the heading (2), you say that you discussed Ms Little's appointment with the shire president and the deputy shire president at a meeting held on 10 January 2014.

THE COMMISSIONER: It doesn't quite say that, it doesn't say "discussed Ms Little's appointment."

NELSON, MS: Correct.

THE COMMISSIONER: It does it to a point: "this position."

NELSON, MS: Thank you, commissioner.

So the actual sentence is, "The decision to appoint this position was discussed with the shire president and the deputy shire president at a meeting held on 10 January 2014"?---Yep.

Who was the shire president and the deputy shire president at that point?---Malcolm Edwards and Virginia O'Neil.

Did you discuss at that meeting on 10 January that you had arranged for a Ms Little to travel to the shire for interview?---I honestly can't remember. I may well have done. Certainly it would have been arranged by then. The focus on that appointment was very strong with the council. There is a minute there; if I may look at that, it may tell us.

I'll just find the page?---It is at appendix 6.

Page 27 thank you, and about halfway down the page?---Yeah, it's a regular issue. It is as an agenda which I formulated with the shire president when I started about making certain that we covered off managing the relationship between the political and the appointed elements of the organisation and I have noted that, yes.

So what's in paragraph 2.1 on your screen, is that an accurate reflection of what you discussed at that meeting with the shire president?---Yes.

So do I take it from that that you did not flag that you were interviewing a Ms Bronwyn Little who had a close personal relationship with yourself?---No, I didn't. What I note is that we are pursuing those. I have no - I have no absolute recall of the conversation. The minute notes there we're chasing down the youth and community job and strategic planning job and notes that we now have a specific individual, Teresa Foster, who had been dealt with before Christmas, who's starting.

Yes. Could I have page 14 thank you, Madam Associate.

Could you just read to yourself what's under that paragraph headed (2) Response to Complaint, just to remind yourself what you have told the department?---"The decision to create the strategic planning manager position was based on - - -

You don't need to read it aloud, Mr Kerr-Newell?---That one?

Just read it to yourself if you don't mind. Just read it to yourself to refresh your memory?---Yes.

You did not tell them that Ms Little had a close personal relationship - - -?---No, I didn't.

Why not?---It didn't seem relevant at that point. I have not said, I don't think - - -

THE COMMISSIONER: I beg your pardon?--- - - - formerly to the shire that I have a - I have not said formerly and kept a record of making that statement. I agree.

Mr Kerr-Newell, it's probably just me because I'm a little bit slow but you're responding to the local government department - - -?---Yes.

- - - and you say, "Response to complaint of the creation of the position of strategic planning and the recruitment process used"?---Yes.

Are you telling me that it was not relevant in answering that, to mention the close personal relationship?---Um, I

answered the question they asked. I can't - I honestly can't remember what the question was.

"And the recruitment process used." That doesn't answer my question. Are you telling me it was not relevant to advise them of the close personal relationship?---No, I don't believe it was.

Are you telling me it was not relevant to advise them that the position was filled four days before applications closed?---No.

That was not relevant?---I did not believe it to be so.

It's not relevant when the department is asking you specifically about the recruitment process. I'm not criticising you. I just merely want to understand your evidence very clearly?---No, I'm - I'm clear. I was responding to the question about the creation of the position and the recruitment process.

Yes?---And that is my response.

We know that. Anyway, you've answered my question. Carry on.

NELSON, MS: The other attachments that you had given to the department and the responses are appendix 1, are the delegations that we looked at earlier, your delegations as CEO. Then appendix 2 is the advertisement for the manager of finance and accounting services. Appendix 3 - sorry, and also at two is the manager of youth and community development advertisement?---Yes.

Appendix 3, a series of emails between Heather Perkins and Ms Mono about short-listing for the manager finance and accounting position; a reference check is at appendix 4 from Ms Teresa Foster, who was the one appointed manager of finance - - -?---I can't see any of this but I'm sure that's true.

And then appendix 5 is a series of emails in relation to a reference for Margaret Glass, who was appointed in what position?---Manager of youth and community.

Then appendix 6 is that meeting minutes with the CEO and the shire president that we looked at and then appendix 7 is the strategic planning manager advertisement. Why have you not given them any emails in relation to or notes in relation to short-listing for - - -?---In relation to - - -

In relation to short-listing for Ms Little's position?---Do you mean why - which emails haven't I given them?

Well - - -?---I'm sorry, I don't understand - I'm sorry, I don't understand the question.

There is nothing attached that substantiates the

short-listing position or process that you undertook?---No, there isn't.

Is that because there are no notes? There are no notes of that process?---There are no notes.

Why were there - - -?---Certainly - sorry.

Why were there emails in relation to the appointment of the other positions and a short-listing for that and there were none for Ms Little?---I have no absolutely clear memory but I would have thought it was because I was distant from Halls Creek when others were being done and I was in Halls Creek when Ms Little's appointment was being undertaken, that is the process for Bronwyn Little. That I suspect is the - I honestly haven't got a clear memory but thinking it's - that would be why that is the case.

Did you have a prior relationship at any time with Ms Margaret Glass before she was appointed?---Yes, I did.

What was the nature of that relationship?---Um, we were friends. She was the executive officer of the employers council for NZBF, which is where I first met her.

She was employed about the same time as Ms Little, wasn't she?---Yes, she was.

Did you assist her in writing her CV for the position?---I may well have done. I can't remember but if there's an email there, it will refresh my memory. It's possible.

Of the current directors that you have in the shire at the moment, who else did you assist in writing their CVs for them to get the positions that they currently hold?---I can't recall if I did it for Ms Glass. I have - there are a number of people who work in the shire who I have worked with previously.

And who are they?---Um, Lloyd Barton, Margaret Glass, Bronwyn Little and Phil Burgess I have. Teresa Foster I knew also because of her previous work at Rotorua District Council. I knew her chief executive at the time. Musa Mono was in the post when I arrived

So Ms Glass, had you known her since at least 2012?---At least, yes.

Have you been a referee for her on prior occasions?---Yes, I have.

You were a referee for her when she applied for the position at the shire?---I can't remember. I may have been.

Were you on the interview panel for Ms Glass - - -?---Yes, I was.

- - - for her position at the shire and who else was on the panel?---It must have been Heather Perkins and I would have thought Sterling Bonython-Romanov but I'm doing that from memory.

Did you make any type of disclosure to them about the nature of your relationship and the fact you had one with those people?---I said that I knew Ms Little - Ms Glass and if she had put me as a referee, then that would've been obvious as well but I certainly would've said that I knew her.

And - - -?---The practice I adopted in recruitment was to advertise the jobs as you should, so we got the best possible field, and I was not and have - make it clear that I also went out and actively sought applicants for those jobs because Halls Creek is a phenomenally difficult place to recruit good qualified effective staff. In fact that's been a challenge for many years. Could I have some water, please?

Could I have document 1004^, please.

This is an email of 15 November 2013?---Thank you, yes.

From Margaret Glass to yourself at your email address and the subject is "Re Jobs in the Bush"?---Yes.

If we go to page 4, page 4 is the email chain, so starting from the first one at the bottom of the page, November 14 2013, you sent an email to Margie?---Yes.

And what are you suggesting to her in that email?---I'm sorry, what's the question?

What are you suggesting to her in that email?---That, um, a previous person who handled HR who was dismissed for, um, non-performance and in the cover up of sexual harassment and in not addressing bullying had been removed by my predecessor and that things would go better now we had someone who was actually competent.

If I could read the email to you:

Margie, brief update on the work front. I've achieved my first vacancy by remote control and hope to have an advert in place well before Christmas that you will be interested in and where's the one-pager?

What's the one-pager you're referring to?---A review of her skills and capacities.

Grab 21

It appears that the following day she sends that to you:

Hi Rodger, apologies. I thought I had sent this already. Personally I don't really enjoy writing

things like that about myself, so hopefully it's what you're looking for.

And then you respond on the same day:

Hi Margie, good stuff. Just what I ask for. The job is now officially vacant.

And you say on the second line:

I shall attend to the advert in the next two weeks following my arrival mid-next week - - -"?

---Yes, I was - - -

"- - - in the council meeting on Thursday."

So would you agree that at 15th of November you had not yet written the advertisement for that - - -?---That's true. I was actively recruiting by that stage to make certain we had someone who had applied for the job.

Why did you need Ms Glass's qualifications or achievements in order to write the advertisement for the position?---No. I wanted to know whether or not she would be any good at it, the position description. The advert, I guess, were much prewritten. I mean, not a lot had changed from the last time. The previous incumbent in the job had by that stage left or was leaving. She had locked herself up in the house and had refused to come out for the previous two weeks.

Can you see that the perception is from that email chain - - -?---Yes.

- - - that you were going to finalise, at the very least, the advertisement after you had received Ms Glass's one page - - -?---Yes.

- - - about herself. Is that because you were going to make sure the advertisement was able to target her qualifications and skills?---No. This is about me ensuring that we have at least one quality applicant.

Isn't that saying the same thing, because you thought the quality applicant was Ms Glass, didn't you, Mr Kerr-Newell?---As in the previous job, there is clarity around what needs to be done. In that task we needed someone who had experience in working with young people within a Justice program because the youth funding in general had been ceased I think previously and it was now a Justice program, so I needed someone who had that background.

And you thought that Ms Glass would be perfect for the job?---Indeed I did but not such. If I had thought that, then I would've appointed her but that would've been an inappropriate process and I would not have seen the field

of candidates.

I'm just going to move on to the tender, the purchase of six new vehicles by the shire in 2017 and they were purchased for yourself plus five of your directors, weren't they?---No. Four - three of my directors and myself. The other two were for the rural road foreman and for our roading contract manager.

Okay, thank you. Who was responsible for initiating that process?---Of the tender?

Or for the very initial decision - - -?---Well, the action, it was me.

And so why did you do that?---Because the - the then state administration had announced that they were going to cease the concessions on vehicles and stamp duty, and I saw no reason - and set the date forward at 30 June. I saw no reason to give the state any more of the shire's money than was absolutely necessary.

So what instruction did you give to your staff to get that process under way?---As we had no budget for it, to go out and find how much those vehicles are going to cost me, more or less, and formulate that as a report to the council seeking budget amendment.

Who did you give that responsibility to?---Mr Burgess.

Why did you give it to him?---He deals with those things.

What instruction did you give him specifically about finding out how - the size of the budget amendment that would need to go before council?---I needed to know - if you seek a budget amendment, it needs to have a number in it. I didn't know what that number was. I guessed it was around about 300,000 - you know, 280, whatever - because when we buy vehicles, it's principally the cost of the vehicle but they - we require bull bars on the front, for example, because of the number of cattle on the road, as a safety measure, an extra spare wheel, those sorts of things. So he would have gone away to find out what that number was and I think that that generated a report to the shire and it would have been February or possibly March or - 17.

So when you gave him that responsibility and told him to go away and find out the numbers - - -?---Yep.

- - - what instruction did you give him about how he was to go about that?---I don't recall I gave a particular instruction. We talked about it. It wasn't, you know, "Here's an order. Go away and do it." We - I'm sure we actually had a discussion around the management table at a Monday meeting about the desire of the state government to take significantly more money from us. We had an overarching view given the chaos in the vehicle fleet

previously that we would have standardised on all Toyotas, so in fact what we were only - what we were looking for was only Toyotas because they're supportable and work significantly better than other vehicles. So I would've said, "Go away and, you know, tell me how much it is." The initial report would have been written by Teresa Foster I think.

After you gave him the instruction to go away and find out those numbers, what was the next interaction you had with him about what he had found out?---We would have talked about it off and on in the course of the coming period.

And apart from you and Mr Burgess who else did you talk about the numbers with?---I'm sorry?

Who else did you talk to about the cost of the vehicles?---Anyone and everyone in the organisation. As I said, it would've been discussed generally at a management meeting.

What about outside the organisation?---Did I discuss that with anyone specifically? I may well have said I get diesel from the local Toyota shop. I may well have said it to Baz, yes. It was not a - it's not a secret that we were aiming to have (a) a new Toyota fleet or (b) beat the government to the punch on tax.

Mr Burgess has told the commission that he obtained the numbers to go in the budget amendment report from Ms Baz?---From?

Ms Baz, the local - - -?---That would be the easiest thing to do, yes.

Were you involved in those discussions with Ms Baz?---Not over the numbers. As I said, I may well have said it to her. It was - it's a public matter. I have no recollection of doing so but no, I wasn't involved in those particular discussions.

What do you mean it's a public matter?---Well, it's no secret that the government are moving the rules. There is no secret that we are going to have to do a budget amendment. That's a public document. There is just no secrecy.

At the time that you're actually formulating the budget amendment report - - -?---The budget amendment report, yes.

- - - amendment report - you are - that's not a public issue, is it?---No, but it becomes a document - that he would've gathered information. Had I been him, I would've gone to her but equally I would've gone to the internet or whatever.

But it's not a public document until it has gone to council and then been posted on the web site in accordance with the local government - - -?---That's absolutely true but it's

still in the public - it's always going to be in the public domain. My assumption is that all things are discoverable but that happens to be a public report about budget amendment. He's - he tasked to write it high when the (indistinct) I couldn't tell you in detail.

Is it your evidence that you may have spoken to Ms Baz about the fact you were getting a budget amendment - - -? ---Absolutely. As I said, it's not a secret if - I can't remember but there is an absolute possibility I did. As I said, I quite enjoyed the idea of denying, legally denying, tax of a state government - - -

At the time - - -?--- - - - and made a joke of it.

We're talking at the - the budget amendment report is dated 20 April 2017?---Is it April? Is that the budget amendment report?

The budget amendment report?---Right.

What's the purpose of that report to council, Mr Kerr-Newell?---Budget amendment. There is no provision in the budget - how much did it cost? It was about, what was it?

It was 337,000 was in the - - -?---Yeah, but I don't think - what is it? The budget amendment report may have actually had a different number from that. It would've been a capacity to do it. I can't remember the particular numbers but, yes, you - - -

(indistinct)?---By the nature of the issue it is not in the budget, then I have no basis on which I can fund it. So the act allows for the budget to be amended, which it was by the addition of whatever the number is actually and the funding which supported that was from the plant reserve fund.

I'll hand you a hard copy of the actual agenda item in this folder and I've also got one for Mr Vandongen?---Thank you.

Commissioner, you have a folder - - -

THE COMMISSIONER: I do?---Sorry. Now, what was the question?

NELSON, MS: There's no question right at the moment. Just turn to the tab 0428^. I'll just give you a moment to refamiliarise yourself?---Yeah, but I recognise the report.

Did you have any input into drafting this report? Did you have any input into drafting this report?---No. I would certainly have looked at it. Mr Burgess is not the most confident person in his writing. I would - certainly I would have helped him had he asked me.

He tells us that he did ask you and you looked at it in the

draft - - -?---I can't recall whether he did or not. I think by that stage he was getting to the point where it was (a) improving and (b) possibly he wasn't coming to me, he might have been going to Ms Gill or Ms Little, both of whom are good writers, to improve his report. When the report was written I would have seen it before it went in the agenda, because I would flick through the agenda to make certain that (a) they were the reports that we had agreed to put in there and (b) that they were competent-ish and that was subsequently - sorry if I'm butting into your question, it would have gone to a meeting of the shire president and myself where we would review the agenda and the recommendations or not.

So having now looked back at this particular report, what was the main reason that you put to the shire president as the need to do this particular action now?---Because after that time it would - the price would rise. There was adequate funding to do it. We were moving to a position where we sought to have an all Toyota fleet. I'm now looking at item 3.1. We've identified one, two, three, four, five, six vehicles, including one which I drive around. The ultimate - the end game here is to replace the vehicles at three years or a hundred thousand kilometres. That hasn't been financially possible until we generated sufficient savings by getting rid of the vehicles which the shire had over time accumulated. When they started to be replaced, we started to make substantial savings which has allowed us to roll those into upgrading and upgrading and upgrading the vehicle, with a view of getting to three years.

All right?---The vehicle at the top, Mr Lovell's, was in a road crash which was never adequately repaired. The next one, although it's done similar kilometres, had become very heavy on maintenance. The - - -

Okay, I can read that there thank you, Mr Kerr-Newell?
---It's all there.

I'll just continue on as time is marching on. So was there a time constraint that you recall was of issue in this particular procurement?---The procurement was a pointless exercise unless we could - I should pick an appropriate word, unless we could or were in a position not to have to pay the increased stamp and registration rate. Why would you do it otherwise.

So the cut-off date for that was, I think, 30 June - - -?
---30 June.

- - 2017?---So it had to be - time was of the essence. It had to be signed, sealed and delivered.

So the cars had to be in the shire - - -?---And the vehicles delivered there and then; you know, otherwise they weren't going to comply.

Thank you. You can see at 4.1 that the budget amendment you have asked for is approximately \$336,000. Do you agree with that?---Yes.

If we go to the last page of the report and there's a schedule with some numbers. Do you recall seeing that attached to the report?---Yep.

Had you seen that schedule before it was attached to the report?---I must have done, yes.

Did you have input into the numbers that went into that schedule?---I will certainly have reviewed it. Did I write it or was I the principal author of it? No, I wasn't.

Mr Burgess said that those numbers, and we've confirmed this with Ms Baz, came from numbers that she had provided to the shire?---I - I'm sure that's wrong.

Including as you can see the second line of that schedule, the code for each vehicle?---I'm sorry, including?

The code? On the second line of that schedule there's a particular specific code for each vehicle?---You mean LC76GXL?

No, the next line down: 7C7145 - - -?---Oh, this.

That is a Toyota WA code?---I have no idea.

Do you accept that all those numbers came from Ms Delia Baz at Halls Creek Toyota?---I have no idea. I could neither confirm it nor - - -

You were involved in discussions with her about the colour of the vehicles that were to be purchased, weren't you? ---Yes, I had offered the opportunity to this - I - is my view that a vehicle is a whole of life issue; having a large number of white vehicles has proved to be less successful than having a mix of coloured vehicles. There is an added advantage of staff happiness if they get to pick their vehicle colour. So, yes, everybody got to pick their own vehicle colour.

When did that occur? Did that occur prior to this budget amendment report, to your recollection?---When we talked about it, people were interested in their vehicle colour. I honestly don't remember how it sits; it could've been before, because certainly it was just an issue I had raised.

Would it surprise you if those discussions had taken place in early March 2017?---No. If this was going to happen it had to happen quickly. We needed to define what the vehicles were.

If I could have - - -?---I'm quite certain it could well have happened in that - I don't have a memory of it, but it

could have because it was part of the - the benefit that people assess in their heads.

And the colour of the vehicle is also necessary for the ordering of the vehicle before, isn't it?---I'm sorry?

The colour of the vehicle is relevant when you place the order for the vehicle, isn't it, Mr Kerr-Newell?---The colour of the - - -

The colour that you want the vehicle to be?---You need to specify, yes.

Tell them, yes?---Because most Toyotas seem to be supplied in white.

Did you give any consideration to using the Department of Finance procurement for vehicles, for government vehicles, rather than going through a Halls Creek tender process?
---No.

Why not?---Because, um, we source - we would source vehicles from two sources, either through the WALGA purchasing arrangement or Toyota. I don't think it's part of that. We would simply advertise it locally.

Why did you not use the WALGA purchasing arrangement?
---Because they don't have Toyotas.

Did you make any inquiries with the Department of Finance as to whether they could procure the Toyotas for you?---No.

And what was the reason for that?---I wasn't aware that they were capable of doing that.

If we could have 0456^; if we go to the bottom of the page to the first email chain.

It's an email from Ms Foster of Sunday 12 March to Mr Burgess?---Yeah.

"Rodger rang me yesterday to choose a car and colour"?---I hardly raised it with her.

Who else did you ring for them to pick the colours of their vehicles?---The people who were involved were, um, Mr Mono, Bronwyn Little, Teresa Foster, myself, um, Clive - I can't remember his other name; he's our roads guy - and Mario Juzyk. They were the- they're on the report.

Given that Ms Foster said "Rodger rang me yesterday" and she's emailing on a Sunday, do you accept that you possibly rang her on a Saturday?---Absolutely. We - we worked most days. It's not avoidable.

So that would be Saturday 11 March?---Yes, it would've been. Yes, if she says "yesterday" and she's replying on Sunday, it must've been Saturday. That doesn't surprise

me.

Now, by 13 March, Ms Baz was aware that Ms Foster wanted a wildfire Prado, that Ms Little wanted a metal storm coloured Prado and that Mr Mono wanted a white Prado and you - - -?---He wanted a white one, yeah.

You wanted - what colour did you want?---It was a light gold colour, the one that least shows the dirt.

Vintage gold?---That sounds right.

So had you communicated that information to Ms Baz by Monday 13 March with Mr Burgess's help?---Did I? No, I don't think I did. It may well have been communicated there and that's fine because we're - there is a premium, I discovered, for colour.

And when did you discover that?---I think in conversation with Mr Burgess.

Was Ms Baz also present at that conversation?---Not that I recall.

Mr Burgess has told the commission he recalls a meeting at Ms Baz's workplace on a Saturday around this time and that you and he and Ms Baz discussed the procurement of these vehicles?---We - that's completely possible. I usually fill my vehicle up on Saturday. Yes, that would - I may well - yes, I possibly did discuss it with her.

What was the purpose of discussing that procurement with Ms Baz?---To understand the colours available and I think to deal with what kit was swappable from old vehicles to new vehicles.

Why was that relevant to Ms Baz?---Because, um, we specified vehicles in different ways and I recall the conversation. It was to do with roof racks and bumper bars and what was shiftable and what wasn't.

So as part of the procurement of the six new vehicles, you were going to also transfer some of the kits from the old vehicles on to the new vehicles?---Absolutely. We were trying to minimise the cost.

Is that something that you discussed with Ms Baz?
---Absolutely, yes.

When did you discuss that with her?---I don't recall the date. It may - I'm sure it was before - if the report was in April, it's likely to have been in March.

And why was it relevant to Ms Baz to get the specifications of the colour for each car that was to be ordered and accessories to go on each car?---We were talking about it generally. It hadn't at stage gone to tender at all, um, we were interested in what was swappable and what wasn't

and if my memory's right, um, when we were thinking about the Prados, we - I mean, we needed to acquire one new roof rack. We needed to acquire a number of spare wheels. We want two-way radios in. We were scalping out those or Phil was scalping out the extent of what we were planning to do.

Ms Baz was able to give you that information that you required?---Well, yes. She's the local Toyota dealer.

And at that stage, did Ms Baz have contracts with the shire to supply fuel or to - - -?---Yes.

- - - maintain vehicles?---Yes.

Was that also something that occurred to you as perhaps giving her an advantage when it came to tendering for the procurement of these vehicles?---I think there is - I can't see any particular advantage she gets. She's - like I said, we prefer those people. We want to support local businesses and suppliers. I think there's a bit of a group thing in the organisation that we have a formal policy which mandates 10 per cent, come what may. In fact the policy's remarkably badly written and should - it's limited, I think, too.

When you say "She's local; we prefer those people", can you just explain that comment?---We - the shire should prefer to use local suppliers when it can. It's how we keep the town going.

And in this particular procurement, how would you give the locals that preferred treatment?---Well, I think there's a - the group thing in the - in the shire is that we give all local suppliers a 10 per cent benefit up to limited value of \$50,000. In fact that's not what the policy says.

So if you go back to my question, in this particular procurement for six vehicles, how would you give the local supplier the preferred treatment?---They - to get the preferred treatment, they would need to be cheapest. There are not many significant factors in the acquisition of a Toyota which are open to judgment other than price and deliverability.

And by deliverability, you mean the delivery date?---Yes, it has to be prior to 30 June.

Which was very important to you in this particular procurement process?---That was the key to it, otherwise why not spread it over two years. In fact we could afford it which also helps because you get further down the track with vehicle savings.

Are you aware of when Ms Baz ordered the six new vehicles?---I have no idea.

She's ordered them on Monday 13 March, Mr Kerr-Newell?---She may well have. I don't know.

It's not something she mentioned to you. That is not something she mentioned to you?---No.

Looking back now at the sequence of events we've discussed, can you see how she was in a position to make that order on 13 March?---My view was that she's a business and she makes money by taking risk. She - you tell me she made that order then. She was taking the risk that she would get the contract.

By 20 April when the budget amendment went to council, had you spoken to any other Toyota dealerships about the supply - - -?---I hadn't, no.

Had Mr Burgess spoken to any other Toyota dealerships?---I don't know.

He had not. That's what he's told the commission. He had not?---No.

He had only spoken to Ms Baz?---He may have interrogated the - I don't - I - the answer is I don't know.

I'll show you document 0404^. This is an email from Halls Creek Toyota to Angela Hill and Vince Bradley, and they work at Toyota WA, sent on 13 March 2017 and the subject is Order for Six New Vehicles:

I would like the following vehicles delivered to Halls Creek in June 2017.

And the order she's put in, is that exactly the order that was delivered to you, Mr Kerr-Newell?---I believe it - yes.

Three Prados, two LandCruiser dual cabs and one LandCruiser GXL?---Yes.

Then on that same day - if we go to 0405^ - Toyota WA replies, saying:

Just confirming that the order is what she says it is. They speak about June delivery and she's asked to double-check these are what the shire wants as we now only have a couple of days to make any changes before they are locked away.

Did she double-check with the shire what - - -?---Did she?

Did she double-check with you?---I have no idea. She didn't with me.

Did she speak to Mr Burgess?---I don't know.

If she had spoken to Mr Burgess about purchasing six new vehicle and exactly what you wanted on them, is that something he might have spoken to you about?---Possibly. However, he was well aware of what sort of vehicle and the

specification for the vehicle. There was little doubt about that, as you make the point yourself. We know about it in March. I don't think our thinking changed much from then, so - - -

And - - -?---Sorry.

- - - he knew about it because you had sat down and spoken to him and Ms Baz on that Saturday?---About what the vehicle requirement was, yes.

Yes?---That's different from a tender.

THE COMMISSIONER: Is this a convenient time?

NELSON, MS: It is. Thank you, commissioner.

THE COMMISSIONER: We will break until 2.15.

LUNCHEON ADJOURNMENT

NELSON, MS: Thank you, commissioner.

If I could have 0406^ on the screen thank you, just prior to the lunch break I showed you an email of 13 March from Toyota WA to Delia Baz, asking her to check in with the shire as to what was wanted with the particular add-ons for the cars and then up on the screen now we've got an email from about three weeks later from Toyota WA to Delia Baz, giving a status report on the six vehicles. We can see now that they have actual delivery dates or production dates. Did Ms Baz inform you as to when the vehicles would be likely ready for delivery to the shire?---Ms Baz was asked, I had certainly asked her that they were still clear that the delivery date had to be before 30 June.

When did you have that conversation with her?---I - I can't recall whether it was April, May or June. It's more likely to be May, not around April.

How can you account for the fact that by 13 March and definitely by 7 April, Toyota WA were aware of exactly what vehicles were required to be delivered to the shire and yet the budget amendment for the purchase of those same vehicles had yet to go before council?---I can't account for Baz's getting ahead of the game. That's what it looks like to me.

But how was she able to get ahead of the game, Mr Kerr-Newell?---I have - well, she is - we had - no doubt we'd talked to her about what the vehicles are. She, I imagine, has decided that we're unlikely to change our specification, which is true, and that she's taking a risk to guarantee that she can meet the principal term of the tender which will be prior to 30 June.

She had the absolute detailed specifications for each vehicle that you wanted down to the colour, didn't she?

---Well, yes.

She only had that information because the shire had given her that information. Correct?---We had looked for that information, yes, and I'm certain it was given to her.

It was given to her before it was given to any other Toyota dealer in the whole of the state?---Yes.

And by virtue of having that information, she was able to put in an order that could be delivered by 30 June which was the - - -?---This would appear to say that she did.

Yes, and that date was crucial to the performance of the tender, wasn't it?---Yes, it was.

Without meeting that date, you didn't meet the tender specifications did you, Mr Kerr-Newell?---That's correct.

I take you to a blank form of the tender which is document 0435^ and that is in the folder that is in front of you, Mr Kerr-Newell, under tab 0435^?---Sorry, under?

THE COMMISSIONER: 0435^?---Yes.

NELSON, MS: If we could just scroll through to the second page thank you, Madam Associate?---That looks like these would have, yep.

And a bit further down. Did you prepare this document?
---No.

Who prepared it?---I - Phil Burgess.

When did he prepare this?---I don't know. He, I suspect, would have been preparing it over the period prior to the tender being offered.

The tender formally opened on 21 April so the date after the budget amendment was passed by council?---Yes.

You can see from the front page of 0435^ that the tenders were to close at 2 pm on 8 May 2017?---Yes.

That accords with your memory?---(No verbal response)

Mr Burgess said that he flew out of the country to New Zealand on 22 April?---Of?

April?---Yes.

Do you recall that?---I recall him going to New Zealand, indeed.

He was away until 23 May, so he away for the whole of the period the tender was open - - -?---Yes.

- - - and for the tender evaluation period. Who was

responsible for looking after this tender while he was away?---Mr Kearney.

And under whose supervision?---Ultimately mine.

Did Mr Kearney seek your assistance on any aspects of the tender evaluation?---Not that I recall.

You weren't on the tender evaluation committee?---No.

Was there a committee formed?---Our requirement is at least two people would open the tender, that would report them, and then it would need to be written up. There's very little evaluation. It either complies or it doesn't. It has the price that wins or loses.

Looking through the request for tender documentation that you've got in front of you, where do you say the assessment criteria are set out?---I don't know if I have looked through it or not.

Take your time and have a look through the document?
---That's at Evaluation and Selection Criteria.

What page is that?---15.

That refers back to the specification as being the critical issues?---I'm sorry?

Are these evaluation criteria just standard evaluation criteria for this template?---Not in totality, but principally they are. I think if there's a difference, the difference will be time is critical. There the prime consideration is demonstrates an understanding of time constraints, requirement delivery and represents best value for money.

Is there anywhere in this tender a conflict of interest clause?---Not as such, no.

Is that not something that should be in a tender document?
---With an external tenderer it's quite hard to have a conflict of interest.

Did you consider - - -?---No, it's not in.

Did you consider the fact that Ms Baz already had contracts with the shire related to the maintenance of Toyota vehicles as perhaps being a conflict of interest when it came to assessing her tender application?---I believe - I do not believe there is a conflict of interest. To go back to your earlier words, there may be a perception of conflict of interest.

Because she already had contracts - - -?---Because she has other contracts but then the maintenance of Toyota vehicles is not something practically we're going to undertake outside Halls Creek because one is a 750 return journey -

kilometre return journey or, alternatively, 1500-kilometre return journey. We can't afford vehicles off the road for that length of time.

Apart from Halls Creek Toyota, there are other places in Halls Creek where you can get vehicles maintained, are there?---Yes, there are and that indeed was part of the prior problem. It was badly done.

But the practice of Halls Creek at the time of this tender in 2017 was for Halls Creek Toyota - - -?---To maintain that sort of vehicle.

Yes?---We have other vehicles we maintain.

Was there any thought given to the council being consulted as to the criteria by which the tender was to be judged - - -?---No.

- - - the assessment criteria? As a - already being a contractor to the Shire of Halls Creek, did you consider whether under the Local Government Act Ms Baz was required to declare a conflict of interest as - when she put in for tenders back to the shire for other work?---No.

I only ask that question because under the definition in the Local Government Act at 5.70 employees who must disclose interest in reports include contractors to local governments?---I'm sorry?

I'll move on, Mr Kerr-Newell. Did you consider whether the regional pricing preference or the local pricing preference should have been included in this tender document?---It's not. Arguably it could've been.

Do you believe it had applied to this contract?---I think that that may have been - but I referred to this earlier, about the organisation's thought. I don't think that's what the policy says.

When did you form the view that that's not what the policy said?---When I was reviewing the material prior to coming here.

So at the time that Ms Baz was awarded the tender, are you aware that the regional or local pricing preference was applied to her tender?---Yes, but it was not ultimately material to the price.

THE COMMISSIONER: What do you mean by that? What do you mean by that?---That the next best bid which - if you excluded the stamp duty and vehicle concession, which was cheaper than the bid made by Baz, it was even more improved by the application of the local pricing policy which as I - literally you would be all surprised to know I was reviewing all of those things which I thought I might be asked today and that was one of the things I did review. Notwithstanding if you didn't apply that, then the

difference in price still made the bid by Baz cheaper.

NELSON, MS: Before we get to that analysis, would you agree that it was necessary for the regional or local pricing preference to be in the tender document if it was to be applied to the evaluation?---I hadn't thought of that. Should it be? Possibly in - for absolute clarity, yes, but it's a public document. It is much discussed in council from time to time. It has been - it was the subject in my time in reduction in that pricing preference which I think allows for 10 per cent limit of value or previously \$150,000 which is a matter the shire president and I had previously discussed. We concluded that that was a very large number for the shire to have so - and reduced it to 50, so it was not, you know, done and forgotten. It was reasonably - again in retrospect, should it have been in? Possibly, yes.

It's actually a requirement of the Local Government Finance Regulations 24F(4):

Local government is to ensure that a copy of an adopted regional pricing preference policy is included with any specifications for tenders to which the policy applies?

---I have got that wrong or indeed someone else has but - - -

When you say someone else has, it's ultimately your responsibility - - -?---Indeed it is.

- - - Mr Kerr-Newell, isn't it?---I don't seek to deny that.

The officer who you had put in charge or responsible for the tender process went on leave for a year - a month?
---Yes.

And in fact in his absence you were the one that was ultimately responsible?---And he was left with a junior staff member. Sadly it's part of the management challenge I have, that the staff - when one person goes, that's the entire capacity taken off.

THE COMMISSIONER: But that doesn't explain why - - -?
---Sorry?

It doesn't explain why you got it wrong?---I got it wrong because I got it wrong. I would put it down to stupidity on my own part.

NELSON, MS: Surely you had an opportunity to look over the tender document - 0435^, the one that's in front of you - before it went out to the market?---I don't recall doing it but I take the point that the commissioner is making, it's my responsibility. I don't deny that.

Just before we leave that document, can you see - I think it's on page 3 or 4 where your vehicle and the specifications for your vehicle are set out?---Yes.

Was there anything deliberately left out of that list that you recall?---Deliberately left out?

Any add-ons that were going to be put onto your vehicle?---Yeah. There were - because we had - we had a light bar.

And was there a ladder and a dual wheel carrier left off there?---It was not included in this - - -

Why was that?--- - - - for the reason that my original vehicle had that. It had a roof rack, a ladder and a dual wheel carrier which it was - why would you spend more money than you have to? It was swapped over from the old vehicle to the new vehicle and the old vehicle got the new bumpers and off it went.

And the old vehicle was part of a disposal tender?---Yes.

Going to 0430^ - and that is in the pile of documents in front of you as well, the next tab on from what you were looking at, so we're now looking at the council agenda item in relation to the tender after the tender has closed on 8 May and the evaluation has been done, and what you have in front of you is the report by the operations officer, Mr Kearney, that went before council. It's Mr Kearney's evidence that he didn't write this document. Did you have any input into this report?---I don't recall that I did. Although Mr Kearney is not the most skilled in report-writing, nonetheless he was the last man standing.

During the tender evaluation period did you have an opportunity to look through the tender applications for the three dealers that had put one in?---I looked through a large A3 spreadsheet.

So you didn't look through the actual tender documents that they submitted?---No, I presume that the information had been correctly transcribed from the documents to the spreadsheet. I did not check the originals.

And presumably you're aware that tenders came in from Broome Toyota, Kununurra Toyota, as well as Halls Creek Toyota?---Yes.

If you could look at page 5 please, do you recall seeing that spreadsheet before?---Yes.

This was provided as an annexure to the report for council?---I'm sorry?

This was provided as an annexure to the report to council?---Yes.

Were you aware what Broome Toyota's tender application and

Kununurra's tender application had to say about the delivery of the vehicles?---Yes.

What did they say?---They could not deliver by the due - the date on which the shire wished the vehicles.

Given that was one of the key criteria of the tender, why were they even considered in the evaluation of this tender?---Yes, they shouldn't have been. They should have been excluded because they met - or failed to make the first test. In hindsight, I would say.

Why were they not excluded? Why were they not excluded, given that?---It was - it is an error.

An error of whom?---As you have made the point, it must be an error of mine.

You can see here that the price that Broome Toyota put in of \$329,326.28 was less than the price of Halls Creek Toyota?---Yes.

And then registration and stamp duty were added to the Broome Toyota price?---Registration increase and stamp for post 30 June, yes.

What was the reason for doing that?---Because those would fall due if the vehicles were delivered after 30 June. As it subsequently - it's all right. As it subsequently occurred, in fact it didn't - that didn't happen.

Correct. But you're operating at the time on the knowledge you had?---Indeed. Yep.

Would it surprise you to know that the Broome Toyota figures for each of the cars already included registration and stamp duty?---Yes.

That would surprise you?---But presumably it wouldn't include the increase and if so, I did not personally do the analysis. That bit I can't comment on, but I presume there is the price delivered.

I raised that because the Halls Creek figures do not include any stamp duty or registration whatsoever?---As I think the - the tender called for.

Correct. So why is it that Broome Toyota's figures that were entered onto this spreadsheet did not have that registration and stamp duty taken out?---I don't know.

Who actually compiled this spreadsheet?---Whoever?

Who compiled this spreadsheet?---I suspect it was either Kellie Gill or Bronwyn Little, as both of them are literate and competent report-writers and Perry isn't.

This was a significant procurement for the shire, wasn't

it?---Sorry?

A significant procurement, Mr Kerr-Newell?---In terms of vehicles, yes. In terms of our largest procurement which is for road maintenance and road construction, no.

But this was an out of budget cycle procurement?---Yes, it was.

So council were keeping their eye on it. The money had to come from somewhere didn't it, Mr Kerr-Newell?---Indeed it did. It came from the plant account which is created for exactly that purpose.

My question to you is: why is it that you're not dotting every "i" and crossing every "t" of this particular report to council? Why are you palming it off to Bronwyn Little who is not a financial person, and Kellie Gill?---Because they can write, I expect, the analysis and the management of the procurement process to be done by - in this case Mr Burgess. He goes on holiday; the report still has to run. I have no doubt as we operate a collegial office, they were helping.

You can see clearly the local pricing preference has been applied?---Yes.

So Halls Creek Toyota has had 10 per cent effectively taken off?---Yes.

You say that that's a mistake?---Looking carefully at the policy I would say it's not supported by the policy, so it's inaccurate.

Given the figures that are in front of you, being the figures given to council, would you agree that if that amount of 27-odd thousand was added back onto Halls Creek's price, that they would not be the winner on price in this tender?---No; because you would need to take account of the cost of post 1 July delivery, so Halls Creek Toyota would still be cheaper.

In any event, you say that Broome Toyota could not deliver by the specified date?---(No verbal reply)

You say Broome Toyota could not deliver by the specified date?---Yes.

And the reason for that was because Halls Creek Toyota were able to pre-order the cars?---They had chosen to I understand from what you've shown me.

And Broome Toyota actually made a complaint to you about that didn't they, Mr Kerr-Newell?---Yes, they did. They made it to Mr Kearney in the first instance, who put them on to me.

If I could have document 0039^, if we go to page 2 we can

see the letter that is your response. Do you recall that, writing that letter?---Yes, I was - sorry.

What are you apologising for?---Starting to answer a question you hadn't asked me.

So when you tell Broome Toyota that the local pricing preference should have applied, that was actually incorrect?---I would say having reviewed it, yes.

When you say in the second paragraph, second line, "My staff, I am sure, conversed with Toyota for a guideline on price," you knew that to be incorrect didn't you, Mr Kerr-Newell?---They did talk with Toyota.

THE COMMISSIONER: No, they talked with Halls Creek Toyota and in the letter you refer to Halls Creek Toyota?---When I wrote that letter I didn't know who'd they'd talked to, but I knew they had definitely talked to at the very least Halls Creek Toyota, and possibly other Toyotas.

That's not the way your letter reads, to me.

NELSON, MS: You had in fact talked to Baz prior - - -?
---Indeed I had. This was not a - - -

And you talked to her prior to the tender even opening hadn't you, Mr Kerr-Newell?---I talk to people in town on a regular basis. I go there to fill my own vehicle up with diesel because that's where we buy it from, and it was a subject of conversation. It is - wasn't a hidden matter at all. In fact, I was quite pleased if we might be able to save 25 or 30 thousand dollars that was otherwise - - -

THE COMMISSIONER: You might be pleased to see that, but we're not actually concerned with the ultimate cost?---No.

We're concerned as to whether or not there was any serious misconduct by any person. Now, your letter, paragraph 2, "My staff, I am sure, conversed with Toyota for a guideline on price," when you knew that you had talked to the ultimate successful tenderer, Halls Creek Toyota. Not your staff: you?---(indistinct)

Is there any other way to read that second paragraph than that it is misleading?---I don't think so. A point you made to me earlier, commissioner, it's about perception as well so it could be perceived to be misleading.

I don't perceive it: I think it is. But carry on.

NELSON, MS: Thank you, commissioner.

Because Halls Creek were given, were privy to information that was only available otherwise to shire employees, they were able to put in an order. That's factual isn't it, Mr Kerr-Newell?---That?

They were privy to information that was otherwise only available to shire employees. When they put in their order they were privy to the colour and all the add-ons that you wanted, specified in here?---That was how they - Mr Burgess formulated his price. Yes.

And at the time they were preferred suppliers for maintenance of your vehicles, and fuel?---And supply of fuel, yes.

And at the time you were also friends with Ms Baz, weren't you?---I try to be friendly with everyone in the community, in which she is not a special friend of mine.

In April 2017 she came to your birthday party at your home, didn't she?---She was invited to my birthday party, yes, as were a number of other people. I seldom socialise with people in town.

If I could have 0975^ please which is a telephone call.

Start of TI transcript, T0975^:

KERR-NEWELL: (aside) She's not answering her phone.

FIONA: Rodger it's Fiona. I'm just trying to find Delia.

KERR-NEWELL: Oh no. Okay.

FIONA: Just a sec.

BAZ: Hello?

KERR-NEWELL: Hello how's that?

BAZ: How's what?

KERR-NEWELL: You got your money.

BAZ: Oh good on you.

KERR-NEWELL: Mm, mm, mm, mm.

BAZ: Thanks for organising that so quickly.

KERR-NEWELL: (laughs)

BAZ: Oh.

KERR-NEWELL: Just make certain it's ready on Friday.

BAZ: Okay. Oh yeah my, my, my goal is ready on Thursday so that I've got leeway. So planned my week.

KERR-NEWELL: Oh right.

BAZ: Yeah.

KERR-NEWELL: Good.

BAZ: Yeah. As to which days I'm doing yours and don't I need

KERR-NEWELL: No, no I don't want, I'll be back on Friday night. So

BAZ: Okay.

KERR-NEWELL: ah now if you want to come round with Angelo if you're having a day off tomorrow

BAZ: Mm?

KERR-NEWELL: we will be watching the ah British and Irish Lions being pummelled by the New Zealand Maori (indistinct) at three-thirty where beer will be drunk.

BAZ: Okay. Alright.

KERR-NEWELL: Alright?

BAZ: Well the last four Saturdays we've been called out so I don't

KERR-NEWELL: No, no, no

BAZ: like my chances.

KERR-NEWELL: you need a break Delia.

BAZ: (laughs) Yeah I know but I'm on call.

KERR-NEWELL: Yeah, yeah, yeah whatever. Three-thirty. See ya.

BAZ: Alright. Bye.

KERR-NEWELL: Bye

End of TI transcript.

NELSON, MS: Do you still maintain that you don't socialise often with Ms Baz?---I don't socialise often with people. I invited her around to watch Rugby.

Is that not a social occasion?--- She didn't come, as it happens.

She didn't come?---No.

But that's a social occasion isn't it, Mr Kerr-Newell?---I think that I have socialised with Delia on a number of occasions; certainly my birthday party, certainly the progressive dinner in two or three years previously. It's a small community. I undoubtedly socialised with a number of people on a very limited basis from time to time.

Going back to the first page of that transcript please, Madam Associate, you say to her, "You got your money," and she says, "Oh good on you." What are you referring to?---I don't know. I phoned her - - -

The money for the vehicles?---Yes.

Because as at 16 June 2017 she hadn't yet delivered all the vehicles, had she?---She delivered some of them and we paid for some of them. I would need to go and check the records myself to tell you how much and how often. There would have been two or three payments to her. She was keen, I imagine, for her cash flow to have the money. I had said that I would try and deliver up the cash as soon as it was practical. She had asked me that. I saw no reason why we shouldn't do that.

Do you normally blow kisses to your shire contractors?
---From time to time we've done it with our roading contractors so we can match cash flows.

No, blow kisses: do you often blow kisses?---No, I don't.

Just on the payment, I'll show you six invoices that she has sent through on 7 June, 0460^, and if we just scroll down slightly thank you, Madam Associate, you see there are six invoices attached and if we scroll to the next page it's the first of those invoices for HC-2850 which is your registration plate isn't it, Mr Kerr-Newell? Is that correct, HC-2850 is your registration?---Must be my vehicle, yes.

Just down towards the bottom in handwriting it says, "Paid 16 June 2017." The purchase order that Ms Baz was given after the tender was awarded to her did not require delivery date until 23 June, so how is that she's been paid on 16 June?---Because it must have been deliberate.

If we scroll through all of those invoices you can see they've all been paid, I believe, on 16 June except for HC-2854 which is this one which is on 30 June and that's the Wildfire car which was late arriving?---Yes.

Do you accept from what's written on those invoices that all were paid for by the shire, except for the one Wildfire vehicle, on 16 June?---That's what that shows, yes, and the last one is paid on a later date because it was later.

Play another call please, 0974^.

Start of TI Transcript, T0974^:

KERR-NEWELL: Hello Delia.

BAZ: Hello. Uhm, thanks for the payment that I received today for the vehicles.

KERR-NEWELL: Yes.

BAZ: But how come only two.

KERR-NEWELL: We only got two vehicles Delia.

BAZ: Yeah I know but the other vehicles as they are are complete. The only hold up is the extra things that you asked for.

KERR-NEWELL: (indistinct) we won't make you wait, I'm not kidding we won't make you wait until next pay run as soon as you gonna bring them Monday are ya?

BAZ: No ah the, the vehicles are ready. The vehicles including yours are ready the way they are. The, the, the week that I need now is for the extra things that, that is not part of the tender contract.

KERR-NEWELL: The what?

BAZ: In the tender what I tendered for, in the documentation that I tendered for everything that I tendered for has been done to those vehicles. The, the, the week that I need is for the extra things the light bars to be fitted

KERR-NEWELL: Could I no, no, no, no that's interesting, let me go and (indistinct) Phil, I'll call you back.

BAZ: Okay.

KERR-NEWELL: See ya.

BAZ: Alright. Bye.

End of TI Transcript.

NELSON, MS: The call on which you call her back is the one we listened to before when you ask her over for the beers. So this call is on 16 June as well and you say - you can see on page 1 - thank you, Madam Associate.

You say, "We've only got two vehicles, Delia"?---Yes. The other vehicles were there but there were other things obviously required done to them. It was - I think lights, possibly two-way radios and then the swap-overs and - - -

They hadn't been actually delivered to the shire, had they, yet you paid for them?---Yes.

They hadn't been checked by the shire before they were paid for to make sure that they were getting - you were getting what you had actually asked for?---No, but we'd identified they were all there.

How did you identify that?---I'm sure the first two that were delivered would have been the two LandCruisers, white

ones.

But you would agree that in this call you don't seem to be aware that the other vehicles were complete?---Yes, I agree.

The extra things that she's referring to, the extra things that you asked for, why were they not part of the originally tender?---I can't remember what the extra things are. It is an ongoing issue of equipping vehicles.

If we could have 0732^?---There were issues with the front bumper of a vehicle.

This is a 12-page document which is a series of purchase orders, invoices and remittances. If we could go to page 9 please. This is a purchase order number 58376. You can see the date is 3 July 2017 and it refers to additional changes as per specified in tender that come to \$11,776.50?---Yes.

If we go to page 8, you see the invoice in relation to this?---And that's to do with recycling kit and the effect of that - a steel bull bar, they tried to shift from one vehicle to another, it didn't fit, and the front grille was a choice I made, a different front grille.

So was this purchase order at page 9 something that you were aware of that had been ordered on 3 July?---Personally of that - no, but it is a product of recycling of kit on vehicles plus some extra stuff which weren't in the originally tender because it was assumed that we would be able to recycle stuff, and that turned out not to be the case.

Are these the extra things that you refer to or Delia refers to in that call of 16 June as being the reason why the vehicles - - -?---I'm sorry?

Are those things that we've just looked at in the purchase order - - -?---Well, one is - - -

- - - the extra things that Delia is referring to?---If you go back the other way, one is recycling the wheel carrier, moving roof racks, the bull bar on a vehicle doesn't fit so we ended up buying a new one and leaving the bull bar on the original vehicle, and the freight which I presume is associated with it.

That purchase order at page 9, do you agree that under the procurement policy of the council that it's necessary to get three quotes for an amount that's going to be over \$10,000?---Yes.

I can tell you that Mr Burgess said that that process was not followed on this occasion. Are you aware of the reason for that?---Regulations.

No, but are you aware of why the regulations were not followed on this occasion?---No, I'm not.

Is it because Ms Baz had been promised this extra work, as on the back of the tender?---No, not that I'm aware of.

Your evidence earlier today was that it was an issue that was discussed in that Saturday morning meeting between her and Mr Burgess and yourself, the fact that there would be changeover of add-ons from one vehicle to the other vehicle?---That was always a possibility; that seemed a way of reducing cost, rather than purchasing new double wheel carriers, roof racks, all those sorts of things which had been the norm in the past and we simply sold the vehicles with all the kit on them. This was a way of trying to reduce the unit cost of vehicles.

Is it the case, Mr Kerr-Newell, that in that meeting between you and Ms Baz and Mr Burgess in March that you actually promised her the tender and the flow-on work from the tender?---No, I did not.

And at that meeting did she tell you that she was going to go ahead and order the vehicles three days later?---No, she did not and if she had said that to me I would have said, "If you do that, you're going to end up with the vehicles if you don't win the tender," and I would have said to her that it was her risk but a dumb idea.

Did you say that to her?---Not that I recall. She didn't tell me she was going to go and apparently order the vehicles.

I just want to revisit the recruitment of Margaret Glass please?---Of?

Margaret Glass. Did you conduct the performance reviews of Ms Glass during the time that she's been at the shire?
---Yes.

You've done all of them?---Yes.

If I could have 0856^, this is a performance review report for Ms Glass and the interview date is 12 September 2014 and it says that she has been in the position for eight months?---Yes.

If we could just scroll to the second page, the writing in blue there whose writing is that?---I presume it's Ms Glass's.

And the black circles?---Must be mine.

If you could just scroll slowly through the document thank you, Madam Associate, and stop there.

What are those concluding comments that you have made?
---"Pay \$5000 from six-month anniversary."

So that's a pay increase of \$5000 per annum?---Yes, it is.

A week later on 19 September 2014, if I could have document 1007^, there's a document headed Memo Margaret Glass, Final Warning 2014/09/19?---Yes.

Are you aware of what this is about?---If my memory serves me well, it's a stolen puppy.

If we could go to page 3 and if we could just scroll down to the bottom, is that a memo that has been authored by you?---Yes.

Did you give this memo to Ms Glass?---Sorry?

Did you give this memo to her?---Yes, and I said it to her verbally as well.

Okay, and the date of this memo is 19 September 2014. Does that accord with your recollection of when this incident occurred?---Yes.

And the memo is entitled Final Warning?---Yes.

So what had occurred prior to this? For this to be the final warning, what had occurred prior to this?---She had none. I had the silence. It was - at one level it was an incredibly minor matter; at a different level, it had the effect of irritating two communities. There was no process that predates it.

So if there was no process predating it, why does this memo say Final Warning?---Because I was particularly irritated by her, in my opinion, poor judgment around assisting another member of staff to make away with a puppy, which was subsequently returned with an apology.

You mentioned that you had a discussion face to face with Ms Glass?---Indeed I did.

When did you have that discussion?---Around about that time.

If this was a minor matter, why did you feel the need to document it in a memo form and to have a discussion - - -? ---The theatre of - of human management. She needed to understand very early on that it was a challenge working with and within Aboriginal communities. You could argue it was wildly excessive.

What was wildly excessive?---The final warning.

You say here at the second-last dot point, "You demonstrated a substantial error of judgment"?---Yes.

Was that a true statement when you wrote it?---I think it was a substantial error of judgment in, as it happens, a

minor matter but it was a substantial error of judgment. I was performing the theatrics of management.

The theatrics of management?---Yes.

What do you mean by that?---I wished to make an impact on her thinking, so she wouldn't do it again.

When had this incident come to your attention?---When they - shortly before that.

What, days or - - -?---Days, when Lucy Ray phoned me up.

Now, how is it that you are giving her around about the same time a pay rise of \$5000, even though she'd demonstrated a substantial error of judgment?
---Because - - -

VANDONGEN, MR: I just notice the first paragraph of that document might give some indication about the date, given that it's my understanding the performance review was on the 12th.

THE COMMISSIONER: That's correct, it was before.

NELSON, MS: Thank you. I might just clarify that.

If we could have document 0856^ and page 7, thank you, you can see that Ms Glass has dated this 19 September?---But it took place on a different date. If you go to the top it has the date.

Are you saying that she signed and dated this after - - -?
---12 September.

After 12 September?---Yeah.

Was it then a matter that you could revisit, the fact that she had received a pay rise and then had been found to have demonstrated a substantial error of judgment?---That's true, but she had done a huge amount of work by that stage. She had managed to restart the federal funding which had all been suspended. She had got the staff into position and we went from having a totally dysfunctional work unit to a functional one. When I appointed her as I did with the majority of staff, in fact all of the senior staff, I appointed them on relatively low rates of pay. I've always found it a lot better and as a management strategy, easier to increase their pay if they do well and to do it in substantial chunks. I have no appetite for hiring people at the top of the range. I hire them at the bottom of the range; if they perform well, then they get substantial pay rises. I find that helps with motivation and - - -

THE COMMISSIONER: Is that part of their contract?---What, the rate of pay?

Yes?---No. The remuneration rates which I use to establish

what looks like reasonable pay is a Macarthur remuneration survey and I don't know why I got particularly set on the number of a hundred thousand but that is substantially below the median value in all cases in the Macarthur survey.

I'm just wondering why if people agree to work for a particular rate - - -?---Why did they do it? I think - - -

No; no, let me finish. People agree to work for a particular rate and then you unilaterally increase their rate out of shire funds. I don't understand why you'd do that?---Because the turnover rate in the shire was extraordinarily high and that, at least in part, was to do with remuneration. As I said, as a way of motivating people, giving them what they perceived to be substantial pay rises is a very useful way of retaining their services. They become more available - - -

I think you told me this morning that the council did not know about it?---No, I - not in detail but that was not required of me. As I've said before, our payroll bill is going down not up.

Carry on.

NELSON, MS: The base salary of course is only a proportion of their total package isn't it, Mr Kerr-Newell?---Yes, that's the majority but, yes, it is, it's a proportion.

So if we took Bronwyn Little's starting base salary that we looked at this morning of a hundred thousand, by the time you add on all the benefits under the package, she was actually getting a total package of 159,000-odd, wasn't she?---Most of the difference between cash and total is made up in a notional sum of housing which is if you look at it, it's in excess of \$20,000.

Looking at her particular package at the time she came on board, she was given the necessary 9.25 per cent superannuation, then there was an extra five per cent matching contribution?---Yes.

Benefit of the use of motor vehicle \$12,000, rental subsidy \$24,960?---Yes.

Internet connection, phone calls, annual leave airfares allowance?---Yes.

Electricity allowance, water allowance, uniform and mobile phone allowance?---That's true.

These are all the additional aspects of a package attract people to regional Western Australia?---That is designed to do just that. This was not new, in my time I was continuing what I think was an appropriate practice of my predecessor. Recruitment is very difficult.

Just on that fact, when you were recruiting Ms Glass can you recall how many applications you had for that position?---No.

I think you told the Department of Local Government that there were about 32 applications for that position?---That wouldn't surprise me. The salary tends to attract many applicants.

You were just saying it was difficult to get people. You were saying it was difficult to get people up to - - -? ---Yes, who are qualified. I should have qualified that by saying who are experienced and qualified.

How long have you been a director of New Zealand Windfarms Ltd?---Since March of 2016.

What about the company NZWL-TRH Ltd?---They are all subsidiaries of Windfarms.

So you're also director of that subsidiary?---Yes.

And the company TRH Services Ltd?---Yes.

At some point I believe you became chairman of New Zealand Windfarms and the subsidiary companies?---Yes, I did.

When was that?---November of 16.

How did you come to take up that position?---I'm sorry, I don't understand your question. I was elected to that role, from amongst the directors.

So that was something you obviously nominated for?---I was nominated, yes.

Since you've become chairman of New Zealand Windfarms or perhaps before I ask you that question, what type of company or what type of business is New Zealand Windfarms? ---It generates energy by wind turbines.

And it sells that energy back into the grid, does it? ---Through Transpower, yes.

And it's located where?---In Palmerston North, in the North Island of New Zealand.

Do you own any of the shares in the company?---No, but I have - the - I was - I have options to purchase shares at - at - through different prices.

How did you come to be a director of that company? ---Because I was invited to become a director.

Since taking up the chairmanship, has the company undertaken any particular milestones in that time?---It has become considerably more successful.

In what way?---Financially.

If we could look at 0020^ and page 3, it says Chairman's Review at the top. Is this a document that you have put together? Is this what you have written as chairman?
---Indeed. Yes.

If we could look at 0020^ and page 3, it says "Chairman's Review" at the top. Is this a document that you have put together? Is this what you have written as chairman?
---Indeed. Yes.

If we go down to halfway down the page, this document was dated 25 August 2017. You've said to the shareholders:

Since the last AGM we have appointed a new CEO, reviewed staffing levels, introduced a management protocol, done some work on financing.

Is that what you were referring to, the hedging policy, Mr Kerr-Newell?---Yes.

Purchased some electrical assets from Powerco?---Yes.

And introduced a dynamic noise curtailment regime?---Yes.
At

Would you agree that power generation is a politically charged environment to be in?---No.

Well, it's not an easy market judging from what you've written here, is it, Mr Kerr-Newell?---Um, it was - Windfarms is a merchant generator. It dispatches to the market. It is effectively a price-taker. The market price resets every five minutes; depending on the energy delivered to the grid, that's the price you get. There actually is no control over the price.

If we go to the top of the next page thank you, the very first line there you say, "However, of concern to your board is the increasing and challenging task of making a profit in the wind sector"?---That's true. It's the nature of a market anomaly in the New Zealand energy field. The point there is that, um, "gentailers" managed to avoid losses easier than the merchant generator did, Windfarms.

So as chairman of this particular company, what is your role?---To create a policy environment and a set of directions which makes the company as successful as it can be.

Are you also on the audit and risk committee?---The?

Audit and risk committee?---All directors are members of all committees. It's chaired by another director.

And you're on the remuneration committee?---The same thing.

And the nominations committee?---Indeed.

What is the primary purpose of that committee?

---Nominations committee: to seek new directors if required.

How often do you have to do reports to the New Zealand exchange?---Quarterly.

Are you involved in that process?---I'm involved in it signing off, not in the production of the report.

How many options do you have?---Five and a half million, I think.

How much do you get paid to be the chairman of New Zealand Windfarms and its subsidiaries?---I can't say with absolute precision. I think it's \$78,000 currently per annum.

THE COMMISSIONER: Is that New Zealand dollars or Australian dollars?---New Zealand.

NELSON, MS: Does that get paid into your New Zealand bank account?---It gets paid to my personal company, i93.

When you say your personal company, are you the sole director?---I am the sole shareholder of it.

Are you on the board or concerned in the management of any other companies?---Currently, no.

What about a company by the name of B Brink?---That company is now defunct. I was previously on it. It was, um, a company in which i93 owned - I think it was 20 per cent.

What type of company was that, what type of work?---It was a vehicle for a number of people, of which I was one, to work together on various policy projects. I don't think it ever gained a contract.

And were you a director of that company? Were you a director of that company, an officeholder?---Of B Brink, yes.

Of B Brink? Are you still a director or officeholder?---No.

When did you cease to become one?---Effectively, back in 13 and the company has subsequently been wound up. It has not traded or acted in any way since early 2013. I did reference it in fact in my application.

And i93 is still a going concern?---Yes.

When did you start that company? When did you incorporate that company?---2011, I think. There'll be a company

record which has the precise date in it.

As chairman of New Zealand Windfarms, what type of work do you have to do for it financially to help keep it afloat?
---What sort of work do you have to do to?

What is your role in the financial wellbeing of New Zealand Windfarms?---To make decisions about the options that get applied. I'm not certain I quite understand the question.

Well, what do you actually have to do as chairman when it comes to the company's finances?---We receive a financial report on a regular basis. We review that to understand whether or not the company is performing appropriately.

Do you have to seek facilities for the company, financial facilities from banks?---No, I don't.

You don't?---That - the company has sought and is in possession of a loan of I think \$15 million, but that would've been done by the executive and indeed with the support of another director who is expert in corporate finance.

You didn't have any role in getting that facility up?---No, other than to sign it off. That's not my expertise.

Could I please have call 0916^.

Start of TI Transcript T0916^:

KERR-NEWELL: I've been ah hitting one of my directors on the head repeatedly with a piece of four by two. Ah, I have been trying to persuade a New Zealand Bank to lend a wind farm about forty million dollars and I've just finished trying to persuade an Australian bank to lend the Shire four million. I'm on be nice to banks week. I'm not avoiding you.

BELL: (laughs) Were you successful is more to the point on all fronts?

KERR-NEWELL: Ah I've nailed the Australian one, ah I think I'm en route to nail the New Zealand one.

End of TI Transcript.

NELSON, MS: Do you still maintain that you weren't involved in financing for New Zealand Windfarms?---Yes. That was done by the two directors who are resident in New Zealand. I was pushing them to persuade a New Zealand bank and we didn't need \$40 billion, it turned out to be 15; just as - - -

THE COMMISSIONER: That's not what you said?--- - - - the shire didn't need four, it turned out to be two.

And it's not what you said, Mr Kerr-Newell?---Sorry, yeah.

You didn't say that you were pushing them to persuade them. You said, "I have been trying to persuade a New Zealand bank"?---I had no contact with the BNZ. All that contact was the chief executive and the two other directors who are resident in New Zealand.

NELSON, MS: Were you speaking - - -?---I'm speaking to a recruitment consultant here.

Who's a friend of yours? Is this recruitment consultant a friend of yours?---Yes, she's well known to me and I've had a business relationship with her going back years.

So when you said to her, "I have been trying to persuade a New Zealand bank to lend a windfarm about \$40 million," was that a lie?---Well, if I had been more precise I should have said I was trying to persuade a New Zealand bank through the agency of my fellow directors. I'm not either telling the truth or a lie. I'm - - -

But you tell her that as the reason for not calling her back. You say, "I'm not avoiding you"?---That's right. She had been phoning me on a number of occasions.

How much time do you spend in an average week on New Zealand Windfarm business?---It's highly variable, from next to nothing to three or four hours.

So what is the most number of hours you would spend in a week?---I couldn't tell you accurately. I don't know. Whatever hours I spend I ensure that all of my tasks within Halls Creek are complete, which was an assurance I actually gave to the shire president.

When did you give that assurance?---I'm sorry?

When did you give that assurance to the shire president?---I think in the letter I wrote to him, seeking his agreement to me taking the role up.

Was that the first time that you had explained to him your obligation to New Zealand Windfarms?---I talked about it at the time, yes.

Was that the first time that you had raised that you were - - -?---Yes.

- - - employed by New Zealand Windfarms?---That I? I think that I asked him before I accepted the appointment.

Are you talking about the appointment to be chairman or the appointment to be a director?---The appointment to be a director.

Have you told him that you are now chairman?---I don't think so.

Why not?---There is no difference in my workload as director or chairman.

But there's a difference in your pay isn't there, Mr Kerr-Newell?---Yes, there is.

Of \$50,000? Directors get paid \$10,000 and chairman gets paid \$60,000 annually. Isn't that correct?---The directors get paid considerably more than that.

In the annual reports it mentions \$10,000 plus whatever audit committee or nomination committee fee?---No, I - you must have been looking at a part number for a director.

I don't want to mislead you. I'll just check that?---There is a - I'm sure in the annual report there is obliged to be a disclosure of that. It's about 30 or 35 thousand dollars a director. Chairmen tend to earn twice what a director earns. That number is slightly less than it has been. My remuneration went up a little as a chairman. The directors' went up more, to reflect the amount of work they do.

That is my mistake. It says, "Board chairman received \$60,000, deputy chair 37,500 and remaining directors \$30,000"?---I'm sorry, the? It's about two to one.

Yes. In any event, you did not tell the shire president that you had increased your pay or that your title had changed?---I don't believe I mentioned the level of pay I received in the first place.

Were you asked about that?---No; but again, that's not - the key issue I know for me, and I believe for the shire president although I'm sure he would speak for himself, is whether or not it was appropriate for me to undertake that role at all is the first question. The second one is what impact, would it have an adverse impact on my role as chief executive of the shire and did it contribute to my capacity in terms of professional skills to do my job.

How did you perceive that it might have an impact on your duties as CEO of the shire?---Because the number of hours I can work in any given day is inevitably limited. If the sum of what I need to do in the shire plus what I need to do for the company exceeded that, then it was going to have an adverse impact. As long as there was sufficient time to do my job and to undertake the variable amount of time during my normal working period, then it wasn't going to have an adverse impact. When it came to physical board meetings, then I took holidays.

THE COMMISSIONER: It all depends on what you tell the president, doesn't it, about what - - -?---I'm sorry, I didn't hear the first bit.

It all depends on what you tell the president - - -?---Yes,

it does.

- - - about your role in Windfarms?---Yes.

Because unless you tell the president everything, he may not have full information when making a decision?---True. I agree.

NELSON, MS: What did you tell the president was going to be your commitment?---I'm sorry?

What did you tell the president was going to be your commitment?---That I would like to take up the appointment, that I had thought through the impact of that appointment, I believed I had an obligation to deliver up all the things which are delineated for the shire, that there was sufficient time left in my day for me to undertake that role.

So when you say there's sufficient time left in your day, you meant in an average working day if you had time to spare that you could spend on Windfarms?---No, I tend to work quite substantialised, I will start most days at 7.30 in the morning when I start to review my emails, I then have some breakfast, I go into the office roughly from 8.30 until 6.00, 6.30 in the evening and I carry on afterwards. Inevitably I end up working at the weekends as well, because it's the nature of the job. A lot of meetings tend to happen on Mondays, so therefore I travel on Sundays or, you know.

So given those normal hours you're referring to, 7.30 starting to look at emails, up until 6.30 at night, how was it that you were going to have any time to spend on Windfarm business?---I have done it in the course of the day. I mean, the time difference between New Zealand means that anything that I might be talking about in Windfarm terms tends to be first thing in the morning or earlier in the morning and I regularly talk to the chief executive of Windfarms on Monday evenings, WA time.

Would you generally do Windfarm business during the working week?---Yes, and then I extended my working period to ensure that I'd completed my shire tasks, if that was the case.

So given that you'd do Windfarm business early in the morning or Monday evenings were specific times that - - -? ---Or usually nothing much - by midday in WA it's the end of the working day in Australia - or in New Zealand.

So if you worked in that way, that gave you sufficient time to do shire business - - -?---Yes.

- - - between the hours of 7.30 to 6.30-ish?---I believe so, and Saturday and Sunday and whenever. I can't avoid dealing with my role as the chief executive, whether or not I'm at work or on holiday even. Life carries right along.

So when you say you had Monday evening ordinarily telephone conversations with the chairman - sorry, with the - - -?
---Chief executive.

- - - chief executive, the time difference in New Zealand would mean that was invariably midnight or afterwards?
---No, it would have been either 10 or 11 o'clock in the evening.

For here?---In New Zealand, yes.

Is the time difference seven hours?---Four.

Four?---Or five, depending.

And how often were you expected to attend in New Zealand for board meetings?---We've established that on average once every three months.

Their board meetings were ordinarily monthly, weren't they?---We had telephone meetings as well.

Would that be during the course of an ordinary meeting when you were not physically in New Zealand, you would hook up by phone?---Yes.

So what time of the day were board meetings held?---Tend to be between 7.30 and 8.30 in the morning - with WA time, which is lunchtime New Zealand time. Any earlier than that is unpleasant.

I'll show you the letter to the president, 0321^.
Madam Associate, if we could have it minimised so that the whole letter is on the screen that would be helpful, thank you. Is that the letter you were referring to?---Yes.

It's dated 14 January 2016 and I think I'm correct when I say your evidence was that that was the first occasion that you spoke to the shire president about - - -?---Yes, it was.

- - - the possibility of taking up the directorship?---Yes.

What did the shire president say to you about that?---He said that he was happy, providing it had no adverse impact on the shire.

Did you describe the nature of the business to him?---I said it was a wind farm generating electricity. As a business it's quite small.

Did he ask you any questions?---We talked over what it was.

You say at the first phrase, "Following on from our discussion." Is the discussion the conversation we were just referring to?---That was a discussion we had, yes.

Did the discussion happen on this date or on a previous date?---What day was 14 January? If you can tell me that, I will tell you when it was.

VANDONGEN, MR: Thursday.

NELSON, MS: If I could have 0654^ thank you, page 4 please?---Yeah, that was the day we would have had the discussion.

Grab 35

So it's a Thursday?---Yep; yes it is.

Why are you sure that that was the day? What happened on Thursdays?---I meet the shire president on Thursdays.

Every Thursday?---Not without exception but principally.

What is the purpose of those meetings?---To ensure the shire president is up to date with the doings of the shire, to - you have seen the minutes from it - to deal with employment, dismissal, to deal with issues, opportunities and general business. It's a miscellany of things. Those are - - -

Right. Is it just you and him?---? - - - then reduced to minutes.

Right. It's just you and him? Is there a minute-taker or is it just - - -?---There are minutes, yes.

Who takes the minutes?---I prepare the minutes.

So apart from you and the shire president, is there anyone else present at the meeting?---From time to time but principally the shire president and I. In earlier times mainly also the deputy shire president.

And on the 14th - - -?---But less so currently

On 14 January 2015 would anyone have been present at that meeting?---I can't remember. If there's a minute it will say.

You in this letter point out that you were going to take on a directorship of New Zealand Windfarms Ltd.

THE COMMISSIONER: What number is the letter?

NELSON, MS: Is there - - -

THE COMMISSIONER: What number is the letter?

NELSON, MS: Sorry, 0331^.

Is there a reason why you didn't include the other two subsidiary companies in the letter?---No, other than

the collective is listed on the exchange as NWF. The others are subsidiaries and are there for structural purposes. One's a - I think owns the assets. One is - owns the labour, I think and I'm not certain there isn't a third one as well which is capable of contracting. It's a historic anomaly.

Okay. The second paragraph, "There's no possibility of a conflict of interest as this is a New Zealand-based power generation company - - -"?---Yes.

"- - - as we have discussed". Do I take it by that sentence that the fact that the company is in New Zealand - so the geography, the geographical location of the company - - -"?---I thought it - - -

- - - is the reason there is no - - -"?---It is useful to - - -

- - - property in the company?--- - - - have exposure in the commercial world. It would have been more useful to have had that exposure in Australia but I cannot see, at least in WA, how I could have done that because there was always going to be a danger they might in some way, shape or form interact with the shire. By having it outside the country, that removed that possibility of it ever having to interact with the shire.

You say there's no possibility of a conflict. How can you rule out in advance any possible conflict?---I cannot foresee reasonably that there can be a conflict between public governance in WA and the generation and sale from merchant generated energy in New Zealand. I've made a judgment.

Then finally, you say, "There will be no impact on my activity as CEO of the shire as any company activity will occur in my own time"?---If I used time on Windfarms during my day, I simply added it on to the end of my day and kept going until the tasks were all achieved.

THE COMMISSIONER: Why did you ask for the president's permission?---Because that's my conduit to council.

Well, did you advise the president whether there was a resolution of council appointing the president to approve this as your contract of - - -"?---I'm not aware of a resolution to that effect.

- - - as your contract of employment requires?---No.

So it may be that the president's approval, through no fault of his own, is ineffective?---Yes.

Anyway, I think the airconditioning in this room is not working and it has been a long day for everybody, not least Mr Kerr-Newell, so I think we will adjourn until tomorrow morning at 9.30.

(THE WITNESS WITHDREW)

VANDONGEN, MR: Commissioner, before you adjourn, could I raise one issue with you?

THE COMMISSIONER: You certainly may.

VANDONGEN, MR: It's in response to the matter that you raised with me this morning about the position of Ms Salerno and her acting for the Shire of Halls Creek.

THE COMMISSIONER: Yes.

VANDONGEN, MR: I've been instructed that a letter was sent to the Shire of Halls Creek on 29 November 2017 in which she advised that she was no longer to be acting for the Shire of Halls Creek. So the point that you put to me this morning was a bit of a surprise to her I think.

THE COMMISSIONER: So the shire and she have terminated their relationship?

VANDONGEN, MR: I can't say effective from 29 November but certainly the letter that I saw this morning was dated 29 November.

THE COMMISSIONER: That would appear to be the case. Thank you for clearing that up, Mr Vandongen. We will adjourn.

AT 3.51 PM THE MATTER WAS ADJOURNED UNTIL
FRIDAY, 27 APRIL 2018