



MEMORANDUM



Te Kawa Mataaho
Public Service Commission

[IN CONFIDENCE]

To: Peter Hughes, Public Service Commissioner

From: Hugo Vitalis, Laurence Pidcock (General Manager, New Zealand Government Procurement), Kate Salmond, and Dean Rosson

Copies to: Martin Kessick, Bryan Dunne, and Anita West

Date: 12 December 2022

Subject: Conflicts of Interest – Review of agency practices

INTRODUCTION

1. Concerns have been raised about whether public service agencies¹ have appropriately managed conflicts of interest in their contractual relationships with two consultancy firms: Ka Awatea Services Limited (KAS) and Kawai Catalyst Limited (KC). The directors of these firms are related to the Hon Nanaia Mahuta (the Minister) who has held a variety of Ministerial portfolios since 2017.
2. Following a discussion with the Minister, the Hon Chris Hipkins, Minister for the Public Service, asked you to look into the matter. Simeon Brown MP, National Party Spokesperson for the Public Service, also wrote to you requesting an investigation.
3. In early October, the Commission initiated a review into the circumstances surrounding any contract that a public service agency entered into with KAS, KC, or with any of the directors of those companies since October 2017. This memo sets out our findings and recommendations.

EXECUTIVE SUMMARY

4. Our review revealed no evidence of favouritism, bias, or undue influence over agency decisions in relation to KAS or KC due to the connection with the Minister. That said, it is apparent that agency procurement and conflict management practices fell short of the high standards rightly expected of public service agencies. In the cases of Te Puni Kōkiri (TPK) and the Ministry for the Environment (MfE) there were sound policies and processes and opportunities to address the perceived conflicts, but the opportunities were missed. There was a minor perceived conflict in the case of Kāinga Ora (KO), but the agency did not ask about conflicts of interest during the contracting process, which is a basic requirement of good procurement. Finally, while there was no conflict in relation to the Department of Conservation (DOC), the contract management was poor.
5. Overall, some agencies' practices are not well suited to identifying perceived conflicts of interest that arise at an agency level, including potential implications for Ministers. The agencies under review have taken steps to address the specific issues that have been identified, but we recommend you also seek an assurance that the wider recommendations of this review are adopted and fully incorporated into their revised policies and procedures. We also recommend amending Te Kawa Mataaho Public Service

¹ departments, departmental agencies, and statutory crown entities in the Public Service

[IN CONFIDENCE]

Commission's Conflict of Interest model standards to provide additional guidance on conflicts of interest in procurement.

6. Finally, while the actions of Ministers, the directors of KAS and KC, and members of the public, were outside the review's scope, this review did not identify any matter that would require referral to another oversight body.

BACKGROUND

7. Procurement and contract management by public service agencies is governed by a mix of legislative rules and detailed guidance. This framework of rules and guidance ensures transparency, accountability, and responsible use of public money. Public service agencies have specific responsibilities in relation to the management of conflicts of interests. The roles and responsibilities of public service agencies differ significantly from those that apply in the private sector.
8. Prior to discussing our findings in more detail, some brief observations are warranted in relation to the framework within which public service agencies operate and the wider context, specifically:
 - Why effective conflict of interest practices are particularly important in the public sector;
 - What specific responsibilities public service agencies have in relation to procuring services and managing conflicts of interest; and
 - The focus areas that have been identified by the Office of the Auditor General (OAG) for improving public sector procurement.

Importance of effective conflict of interest practices in the public sector

9. In a country with the population of New Zealand's, conflicts of interest are likely to frequently arise especially in regional areas and niche areas of expertise. This is the case for both the public and private sectors. This is what makes effective conflict management so important. At its most basic, a conflict of interest arises when a person carries out a particular function with two or more interests in conflict. New Zealand Government Procurement's (NZGP) *Guide to Procurement* explains:

A conflict of interest is where someone is compromised when their personal interests or obligations conflict with the responsibilities of their job or position. It means that their independence, objectivity, or impartiality can be called into question.

10. There are three types of conflicts:
 - 10.1. **actual:** where the conflict already exists
 - 10.2. **potential:** where the conflict is about to happen, or could happen
 - 10.3. **perceived:** where other people might reasonably think that a person has been compromised.
11. Conflicts of interest can arise in a range of situations and have different levels of seriousness. However, the presence of a conflict does not necessarily mean that a person has done anything wrong. It is often possible to effectively manage a conflict of interest.
12. There are higher expectations in relation to the management of conflicts of interest in public service agencies, particularly because public money is involved. The public rightly expect that public servants act impartially and must have confidence that decisions are being made for the right reasons and not influenced by favouritism, improper personal motives, or for private benefit.

13. Given the small and inter-connected nature of New Zealand society, some interests cannot be avoided or easily put to one side. A close personal relationship is one such example. This includes a person's partner and/or dependants. Whether other relationships constitute a conflict is a matter of judgment.² However, it is important to note that just as a close personal relationship must not provide an unfair advantage, it should also not be a disadvantage.
14. Effective management of contracts and conflicts of interest is critical to maintain trust in public service agencies. It is therefore fundamental that we get this right.

Agencies' responsibilities in procuring services and managing conflicts of interest

15. Public service agencies contract for a wide range of services to deliver the outcomes for the government of the day. Much of this day-to-day activity is not directly visible to Ministers because decision-making is devolved to chief executives. In relation to public service departments, chief executives are responsible for day-to-day departmental operations, including the management of contracts. Crown agents, such as Kāinga Ora, operate at "arm's length" of Ministers, being governed by statutory boards.
16. Due to the devolved nature of such decision-making, public service agencies have the primary responsibility for ensuring good procurement processes are followed. They are also responsible for ensuring conflicts of interest are effectively managed within their agencies and in relation to their suppliers. Given the information asymmetry due to limited Ministerial visibility over individual contracts, only agencies can consider flow on implications for Ministers and ensure any conflicts arising are appropriately managed. Alongside this, Ministers have clear obligations around managing conflicts of interest, based on the information available to them, as set out in the Cabinet Manual.

Focus areas for improving public sector procurement

17. In 2019, the OAG undertook a review of Procurement Leadership and identified some important areas for NZGP to focus on to further improve public sector procurement performance. Those were social services procurement, local government procurement, All-of-Government contracts, reporting on planned procurement, significant service contracts, and building procurement capability.
18. The review did not identify any systemic issues with contracting under \$100,000 but the finding that there was a need for strengthened procurement capability across the public sector is relevant. This included improved training and development of capability across the system. Since then, NZGP has developed a monitoring and reporting framework to support the improvement of procurement practices across the public sector. It has also strengthened a function to evaluate options for monitoring capability, assurance, and general performance of the procurement system against the parameters set by Cabinet. Hikina, an online learning management system, was launched and provides training and skills development for government procurement professionals. This is ongoing work, but we note that there is a general scarcity of procurement expertise in New Zealand, making this exercise challenging.

² The Office of the Auditor General has issued detailed guidance on conflicts of interest generally, including on what constitutes "a close personal relationship". See **appendix 2**.

THE PURPOSE OF THIS REVIEW

19. The purpose of this review is to determine whether public service agencies appropriately identified, assessed, managed, and documented any conflicts of interest in their contractual relationships with KAS and/or KC.
20. The focus of the review is on agency practices in relation to conflicts of interest arising from the relevant contracts. It does not form any views in relation to the actions of Ministers, KAS, KC, the directors of those companies, or any other individual members of the public. The review also does not examine any employment relationships or Cabinet appointments. The key roles and relationships relevant to this review are set out in more detail in **appendix 1**.

OUR METHODOLOGY

21. Our review consisted of the following steps:

- Step one: Identify every contract for service (including grants) between KAS, KC, or any of the directors of those companies and any department, departmental agency, or statutory crown entity³ since October 2017 (the relevant contracts)
- Step two: In relation to the relevant contracts determine, having regard to relevant system-wide guidance, whether:
 - There were any actual, potential, or perceived conflicts of interest, and if so
 - Whether those conflicts of interests were appropriately and in a timely way:
 - Identified
 - Assessed
 - Either avoided or actively managed
 - Approved and documented.
- Step three: Identify whether there is a need for agency-specific remedial action and/or additional improvements (e.g. guidance) in this area so that the lessons learned through this review can be learned by the wider public service.

Step one – Identifying relevant contracts

22. The Commission wrote to the Chief Executive or Board Chair of every department, departmental agency, and statutory crown entity in the Public Service and asked them to advise whether they had entered into any contract for services (including grants) with KAS, KC, or with any of the directors of those companies since October 2017. We have obtained assurances that all public service agencies have conducted reviews and only the following four agencies identified that they had entered relevant contracts:

- 22.1. The Department of Conservation (DOC) – Had a contract with KAS for a maximum of \$60,000 (including GST) (\$11,800 (excluding GST) was paid) for Waimirirangi Ormsby (WO) to provide advice on possible models for improving DOC’s engagement with rangatahi Māori between October 2020 and May 2021.

³ Crown agents, Autonomous Crown entities, and Independent Crown entities

- 22.2. Kāinga Ora (KO) – Had a contract with KAS initially estimated to be \$100,000 (excluding GST) (\$72,300 (excluding GST) was paid) for Rama Ormsby (RO) to backfill a parental leave position on a part-time basis between August 2020 and February 2021.
- 22.3. Te Puni Kōkiri (TPK) – Awarded a grant to KAS for \$28,300 (excluding GST) to assist Gannin Ormsby (GO), WO, and Tamoko Ormsby (TO) to run a three day event for rangatahi Māori in April 2021.
- 22.4. Ministry for the Environment (MfE) – Had contracts with KAS and KC for a maximum total of \$91,000 (excluding GST) for GO, WO, and TO to be part of a Māori Technical Experts Group supporting the development of a national waste strategy between October 2020 and June 2021.

Step 2 – Assessing agencies’ practices in relation to the relevant contracts

23. To undertake this part of our review, we established a project team responsible to the Deputy Commissioner – Integrity, Ethics and Standards (IES), led on a day-to-day basis by the Manager IES, and with detailed analysis led by the Chief Advisor IES. A Principal Advisor on secondment from NZGP assisted in the review and other senior leaders at NZGP provided advice and support as required.
24. The project team:
 - Gathered primary documents from agencies
 - Obtained internal review reports where they had been undertaken
 - Asked for further primary documents and questions of agencies where we identified gaps (both via emails and in person meetings)
 - Tested our understanding of facts with agencies
 - Undertook a natural justice process with the agencies in respect of our findings.
25. All agencies provided full co-operation. Agencies had varying levels of documentation, noting that the size and nature of each contract differed significantly.
26. As this review was focused on the actions of the agencies only, we have not conducted interviews or involved any person outside of the scope of the review as noted above (see paragraph 20).

Framework for analysis

27. Our framework for analysing the relevant facts is set out in **appendix 2**. It is based on the three main complementary sources of system-wide guidance for public service agencies in identifying and managing conflicts of interest:
 - 27.1. *Te Kawa Mataaho Public Service Commission’s Conflict of Interest model standards* – These set expectations at an organisational level. They focus on the practical steps leaders should take to ensure that they have the right policies, processes, and culture in place to identify and manage conflicts well.
 - 27.2. *New Zealand Government Procurement’s Guide to Procurement* – This is a guide for public servants engaging in procurement. It includes an explanation of why conflict of interest management is so important in the context of procurement and a high-level overview of the basic principles. It also provides access to various supporting tools and templates.

Significantly, this Guide gives effect to the Cabinet approved Procurement Rules, which are also highly relevant for our review.

27.3. *The Office of the Auditor-General's Managing conflict of interest: A guide for the public sector* – This provides principles-based guidance for individuals working in the public sector, to help them judge how best to manage a conflict. It includes the basic rules and scenarios and has recently been supplemented by a specific guide on *Managing conflicts of interest in procurement*.

28. In relation to each agency, the review team applied the framework for analysis by considering two over-arching questions:

28.1. Did the contractors' relationship to the Minister give rise to any actual, potential, or perceived conflicts of interest that the agencies needed to manage, and if so

28.2. Were those dealt with appropriately?

Step three – Identifying additional improvements

29. Having applied the framework for analysis, and discussed our findings with relevant experts, we identified additional guidance that could improve agencies' practices and some areas where procurement and conflict management capability could be improved. Our observations and recommendations related to additional improvements are set out below.

OVER-ARCHING FINDINGS

30. Our review across all four agencies revealed no evidence of favouritism, bias, or undue influence over agency decisions in relation to KAS or KC due to the connections with the Minister. That said, it is apparent that agency practices fell short of the high standards rightly expected of public service agencies. Furthermore, while the actions of Ministers, KAS, KC, the directors of these companies or any member of the public are outside the scope of this review, it is worth recording that we have not identified any matter that would require referral to another oversight body. Key issues identified are outlined below together with our recommended response. This includes revising the Commission's Conflict of Interest model standards to assist agencies through specific guidance on issues raised by this review.

31. We observed that all four agencies were operating under tight deadlines over a period that included: the COVID-19 response, associated staff disruptions, and spanned an election. In several instances, staffing changes meant management of individual contracts within agencies changed hands several times. While we saw some evidence of agencies recording their actions and rationale for particular decisions, the practice was piecemeal and generally insufficient.

32. We are conscious that we have the benefit of hindsight not available to individuals working under significant pressure within agencies. However, it is apparent that in the cases of TPK and MfE there were sound policies and processes and opportunities to address the perceived conflicts, but the opportunities were missed. It was not the case that the conflicts that the agencies faced could not be managed. Rather, it appears to us that agency decision-making was impacted by a focus on meeting deadlines rather than the need to ensure conflicts were effectively managed.

Conflict of Interest Practices

33. Poorly managed *perceived* conflicts of interest can be just as damaging to public trust and confidence as poorly managed *actual* conflicts of interest. The underlying concern in relation to both is the same: that agency decisions are made fairly and impartially.
34. Members of the public often do not have access to all the relevant facts and cannot know what is in the minds of public servants and whether a matter of influence or bias is at play. The public can only judge by outward appearances and what is in the public domain. That is what makes perceived conflicts of interest often as risky as actual conflicts.
35. Agencies must therefore take just as much care to identify, assess, and manage perceived conflicts. The risks associated with perceived conflicts of interest are significantly heightened when decisions are not appropriately approved and documented.
36. Our review has identified that some agencies' practices are not well suited to identifying perceived conflicts of interest that arise at an agency level, including potential implications for Ministers. In our view there are several reasons for this:
 - 36.1. The onus is on the agency to understand and assess declared conflicts and the associated risks. However, the examples we reviewed either amounted to a perfunctory exercise by agencies or involved limited documented explanation or discussion between the agencies and the supplier.
 - 36.2. It is difficult for individuals to reflect objectively on their own personal relationships to decide whether they could be seen by others to be a conflict.
 - 36.3. When thinking about possible conflicts, agencies tend to focus on whether the staff immediately involved in the procurement have a conflict of interest of any kind rather than any broader view.
 - 36.4. Agency level conflicts and implications for Ministers can be particularly hard to identify, assess, and manage. This is why when any conflict involving a Minister is declared it should be escalated for appropriate consideration.
37. These issues suggest that agencies could benefit from additional guidance in relation to identifying and assessing the exact nature of conflicts. Best practice is for possible conflicts to be discussed and then documented, even if it is ultimately assessed that there are no conflicts of interest, to ensure the issue has been thought through and considered and to demonstrate that was the case.
38. To assist agencies to consider possible conflicts arising in relation to Ministers and suppliers, Te Kawa Mataaho Public Service Commission's Conflict of Interest model standards should be amended to provide additional guidance on this point.
39. Finally, matters involving Ministers should have a clear and timely escalation path to the Chief Executive to ensure the agency level perception risks are appropriately assessed and managed. As the Chief Executive is the agency's point of contact with Ministers, they are best placed to ensure that any flow on implications for Ministers are addressed as part of the management plan.

Contracts valued at \$100,000 or less

40. In addition to poor conflict of interest assessment and management, poor procurement practices can exacerbate concerns. There are a range of tools and assistance available that have been developed already by the NZGP. However, in the matters under review, these were either not used at all, or in some cases only partially used. Full use of these available tools and supports available would be a practical way to improving basic agency practices.
41. It is worth noting that because of their relative low value, the supplier arrangements we reviewed were managed by business units or line managers rather than dedicated procurement specialists. This is generally appropriate to the level of cost and risk involved. However, it is apparent that specialist legal or procurement help and expertise was either not sought, or where it was, this was far too late in the process. Improved assessment of conflicts will assist business units or line managers to more readily identify heightened risk and the need to escalate oversight and advice on its management.

Direct sourcing

42. When engaging with providers, particularly those operating regionally or in specialised areas of work, the limited number of possible suppliers brings heightened risks. In this context, stronger procurement processes, practices, and more senior oversight helps to mitigate such risks.
43. The contract with TPK was for grant funding that was openly advertised. However, in relation to the contracts with the other three agencies the procurement opportunities were not openly advertised. In making these decisions, the agencies appeared to trade off good practice against convenience, project deadlines, and the relatively low amounts of money involved. However, we observed that the decisions to direct source were justified because of the limited supply of specialised suppliers. Nevertheless, given the heightened perception risks with two of the agencies, such decisions should have been better justified. This could have been achieved through openly advertising the opportunities or through undertaking robust and documented efforts to explore alternative providers.
44. In our view, some of the agencies did not give sufficient consideration to procurement principles that continue to apply for contracts under \$100,000. By not robustly assessing the options and documenting their rationale, some agencies were not able to immediately respond when questions were raised about their motivation. Similar issues arise from the fact that at least two of the contracts were not signed by the agencies until the work was well underway.

OVERVIEW OF AGENCY-SPECIFIC FINDINGS

45. Our supporting analysis of the key facts and assessment of conflict of interest practices for each agency against the framework for analysis is set out in **appendix 3**. There we also make some suggestions as to agency specific areas of improvement. Our overall findings from the individual assessments for each agency are set out in turn below.

Department of Conservation

DOC had a directly sourced contract with KAS for a maximum of \$60,000 (including GST) (only \$11,800 (excluding GST) was paid) for WO to provide advice on possible models for improving DOC's engagement with rangatahi Māori between October 2020 and May 2021. The Minister held no relevant portfolio in relation to DOC.

46. This contract did not involve a conflict of interest. The question of whether there was a conflict of interest was asked in the New Supplier Forms, completed by KAS and DOC, and as part of DOC's standard terms and conditions in the contract. No conflict of interest was identified. The relationships between the department, the Minister (who held no relevant portfolio), and the contracted services were too remote to create even a perceived conflict. As DOC has noted in its own internal review, the main issue here was poor procurement and contract management. For example:
- 46.1. The direct source approach was acceptable given the value of the contract (maximum \$60,000), but it was not well documented. We would have expected to see a short procurement plan, as required by DOC's internal policies. This should have recorded the rationale for the direct source approach, documented the reference checks that were done, and set out a market assessment of the alternative options.
 - 46.2. Oversight and management of the contract was particularly weak during the delivery stage. Contracted services continued to be delivered, but at a certain point DOC stopped engaging with the project. This left the project incomplete but not formally at an end. As DOC found in its internal review, this was the result of staff changes and competing priorities, but it is also evident that there was a lack of understanding of robust procurement, including contract management.
47. DOC's internal inquiry has identified several practical steps to improve its processes around conflicts of interest and its contract management capability. We consider that these are well considered and will address the issues we have seen in our review.

Kāinga Ora

KO had a directly sourced contract with KAS initially estimated at \$100,000 (\$72,300 (excluding GST) was paid) for RO to backfill a parental leave position on a part-time basis between August 2020 and February 2021. The Minister was the Associate Minister - Housing (Māori Housing).

48. This contract gave rise to a minor perceived conflict of interest, which could have been easily managed if it had been identified at the time. Given that the contract was for operational services and that KO operates at "arms-length" (i.e. it is responsible through its Board to the Minister of Housing), simply documenting the nature of both the relationships and the work would have been a proportionate response and sufficient to mitigate the risks.
49. The main issue for KO is that it did not ask about conflicts of interest in discussions with the contractor or through its contracting process. That is a basic requirement of good procurement. Further given the estimated value of the contract the opportunity should have been openly advertised. We note, however, that these events occurred in mid-2020, when KO was still in the process of being established. This was well before the Commission began working with the agency as it improved its internal processes and practices.
50. As evidence of its increasing maturity in this space, KO has conducted its own review of this matter. It has identified that significant work has already been undertaken to improve the agency's procurement and conflict of interest management practices and has recommended further areas for improvement which we endorse.

Te Puni Kōkiri

TPK awarded a grant to KAS following an openly advertised application process for \$28,300 (excluding GST) to assist GO, WO, and TO to run a three- day event for rangatahi Māori in April 2021. The Minister was the Associate Minister – Māori Development.

51. This contract gave rise to a moderate perceived conflict of interest. The conflict was declared by KAS, but it was not appropriately assessed or actively managed by TPK. The main issue for TPK is that it did not recognise the agency-level risks, stemming from the declared conflict. Since the exact nature and seriousness of the conflict was never assessed, the risks were not actively managed. Given that this case illustrates some broader lessons for the system, it is worth setting out a few key details (noting that there is further detail in appendix 2).
52. In late 2020 KAS applied to TPK, through an openly advertised grant process, for funding to support a three-day event. Our assessment is that TPK had effective systems and controls in place to ensure fairness in its assessment of such applications. The documentation shows that this application went through three tiers of assessment at regional, national, and senior leader level. Detailed consideration was given to whether it met the criteria for the fund. But when it came to the declared conflict, there was simply an assessment that it was not severe. There was no other record of associated reasoning.
53. We agree that the conflict was not severe. However, there were perception risks that needed to be actively managed. How could the public feel confident that the application would be assessed purely on its merits and would not be influenced by ulterior motives, such as loyalty, favouritism, or prejudice? Such risks were heightened because the applicants had proposed a panel process as part of the event. The application included “Nanaia Mahuta” (suggesting she was proposed in her personal capacity) as a potential paid panellist at the event alongside eight other possible experts and panellists. It was not clear from the form whether the experts and panellists had already been approached by KAS to discuss their possible involvement in the project. It is important to note that when the event subsequently occurred, the panel and expert proposal did not eventuate in the proposed form and the Minister was not involved. However, the inclusion of the proposal in the application compounded the perception risks.
54. We would have expected the mention of the Minister’s name in the application to have alerted TPK to the need to undertake a more detailed assessment of the risks. If that had been done, a targeted management plan could have been developed, potentially including: requesting KAS to revisit the panel proposal, alerting senior leaders to the declared conflict so they could consciously put the issue to one side in their decision-making and record that they had done so, and/or asking for an external peer review of the final decision. This may seem disproportionate given the value of the grant but there was a need for additional measures to be put in place to mitigate the specific perception risks.
55. TPK is in the process of implementing numerous measures to improve its internal controls and staff capability in relation to conflict-of-interest identification and management. In our view, part of the issue is that agency and system level guidance on conflicts of interest is designed to focus on individual public servants having a competing personal interest that conflicts with their official duties. In this case, the declared conflict should have also highlighted the perception risk for TPK at an agency level as it was associated with their obligations to Ministers. For this reason, additional guidance would assist agencies in assessing these kinds of issues and escalating them appropriately.

Ministry for the Environment

MfE had directly sourced contracts with KAS and KC for a total of \$91,000 (excluding GST) for GO, WO and TO to be part of a Māori Technical Experts Group supporting the development of a national waste strategy between October 2020 and June 2021. The Minister was an Associate Minister – Environment responsible for urban water, biodiversity, and air quality management. A different Associate Minister – Environment was responsible for waste and resource efficiency.

56. These contracts gave rise to a perceived conflict of interest, as recognised by the Ministry at the time. It was significant. There were also potential implications for the Minister that the agency needed to manage.
57. The conflict was identified, assessed, and to some extent mitigated. However, it was not escalated and actively managed in a timely way and the management plan fell short of what was required in the circumstances. Again, this case illustrates some broader lessons for the system so it is worth setting out some additional detail.
58. The main issue for MfE, as identified in its own internal review, is that officials missed several opportunities to address the issues earlier in the life of the project. The project began in June 2020 and involved the development of a new waste strategy for New Zealand. An initial step was the establishment of a Māori Technical Experts Group (MTE Group) to develop a conceptual framework to underpin the strategy and to help with subsequent iwi engagement. GO had relevant expertise and it is clear from our review that is why officials approached him about being part of the MTE Group. But his involvement in this policy work, given his relationship with the Minister, was something that required careful management.
59. As early as 3 July 2020, officials identified a perception risk arising from GO's possible involvement with the project in a draft memo that, based on a review of the emails, does not appear to have been circulated to senior leaders. This was the first missed opportunity.
60. The second missed opportunity came in August when staff working on the project discussed the need to document the rationale for the direct source approach and to obtain legal advice on how to manage the perceived conflict. It was suggested that this could be done through the contracting process. A week later, the project team identified that the possibility of including WO and TO in the MTE Group as well would increase the risks and that, if they decided to go ahead, the team would need to have good and well documented reasons for their inclusion. No legal advice was sought at this time and the contracting process ended up significantly delayed due to competing priorities.
61. By September, initial scoping work with the MTE Group, including WO and TO, was effectively underway but MfE had not formally documented, assessed, or put in place a management plan, relating to the perceived conflict of interest. The estimated value of the work remained largely unsettled at this stage as well.
62. The third missed opportunity occurred in mid-October when the project team sent draft contracts and a draft procurement plan to MfE's procurement and legal team for approval. At this point the project team was rushing to finalise the contracts by 29 October 2020 (the date of a scheduled meeting with the Wider Advisory Group, which the MTE Group was supposed to present at).
63. The nature of the conflict, the fact that the services had been direct sourced, and the estimated value of the contract with KAS (\$91,000) caused the procurement and legal team to raise significant

concerns. They advised that this was a major perceived conflict requiring Chief Executive sign off or at least visibility. Our view is that this was appropriate. But by this stage in the project the self-created tight timeframe was driving the decision-making, rather than the needs of effective and robust procurement.

64. There were a few brief discussions with the Chief Executive about the contracts, but ultimately the responsible Deputy Secretary was left to make the final decision. To support that process, genuine attempts were made by officials to grapple with the issues at the heart of the conflict, but these were undermined by the sense of urgency. For example, urgent advice was sought from the Commission, but that advice was based on an incomplete picture as only GO's involvement was mentioned and was recorded differently at MfE. Similarly, a decision was made to split the contract in two, to allow the contract with GO to proceed, while the separate issues arising from WO and TO's involvement were considered. But time ran out and a pragmatic decision was made to proceed with both contracts.
65. By this time the ideal window for forming and documenting the management plan had been missed. And in the end, our view is that what was proposed was not as detailed and targeted as the circumstances required. The plan introduced few, if any, additional measures to mitigate the perception risks. It relied mainly on contractual terms around confidentiality and regular meetings, that on the face of the documents, would have been included in any event. But the main gap was that the plan did not put any measures in place to protect the Minister from inadvertently becoming drawn into the work in the future, either through discussions with the Minister for the Environment, the Associate Minister responsible for waste, or at Cabinet. To address this, MfE should have informed the Minister for the Environment about the Group, its membership, and the conflict risks.
66. MfE's internal review found that the conflict was not discussed with any Ministers to minimise the risk of accusations of influence, but that it could have been under the 'no surprises' principle. Our view is that the Minister for the Environment needed to know as part of effective conflict management.
67. Aside from this difference in rationale, MfE's internal review reached similar conclusions to those we have reached. MfE's review identified four key improvements that the Ministry has made since 2020, that would reduce the likelihood of similar issues arising again. These include: the introduction of a new function to improve project management and planning, allocating a member of the Ministry's procurement team to each of the agency's business units to work alongside the units at all stages of any procurement, and updating its internal conflict of interest guidance and forms. These are encouraging but we recommend that additional information is obtained from the Ministry on the specific measures that have been put in place to ensure that conflicts of interest are actively managed in a timely way, and decision-making processes at all times can be audited and justified.

RECOMMENDATIONS

68. In undertaking this review, we are mindful that the costs of administration and management of contracts need to be proportionate to the level of risk involved. We are also aware solutions need to be practical and proportionate while ensuring improvements are made to public service agencies' management of conflicts of interest. But the value of the contract is not the only indicator of the risks involved. The presence of any kind of conflict also increases the risks, creating a need for greater controls.
69. It is therefore recommended that:

IN CONFIDENCE

- 69.1. There is a clear expectation that all public service agencies will:
- 69.1.1. Adhere to the Government Procurement Rules, and Procurement Principles (which apply irrespective of procurement value)
 - 69.1.2. Use a government template contract for services for all contracts, such as the Government Model Contract or the template for the relevant All-Of-Government panel, unless there is a good reason not to. If a non-standard template is used, agencies must ensure the terms and conditions deal with conflicts appropriately and must seek a conflict disclosure. This will ensure that contractors are always asked to make a conflict of interest declaration.
 - 69.1.3. Adopt NZGP's procurement tools, guidance, and template management plans.
 - 69.1.4. Adopt a staged and risk-based approach to procurement in agencies' internal procurement policies, e.g. a note that best practice would be to get more than one quote for contracts valued at between \$50,000 and \$100,000 (excluding GST), unless there is a good and well documented reason not to.
- 69.2. Agencies' internal conflict of interest policies should also:
- Ensure staff specifically ask third parties to identify any interests that may give rise to a conflict of interest (as opposed to simply asking for a declaration of conflicts), including any personal relationships and any financial interest. The agency can then assess whether those interests give rise to any conflict.
 - Identify that conflicts can arise at an agency level and that it is important to consider relationships with key leaders including tier 1 and 2, Ministers, and Associate Ministers.
 - Ensure a clear and timely escalation path to the Chief Executive is followed when a conflict of any kind relating to a Minister is identified.
- 69.3. In relation to the individual agencies, it is recommended that you write to each agency to seek assurances that these recommendations are adopted by agencies and fully incorporated into their revised policies and procedures.
70. Finally, it is recommended that the Te Kawa Mataaho Public Service Commission's Conflict of Interest model standards are revised to include additional guidance to support agencies to incorporate these measures.

Appendix 1

Roles and relationships

ROLES AND RELATIONSHIPS

1. During the relevant period, Hon Nanaia Mahuta (the Minister) held the following Ministerial portfolios:

Minister Mahuta – ‘Minister’ and ‘Associate Minister’ roles, 2017 onwards					
2017	2018	2019	2020	2021	2022
Environment , Associate Minister (26/10/2017 – 06/11/2020)					
Māori Development , Minister (26/10/2017 – 06/11/2020)					
Local Government , Minister (26/10/2017 – ongoing)					
	Housing and Urban Development , Associate Minister (14/11/2018 – 28/06/2019)				
		Housing (Māori Housing) , Associate Minister (28/06/2019 – 06/11/2020)			
		Trade and Export Growth , Associate Minister (28/06/2019 – 06/11/2020)			
			NZ General Election (17/10/2020)		
			Nationwide lockdown (25/03/2020 – 27/04/2020)		
				Nationwide lockdown (17/08/2021 – 31/08/2021*)	
				Foreign Affairs , Minister (06/11/2020 – ongoing)	
				Māori Development , Associate Minister (06/11/2020 – ongoing)	

2. During that same period, four individuals who are related to the Minister with varying degrees of closeness either contracted through, or were directors of, two whānau consultancy firms as shown in the two tables below:

Whanau consultancy firms	
Kāwai Catalyst Limited	Management Consultancy Service Incorporated 12 March 2018 Directors: Tamoko and Waimirangi Ormsby (appointed 12 March 2018)
Ka Awatea Services Limited	Management Consultancy Service Incorporated 11 June 2019 Directors: Gannin Ormsby (appointed 7 July 2020); Tamoko and Waimirangi Ormsby (both appointed 15 December 2020)

Relationships	
Gannin Ormsby	Husband of Hon Nanaia Mahuta
Rama Ormsby	Brother of Gannin Ormsby
Tamoko Ormsby	Nephew of Gannin Ormsby
Waimirangi Ormsby	Wife of Tamoko Ormsby

Appendix 2

System-wide guidance

What is expected of agencies?

INTRODUCTION

1. There are three main complementary sources of system-wide guidance for public service agencies in identifying and managing conflicts of interest when contracting for services:
 - 1.1. Te Kawa Mataaho Public Service Commission's *Conflict of Interest* model standards – These set expectations at an organisational level. They focus on the practical steps leaders should take to ensure that they have the right policies, processes, and culture in place to identify and manage conflicts well.
 - 1.2. New Zealand Government Procurement's *Guide to Procurement* – This is a guide for public servants engaging in procurement. It includes an explanation of why conflict of interest management is so important in the context of procurement and a high-level overview of the basic principles. It also provides access to various supporting tools and templates. Significantly, this Guide gives effect to the Cabinet approved Procurement Rules, which are also highly relevant for our review.
 - 1.3. The Office of the Auditor-General's *Managing conflict of interest: A guide for the public sector*. This provides principles-based guidance for individuals working in the public sector, to help them judge how best to manage a conflict. It includes the basic rules and scenarios and has recently been supplemented by a specific guide on *Managing conflicts of interest in procurement*.
2. In this appendix we set out our framework for analysis, which is based on all of the system wide guidance but particularly draws on the expectations that are placed on agencies through the *Conflict of Interest* Model Standards.
3. Our Framework consists of two key questions:
 - 3.1. Did the contractor's relationship to the Minister give rise to any actual, potential, or perceived conflicts of interest that the agencies needed to manage, and if so
 - 3.2. Were those dealt with appropriately, by being:
 - identified in a timely way
 - appropriately assessed
 - avoided or actively managed in a timely way
 - appropriately approved and documented.

WAS THERE A CONFLICT?

Definition

4. There is no single agreed upon definition of 'conflict of interest'. At its most basic a conflict of interest arises when a person carries out a particular function with two or more interests in conflict. The system wide guidance tends to frame this around a public servant having competing public and private interests. For instance, the *Guide to Procurement* explains:

A conflict of interest is where someone is compromised when their personal interests or obligations conflict with the responsibilities of their job or position. It means that their independence, objectivity, or impartiality can be called into question.

Similarly *Managing Conflicts of Interest* states:

A conflict of interest is any situation where your duties or responsibilities as an employee or office holder in a public organisation conflict, or could be seen to conflict, with some other interest you might have outside of work.

5. These definitions are in keeping with the main audience for these guides (public servants) and their purpose (to help people identify whether their own personal interests may create a conflict at work). In the context of this review however, the second interest to be considered is not strictly “personal” to individual public servants, as it would arise equally for every public servant within an agency.
6. Those who have raised concerns about the contracts awarded to Ka Awatea Services (KAS) and Kawai Catalyst (KC), have not alleged that the public servants who made the relevant decisions had conflicting public and personal interests. Instead, they have called for an examination of whether there was any bias or apparent bias in the decision-making, arising from the companies’ connection to the Minister.
7. As the OAG’s *Managing Conflicts of Interest* Guide explains:

In any situation where activities are paid for out of public funds or carried out in the public interest, the public needs to be confident that decisions:

- *are made for the right reasons; and*
- *are not influenced by personal interests or ulterior motives.*

The risk with having a conflict of interest – at least, one that is not properly managed – is that you will be seen to be advancing your own interests or the interests of others you feel a sense of loyalty or obligation to, rather than the interests of your role as a public servant.

*Even if you have no intention of acting improperly, and are confident that you can think and act impartially, **if it looks like** you might be influenced by personal interests or ulterior motives when making a decision, you risk undermining public confidence in the integrity of that decision.*

...

Conflicts of interest can arise in all walks of life, including the private sector. However, there are higher expectations about conflicts of interest in the public sector because it is public money that is being spent, and public powers that are being exercised.

Where activities are paid for out of public funds, or decisions are made exercising public powers, members of the public rightly expect the people making those decisions to act impartially, without any possibility that they could be influenced by favouritism or improper personal motives, or that public resources could be misused for private benefit.

Conflicts arising from personal relationships

8. Conflicts of interest can stem from a variety of different factors including financial interests, activities and strongly held personal beliefs. However, particularly in a country with a population the size of New Zealand’s, conflicts arising from close personal relationships are relatively common. The OAG provides useful guidance on the type of personal relationships that could give rise to a conflict, which is worth setting out in full:

Relationships

- 3.18 *In general, for situations not covered by specific statutory rules, we consider that, at least, the interests of any dependants or relatives who live with the employee or office holder must be treated as effectively the same as if the interest was held by the employee or office holder. In other words, if interests held by these relatives overlap with an employee or office holder's official duties, there will be a conflict of interest.*
- 3.19 *For other relatives, it will depend on the closeness of the relationship and the degree to which the public organisation's decision or activity could directly or significantly affect them. (Part 4 covers assessing the seriousness of a conflict of interest.)*
- 3.20 *Close relationships can vary. A relationship could be close because of the directness of the blood or marriage link, or because of the amount of association. There are no clear rules but it will usually be wise not to participate if relatives are significantly affected.*
- 3.21 *Some cultures, including Māori culture, have a broad concept of family. In our view, a conflict of interest will not often arise where the connection is a common ancestor, such as another iwi or hapū member. Sometimes an iwi connection could create a conflict of interest in and of itself. For example, if the person is working for a public organisation on a Treaty settlement where they are likely to end up as a beneficiary, this might create a conflict of interest. In this situation, the interest is personal.*
- 3.22 *Questions of judgement and degree also arise when considering friends and other associates. However, in our view, it is unrealistic to expect the employee or office holder to have absolutely no connection with or knowledge of the person concerned. New Zealand is a small and interconnected society. Simply being acquainted with someone, having worked with them, or having had official dealings with them is not something we would consider to cause a problem. However, a longstanding, close, or recent association or dealing might do.*

Distinguishing between the different types of conflicts

9. As *Guide to Procurement* explains a conflict of interest can be:
- actual:** where the conflict already exists
 - potential:** where the conflict is about to happen, or could happen
 - perceived:** where other people might reasonably think that a person has been compromised.
10. When it comes to conflicts arising from a personal relationship this requires officials to think not just about the circumstances as they currently stand, but also about what might happen in the future and how an outsider might reasonably view them.
11. In the context of this review, this highlights the need to think about possible future implications for Ministers and what the public might think of the whole situation. Ministers are not involved in the day-to-day decision-making of agencies and often have no visibility of the contracts that are entered. So, officials have an obligation to ensure that, when thinking about future possibilities, measures are put in place to ensure that their Ministers are not inadvertently put in the position of having a possible conflict. Officials also need to ensure that there is clear documentation explaining how the Ministers may, or may not, become involved in a matter. This will help to mitigate any perception risks, as the public is unlikely to be aware of how the relationship between Ministers and agencies works in practice.

The risks associated with perceived conflicts

12. It is worth noting that a poorly managed 'perceived' conflict of interest can be just as damaging as a poorly managed 'actual' conflict of interest. The underlying concern in relation to both is the same: ensuring that decisions are demonstrably made fairly and impartially. Members of the public do not often have access to all the relevant facts and cannot know what is in the minds of public servants. They can judge only by appearances and what is in the public domain. That is what makes perceived conflicts of interest often as risky as actual conflicts and just as much care needs to be taken to identify and manage them.
13. As we explain below, the risks associated with perceived conflicts of interest are significantly heightened when decisions are not appropriately approved and documented. Poor procurement and contract management practices can lead the public to assume that corners have been cut. This then leaves room for doubt to grow around whether there has been some form of favouritism.

IF THERE WAS A CONFLICT, WAS IT DEALT WITH APPROPRIATELY?

14. If our review finds that there was a conflict of interest, then we consider the second question in our framework, which is whether the conflict was dealt with appropriately through:
 - timely identification;
 - appropriate assessment of the nature and seriousness;
 - timely avoidance or active management; and
 - appropriate approval and documentation relating to both the conflict and the contract more generally.

Timely identification

15. The *Conflict of Interest* model standards require agencies to ensure that:

Expectations relating to conflicts of interest are referred to and recorded in contractual agreements [including with contractors]; individuals are required to sign that they have read and understood the expectations and accept responsibility for identifying and recording their relevant private interests.

16. So agencies are required to ask the question of contractors, but it is up to the contractors to identify whether they have any relevant private interests to declare. As the OAG's *Managing Conflicts of Interest* Guide explains:

The primary responsibility for identifying and disclosing conflicts of interest to the relevant people in a timely and effective manner rests with the person concerned.

This is because it is the individual person who will always have the fullest knowledge of their own affairs. They will be in the best position to realise whether and when something at work has a connection with another interest of theirs.

17. But while contractors have the best knowledge of their own personal affairs, public servants still need to provide them with sufficient context to be able to identify what interests may, and may not, be relevant. There are two reasons why these kinds of conversations around conflicts of interest are so important in the context of contracts and grants:

- 17.1. As noted in the OAG's *Conflicts in Procurement Guide*, public, private, and volunteer sectors in New Zealand sometimes have different ideas about what is appropriate when it comes to identifying and managing conflicts of interest. Broadly speaking, there are higher

expectations around conflicts of interest in the public sector because it is public money that is being spent and public powers that are exercised. That's why confusion easily can arise when these sectors intersect.

17.2. While contractors are primarily responsible for identifying their relevant private interests, it should be for the public servants to determine whether they represent a conflict and how they should be handled. Contractors may have little idea as to how the agency works and the kinds of conflicts that may arise. This is particularly important for situations that could be perceived conflicts, as individuals are typically not best placed to judge how their personal circumstances may be reasonably viewed by others.

18. Given these observations, under this aspect of our framework, we only look at whether the personal relationships were disclosed as relevant interests.

Assessment of the nature and seriousness

19. The assessment requires identifying the conflicting interests, assessing the extent of the overlap between the two, and determining the overall seriousness. Once the seriousness of the conflict is identified the agency can move on to consider the nature of risk the conflict gives rise to and the range of possible mitigation options.

20. The OAG's *Managing Conflicts* Guide explains:

Several factors that might need to be considered in assessing the seriousness of a conflict of interest. They include:

- the type or size of the person's other interest;
- the nature or significance of the particular decision or activity being carried out by the public service agency;
- the extent to which the person's other interest could specifically affect, or be affected by, the public organisation's decision or activity; and
- the nature or extent of the person's current or intended involvement in the public organisation's decision or activity.

Seriousness is a question of degree. It involves a spectrum of directness and significance – how close and how big. Directness (and its opposite, remoteness) is about how closely or specifically the two interests concern each other. Significance is about the magnitude of the potential effect of one on the other.

The organisation might judge that the overlap of the two interests is so slight that it does not really constitute a conflict of interest. In other words, there is no realistic connection between the two interests, or any potential connection is so remote or insignificant that it could not reasonably be regarded as a conflict of interest.

However, it must be remembered that this judgement is not primarily about the risk that misconduct will occur. It is about the seriousness of the connection between the two interests.

21. In this review we have adopted the following terminology to reflect our overall assessments of the conflict risks:

- Minor – where the conflict could be avoided or managed without having to put specific measures in place, beyond documenting the nature of the conflict and the agency’s assessment.
- Moderate – where the conflict is such that the agency would need to put some additional measures in place to avoid or manage it.
- Significant – where the conflict is such that it can only be avoided or managed by putting robust additional measures in place.

Timely avoidance or active management

22. Judgements about the seriousness of any conflict of interest inform the suitability of mitigation and avoidance options. This relates to the fourth component in our framework: Was the conflict avoided or appropriately mitigated in a timely way? This is a requirement in the *Conflict of Interest Model Standards*.
23. The Model Standards also make it clear that the disclosure of a private interest does not itself resolve a conflict of interest and that public servants must consider measures to resolve or manage the conflict. There are a broad range of measures that could be put in place to manage a conflict of interest. Examples in the *Procurement Guide* that specifically relate to contracting services include:
- Restricting the relevant person’s involvement in the matter
 - Engaging an independent third party to oversee all or part of the process and verify its integrity
 - The person giving up the private interest that was the source of the conflict
 - The person resigning from their position with the agency – this is a last resort option that should only be considered if the conflict cannot be resolved in any other workable way.
24. If, having considered the options, a public service agency decides that the conflict of interest is insignificant and can easily be addressed, it might formally record or declare the disclosure and assessment in some form but take no further action. However, as the OAG’s *Managing Conflicts Guide* explains it should not be assumed that this will always be enough. The Guide elaborates:
- The risk to be assessed is not just the risk of actual misconduct by the person involved but the risk that the public organisation’s capacity to make decisions lawfully, and fairly might be compromised or its reputation damaged. In making this assessment, the public organisation needs to consider how the situation might reasonably appear to an outside observer.*
25. The decision about what to do in any particular case will not always be clear cut and a range of possible judgements could be reasonable. In that context, for this aspect of the framework, our analysis focuses on whether agencies considered mitigation options, developed a management plan, and actively managed the conflict in line with that plan.

Appropriate approval and documentation

26. This component of our framework is comprised of two parts:
- One relating specifically to conflicts of interest
 - One relating to the contracts for services more generally.
27. In relation to the first part concerning conflicts, the expectation on agencies in the model standards is that decision-making processes at all stages can be audited and justified. At a minimum this would

include a formal conflict of interest declaration in the contract for services and a written record of the agencies' assessment and management plan. This is good administrative practice, but it is also a risk mitigation in itself, as the documentation can assist in responding to any concerns that may be raised about a conflict in the future.

28. There is no formal requirement on the level of seniority at which the assessment and management plan need to be approved, it would simply depend on the level of risk involved and the agency's internal policies.
29. In relation to the second part, the reason this is relevant is because, as noted above, poor procurement and contract management practices can increase the risks associated with perceived conflicts of interest. The public may question public servant's motivations if it looks like they are cutting corners. The prime examples are:
 - direct sourcing suppliers without openly advertising the opportunity
 - not signing contracts until the work is well underway, which is considered poor practice as it involves unnecessary legal risks
 - not actively managing contracts so that the procured services are delivered as specified in the contract and on time.

The first of these examples is particularly significant to our review, so it is worth setting out the applicable system-wide expectations upfront.

A note on direct sourcing suppliers

30. Cabinet has directed agencies to follow a whole of government approach to procurement and property. Procurement activity under that approach does not include awarding grants but it does include awarding contracts for consultancy services. When engaging in procurement, mandated government agencies (which includes all public service agencies, including those covered by this review) should apply the Government Procurement Rules.
31. One of the Procurement Rules is that government contracts valued at \$100,000 or more (excluding GST) must be openly advertised, unless an exemption applies and the rationale is documented and endorsed by a senior manager. If NZGP ask for this documentation the agency must promptly make it available.
32. For example, one of the exemptions from open advertising, is that there is no reasonable alternative or substitute because there is only one supplier. The Rule explains that this may be because the procurement relates to exclusively owned intellectual property, a work of art, or because "for technical reasons there is no real competition". The phrase "technical reasons" is defined in the Rules largely with reference to the information technology and construction industries. During our review, we noted that this exemption was cited by agencies when a cursory examination of the market did not identify anyone else they would like to approach. This is a misapplication of the exemption and does not reflect the underlying goal of the rule, which is to ensure that there is competition and all suppliers are treated fairly.
33. It should also be noted that this is not a black and white rule. The \$100,000 threshold is a benchmark but it should not be viewed as a bar, below which no constraints apply. The Procurement Principles should guide agencies at all times, regardless of the value of a contract. The high-level principles are:
 - Plan and manage for great results

IN CONFIDENCE

- Be fair to all suppliers, including by creating competition and encouraging capable suppliers to respond
 - Get the right supplier
 - Get the best results for everyone
 - Play by the rules, including by staying impartial.
34. The government awards contracts and grants worth billions of dollars each year, and a significant proportion of these relate to contracts that are under \$100,000. Given the scale of government spending and the collective impact of public service agencies on the market, competition for small contracts is also important and this can be done in a way that is practical and proportionate to the sums of money involved.
35. It is good practice to take a graduated approach reflecting the relationship between the relevant Procurement Principles and Rules. For example, we are aware that some agencies have policies that all contracts worth between \$50,000-\$100,000 can only be entered if the agency has obtained three quotes, to ensure that they are being fair and getting value for money. This is not only good practice, but it can also assist in dispelling concerns around the fairness of direct sourcing suppliers, particularly in cases where a perceived conflict of interest is involved.

Appendix 3

Agency-specific findings

INTRODUCTION

1. There are four public service agencies that have been identified as entering relevant contracts for the purposes of this review: the Department of Conservation, Kāinga Ora, Te Puni Kōkiri, and the Ministry for the Environment. In this appendix, we provide an overview of the relevant facts in relation to each agency and then apply our framework for analysis.
2. At the end of our analysis in relation to each agency, we have made some observations and suggestions to improve the agency's practice going forward. Our recommendations concerning system improvements are set out in the main body of our covering memo.

Department of Conservation

Overview of the facts

Having reviewed the available documentation and asked clarification questions of DOC officials, this is our understanding of the relevant facts in relation to this contract. As this review was focused on the actions of the agencies only, we have not conducted interviews or involved any person outside of the Commission's jurisdiction. It is important that the findings below are read with that context in mind.

1. The Department of Conservation (DOC) is charged with conserving New Zealand's natural and historic heritage. Under the Conservation Act 1987, DOC has a particular responsibility to interpret and administer the Act to give effect to the principles of the Treaty of Waitangi. This involves building and supporting effective conservation partnerships with tangata whenua. The business group within DOC responsible for Treaty partnerships was called Kahui Kaupapa Atawhai (the business group).
2. In July 2018, DOC held a two-day Treaty Partner Summit to celebrate and reflect on 30 years of working with iwi, hapū and whānau. A delegation of rangatahi Māori attended, including Contractor X and Waimirangi Ormsby (WO). Contractor X presented at a session on a rangatahi Māori vision for conservation.
3. As a result of the Summit, DOC's senior leadership team asked the business group to explore how to engage more effectively with rangatahi Māori. This project was added to the unit's 2018/19 work programme. In June 2019, the unit's Deputy Director-General (DDG) contacted Contractor X to discuss the project. Subsequently, Contractor X invited WO into further discussions with the DDG.
4. The DDG worked with the Director of the business group (the Director) to scope the rangatahi engagement project in more detail. The DDG decided that the business group would need to outsource the project, on the basis that they did not have the capacity or capability to deliver it in-house. Given Contractor X and WO's skills, networks, and interest, the DDG proposed that they conduct the project as contractors.
5. In early 2020 the COVID-19 national lockdown occurred, and little progress was made on the project. DOC prepared an initial project outline and the DDG first met with Contractor X and WO to discuss it in mid-May 2020. The DDG then asked the pair to work with the Director to finalise a contract. The Director, WO, and Contractor X met and exchanged several emails over the following week, culminating in the Director sending a draft contract through for consideration on 28 May. DOC had wanted to have one project covering the contract and could not contract with individuals, so WO and Contractor X had agreed that the contract would be with WO and Contractor X's formal role would be as a subcontractor. This would be arranged through Ka Awatea Services (KAS), the organisation WO worked for.
6. The draft contract set out the purpose of the project. It explained that the Conservation Act establishes various bodies that DOC must consult with but does not specifically address engagement with rangatahi or create a Youth Board framework. In that context DOC explained that: "This exercise is to look at shaping and influencing how to embed rangatahi representation within [DOC]" and scoping "opportunities to influence change". The project objectives were identified as:
 - An articulation of the contribution rangatahi could bring to DOC
 - A regional register of rangatahi advisors and specialist advisory areas
 - Proposal of advisory models and explanation of alignment with how DOC works
 - Identification and proposed models of rangatahi projects

IN CONFIDENCE

- Identification of all costs associated with next steps
 - A final report, with recommendations of next steps, and in a form that could be used to easily explain the proposals to DOC senior leadership and staff
7. The draft contract proposed the work would be undertaken between 28 May and 30 August 2020, at a total cost of \$15,000 (excluding GST). This was to be paid in instalments at the end of each key milestone, the first milestone being preliminary scoping of the work schedule.
 8. WO and Contractor X reviewed the draft contract, raised some concerns around the proposed timeframes and fitting the work around other commitments, and asked for some amendments to the intellectual property clause, which DOC made. WO and Contractor X then met to discuss and to obtain some advice from others at KAS.
 9. WO then emailed the Director on 17 June and advised that: “the scope of the work exceeds our ability to deliver what’s expected for the proposed remuneration of \$15,000”. As a solution, she offered two alternative options: Delivery of a named project objectives for \$15,000 (excluding GST) or delivery of all objectives for \$74,605 (excluding GST). She provided a detailed breakdown of the estimate for each and advised that Contractor X would no longer be a subcontractor but might revisit that decision if DOC chose the second option. WO also clarified that the parties to the contract should be DOC and KAS.
 10. The Director escalated the proposal to the DDG, who requested time to consider it and, in the interim, asked for two professional referees for work completed by KAS. The Director passed the request on to WO and explained: “your proposal requires significantly more due diligence.” WO provided contact details for three referees and attached a written reference from one of them. The Director replied indicating that she would approach the referees and consider the proposal further but that “there will be some negotiation required”. She also advised that the business group would not be able to commission the work for at least a month, due to an urgent COVID response programme taking precedence.
 11. After touching base briefly in July and again in September, the Director met WO on 15 October to work through the detailed estimate for the delivery of all project objectives that had previously been provided. The estimate broke each project objective down into the steps required for completion, and estimated the hours required to complete each step. The Director proposed reducing the estimates for various specified steps and signalled that the total budget could not exceed \$60,000 (including GST).
 12. After further discussion about the timeline, the amended contract was signed by DOC on 7 November 2020. Around the same time, Gannin Ormsby (GO) completed DOC’s new supplier form on behalf of KAS and the Director completed DOC’s equivalent internal form. On 27 November GO signed the contract on behalf of KAS.
 13. The standard terms and conditions of the contract as well as both new supplier forms had in-built conflict of interest declaration clauses. By signing the documents both GO and the Director declared that, having made diligent inquiry, they had no conflicts of interest. The Director also ticked a box on the new supplier form noting no additional conflict of interest form was required.
 14. On 27 November WO returned the signed contract to DOC, with a progress report and the invoice for the first completed milestone (\$11,800 (excluding GST), which DOC paid). The agreed timeframes then slipped due to personal circumstances and the Director going on secondment.

15. In early June, an Acting Director took over managing the contract and worked with WO to reset the timeframes. On 1 July, WO provided a report to the Acting Director outlining a draft articulation of rangatahi contribution to DOC fulfilling one of the project objectives.⁴ The Acting Director replied explaining that they had left DOC and that WO should contact a third person, copying in the original Director (still on secondment), to find out who the next contract manager would be. On 4 August 2021, WO did this and attached another report, providing an overview of consultation with rangatahi about the Rangatahi Register, which was another one of the project objectives.
16. There is no record that DOC replied to this email or reviewed either of the two 2021 reports. No further payments were made to KAS under the contract and DOC has no other correspondence or documentation relating to the project, until August 2022 when questions were asked about the contract in Parliament. The contract was terminated on 25 August, noting that no further progress had been made since August 2021. DOC initiated an internal inquiry into whether the agency had complied with its own systems, processes, procedures, and tools in its engagement with KAS. The inquiry was completed at the end of October 2022.

Was there a conflict of interest?

17. There was no conflict of interest in relation to this contract with KAS.
18. The Hon Nanaia Mahuta (the Minister) did not hold a Ministerial portfolio associated with DOC at any point between 2018 and 2022. As a Cabinet Minister, the Minister may have been part of collective decisions concerning DOC during this period, but this project involved early scoping of a possible framework for future rangatahi engagement. There was no realistic prospect of Cabinet involvement during the project, nor is there any evidence of Ministerial involvement.

Was there appropriate approval and documentation in relation to the conflict and contract more generally?

19. Since there was no conflict, there is no need for us to consider most of the components of the second question in our framework for analysis. However, it is worth making some observations about approval and documentation, as they highlight some broader lessons for the system.
20. First, and as noted by DOC in its internal review, DOC's internal policies required an additional conflict of interest form to be completed for contracts valued \$20,000 (excluding GST) or more. This contained a more detailed set of questions for the contract manager to work through, in consultation with the supplier. If this had been completed, then it would have given the public greater reassurance that the issue had been robustly explored at the outset.
21. Second, in relation to the contract, the business group decided to procure this project on a direct source basis because they were not aware of any other providers who specialised in rangatahi engagement and wanted access to a rangatahi network, which Contractor X and WO could provide. Given the estimated value of the contract was initially well under \$100,000 (excluding GST), this approach was consistent with NZGP's Procurement Rules.
22. However, when the estimated value of the contract increased to \$60,000 (including GST) it would have been good practice (and more in keeping with the Procurement Principles and DOC's internal Procurement and Supplier Management Standard Operating Procedure (procurement SOP) for DOC

⁴ The draft report mentioned the three-day event that KAS had run with rangatahi Māori in April 2021, which was partially funded by TPK and considered as part of this review. The event was mentioned as an example of the type of contribution that rangatahi Māori can make and the report made it clear that this was a pre-existing event that was in no way associated with DOC.

to have tested the assumption that there were no other potential providers in the market and/or explored the cost / benefit of openly advertising the opportunity. DOC's procurement SOP also required the unit to prepare a short procurement plan, documenting its rationale for the direct source approach. However that was not done.

23. DOC did revise its approach to some extent when the projected costs increased: It negotiated the estimate down by \$22,531⁵ and obtained contact details for three referees and a written reference. However, DOC has been unable to confirm if the referees were ever spoken to or whether a market assessment of any kind was done.

Observations and suggestions

24. This review has identified deficiencies in the procurement process (as described above) and the overall contract management. As identified by DOC in its internal inquiry, there were weak project management practices and oversight, particularly at the delivery stage. There were also issues around role clarity due to multiple changes in DOC leadership and shifting priorities. This resulted in DOC ceasing to engage with the project, leaving it incomplete but not formally at an end. There may also have been a lack of understanding of robust contract management and procurement practices.
25. These kinds of deficiencies could have exacerbated perception risks if there had been a conflict of interest.
26. DOC's internal inquiry has identified several practical steps to improve its contract management capability and processes around conflicts of interest. We endorse those recommendations and suggest that additional work be undertaken to make DOC's 65-page procurement SOP more user friendly. The aim should be to ensure that staff in the business units can readily identify the key information that they need, even when they are under time pressure.
27. Our review also highlights the need for better support for business units, which are expected to procure and manage contracts that are valued at less than \$100,000 largely on their own.

⁵ Note – KAS' estimate was \$74605, *excluding* GST and DOC's maximum was \$60,000, *including* GST.

Kāinga Ora

Overview of the facts

Having reviewed the available documentation and asked clarification questions of KO officials, this is our understanding of the relevant facts in relation to this contract. As this review was focused on the actions of the agencies only, we have not conducted interviews or involved any person outside of the Commission's jurisdiction. It is important that the findings below are read with that context in mind.

1. Kāinga Ora (KO) was established in October 2019 when legislation brought Housing New Zealand, its subsidiary HLC, and the Kiwibuild unit from the Ministry of Housing and Urban Development together as one organisation. At the time, the Hon Nanaia Mahuta was the Associate Minister – Māori Housing (the Minister). The Minister held that portfolio until 6 November 2020.
2. Under its legislation, KO must maintain systems and processes to ensure that it has the capability and capacity to uphold Te Tiriti o Waitangi and its principles, to understand and apply Te Ture Whenua Māori Act 1993, and to engage with Māori to understand a Māori perspective. In May 2020, KO established Te Kurutao (the business unit) to carry out this work. The business unit was to incorporate the existing Māori Outcomes team.
3. The business unit was still being established when on 24 July 2020 a key member of the team in Auckland formally submitted an application for maternity leave commencing 1 August 2020. At this time, New Zealand had just come out of a national alert level 4 COVID-19 lockdown in May and in August Auckland went into an alert level 3 lockdown.
4. The departing staff member was responsible for facilitating monthly hui to provide local iwi with an overview of KO projects in the region and for quarterly workshops on the strategy around infrastructure and urban landscape planning and design. These hui and workshops were not open to the public and were attended by 13 Auckland based iwi, KO staff, external attendees, and consultants. No one else in the business unit had the capacity and capability to take over this work.
5. On 27 July 2020, a contractor working with the Māori Outcomes team introduced the Head of Māori Outcomes to Rama Ormsby (RO) via email. The contractor had recommended RO to the Head of Māori Outcomes, as someone who might be able to assist with the work. The Head of Māori Outcomes discussed the work with RO and they verbally agreed in principle on some terms.
6. On 7 August 2020 RO began work by facilitating a six-hour hui. On 19 August, the Project Assistant of the Māori Outcomes team emailed RO to ask whether he had started the contract process. RO advised he was yet to receive a draft contract to review.
7. The Project Assistant sent RO a draft contract on 26 August. This was a Short Form Agreement (SFA) for consultant engagement, based on an Engineering New Zealand template. RO filled in the SFA and sent it back to the Head of Māori Outcomes on 9 September. The SFA identified KAS and KO as the contracting parties, and RO as the key person delivering the services. This version of the SFA was signed by a director on behalf of KAS, who ceased to be a director on 24 September.⁶
8. Given that change, on 1 October RO emailed the Head of Māori Outcomes asking for the draft SFA to be replaced with a revised version which identified Gannin Ormsby (GO) as the signatory on behalf of KAS. RO also sent back a completed vendor set up form for KAS and confirmed that invoices under the SFA would be processed through the company. By this stage the Head of Māori Outcomes had

⁶ This is the first mention of KAS in the documentation we reviewed. Due to staff changes, KO were not able to confirm whether the company had been mentioned in discussions before this point.

announced that she would shortly be leaving KO, increasing the impetus to finalise the contracting process.

9. On 8 October the Head of Māori Outcomes sent a short internal memo to the Procurement & Innovation Manager, copied to the Chief Advisor Māori (Chief Advisor) and the General Manager Commercial & Finance. The memo sought authorisation to proceed with engaging RO to cover for the team member on leave. It stated that the value of the contract was \$100,000 and explained the reasons for engaging KAS on a direct source basis. The reasons given were that RO had extensive Iwi Hui management experience, KAS were able to commence work immediately, the anticipated cost / benefit of undertaking an open competitive sourcing process was not favourable, the services could only be supplied by one supplier, and that RO came highly recommended by some Kāinga Ora staff who had worked with him previously. It also noted that the unit had “proactively and robustly” considered its engagement options.
10. The internal memo was signed by all relevant KO officials between 8 and 13 October 2020. In the same window, the Project Assistant and the Chief Advisor exchanged emails with RO and GO arranging for the final SFA to be signed. This included one from the Chief Advisor to GO and signed off: “E mihi nui ani ki a kōrua ko Nanaia me tō kōrua whanau” [Thanks to both you and Nanaia, and your family]. On 12 October GO signed the contract on behalf of KAS and on 13 October it was signed by the General Manager Commercial & Finance on behalf of KO. The SFA had an end date of 1 February 2021. It did not have a conflict of interest clause and there is no record that KO raised the issue of conflicts of interest with KAS at any point during the contracting process.
11. Between 7 August 2020 and 5 February 2021, RO facilitated 14 six-hour workshops and six, six-hour hui on behalf of KO. He also attended regular meetings with staff in the business unit. KAS sent five invoices to KO between 6 November and 26 May 2021 for the contracted work and KO paid the company a total of \$72,299.16 (excluding GST).
12. KO undertook a review into this procurement in October 2022, following questions being raised in Parliament about this contract.

Was there a conflict of interest?

13. Our assessment is that this contract gave rise to a minor perceived conflict of interest, which could have been easily managed if it had been identified at the time.
14. The Minister was the Associate Minister for KO, responsible for Māori Housing, when the agency entered the contract with KAS. GO, who was the Minister’s husband signed the contract and his brother delivered the relevant services. There was no actual conflict, because Kāinga Ora operates at “arms-length” from Ministers (i.e. it is responsible through its Board to the Minister of Housing) and RO was filling an operational role that had no prospect, nor is there any evidence of, Ministerial involvement. However, those two details would not have been immediately apparent to an outside observer.
15. Whether the relationship between RO and the Minister alone would have been close enough to be the source of perceived conflict is questionable.⁷ But GO’s involvement alters the situation. The fact that GO signed the contract, combined with problems in the procurement process (discussed at

⁷ The rule of thumb set out in the OAG’s Conflict of Interest Guidance and quoted in the Framework for analysis, is that at least the interests of any dependants or relatives who live with a person must be treated as effectively that person’s interests. For others it will depend on the closeness of the relationship and the overlap with the person’s official duties.

paragraphs 20 and 21 below), could have caused a reasonable observer to question whether the agency's judgment had been compromised.

Was the conflict dealt with appropriately?

16. The perceived conflict was not identified, assessed, or actively managed.
17. It is evident the Chief Advisor, who was one of the three people who signed the procurement authorisation memo, knew that GO was married to the Minister. But aside from this, there is no record of whether relevant officials were aware of the relationships between RO, GO, and the Minister, or whether they turned their minds to the possibility of a conflict.
18. The main issue is that KO did not ask about conflicts of interest in discussions with RO or GO, or through its contracting process. This is inconsistent with good practice and the system level guidance. The business unit generated the contract with a template that contained no conflict of interest clause. Using a government specific template, such as NZGP's model template contract for services, could have resolved the issue.
19. If the perceived conflict had been identified, then KO could have taken steps to mitigate the risks such as:
 - 19.1. Undertaking and recording an assessment of the alternative options. For instance, did they ask regular hui and workshop participants who else might be appropriate? Did they approach other agencies for ideas and advice? Such steps would have provided added assurance that KO was being fair to all suppliers.
 - 19.2. Undertaking and recording the steps officials took to assure themselves that RO was the right supplier for the job. For example, assessing his CV next to the criteria for the role and recording the discussions with referees.
 - 19.3. Obtaining a conflict of interest declaration explaining the nature of the relationships as well as recording the assessment of the conflict to demonstrate how unlikely it was that the Minister would become involved in any way with this work.
20. Finally, there were problems in relation to approval and documentation in relation to the procurement process more generally. First, the rationale for the direct source approach, lacked detail and/or supporting evidence. The internal authorisation memo, which recorded the reasons for not openly advertising, simply stated RO's capability and availability and did not provide any explanation or attach any records to support the statement that KO "proactively and robustly" considered other engagement options. KO has not identified any other relevant records in its systems and the Head of Māori Outcomes left in October 2020. Further, given the original estimated value of the contract was \$100,000,⁸ the Procurement Rules applied. This meant that the opportunity should have been openly advertised unless there was a relevant exemption, endorsed by a senior manager. Officials did obtain internal authorisation not to openly advertise, at an appropriately senior level. However, it was obtained on the basis that there was no reasonable alternative because there was only one supplier.

⁸ An explanatory note to Procurement Rule 6 explains that the Rules apply to the procurement of services when the maximum total estimated value meets or exceeds the value threshold of \$100,000 (excluding GST). An explanatory note adds: "*Even if the monetary value of a procurement is less than the value threshold, agencies are still expected to follow good procurement practice. This means applying the Principles and having regard to other good practice guidance. It's better to be cautious. If your estimated value is getting close to the value threshold (eg services valued at \$98,000), always consider using an open competitive process. After all, your calculation is only an estimate.*"

The Procurement Rules define this exemption narrowly, as discussed in appendix 2, and it is not clear that it would have applied in this case.

21. Second, it seems likely that the urgency around procurement could have been avoided with more advance planning. It is relevant to note that in mid-2020 KO was still in the process of being established and there were multiple COVID-19 level 3 and 4 lockdowns. But RO was approached less than a fortnight before the first hui he had to facilitate and the written contract was not finalised until the work had been underway for two months. This is not ideal and involves unnecessary legal risk, even with agreed verbal terms. It also meant that KO was not immediately aware of who would be signing the contract, and there was nothing to spark a timely conversations around declaring conflicts of interest.

Observations and suggestions

22. The main issue for KO is that it did not ask about conflicts of interest in discussions with the contractor or through its contracting process. That is a basic requirement of good procurement. Further, given the estimated value of the contract it should have been openly advertised. We note, however, that these events occurred in mid-2020, when KO was still in the process of being established. This was well before the Commission began working with the agency as it improved its internal processes and practices.
23. As evidence of its increasing maturity in this space, KO has conducted its own review. It identified that significant work has already been undertaken to improve the agency's procurement and conflict of interest management practices and has recommended further areas for improvement. We endorse those recommendations.
24. In particular, we note that KO now routinely uses NZGP's model template for procuring services and requires the completion of a formal declaration form even when there are no conflicts of interest. This will help to ensure people stop to consider possible conflicts appropriately. KO is also committed to further awareness raising, training and guidance for staff about conflicts of interest and procurement and why carrying these processes out thoroughly and in a well-documented manner is important. We suggest that this also includes encouraging staff to engage early with the agency's Procurement Team, particularly when a direct source approach is being considered for contracts over \$50,000.

Te Puni Kōkiri

Overview of the facts

Having reviewed the available documentation and asked clarification questions of TPK officials, this is our understanding of the relevant facts in relation to this contract. As this review was focused on the actions of the agencies only, we have not conducted interviews or involved any person outside of the Commission's jurisdiction. It is important that the findings below are read with that context in mind.

1. Te Puni Kōkiri (TPK) is government's principal policy advisor on Māori wellbeing and development. In the 2015 Budget, the department was allocated \$2.1 million for a new Rangatahi Suicide Prevention Fund (the Fund), targeted at Māori aged 10 to 24 years old. The fund was designed to support a range of community initiatives contributing to improving rangatahi wellbeing and reducing the likelihood of rangatahi suicide.
2. Since 2015 TPK has advertised the availability of the Fund on its website, alongside detailed relevant information, forms and application guidelines. The template application form for 2020/2021 required applicants to declare any conflicts of interest. It stated:

“Are there any conflicts of interest (real or perceived) between you as an applicant, any other member of the organisation, any third party or employee of Te Puni Kōkiri? If yes, please state how any conflict of interests will be managed appropriately.”

Further guidance on what might constitute a conflict was provided in the Fund Information.⁹

3. In November 2020, Ka Awatea Services (KAS) approached the Hamilton Office of TPK to discuss the possibility of applying for funding for an upcoming project. They were referred to the Tauranga Office (as a staff member there had subject matter expertise in the content of the proposal) to obtain further advice and to discuss their project further.
4. In late November, KAS submitted an application to the Hamilton Office for a grant of \$28,300 from the Fund for its project: Toa Taua Taiao – Rangatahi empowerment through Pepeha. The project was to deliver a three day live-in wānanga in April 2021 for 40 rangatahi: half from Waikato-Tainui and half from wider iwi. They explained the wānanga would be run as a pilot project and had been designed by two rangatahi Māori: Waimirirangi and Tamoko Ormsby (WO and TO). Waikato-Tainui had already agreed to provide the majority of the funding.
5. The goal of the wānanga was to teach rangatahi how to care for their environment and their own wellbeing, through learning about food sovereignty and indigenous stewardship and by developing and pitching a related business idea. The wānanga was to include excursions with experts in Māori knowledge to learn about the natural world, and a business incubator. During the incubator rangatahi

⁹ This explained that: “A conflict of interest can arise if the applicant, or people involved with the proposed initiative have personal or business interests that could conflict with their obligations under the funding agreement. For example where a board member of the applicant is also the person who will be paid to deliver the project there is a conflict of interest, because some of that funding will directly benefit that board member. Conflicts of interest could call into question independence, objectivity or impartiality and can be:

- Actual: where the conflict currently exists
- Potential: Where the conflict is about to happen or could happen
- Perceived: where other people may reasonably think that a person is compromised.

The applicant must do their best to avoid situations that may lead to a conflict of interest arising during the term of their agreement with TPK, and inform us as soon as a conflict of interest arises. We can still fund a project where there is a conflict of interest; we just need to be satisfied that the conflict is being managed appropriately.”

would workshop their ideas with experts to obtain specialist advice and pitch them to panellists, who would provide a critique.

6. \$12,800 of the grant from TPK was budgeted to provide facilitation and resourcing of the excursions. The rest of the grant was budgeted to: “provide koha for panelists and experts to support participants to develop their ideas. This includes travel, accomodation and koha for their time.” The application form proposed a list of four experts and five panellists, and “Nanaia Mahuta” was on the proposed list of panellists. It was not clear from the form whether the experts and panellists had already been approached by KAS to discuss their possible involvement in the project.
7. In the conflicts of interest section, the KAS application form stated:

“Yes – Nanaia Mahuta is the wife of Ka Awatea Director Gannin Ormsby [who was identified in the form as a secondary contact for the project] and Aunty of Ka Awatea Directors and Toa Taua Taiao creators Tamoko and Waimirirangi Ormsby”
8. On 30 November, the application was uploaded into the TPK Smartfund system for processing and was assigned to a Regional Assessor in Tauranga. The assessment was completed on 22 March 2021 and approved by the Regional Investment Manager the same day. The Regional Assessor noted that KAS had not recieved funding from TPK before and it was well supported by other agencies in related fields. They found that the proposal aligned with the priorities of the Fund and recommended approving the application.
9. On 25 March the application was assigned to a National Assessor. On 6 April 2021 the National Assessor sent their assessment memo to the TPK investment sub-committee secretariat, alongside KAS’ application form, in preparation for the sub-committee’s scheduled meeting on 15 April 2021. The National Assessor recommended approving the application and commented in the due diligence section that:
 - *“No severe conflicts of interest have been identified”.*
 - *“The kaitono has provided a risk management plan which shows that the risks are adequately managed.”*
 - *“We have identified no risks to TPK in granting the funding”*
10. The scheduled investment sub-committee meeting did not take place on 15 April but the applications were assessed, and decisions confirmed, by email instead. Each of the three sub-committee members (two Deputy Secretaries and a Chief Advisor) formally declared that they had no personal conflicts of interest in considering any of the applications and all three approved the application from KAS with no additional comments.
11. On 21 April the TPK Acting Regional Director – Waikato/Wairiki signed a funding agreement to WO and GO on behalf of KAS for the \$28,300. The funding agreement contained a conflict of interest clause, which stated: “You confirm that you do not have any conflicts of interest which will or may affect you undertaking the Funding purpose.” The clause then repeated the guidance on conflicts of interest in the Fund Information.¹⁰
12. The wānanga took place from 27 to 30 April 2021. The Hon Nanaia Mahuta (the Minister) did not attend. In May, KAS submitted the required evaluation report. TPK assessed this and released the funds to KAS in June.

¹⁰ See previous footnote

Was there a conflict of interest?

13. Our assessment is that this contract gave rise to a moderate perceived conflict of interest.
14. The Minister was the Associate Minister for Māori Development¹¹ at the time TPK approved KAS' application for funding. The Minister's husband signed the application form and funding agreement, and the underlying project was designed and led by TO and WO, the Minister's nephew and niece by marriage. There was no prospect, nor any evidence, of Ministerial involvement in assessing grant applications for the Fund, as this was purely operational. However, the overall circumstances could have caused an outside observer to reasonably question whether the agency's decision-making may have been compromised.
15. How could the public feel confident that the application would be assessed purely on its merits and would not be influenced by ulterior motives, such as loyalty, favouritism, or prejudice? Such risks were heightened because the application mentioned the Minister as a possible paid participant in the wānanga. It is important to note that when the wānanga subsequently occurred, the panel and expert proposal did not eventuate in this form and the Minister was not involved. However, the inclusion of the proposal in the application compounded the perception risks.

Was the conflict dealt with appropriately?

16. The conflict was declared by KAS, but it was not appropriately assessed or actively managed by TPK. The main issue for TPK is that it did not recognise the agency-level risks, stemming from the declared conflict. Since the exact nature and seriousness of the conflict was never assessed, the risks were not actively managed.
17. The only recorded assessment of the conflict of interest is the National Assessor's memo, which found that there were: "No severe conflicts of interest". We agree that the conflict was not severe, but what kind of conflict was it and where did it sit in the seriousness spectrum between inconsequential and severe? The Investment Sub-Committee, who were reviewing nine applications at once across several of their funds, did not have the benefit of the National Assessor's views on these points. Nor did the National Assessor draw the Committee's attention to the declared conflict, so that it could make its own assessment. We would have expected the mention of the Minister's name in the application to have alerted TPK to the need to undertake a more detailed assessment of the risks. This included a potential risk (which never eventuated) of the agency indirectly offering to pay the Minister koha.
18. If the conflict had been appropriately assessed, a simple targeted management plan could have been developed, potentially including: requesting KAS to revisit the panel proposal, alerting senior leaders to the declared conflict so they could consciously put the issue to one side in their decision-making and record that they had done so, and/or asking for an external peer review of the final decision. This may seem disproportionate given the value of the grant but there was a need for additional measures to be put in place to mitigate the specific perception risks.

Observations and suggestions

19. In relation to the grant more generally, the TPK Smartfund process for receiving and assessing applications appears sound. The Fund was openly advertised and anyone could apply. Applications were assessed Regionally and Nationally, with final approval from three senior leaders. There is

¹¹ The Hon Nanaia Mahuta's Associate Minister delegations were matters relating to Te Pokai Ao, International Indigenous Collaboration Agreements, the whole-of-government response to Pae Tawhiti (improving how we work effectively for and with Māori) and other initiatives as agreed.

evidence that detailed consideration was given to whether this application met the criteria for the fund.¹² There was a process for declaring conflicts of interest and the accompanying information provided to applicants was detailed, helpful and consistent with the system-level guidance. There were also good controls in place to ensure the project was delivered in keeping with the funding agreement. Some functions in Smartfund, such as peer review and due diligence were not mandatory at the time. TPK have advised us that these fields, however, have now been made mandatory.

20. The most significant issue is that there was no detailed assessment of the nature of the conflict and how it should be managed. KAS declared a conflict on their application form and this form was shown to all three tiers of assessors. The conflicts were not highlighted to, or identified by, senior leaders and no advice was sought from the TPK legal or procurement teams as to their relevance. As a result, the perceived conflict and associated risks were left largely unaddressed.
21. In 2020, TPK commissioned a review of their investment processes to ensure they were robust and reflected best practice from a risk and control perspective. Out of this review, TPK has implemented, or is in the process of implementing, the following recommendations:
 - **Improved training and guidance for staff on conflicts of interest** (commenced late 2022) – These focus on how to identify and manage conflicts of interest (actual, potential and perceived), how to identify and manage risks, and how to carry out due diligence on organisations and individuals whose applications are being considered.
 - **A Quality Assurance (QA) programme** (developed in 2022, commencing early 2023) – This involves an independent QA check across a sample of investments to identify training needs and/or process improvement opportunities.
 - **A risk-based decision tool for determining when proposals should be escalated to the ISC for approval** (commenced November 2022) – This is based on an assessment of risk criteria, with conflicts of interest being one of these criteria.
 - **A new conflict of interest management plan (COIMP) tool and internal system drawing attention to conflicts of interest** (commenced October 2022) – The COIMP supports officials to better assess, manage, and document conflicts of interest across all funds. The new system ensures ISC decisions formally consider any conflicts of interest and the supporting COIMP.
22. These measures, particularly the additional training and improved escalation controls, will help to address the findings of this review.
23. In our view it is also a contributing factor that agency and system level guidance has been developed to address individual public servants having a competing personal interest that conflicts with their official duties. In this case, the declared conflict gave rise to a perceived interest at an agency level, because of the connection to Ministers. Additional guidance on this kind of conflict could assist agencies to identify these kinds of issues more readily, and escalate them appropriately.

¹² This is evidenced through an exchange of emails between the Regional and National Assessor's on 6 and 7 April 2021, about the substantive application.

Ministry for the Environment

Overview of the facts

Having reviewed the available documentation and asked clarification questions of MfE officials, this is our understanding of the relevant facts in relation to this contract. As this review was focused on the actions of the agencies only, we have not conducted interviews or involved any person outside of the Commission's jurisdiction. It is important that the findings below are read with that context in mind.

1. The Ministry for the Environment (MfE) is the Government's primary adviser on environmental matters and also has a regulatory stewardship role. The Hon Nanaia Mahuta (the Minister) was the Associate Minister for the Environment between 26 October 2017 and 6 November 2020 (with no specific responsibilities concerning waste) and was also a Cabinet Minister.
2. In June 2020 MfE's Waste & Resource Efficiency Division (the business unit) began planning a project to deliver a new waste strategy for New Zealand. The approach was in draft, with timing and process still being worked out through to October 2020, but the indicative deliverables were:
 - a discussion paper, including a proposed outline for the strategy, to be submitted to Cabinet by December 2020, and to be the subject of public consultation in early 2021; and
 - a final strategy submitted to Cabinet for approval by September 2021.
3. The relevant policy team engaged a short-term contractor (the Project Lead) to begin planning the project. With some support from an analyst, the contractor worked with relevant staff across MfE to develop a plan. Early internal discussions, suggested there was an opportunity to adopt a kaupapa Māori approach to realising the project. This could then ground the strategy in tikanga and mātauranga Māori. Staff met with two experts in late June, to test their ideas and informally canvas their interest. The two experts identified by staff were Expert A and Gannin Ormsby (GO).
4. Expert A had been a keynote speaker at MfE's Circular Economy Summit in 2019 and was known for her work developing an indigenous narrative for the Doughnut Economy and her governance work with iwi. GO was known to the team for his work with the Maniapoto Māori Trust Board and as a founder of Pare Kore, a not-for-profit zero-waste organisation supporting marae to reduce waste by providing education and support within a tikanga Māori framework. A Principal Adviser providing advice to the project team on its approach had also been involved in the establishment of Pare Kore.
5. Further the team knew about the Amio Project (Amio) that GO and others in Ka Awatea Services (KAS) were working on. Amio approached resource efficiency through a Māori lens and involved various practical initiatives working with industry around waste, technology, and education. The team's Principal Adviser had attended a cross-agency meeting with KAS in April 2020 about supporting Amio, after GO had reached out to a policy director at MfE inviting the agency to attend.
6. On 26 June, an initial meeting took place between the team, Expert Ay, and GO about the project. The following Monday the Principal Adviser sent an email to the Deputy Secretary, proposing an ongoing role for the pair as part of a reference group. The team also prepared a memo for the Deputy Secretary about the project that mentioned the perceived conflict given GO's relationship to the Minister. However, based on a review of the emails, the memo does not appear to have been circulated to senior leaders. Instead, there was a project meeting between the Project Lead, Deputy Secretary, and others on Friday 3 July. At that meeting the Deputy Secretary gave in principle agreement to the general proposal. It is unclear whether the Deputy Secretary was made aware of the perceived conflict.

7. The team continued project planning and began drafting terms of reference for the group. The Project Lead signalled the need for more detailed planning around establishing the reference group and there were conversations about potential additional members. Expert B was then asked to join the reference group sometime in July. Expert B was known to the team for their work on the Waste Advisory Board and with Pare Kore.
8. On 10 August the Deputy Secretary approved the overall project plan, which referred to the reference group as the Māori Technical Expert Group (MTE Group).

Members of the Māori technical expert group will be recognised leaders in the field of waste, recovery and resource efficiency, circular economy and/or mātauranga Māori, with good connections to other Māori whose knowledge and input will benefit the development of the discussion paper.

9. The project plan proposed that the main work with the MTE Group would take place between 1 August and 30 September 2020; listed the Group's consultancy fees as "TBC"; and included the following medium level risk (15/25) in the register: "[being] unable to reach agreement with Māori technical experts about their role and responsibilities". The plan did not estimate the value of the contracts and it did not mention any conflicts of interest. A week later the Project Lead sent a draft detailed engagement plan to Te Arawhiti for feedback and advice, which identified a fourth possible MTE Group member.
10. On Friday 14 August the Project Manager (the Manager) first learned that GO was married to the Minister. The Manager assumed that the issue would have been raised with and assessed by senior leaders as part of the discussion on 3 July. The Manager responded to an email flagging the heightened perception risk, asking for views from the Principal Adviser, and noting the importance of managing this type of thing upfront. The Principal Adviser responded observing that the perceived conflict had been raised early on, that "it would be great to get some legal advice" on the matter, and that documentation around the direct sourcing as well as any conflicts would be required as part of procurement planning process. However, the Manager opted not to get legal advice at this time as they felt comfortable managing the issues until the contracting process.
11. The team continued arranging an initial two-day workshop with the MTE Group, including sending out a Discussion Paper for consideration. The workshop was seen as an opportunity to adopt a kaupapa Māori approach, by beginning with relationship building and exploring possible ways to work together on the project, including potentially through co-design. On 20 August the Analyst sent an email to the MTE Group to confirm their availability for the workshop on 3-4 September. WO and TO were also included in this email.
12. On 22 August the Senior Analyst sent a draft agenda for the workshop to the Manager and the rest of the team. The draft agenda included WO and TO as attendees and proposed WO as the Chairperson. The Manager noted that this was a "surprise" in an email copied to senior management, and commented:

If there are others beyond our three advisers who you think need to be part of the hui, it would be good to talk that through: who, why, in what capacity, would we be paying them etc. Just needing a bit more explanation and clarity from you on this please.

Also, we've already talked through the importance of documenting up front why we are contracting [GO], given his relationship with one of our Ministers. We would need to be very clear on the reasons if we are to pay more members of the family for services, otherwise the political risks just increase.

13. The Analyst replied on 24 August advising that WO and TO work with GO as part of KAS. They also noted that the Group had agreed on the importance of rangatahi involvement and that they wanted WO as first point of contact. They also advised that it was likely GO, WO, and TO would contract through KAS.
14. A couple of days earlier on 21 August, the Manager had emailed the Team Administrator requesting urgent drafting of consultant contracts for GO and Experts A and B. The email noted that they were “to start work ASAP” and that the “contracts should run from now until the end of June 2021”. The Manager advised: “They are direct procurements – all chosen for their individual expertise and availability.” The urgency stemmed from a desire to have the contracts in place in September. However, on 25 August the contracting work slowed when the team emailed the Manager and Administrator relaying that the Group had offered to attend the 3 September workshop, without charging for their time.
15. The email from the team also provided short bios for GO and experts A and B and a shorter blurb each for WO and TO, who were described as consultants “assisting” GO. Further it explained the team’s “rationale for direct procurement” in more detail, which was:
 1. *All members have technical expertise related to waste minimisation, circular economy and matauranga Māori.*
 2. *They individually and collectively bring a unique set of expertise, skills and attributes required to deliver the objectives of the project which is currently limited within the waste and resource efficiency sector.*
 3. *All members have extensive, iwi, hapu and marae networks and relationships.*
16. On 26 August the Manager replied asking for GO’s CV, as MfE already had ones for Experts A and B, adding: “Still to talk through the nature of any involvement by others in the company, as per previous emails.”
17. The two-day workshop took place on 3-4 September and was attended by Experts A, Expert B, GO, TO, and WO, and several MfE staff in person and via video for particular sessions. It was held at the Waikato Tainui Endowment College, which had been established by the Minister’s father and was close to her home. Officials notes and later procurement plans noted that the Minister joined the attendees for breakfast one morning but was explicit that she was there in her personal and family capacity, as host/mana whenua and that it had nothing to do with her Ministerial responsibilities.
18. Following approval from the business unit’s Directors on 17 September, MfE continued discussions about CVs and contracts on the basis that WO and TO would also be part of the MTE Group.
19. On 20 September, the Manager emailed the MTE Group members thanking all five of them for their CVs and testing their preference to contract with their companies as opposed to with them as individuals (meaning one contract with KAS for GO, WO and TO). Further, it outlined the three key deliverables, the support to be provided by MfE, and a proposed a daily rate.
20. On 29/30 September the team worked with the Manager on draft wording for the contract. This included the same proposed daily rate for each member of the MTE Group, capped at a certain number of days for each of the three deliverables across the three contracts. This added to a total of \$67,000 (excluding GST) for the entire project - \$45,000 of which related to the first deliverable of a draft conceptual framework due at the end of October to be discussed with a Wider Advisory Group.

21. On 5 October GO replied, only on behalf of KAS, but noting that the MTE Group all shared similar concerns. Their main concern was that “the actual work required was underestimated for a National Strategy” and that MfE’s proposed daily rate was inconsistent with the MTE Group’s standard rates. He estimated that the cost for the MTE Group to complete the first deliverable would be at least three times more than MfE had originally proposed, as it would take three months rather than one. The estimate did not include his own time, as he noted that most of the work done by KAS would be completed by WO and TO.
22. The Manager and GO spoke on 8 October to discuss a way forward and reached an agreement to a \$90,000 cap (excluding GST) for the contract with KAS through to June 2021 and a cap of \$20,000 (excluding GST) for each for Experts A and B. The Manager emailed the draft KAS contract to the Director (the Director), who approved it, and then emailed the Legal and Procurement Team on 13 October to get approval for the procurement plan covering the three contracts. The covering email drew attention to the connection between KAS and the Minister which was noted in the risk section. At this point the focus of the covering email was on the relationship between GO and the Minister specifically. However, the underlying draft procurement plan referred to the perceived conflict and highlighted the involvement of all three family members
23. The Manager sent a follow up email shortly afterwards asking for “any big issues” to be raised the next day. It explained that the MTE Group needed to start work immediately to prepare for the workshop with the Wider Advisory Group on 29 October. The Legal and Procurement Team replied asking for more time to consider the issues around the perceived conflict.
24. Over the next few days, the Procurement and Legal Team raised significant concerns. While the draft procurement plan and contracts included content on conflict of interest management, the procurement team supported the Manager to include additional controls.
25. Then on 19 October the Procurement and Legal Team sent the revised procurement plan to their Manager, with a proposal that the plan should be signed out by MfE’s chief executive (CE). The Manager Legal and Procurement replied: “Yes I agree that [the CE] needs to sign this off given the nature of the conflict and the fact that it is direct source.” The Manager then escalated the issue to the Director of the Legal and Procurement Team noting: “There is a major perceived conflict risk” and advising that “The Procurement Team considers the management plan to be sound, but ultimately, we believe it should be a decision for [the CE] as to whether she wishes to proceed.”
26. Given this advice, the Manager drafted a covering email for the Deputy Secretary to send to the CE. It explained that the key issue was that GO is married to the Minister and that “the other two consultants working closely with him are also whanau”. It also noted GO had offered to withdraw if conclusion was that risk was not manageable but Manager stated that: “Given his expertise and mana this would be a loss to the project”.
27. The Deputy Secretary replied that he could not send the email noting “there is information that is new to me” and asking to discuss it with the Director and Manager.
28. The next day, the Director of the Legal and Procurement Team suggested obtaining urgent advice from Te Kawa Mataaho Public Service Commission (the Commission) on the perceived conflict, which the Director of the business unit agreed to do that day. The Director spoke to an Assistant Commissioner, who replied with advice the same day. The advice only addressed GO’s role in the project, as the Director had not mentioned WO or TO in the call. Based on the context provided, the Commission’s advice was that GO’s relationship with the Minister should not preclude him being involved, if a robust and actively monitored conflict management plan was put in place to address

the perception risks. The Commission's internal file note records that the Assistant Commissioner suggested possible components of the plan, including informing the Minister for the Environment of the MTE Group, its membership, and the conflict risks. However, the two agencies have different records of the Commission's advice. An email from the Director to other MfE staff following the conversation, did not include the advice around informing the Minister for the Environment.

29. Over the next two days the Deputy Secretary raised concerns about whether MfE had thought through and documented its rationale around the services that were to be provided by TO and WO. The Manager continued to propose direct sourcing the support work "because some solid searching yesterday found nothing remotely comparable". However, after talking to the CE on 22 October, the Deputy Secretary asked for project team to focus on three separate contracts for the expert advisers (GO, Expert A and Expert B) and for the additional services to be dealt with separately: "This needs to be separately scoped and addressed, and, if required for project delivery, need to determine what process need to go through". The Deputy Secretary then sent a follow up email to the CE on 23 October asking her to sign the revised procurement plan for the three expert advisors (now estimated at \$25,000 each) "given the perception risk".
30. In the meantime, the Manager spoke to GO about re-organising the contracts. The Manager confirmed to the Director that GO had agreed and repeated his offer to withdraw. The manager felt was unnecessary at this stage but noted that it may be different if "his wife became our Minister."
31. Later on Friday 23 October, the Manager advised the MTE Group that the contracts for GO, Expert A, and Expert B would be ready for signing on Tuesday but that the contracts for WO and TO would take longer. It was suggested that this would mean WO and TO would not be able to attend the Wider Advisory Group meeting on the 29 October. GO replied that it would be better if they could have contracts in time to attend the meeting.
32. On 27 October, the CE returned from leave and forwarded the Deputy Secretary's email requesting sign out of the revised procurement plan to the Chief Operating Officer (COO). The CE asked the COO: "Can you test this please. It is unusual for me to have to sign something out like this. Puts more risk for me. If it needs a further signature, maybe its yours." The request was unusual from the CE's perspective as CE sign off was generally sought for higher value expenditure and with more prior notice and discussion than had taken place in this case. The CE's request to test the process as intended to ensure the risk had been fully understood and managed by senior management. The COO asked the Deputy Secretary and the Director of Legal and Procurement whether they were "looking for CE sign out or for her to be aware." The Deputy Secretary then offered to sign out the plan and this approach was endorsed by the Director Legal and Procurement, given that the COO and CE had visibility.
33. On 28 October the Deputy Secretary signed out both procurement plans, one for the expert advisers (GO, Expert A, and Expert B) and for the supporting work (WO and TO). The MTE Group (minus Expert A) then attended the workshop with the Wider Advisory Group on 29 to 30 October as planned.
34. Subsequently, MfE signed contracts with Expert A, Expert B, KAS (in relation to GO), and Kawai Catalyst Ltd (in relation to WO and TO). The first three were signed by the Manager and valued at \$25,000 (excluding GST) each. GO's contract attached a Conflict of Interest Declaration Form, which he completed on 23 November. It recorded his relationship to the Minister but noted that following the General Election on 17 October 2020, her Ministerial role had changed and that she was no longer involved in MfE's portfolio. The contract with Kawai Catalyst was signed by the Director of the business unit given its higher value of \$60,000 (excluding GST). Again there was a Conflict of Interest

form attached, noting the connection between Kawai Catalyst and KAS, but not the Minister specifically.

35. The MTE Group continued to work with the business unit on the development of the strategy through until May 2021. A draft consultation paper in relation to the strategy was then approved by Cabinet in October 2021.
36. In May 2022, following publicity around this contract, MfE conducted an internal review of the process to appoint to the MTE Group. Initial findings were reported to the CE within a week. Later the CE asked for an updated and consolidated report, following additional analysis of emails. This report was provided in mid-August 2022.

Was there a conflict of interest?

37. Our assessment is that these contracts gave rise to a significant perceived conflict of interest, as well as some potential implications for the Minister that the agency needed to manage. There is no actual conflict because there is no indication in the material we have reviewed that the Minister was involved in any way in decisions relating to this project, or that MfE's contracting decisions were made, or influenced by, the connection to the Minister.
38. In relation to the perceived, and related potential conflicts, the relevant circumstances were that:
 - The Hon Nanaia Mahuta was the Associate Minister for the Environment, with no portfolio responsibility for waste and a Cabinet Minister at the time of most of the events described above. This was not the Minister's portfolio role when the final contracts were signed.
 - MfE approached GO to be on the MTE Group because of his expertise, alongside two others. WO and TO were later included as well. They were also qualified for this role. In the end, the MTE Group included three people who were related to each other and the Minister with varying degrees of closeness. They were all contracted on a direct source basis.
 - The contracts with the MTE Group were not signed until after the work of the Group had started. The rationale for the direct source approach was also not well documented and the total value of the original contract with KAS was close to the \$100,000 threshold (as discussed further below).
 - The MTE Group was contracted to be involved in the early stages of a significant policy project for MfE: The development of a new waste strategy for New Zealand. The draft and final versions of this strategy were to be discussed at Cabinet.
39. The overall circumstances could have caused an outside observer to reasonably question whether the agency's decision-making may have been compromised. This required a robust and actively monitored management plan to be put in place as discussed further below. There was also a need for the agency to ensure that the Minister would not be inadvertently drawn into discussions about the project, either through her Associate Minister role or at Cabinet. There is nothing to suggest this potential risk ever materialized, but our view is that MfE should have done more to actively manage it.

Was the conflict dealt with appropriately?

40. The conflict was identified, assessed, and to some extent mitigated. However, clear escalation, decision-making, and management of the conflict did not occur in a timely way and the management plan fell short of what was required in the circumstances.

41. The main issue for MfE, as identified in its own internal review and which is clearly visible with the benefit of hindsight, is that officials missed several opportunities to address the issues earlier in the life of the project.
42. The conflict was declared during GO's initial discussions with MFE at the end of June. As early as 3 July 2020, the project team identified a perception risk arising from GO's possible involvement with the project in a draft memo that was overtaken by events and never circulated to senior leaders. This was the first missed opportunity.
43. The second missed opportunity came in August when the project team discussed the need to document the rationale for the direct source approach and to obtain legal advice on how to manage the perceived conflict. It was suggested that this could be done through the contracting process. A week later, the project team identified that the possibility of including WO and TO in the Group as well would increase the risks and that, if they decided to go ahead, the team would need to have good and well documented reasons for their inclusion. The need for legal advice was identified at this point. However, no legal advice was sought at this time and the contracting process ended up significantly delayed due to competing priorities. Our view is that the project team's assessment at this time was correct. The inclusion of WO and TO heightened the perception risks, as they were also related to GO and the Minster, albeit much less closely. Before agreeing to contract their services as well, the Ministry needed to independently assess the options and document its thinking.
44. By September, initial scoping work with the Group, including WO and TO, was effectively underway but MfE had not formally documented, assessed, or put in place a management plan, relating to the perceived conflict of interest. The estimated value of the work remained largely unsettled at this stage as well.
45. The third missed opportunity occurred in mid-October when the project team sent draft contracts and a draft procurement plan to the Ministry's procurement and legal team for approval. At this point the project team was rushing to finalise the contracts by 29 October 2020 (the date of a scheduled meeting with the Wider Advisory Group, which the Māori Technical Expert Group was supposed to present at).
46. The nature of the conflict, the fact that the services had been direct sourced, and the estimated value of the contract with KAS (\$91,000) caused the procurement and legal team to raise significant concerns. They advised that this was a major perceived conflict, requiring CE sign off or at least visibility. Our view is that this was appropriate. But by this stage in the project, the self-imposed tight timeframe was driving the decision-making, rather than the needs of robust procurement.
47. There were a few brief discussions with the CE about the contracts, but ultimately the responsible Deputy Secretary made the final decision. To support that process, genuine attempts were made by officials to grapple with the issues at the heart of the conflict, but these were undermined by the sense of urgency. For example, urgent advice was sought from the Commission, but that advice was based on an incomplete picture as only GO's involvement was mentioned and was recorded differently at MfE. Similarly, a decision was made to split the contract in two, to allow the contract with GO to proceed, while the separate issues arising from WO and TO's involvement were considered. But in the end time ran out and a pragmatic decision appears to have been made to proceed with both.
48. By this time the ideal window for forming and documenting the management plan had been missed. In the end, our view is that what was proposed was not as detailed and targeted as the circumstances required. The plan introduced few, if any, additional measures to mitigate the perception risks. It

relied mainly on contractual terms around confidentiality and regular meetings, that on the face of the documents, would have been included in any event. These could have been strengthened to specifically target the risks associated with the perceived conflict. But the main gap was that the plan did not put any measures in place to protect the Minister from inadvertently becoming drawn into the work in the future, either through discussions with the Minister for the Environment, the Associate Minister responsible for waste, or at Cabinet. As the Commission advised at the time, to address this, the Ministry should have informed the Minister for the Environment about the MTE Group, its membership, and the conflict risks.

49. The Ministry's internal review found that the conflict was not discussed with any Ministers to minimise the risk of accusations of influence, but that it could have been under the 'no surprises' principle. Our view is that the Minister for the Environment needed to know as part of effective conflict management.

Observations and suggestions

50. Overall, this was a complex procurement and from what we have seen MfE officials working on the project were aware of the relevant issues and were working to address and manage them appropriately. The contracts were awarded on the basis of identified expertise. The review found no evidence or suggestion that the decision-making by MfE was improperly influenced by the connections to the Minister. But there were some gaps in the upfront planning and several missed opportunities to obtain early formal conflict of interest declarations, seek external advice, and escalate the issues. By the time advice was sought from MfE's Procurement and Legal Team and the Commission, it was under urgency and – in relation to the Commission - some of the key facts were left out. The flurry of activity finalising the contracts, was designed to address the perceived conflict, but in other ways it increased the perception risks. Decisions were inherently made at pace with gaps left in the supporting documentation.
51. The Ministry's internal review reached similar overall conclusions. It identified key improvements that the Ministry has made since 2020, that would reduce the likelihood of similar issues arising again. The Ministry has provided us with further details about these initiatives which should address many of the findings in this review. They include:
- **Introduction of a new Enterprise Portfolio Management Office** (July 2022) – This involved introducing a new function to improve project management and planning throughout the Ministry. It is responsible for developing a Ministry-wide standard approach to project management, including some standard project management methodologies and consistent project status reporting
 - **Implementation of a procurement business partner model** (August 2021) – This has involved allocating a member of the Ministry's procurement team to each of the agency's business units to work alongside the units at all stages of any procurement and doubling the size of the team to ensure that there is sufficient capacity to meet demand, and
 - **Improved external supplier procurement processes** (August 2022) – This has involved the procurement team reviewing its supplier conflict of interest processes and forms and making enhancements including:
 - Requiring sufficient assessment of potential impacts (to the Ministry, Ministers, for example) and specifically addressing those impacts

- Requiring CE or Deputy Secretary approval for procurements assessed as “high risk” by the team

In addition the team has updated its conflict of interest guidance and forms for managing internal conflicts of interest in procurement, eg where a staff member involved in a procurement might have an actual, potential, or perceived conflict.

- **Development of a function to oversee all external advisory groups** (in progress) – The Ministry has commissioned an external review of its approach to External Advisory and Governance Groups, which will be completed by December 2022. This will inform the establishment of the advisory group function, which will have oversight of all external advisory groups established at the Ministry and provide advice on the process for establishing such groups, including how conflicts of interest are identified and managed.
- **Established an integrity programme** (in progress and a top priority for delivery) - This has a focus on reviewing and strengthening conflict of interest processes across the Ministry including through refreshed processes, the creation of a ‘wise heads’ group for helping to work through potentially complex cases, mandatory one-hour training workshops, additional training for the Ministry’s Procurement Team, an audit of the conflict of interest new starter documentation, updating information and guides for staff and managers, and developing a ‘conflicts of interest – your questions answered form’ to be shared with staff.

52. Further, as noted in relation to TPK and KO, change to the Commission’s conflict of interest model standards could assist agencies in identifying agency level perception risks and appropriately escalating them in a timely way.