



s 9(2)(a)

Thank you for your email of 18 September 2022 to the Ministry for the Environment (the Ministry) requesting the following under the Official Information Act 1982 (the Act):

a copy of all correspondence (hardcopy or digital), recollections of verbal conversations, and notes/records kept of verbal conversations between the Ministry for the Environment and the Public Service Commission on any aspect or membership of the Waste Strategy Expert Advisory Ropu. This includes, but is not limited to, the correspondence referred to in the following written question.

Reply 31038 (2022) has been answered

Portfolio: Environment (Hon David Parker)

Question: *Further to 20481 (2022), has the Ministry for the Environment had any further communications with the Public Service Commission since 20 October 2020 in relation to any aspect or membership of the Waste Strategy Expert Advisory Ropu, and if so, what was communicated and on what date(s)?*

Reply: *I am advised that the Ministry for the Environment had further communications with the Public Service Commission about the Waste Strategy Expert Advisory Rōpū since 20 October 2020: 4-11 July 2022 & 1 September 2022 regarding the internal review of the procurement and appointment process for the Waste Strategy Expert Advisory Rōpū.*

On 13 October 2022, the Ministry contacted you to extend the timeframes to respond to your request by 20 working days under section 15A(1)(b) of the Act, as consultations necessary to make a decision on the request were such that a proper response could not reasonably be made within the original timeframe.

The Ministry has interpreted your request for “all correspondence... on any aspect or membership of the Waste Strategy Expert Advisory Ropu” to be for information specifically related to the Rōpū itself and its membership.

Please find enclosed information in scope of your request. Some information has been redacted as out of scope of your request. Some information has also been withheld under the following sections of the Act:

- 9(2)(a) - to protect the privacy of natural persons, including that of deceased natural persons
- 9(2)(ba)(ii) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of

any enactment, where the making available of the information would be likely otherwise to damage the public interest.

Information withheld under section 9(2)(ba)(ii) of the Act is information in scope of the Public Service Commission's (PSC's) review of agency management of conflict of interests. More information about this review can be found on PSC's website:

publicservice.govt.nz/publications/review-of-agency-management-of-conflict-of-interests/

The content of verbal conversations recalled by Ministry staff in scope of your request have been accurately captured in the enclosed information. For this reason, no recollections by Ministry staff of verbal conversations have been included in the information provided to you. No notes/records of verbal conversations were identified by the Ministry.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

The Ministry has released a range of information regarding the rōpū and you can find this information at environment.govt.nz/oia-releases/

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at:

www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Ministerial Services team: ministerials@mfe.govt.nz.

Yours sincerely



Pepi Batsos

Director - Organisational Strategy and Performance - Ministerial Services

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	4 July 2022 – 11 July 2022	Email correspondence between Ministry and PSC officials: Waste strategy rōpū: Review of appointment process	Released in part	S9(2)(a)
2	15 September 2022 – 16 September 2022	Email correspondence between Ministry and PSC officials: Ministry's management of perceived and actual conflict of interests	Withheld in full	S9(2)(ba)(ii)
3	Undated	Recollection by PSC official of verbal conversation with Ministry official: conflict-of-interest query in relation to the Waste Strategy Advisory Rōpū	Released in full	N/A
4	1 September 2022	Email correspondence between Ministry and PSC Officials: Waste strategy rōpū: Review of appointment process	Released in part	S9(2)(a)
5	15 September 2022 – 16	Email correspondence	Withheld in full	S9(2)(ba)(ii)

	September 2022	between Ministry and PSC Officials: Ministry's management of perceived and actual conflict of interests		
6	20 October 2020	Email correspondence between Ministry Officials: summary of verbal conversation with PSC Official about a conflict-of-interest query in relation to the Waste Strategy Advisory Rōpū	Released in part	Out of scope

Released under the Official Information Act 1982

From: [John O'Connell](#)
To: [Kate Salmond](#)
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact
Date: Monday, 11 July 2022 10:40:00 am
Attachments: [image001.jpg](#)
[image002.gif](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

OK, thanks Kate – get well soon.

Nga mihi
John

From: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Sent: Monday, 11 July 2022 10:28 am
To: John O'Connell <John.O'Connell@mfe.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Kia ora John,

I'm really sorry but I'm on sick leave today, I just saw your message as I was logging on to put on my out of office.

Re the no surprises principle, again its a bit hard because I don't know the facts. Our file note suggests that Dallas talked to Glen about informing MfE's Minister of the conflicts. Was the CE given advice on the point? If you look at the Crown Law Guidance, this is a judgment call for the CE. So really, all the report could say was whether the CE was given good advice on the point. If you want more specific advice on the application of the principle though, I'd suggest asking Crown Law.

In the end though, this all seems quite separate from the underlying issue of whether the conflicts were appropriately identified and managed in the first place.

Ngā mihi,
Kate

From: John O'Connell <John.O'Connell@mfe.govt.nz>
Sent: Monday, 11 July 2022 8:15 am
To: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Hi Kate

I hope your household health has not worsened.

Keen to get your thoughts on the application of the No Surprises principle in this case, if appropriate.

I'm on leave from Thursday and so I need to get my report to my CE early this week, as a draft for her review.

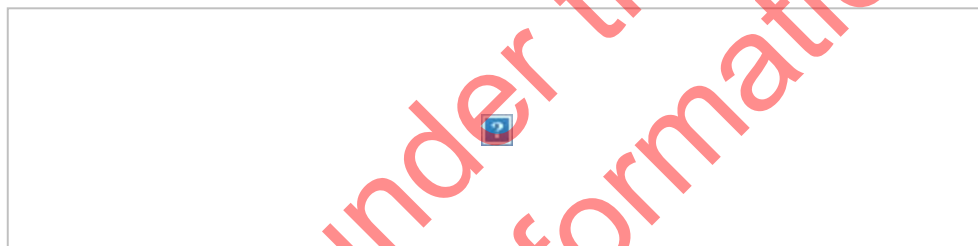
I don't know what discussions, if any, your office has had with my CE or anyone else from the Ministry on this review - noting your comments around your expectations of the scope.

Do you have any time today for a quick follow-up chat?

Thanks
John

John O'Connell (he/him*) – Principal Risk & Assurance Advisor
Ministry for the Environment – Manatū Mō Te Taiao
Phone: **S9(2)(a)** Email: john.o'connell@mfe.govt.nz Website: www.mfe.govt.nz
8 Willis Street, PO Box 10362, Wellington 6011

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From: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Sent: Friday, 8 July 2022 4:35 pm
To: John O'Connell <John.O'Connell@mfe.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

No worries John.

Just logging off now to check in on the family movie watching, so I'll touch base with you again on this next week.

Have a lovely weekend,
Kate

From: John O'Connell <John.O'Connell@mfe.govt.nz>
Sent: Friday, 8 July 2022 4:26 pm
To: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Thanks for getting back to me so quickly Kate.

On your query re scope, I was asked to review the process followed in the appointment of the rōpū members and associated support services - not solely whether any conflict(s) of interest had been identified and managed in line with policies or good practice standards. Hence there are several (inter-related) findings around the process.

Keen on any feedback on the application of the 'no surprises' principle in this case too, as discussed.

Have a good weekend (hopefully a healthy one), and I'm keen to connect early next week.

Thanks
John

From: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Sent: Friday, 8 July 2022 4:09 pm
To: John O'Connell <John.O'Connell@mfe.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Kia ora John,

All good the whanau are just watching movies today, which has given me the time to have a look at your draft report and to have a chat with a couple of colleagues.

My main comment is that it is a little hard to provide any feedback on the logic or robustness of the conclusions you have drawn, because the report doesn't set out the underlying facts. They may well be set out in your initial findings and/or well understood between you and the chief executive. But my understanding is that this report will be publicly released so it would probably be better if it could stand alone. That way the reader can understand why you reached the conclusions that you did.

Similarly, I also want to clarify the scope of what you were asked to do. We had expected your report to focus on conflict-of-interest management and whether MfE had complied with its own internal policies and/or system-wide guidance (eg the Commission's Conflict of Interest Model Standards and the Office of the Auditor-General's Conflict of Interest Best Practice Guide). Your report differs from this (i.e it doesn't set out the facts, assess them against a benchmark, make findings on compliance and offer recommendations to improve). It is more of a general assessment as to where the risks could have been managed better. That makes perfect sense given your role, so I've just asked our Assistant Commissioner to loop back to your CE to clarify whether we've misunderstood. That'll probably happen early next week.

Finally, I am not sure its entirely appropriate to place so much emphasis on PSC's advice in relation to the conflict of interest. As you and I discussed, PSC was only aware of one family member on the rōpū, and the appointment of the other two changed the nature of the issues. In addition, MfE knew about the conflict for months but only asked PSC for urgent advice in October once the

contracts were already drawn up and near final. Given the speed with which the advice was prepared and that it was not based on the full facts, it seems odd to put much weight on the idea that MfE followed it. Also, just in case it helps I've attached our file note of the conversation. This is likely to be publicly released under an OIA soon, and it makes sense for you to see it as well.

I'm happy to chat about all of this on the phone and/or happy to come back to you next week once I've heard back from our Assistant Commissioner.

Many thanks and have a lovely weekend,
Kate

Kate Salmond ([she/her](#))

Kaitohutohu Matua | Chief Advisor – Integrity and Investigations

Te pono, te matatika me te tautikanga | Integrity, Ethics and Standards

waea pūkoro: **S9(2)(a)** | imēra: kate.salmond@publicservice.govt.nz

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From: John O'Connell <John.O'Connell@mfe.govt.nz>

Sent: Friday, 8 July 2022 8:50 am

To: Kate Salmond <Kate.Salmond@publicservice.govt.nz>

Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Oh dear – I'm sorry to hear that Kate.

S9(2)(a)

Absolutely no problem if you can't get back to me today. I need to get the draft report to my CE sometime early next week ideally so any feedback by early next week would be appreciated if you get the opportunity.

Thanks

John

From: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Sent: Thursday, 7 July 2022 5:59 pm
To: John O'Connell <John.O'Connell@mfe.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Kia ora John,

I will do my best to meet that timeframe, **S9(2)(a)** and trying to juggle kids at the moment too. The joy of our current times!

I'll lean on some of my colleagues to provide some support and we'll be in touch again before the end of the week with at least an update as to how far we have got.

Ngā mihi,
Kate

From: John O'Connell <John.O'Connell@mfe.govt.nz>
Sent: Thursday, 7 July 2022 10:21 am
To: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Hi Kate – my draft report is attached, as discussed. I welcome any comments or feedback (if possible, this week?)

I am on leave from next Thursday, and I need to get it to my CE before then ideally.

Happy to discuss it in person if that's easier.

Many thanks
John

From: John O'Connell
Sent: Thursday, 7 July 2022 9:44 am
To: Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Hi Kate – thanks for this, and for the chat yesterday.

Para 16 looks useful: The general principle is to inform Ministers of matters of significance within their portfolio, particularly where those matters are controversial or may become the subject of public debate.

I will definitely send you my draft report for review – probably today or tomorrow.

Many thanks

John

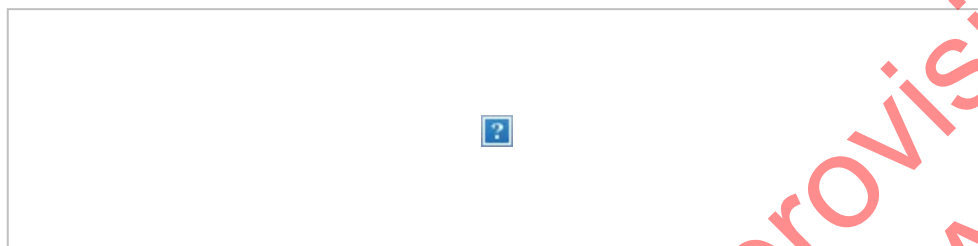
John O'Connell (he/him*) – Principal Risk & Assurance Advisor

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8 Willis Street, PO Box 10362, Wellington 6011

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From: Kate Salmond <Kate.Salmond@publicservice.govt.nz>

Sent: Thursday, 7 July 2022 9:06 am

To: John O'Connell <John.O'Connell@mfe.govt.nz>

Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Kia ora John,

Good to chat to you yesterday.

In case it helps, here is [Crown Law's guidance on the no surprises convention](#). In short, it's a judgment call for CEs to make. But there is a passage in here specifically about when to inform a Minister of a staffing matter, which might be useful.

Once you've finished the draft report and tied up the loose ends you mentioned, I'm happy to review it.

Good luck and talk soon.

Ngā mihi,
Kate

From: John O'Connell <John.O'Connell@mfe.govt.nz>

Sent: Monday, 4 July 2022 4:31 pm

To: Kate Salmond <Kate.Salmond@publicservice.govt.nz>

Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Hi Kate – excellent, thanks very much.

I will flick you an invite to meet (via Microsoft Teams if OK) for Wednesday afternoon – let me know if the time doesn't suit, otherwise I'll talk to you then.

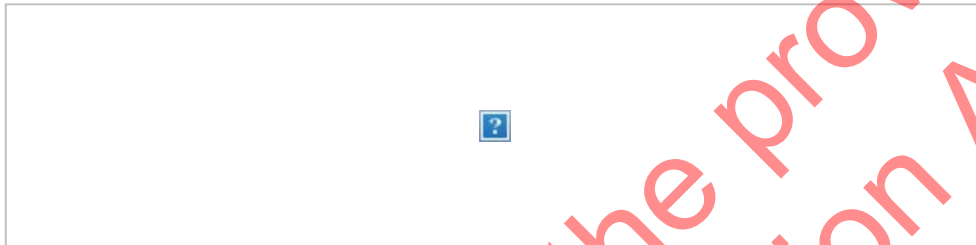
Nga mihi
John

John O'Connell (he/him*) – Principal Risk & Assurance Advisor

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From: Kate Salmond <Kate.Salmond@publicservice.govt.nz>

Sent: Monday, 4 July 2022 3:44 pm

To: John O'Connell <John.O'Connell@mfe.govt.nz>; Martin Kessick <Martin.Kessick@publicservice.govt.nz>

Subject: RE: [IN-CONFIDENCE] Conflicts of interest review - PSC contact

Kia ora John,

No worries at all! I know someone called Kate Edmund actually and she is lovely, so not a problem

I'm very happy to have a chat this week. Tuesday and Thursday are looking pretty dire, but I've got some time on Wednesday and Friday after 2pm if that suits?

Ngā mihi,
Kate

Kate Salmond ([she/her](#))

Kaitohutohu Matua | Chief Advisor – Integrity and Investigations

Te pono, te matatika me te tautikanga | Integrity, Ethics and Standards

waea pūkoro: S9(2)(a) | imēra: kate.salmond@publicservice.govt.nz

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From: John O'Connell <John.O'Connell@mfe.govt.nz>
Sent: Monday, 4 July 2022 3:17 pm
To: Martin Kessick <Martin.Kessick@publicservice.govt.nz>; Kate Salmond <Kate.Salmond@publicservice.govt.nz>
Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Thanks Martin (and Kate)

And sorry for the wrong surname – I blame the messenger!

Let me know when you would free to have a chat Kate – this week if possible.

Many thanks
John

John O'Connell (he/him*) – Principal Risk & Assurance Advisor
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23 Kate Sheppard Place, PO Box 10362, Wellington 6143

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From: Martin Kessick <Martin.Kessick@publicservice.govt.nz>
Sent: Monday, 4 July 2022 2:25 pm
To: John O'Connell <John.O'Connell@mfe.govt.nz>
Cc: Kate Salmond <Kate.Salmond@publicservice.govt.nz>

Subject: RE: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Hi again John,

Kate has confirmed that she's your key contact for this issue. I've copied her in to this email so that she can engaged with you directly.

Regards

Martin

From: Martin Kessick

Sent: Monday, 4 July 2022 2:22 pm

To: John.O'Connell@mfe.govt.nz

Subject: FW: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

Kia ora John,

Thanks for your email.

I'm now the Assistant Commissioner for MfE (since Dallas retired at the start of this year). I suspect that the person you were put in touch with was Kate Salmond who is a Senior Adviser in our Integrity & Ethics team.

I've reached out to Kate to let her know you are wanting to speak to her or someone from the team. As soon as I hear back from her I'll put you in contact.

Let me know if there's anything I can do in the interim.

Regards

Martin Kessick (he/him)

Kaikōmihana Tautāwhi | Assistant Commissioner

Te Aromātai Whakatatutukitanga | System & Agency Performance

waea pūkoro: S9(2)(a) | imēra: Martin.Kessick@publicservice.govt.nz

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From: John O'Connell <John.O'Connell@mfe.govt.nz>

Sent: Monday, 4 July 2022 1:40 pm

To: Dallas Welch <Dallas.Welch@publicservice.govt.nz>

Subject: [IN-CONFIDENCE]Conflicts of interest review - PSC contact

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Kia ora Dallas

You may be aware that MfE is reviewing the process followed with respect to the appointment of ropu members in 2020 to provide advice on a draft national waste strategy.

The CE has asked me to do this review on her behalf. I am keen to talk to someone from the PSC about some general advice in this context as part of my review.

My CE gave me the name of someone from the PSC (Kate Edmond (or Edmund)?) and a cellphone number – I have sent Kate a text but haven't got a reply as yet.

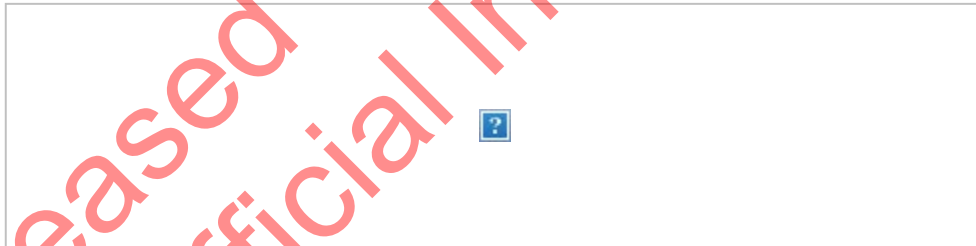
Can you please confirm that Kate is the appropriate person I should talk to or, if not, who would be best as someone for me to talk to about this.

Thanks Dallas

Nga mihi
John

John O'Connell (he/him*) – Principal Risk & Assurance Advisor
Ministry for the Environment – Manatū Mō Te Taiao
Phone: S9(2)(a) Email: john.o'connell@mfe.govt.nz Website: www.mfe.govt.nz

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the Official Information Act 1982

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MfE - Conflict of Interest query 20/10/2020

Glen Wigley, on behalf of Sam Buckley Dep Sec, wished to discuss a matter with PSC.

MfE is establishing the Roopu, Maori Advisory group, to provide a mātauranga māori perspective on a new Waste strategy.

One of the persons to be engaged is (Minister) Mahuta's husband. Minister Mahuta has been Associate Minister for the environment with responsibility for the three Waters programme but has not been responsible for waste. This sat with Minister Sage.

MfE looking for a particular skillset in the development of the ao Māori strategy frameworks. They plan to engage a consultancy company, which Minister Mahuta's husband is associated with, to advise. I am uncertain whether the arrangement with her husband will be as an individual or the company.

I talked with Nicola and Erik. Our common view is that being the Minister's husband should not preclude his involvement, but that a conflict of interest is present. A robust management plan needs to be able to be put in place. Furthermore, perceptions need to be considered and addressed - of attempting to influence MfE and possibly of Minister's family having financial gain. This could be magnified if Minister Mahuta assumes responsibility for waste or a related portfolio.

The te roopu will work to MfE, not any Minister. Ministers have not been involved in the selection of participants.

I discussed the following with Glen

- Having a comprehensive conflict of interest plan in place and monitoring it
- Beefing up and making explicit in the terms of reference such conditions as confidentiality of information and discussion, not speaking on behalf of MfE etc
- Clarifying the nature of interaction with the Minister
- Informing their Minister of the group, its membership and any conflicts of interest.

Nicola had also wondered if the Minister, herself, might wish to declare a potential conflict with the PMO (or the appropriate body or person) and put in place a management plan. I noted this to Glen and MfE will consider whether to raise this.

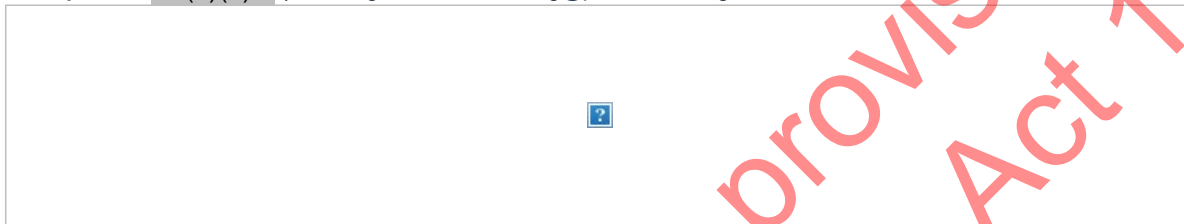
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From: [Grahame Armstrong](#)
To: [Billie Moore](#); [Martin Kessick](#)
Cc: [Amanda Moran](#)
Subject: RE: [IN-CONFIDENCE]Waste Strategy ropu appointment process review
Date: Thursday, 1 September 2022 9:52:16 am
Attachments: [image008.gif](#)
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Thanks Billi. In a nutshell, what are the findings?

Grahame Armstrong
Principal Media Advisor

waea pūkoro: S9(2)(a) | imēra: grahame.armstrong@publicservice.govt.nz



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From: Billie Moore <Billie.Moore@mfe.govt.nz>
Sent: Thursday, 1 September 2022 8:41 am
To: Martin Kessick <martin.kessick@publicservice.govt.nz>; Grahame Armstrong <grahame.armstrong@publicservice.govt.nz>
Cc: Amanda Moran <amanda.moran@mfe.govt.nz>
Subject: [IN-CONFIDENCE]Waste Strategy ropu appointment process review

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Morena Martin and Grahame

I'm not sure we've been in contact before Grahame, but I'm working in the CE's office at MfE and wanted to reach out on a topic on Vicky's behalf.

You'll recall that she asked our risk officer to prepare an internal paper to assess whether policies and processes at MfE needed any improvements in light of the information released on the appointments to the Ministry's waste rōpū in 2020.

This review has been provided to the CE and Minister Parker has been updated on its findings. We intend to put the document on the MfE website in line with the major OIA releases on this topic.

A comms plan is being tidied up now and I can make sure content is shared with you Grahame.

Any questions or concerns, I am here to assist.

Billie

Billie Moore (she/her)

Chief Advisor | *Kaitohutohu Whakarae*

Ministry for the Environment | Manatū Mō Te Taiao

S9(2)(a) | billie.moore@mfe.govt.nz | environment.govt.nz



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Memo

To: Vicky Robertson, Chief Executive

File ref:

From: John O'Connell, Principal Risk & Assurance Advisor

Date: 16 Aug 2022

Re: Waste Strategy Rōpū – review of appointment process

Purpose

To set out findings and conclusions from my review.

Background

On 17 May, you asked the Chief Operating Officer (COO) to ask me to review the process to appoint the rōpū that was involved in development of the draft national waste strategy. I reported my initial findings to you on 23 May. On 22 June you asked the COO to ask me if anything needed to be updated from my initial review, given that some time had passed and further work had been done on analysing emails and other documentation. I was asked to consolidate my work into one report. You also asked me to speak to a representative from the Public Service Commission (PSC) about my review.

The Ministry engaged three rōpū members and associated support services under four contracts from October 2020 to August 2021. A high-level timeline of the appointment process is included at Appendix 1. There has been recent publicity and attention around the family connections between a Cabinet Minister, a member of the rōpū (her husband), and two people engaged to provide support services to the rōpū (the nephew of the rōpū member and his wife).

Executive summary

This review found no evidence or indication that any appointments were made because of any family connections to a Cabinet Minister, nor of any political involvement in the decision-making process. There was sufficient evidence to conclude that all members of the rōpū and associated support service providers were appointed because of their relevant experience. The review did not find any reason to challenge the direct procurement method used.

However, the process followed should have been better planned and implemented. The Procurement and Legal teams were involved too late to provide timely advice at different stages of the process. The risk associated with one rōpū member and the support service provider being related to a Cabinet Minister was identified and discussed early in the process. However, there was inadequate escalation of this risk

to senior management. There was also a lack of clarity over who should approve procurement plans that recorded this risk and the actions and factors to manage it.

Once escalated, the Deputy Secretary responsible decided that the measures planned to manage the family connection risk were sufficient. The existence of the risk was not discussed with any Ministers, to minimise any risk of accusations of influence. It could have been raised with the Minister for the Environment via usual Ministerial channels as part of the 'No Surprises' principle.

There was also a conflict of interest risk between a member of the rōpū and the two people engaged separately to provide support services to the rōpū (the nephew of the rōpū member and his wife). This risk received little specific assessment as it was considered as part of the wider family connection to a Cabinet Minister.

Ministry-wide process improvements made and planned since the time of this procurement process in 2020 are appropriate and will reduce the likelihood of similar issues arising in procurement and appointment processes.

Observations and findings

Method of procurement

Direct sourcing was used to appoint the three rōpū members and the associated support services provider. The justifications for this approach were tight timeframes and the narrow field of people with the required level expertise. The Ministry used existing contacts to identify people with the expertise required to be members of the rōpū (or 'wise heads'). I was told that the rōpū required rangatahi (young people) to be involved. The Ministry considered that the two people identified for this role had the skills and experience required.

My review did not find any reason to challenge the justification for the procurement method used. However, as discussed below, overall planning for this process should have been better. If it had been, there may have been more time available to identify other potential rōpū members and /or support service providers. Also, the Procurement team was not involved in these decisions, or the approach used to make them (see below). They may have endorsed the direct source approach used or advised a different approach. Either way, their input and expertise would have been valuable in helping to make a fully informed decision.

Overall planning

The appointment process was not well-planned. Some confusion over pay rates for the services and unclear lines of responsibility and communication internally were symptoms of this, as was the late involvement of the Procurement Team (see below). Another symptom was the flurry of activity at the end of the process to finalise and sign procurement plans and contracts before a scheduled meeting with the Waste Advisory Group. A late decision to split the support services work into a separate contract from those of the rōpū members, to better reflect the different services, also contributed to the rush at the end of the process.

This lack of planning was at least partly due to the iterative nature of establishing the nature of the services required; those involved were open that it was challenging, with some differing views internally, and that they were “feeling their way”. The nature of the work to be provided, who should do it, and how the work should be contracted for delivery, was innovative and complicated. It involved working with Māori in true partnership, which understandably took some time to work through.

Also, this work was carried out at a challenging time with Covid lockdowns and busy workloads, and people being stretched as a result. However, a simple plan with key steps and milestones, the roles of the teams and people involved, and the advice, input, and decisions required (and by whom and when) should have been prepared. It would have been a valuable tool to use and monitor progress against throughout the process.

Procurement / Legal Teams’ involvement and advice

Procurement and legal advice were sought too late in the process. The Procurement team was not involved until a draft procurement plan and contracts had already been prepared (13 October 2020). By this time there was urgency to finalise and sign the procurement plans and contracts. Given the complexities around the nature of the relationship, the services required, and the family connections (see below), early engagement with Procurement and Legal would have been beneficial to the overall outcome.

Conflict of interest risks

There was a family relationship between a Cabinet Minister (Associate Minister for the Environment at the time but not involved in Waste activities) and three of the people involved in this work. This was identified and discussed early on (June 2020) as a risk associated with the process and as a potential, actual, or perceived conflict of interest.

There was also a conflict of interest risk between a member of the rōpū and the two people engaged to provide support services to the rōpū (the nephew of the rōpū member and his wife). Initially the services of these three people were planned to come under one contract; however, the work was split into two contracts to better represent the different nature of the work to be provided. The existence of this separate risk had little separate discussion or plans to manage it. It was considered within the wider risk (i.e. the family members’ connection to a Cabinet Minister).

No-one escalated these risks to Deputy Secretary level when they became known. The deputy secretary responsible only realised the family connections and associated conflict risks existed when he reviewed a draft email to the Chief Executive on 19 October (very late in the process). He was copied into an earlier email that included discussion of the family connection with a Cabinet Minister, but no-one specifically flagged this risk to him.

Advice from Procurement and Legal teams, when they eventually were involved, was that the procurement plan for this work needed Chief Executive approval given the ‘high’ level of risk associated with these family connections. This did not occur, with

the deputy secretary responsible eventually approving the procurement plans for both the rōpū and the associated support services (these were separate contracts).

The director responsible asked the Public Service Commission (PSC) for advice on how to deal with this risk (but only relating to the husband of the Minister, not also his nephew and his nephew's wife). Again, the team sought this advice very late in the process (20 October). The risk was known about for two or three months before this. The PSC's advice (which was summarised in an email from the director to the deputy secretary on 20 October) was that the rōpū member's relationship with the Minister *"shouldn't preclude the Ministry from engaging with his company or himself, as long as we have strong conflict of interest arrangements and active management in place"*. This email also noted that the PSC *"noted that if Minister Mahuta had responsibilities for waste in the future, there is a question of whether we would need to raise her raising the conflict with the PM"*.

The Ministry therefore followed the PSC's advice, subject to whether we had "strong conflict of interest arrangements and management in place." Conflict of interest management arrangements were recorded in the procurement plans. These explained that the Minister was not involved in the process at all and was not involved in any waste-related activities in her role, and that the people involved were suitably experienced. They also had to sign confidentiality agreements. Regular meetings were also held during the period of the contracts to discuss progress.

While these measures were appropriate, there could have been more in-depth assessment and documentation of the family connection risks. For example, what were the potential impacts of this risk on the Minister concerned, the Government and/or the Ministry? What could be done (if anything), to eliminate or reduce these impacts?

One action that could have been considered was to raise the family connection risk with the Minister for the Environment as part of the 'No surprises' principle. This principle applies where there are matters of significance within a Minister's portfolio, particularly where those matters are controversial or may become the subject of public debate. It is worth noting, however that at the time contracts were signed, officials were not meeting with Ministers, as a "caretaker" government was in place post-election. The general election was held on 17 October 2020 – the week before contracts were signed.

There should also have been more explicit assessment of the related, but separate, risk associated with the family connection between one rōpū member and the support services provider.

Conclusions

This was not a straightforward appointment or contracting process. The nature of the work to be provided, who should do it, and how the work should be contracted for delivery, was innovative and complicated. It involved working with Māori in true partnership, not just a standard supplier agreement. It justifiably took quite a long time to work through. The people in the Ministry involved also did the work against the backdrop of Covid lockdowns and an election year. People involved told me there were also unrelenting and significant work pressures, inadequate resourcing (with

recruitment efforts at the time serving to add to work pressures in the short term), and a constantly changing environment that hindered meaningful planning.

Acknowledging the context at the time as explained above, the process should have been planned better at the outset. Procurement and legal advice should have been sought a lot earlier to assist with the procurement approach, contract structures, and how to manage the potential or perceived conflict of interest risks. These risks should also have been escalated to senior management much earlier. A separate, but related, conflict of interest risk (between a rōpū member and the support services provider) should also have been assessed.

These risks should have been assessed and documented in more detail to ensure that arrangements put in place to manage them were effective at reducing the risk to the Minister, the Government, and the Ministry to an acceptable level. The Ministry effectively accepted the remaining level of risk on behalf of the Minister involved and the Government.

That said, it is important to note that this review found no evidence or indication of any appointments being made because of any family connections to a Cabinet Minister, nor of any political involvement in the process.

Changes and improvements since this appointment process

There have been some improvements and changes within the Ministry since this appointment process was undertaken in 2020 and/or since my initial review that impact on the findings in the review. The key improvements are:

- **Implementation of a procurement business partner model (August 2021):** This model was introduced to improve the quality of service and to ensure the Procurement Team remains close to the Ministry's plans and activities. It was not introduced as result of this rōpū appointment process, but as part of a continuous improvement process. A specific member of the Procurement team now works closely alongside each business group to ensure they are aware of, and involved, in all procurement activities early in the process. This enables the team to provide specialist procurement advice at all stages, including the type of procurement to undertake and how to identify, assess, and manage conflicts of interest.
- **Introduction of a new Enterprise Portfolio Management Office (July 2022):** This new function was introduced to address a recognised need for a consistently higher standard of project management across the Ministry given the Ministry's recent growth. It is responsible for developing a Ministry-wide standard approach to project management, including some standard project management methodologies and consistent project status reporting.
- **Improved supplier procurement processes (August 2022):** Since this appointment process, the Procurement Team has reviewed its supplier conflict of interest processes and forms. It has made enhancements to ensure that all conflict of interest management plans:

- include sufficient assessment of potential impacts (to the Ministry, Minister(s) and/or the Government, for example) and specifically address these impacts;
- assessed by the Procurement team as 'high risk' require Chief Executive or Deputy Secretary approval
- require one-up approval if a conflict relates to the financial delegation holder directly

The Procurement Team has also reviewed and updated its guidance on conflicts of interest.

- ***Development of a specialist external advisory group monitoring function (in progress)***: A project is being planned within Organisational Performance to set up a dedicated role, and any additional business processes required, to:

- Have oversight of all advisory groups established in the Ministry, including their respective purposes and memberships
- Advise on the appropriate process for creating an advisory group, including the selection or appointment method, appropriate fees, and ensuring we effectively identify and manage real, perceived, or potential conflicts of interest

I believe that these initiatives and improvements, once all are fully implemented, will reduce the likelihood of similar issues arising in procurement and appointment processes.

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Appendix 1: Waste strategy rōpū – summarised timeline of the procurement and appointment process

June 2020: Proposal to partner with Māori via an advisory group to develop the new draft national waste strategy developed

July 2020: Work to discuss and map stakeholders to assess who to propose as members of the advisory group. The three rōpū members were proposed for the role, based on their expertise and availability

August 2020: Project manager learned that one rōpū member is married to a Cabinet Minister, and flagged, via an email to a Principal Advisor involved in the process, the need to consider carefully how this conflict of interest is managed

August 2020: Draft agenda for proposed initial hui with the potential rōpū developed. Project manager queried why it included two extra people, who were also related to the Minister. Reason provided was that they work closely with one rōpū member in a family consultancy business, rangatahi presence is very important to the rōpū, and this was how the rōpū wanted to operate.

3/4 September 2020: A two-day hui held with all five proposed rōpū members (without any payment to rōpū members – as part of exploration and planning phase for all parties to assess whether to work together).

September 2020: the Ministry emailed an outline of suggested contract elements to the proposed rōpū members for discussion.

September/October 2020: Extensive discussion, drafting suggestions, and exchanges of views internally and with the proposed rōpū, to develop draft contracts to capture the proposed relationship, likely process, and nature of the work.

October 2020: Approach and terms agreed in draft contracts with rōpū members.

October 2020: Project manager sent procurement plan and draft contract to the Procurement Team for approval (13 October). Procurement team replied, advising that the contract could not go ahead without procurement and legal involvement. The next few days were occupied by some intense work to rework the procurement plan and draft contracts, to take account of the various points raised by the procurement and legal reviews. Procurement and Legal eventually signed off the procurement plan and proposed contracts, on the condition that they went to the Chief Executive for approval given the level of risk associated with the family connections.

October 2020: Procurement plan revised to take account of Procurement Team feedback and passed up for approval along with covering memo. The Deputy Secretary first became aware of the family connection risks (19 October). The Director talked to the PSC about the conflict of interest risk and summarised their advice in an email to the Deputy Secretary.

October 2020: A decision was made to re-organise the contracts to separate the “kaumatua” rōpū role from the supporting work, to better reflect the different roles of the respective providers.

22 October 2020: The Deputy Secretary decided to proceed with the three kaumatua contracts, so long as the appropriate contract management systems were in place. The other contract was to be separately scoped and addressed.

23 October 2020: Documents rewritten as needed, with Procurement and Legal advice. Discussion at ELT level on who from Te Pūrengi should sign the procurement plans, given relevant responsibilities, availability etc.

Late October 2020: Various further minor refinements made to the documents over the next few days. Time was now very pressured, because of the desire to have contracts in place so that the rōpū members could attend a major workshop with the general advisory group in Wellington on 29-30 October. Rōpū made it clear they wanted the support service provider's role signed off in time so they could attend as well, as an integral part of the team.

28 October 2020: The Deputy Secretary inquired as to whether he (rather than the Chief Executive) could sign out the procurement plan given the process that had been followed. The Procurement Director confirmed he could be the signatory. Their advice was that it was appropriate for him to do so given there had been "opportunity for all to consider the risks". These plans included conflict of interest identification and management plans relating to the family connection risk. Contracts were approved by all parties (three separate rōpū "kaumatua" contracts and one for associated support services).

29/30 October 2020: All rōpū members (except one) came to Wellington and participated in 2-day workshop with the full advisory group, where they played a major role in the discussions and early thinking.

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the Official Information Act 1982

From: [Glenn Wigley](#)
To: [basswhite.jobshare](#); [Marianna Tyler](#)
Subject: FW: Procurement conflicts issue - heads up
Date: Tuesday, 20 October 2020 4:28:56 pm
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

fyi

From: Glenn Wigley
Sent: Tuesday, 20 October 2020 4:29 PM
To: Sam Buckle <Sam.Buckle@mfe.govt.nz>; Amanda Moran <amanda.moran@mfe.govt.nz>
Subject: RE: Procurement conflicts issue - heads up

Kia ora korua

As requested I spoke this afternoon to Dallas at PSC.

She wanted to ask around PSC, and came back to me after an hour or so.

They feel that Gannion's relationship with Minister Mahuta shouldn't preclude us from engaging with his company or himself. As long as we have strong conflict of interest arrangements and active management in place.

Other factors that were less significant but relevant;

- The skill sets that Gannion has
- The fact that the contract is with MfE not Ministers
- Ministers were not involved at all in suggestion of names

They noted that if Minister Mahuta had responsibilities for waste in the future, there is a question whether we would need to raise her raising the conflict with the PM.

Glenn

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the Official Information Act 1982

Out of scope