



Te Kawa Mataaho

Public Service Commission

4 October 2022

Ms Penny Nelson
Director-General of Conservation
Te Papa Atawhai | Department of Conservation

By email: 9(2)(a) privacy

Tēnā koe Penny

Background

As you are aware, complaints have been made about the management of conflicts of interest by Public Service agencies during the procurement of services from Ka Awatea Services Ltd (KAS) and Kawai Catalyst Ltd (KC). At this stage I do not consider that the matter warrants an inquiry under the Public Service Act 2020, but I have decided to look into the matter.

So far four agencies have been identified as having relevant contracts (including grants). That includes the Department of Conservation. To determine whether there are additional contracts that should be considered as part of this work, I have written to all departments, departmental agencies, and statutory Crown entities seeking further information.

I am writing to you as the Chief Executive of the Department of Conservation to explain the next steps.

The purpose of this review

The purpose of this review is to determine whether Public Service agencies have appropriately identified, assessed, managed and documented any conflicts of interest in their contractual relationships with KAS and/or KC. If that has not occurred, I will ask the relevant agencies to take appropriate action to rectify the situation going forward.

I will also consider what broader lessons can be learned from this review and what additional guidance if any, needs to be issued as a result of my findings.

In a country with the population of New Zealand's conflicts of interest will frequently arise. How we manage those conflicts matters. It can either build trust in our democracy or it can erode it, so it is fundamental that we get this right.

The matters within scope

The review will look into the circumstances surrounding every contract for services entered into by a Public Service agency since October 2017 with KAS, KC or with any of the directors of those companies (that is, Gannin, Tamoko or Waimirangi Ormsby) in their personal capacities (the relevant contracts).

The focus of the review is on agency practices in relation to conflicts of interest arising from the relevant contracts. It will 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. In addition, it will not examine the process around any individual Cabinet appointments or employment agreements.

In relation to each relevant contract, this review will consider and form a view on whether the agency's practices in relation to conflicts of interest were in order. Specifically, it will consider 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

In forming a view on these matters, the review will consider compliance with applicable best practice guidance and rules on conflict of interest and procurement including the Public Service Commission's *Conflict of Interest Model Standards* and the Ministry of Business, Innovation and Employment's *Government Procurement Rules*.

Documents requested

To support this review, I would be grateful if you could provide the Commission with an electronic copy of all of the documents that your agency holds in relation to the procurement and conflicts of interest arising from the relevant contracts. This should include all internal and external correspondence about the contracts, such as letters and emails, and all internally generated documents, such as procurement plans and the contracts themselves. There is no need to provide drafts of the relevant documentation unless those drafts were the subject of consultation. Further please remember to redact any personal information in the documentation to be provided (or to obtain consent from the relevant parties) to ensure compliance with the Privacy Act 2020.

In addition, I understand that your agency has already conducted a review into this matter. I'd be grateful if you could also provide the Commission with an electronic copy of your review report and any working documents from the review that you consider may assist. The report and working documents will help us to understand your agency's views on this matter and will provide us with invaluable context for the underlying documents.

Nicky Dirks, Manager Ministerial Services at the Commission will be managing the document collection process across the four identified agencies. She will be in touch with you separately to confirm the Department of Conservation contact person for this review. Nicky will also provide a secure link to a shared Sharepoint folder where the documents can be uploaded to. I would be grateful if all documents could be uploaded by 12 October.

The process of the review

I am in the process of finalising a review team at the Commission to undertake this work. This team will be led by the Deputy Commissioner, Integrity, Ethics and Standards, supported by staff from both the Commission and MBIE's Procurement Team.

The first step will be for the review team to review the relevant documentation and form an initial view on what happened and why, that can be tested with agencies. As part of this first step, I would be grateful if you could ensure that key staff are available to answer any clarification questions that the review team may have. This is not an inquiry so we do not envisage conducting interviews, but it may assist for the Team to check their understanding of key issues with those who were involved in the process.

Once the first step of the review is underway the review team will be in touch to confirm the process for the remainder of the review. I can confirm however, that my expectation at this stage is that the entire review process will be completed by 7 December 2022 and at the end of the review I will be publishing a report on the matter that will also be provided to Minister Hipkins.

Requests to agencies for the documentation provided to the review

As noted above, this is not a formal inquiry at this stage but if it becomes necessary to utilise the relevant powers in Schedule 3 of the Public Service Act 2020 or apply the provisions of the Inquiries Act 2013 to this review then I will do so. It is crucial that this is a thorough, robust, and effective review. All relevant material needs to be identified and provided to the team who will then be able to consider it as a whole, in context.

Once the team has the relevant material, it will need time to undertake the necessary process of identifying and testing the relevant facts, conducting analysis, and formulating its findings. It is in the public interest that the integrity of this work is not undermined by the partial release of documentation that the team is considering, into the public domain. The ordinary practice is for that kind of material to become public at the end of any Commission review. Releasing it earlier risks damaging public trust and confidence in the process.

Therefore, if your agency receives a request under the Official Information Act 1982 for any information or documents within the scope of this review, then please contact your Assistant Commissioner immediately so that we can provide you with advice. Similar consideration will apply in relation to media requests or parliamentary questions, so please also contact your Assistant Commissioner if you receive one of those.

I appreciate that reviews can be stressful for the staff involved but there is a strong public interest in resolving these matters, and the team will complete this work as quickly as they are able.

Thank you for your ongoing co-operation.

Nāku noa, nā



Peter Hughes (he/him)
Te Tumu Whakarae mō Te Kawa Mataaho
Public Service Commissioner | Head of Service