



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.

Appendix 1: Waste strategy rūpū – 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 rūpū members were proposed for the role, based on their expertise and availability

August 2020: Project manager learned that one rūpū 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 rūpū 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 rūpū member in a family consultancy business, rangatahi presence is very important to the rūpū, and this was how the rūpū wanted to operate.

3/4 September 2020: A two-day hui held with all five proposed rūpū members (without any payment to rūpū 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 rūpū members for discussion.

September/October 2020: Extensive discussion, drafting suggestions, and exchanges of views internally and with the proposed rūpū, 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 rūpū 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” rūpū 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.