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**CONFIDENTIAL – INFORMATION PAPER**  
**Counties Manukau District Health Board**  
**Audit Risk & Finance Committee**  
**Board Approvals Verification for Ko Awatea Stage 2 Review**

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## **Recommendation**

It is recommended that the Audit Risk and Finance Committee:

**Receive** the Board Approvals Verification for Ko Awatea Stage 2 report.

**Note** there were six major Ko Awatea decisions of which four were not approved by the Board.

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**Prepared and submitted by** Ramon Manzano, General Manager, Regional Internal Audit, endorsed by Margaret White, Acting CFO

### **1. Purpose**

The Paper sets out details of RIA's verification of four key stages of the 'Ko Awatea Stage 2' project which required Board approval.

### **2. Details of work performed**

Audit Program involved:

- Finding evidence that Boards were provided sufficient information.
- Finding evidence that Boards discussed each approval thoroughly.
- Validating that approvals are in chronological sequence (e.g. business case approved ahead of construction).
- Noting any person on record to have concerns or voted against.
- Validating all approvals with signed minutes.

Of the four key decisions reviewed there were two decisions not approved by the Board. Details are in the Appendix.

### **3. Conclusion**

The initial Business Case was approved by the Board in December 2015. However, the decisions to use a Sale and Leaseback funding source, enter into a construction contract and variations from the original business case could not be verified as approved by the Board.

Appendix - Board Approvals Verification for Ko Awatea Stage 2

| Key Stages Requiring Board Approvals  | Audit Findings <sup>1</sup>   |
|---|---|
| <p>1. Business Case</p> <ul style="list-style-type: none"> <li>▪ Concept linked to CMDHB strategy</li> <li>▪ Well defined benefits</li> <li>▪ Risks identified and assessed</li> <li>▪ Detailed budget</li> <li>▪ Funding plan</li> <li>▪ Timeline</li> </ul> | <p>Board approval: Y</p> <p>Date of approval: 02/12/15.</p> <p>Exhibit reference # of minutes evidencing approval: Exhibit 25, pages 255-256</p> <p>Verified with signed minutes: Y</p> <p>Comment on quality of business case (see below):</p> <p>The business case for the Ko Awatea Stage 2 was presented to the Board on 2 December 2015 (Exhibit 24). The Board had approved the intent to support the expansion of Ko Awatea, subject to remaining within the \$10m delegated authority limit of the Board (Exhibit 25, page 256). The approval was carried unanimously.</p> <p>The business case presented to the Board on 2 December 2015 proposed construction of these priority areas:</p> <ul style="list-style-type: none"> <li>▪ 'The Forum' (additional spaces for patient learning, teaching space and tiered lecture theatre),</li> <li>▪ 'The Academy' (additional administration space), and</li> <li>▪ Parking.</li> </ul> <p>A provision to explore options to include a Research Institute was mentioned in both the business case and the Decision Paper presented to the Board in December 2016 (refer to Exhibit 24).</p> <p>The Decision Paper presented to the Board on 10 February 2016 mentioned the construction of the following:</p> <ul style="list-style-type: none"> <li>▪ Patient Learning Centre</li> <li>▪ Tiered Lecture Theatre and Forum area for exhibitions, breakout and informal meetings</li> <li>▪ Flexible space that can be adapted to suit innovative teaching, learning, research and development activities.</li> </ul> <p>Parking, which was included as a priority area in the original business case, was not mentioned in this Decision Paper.</p> |

<sup>1</sup> Exhibits referenced in table provide additional detail.

Appendix - Board Approvals Verification for Ko Awatea Stage 2

| Key Stages Requiring Board Approvals  | Audit Findings <sup>1</sup>  |
|---|--|
|   | <p>We found the following in our review of the business case:</p> <ul style="list-style-type: none"> <li>▪ The business case is linked to CMDH's strategic objectives for a healthier community and more sustainable health system across Counties Manukau.</li> <li>▪ The benefits are well defined and are related to CMDH's strategy of a healthier community and healthier services.</li> <li>▪ The business case has not identified risks related on the proposal, their assessment, as well as corresponding actions to address them.</li> <li>▪ The business case provides a detailed budget costing for the priority construction of 'The Forum', 'The Academy' and 'Parking'. The original total cost for these three is \$7.62m.</li> <li>▪ While the business case does not include a plan on how the construction will be funded, the cover page of the business case submitted to the Board (Exhibit 24) included two funding options: prioritise capital expenditure for up to \$5m per year for two years and negotiate a sale and lease back of operating assets.</li> <li>▪ There is no detailed construction timeline provided for in the business case.</li> </ul> <p>The Board gave approval for Management to further explore their options, subject to the Board's capital funding limit of \$10m. Management further explored their options for the Ko Awatea Stage 2 project. A Decision Paper on the outcome of this work was presented to the Board on 10 February 2016.</p> <p>The revised Capital Cost for the construction project is \$9.895m, which is still within the \$10m limit of the Board.</p> |
| <p>2. Exemption from Government Capital Investment Committee (CIC)<sup>2</sup> signoff.</p> | <p>Board approval: N/A</p> <p>Date of approval: No Board discussion on this aspect.</p> <p>Exhibit reference # of minutes evidencing approval: N/A</p> <p>Verified with signed minutes: N/A</p> <p>Comment on quality of document:</p>   |

<sup>2</sup> Previously known as National Capital Committee.



Appendix - Board Approvals Verification for Ko Awatea Stage 2

| Key Stages Requiring Board Approvals     | Audit Findings <sup>1</sup>  |
|--|--|
|  | <p>No evidence of discussion from the Board about CIC exemption. The Board, as per minutes of 2 December 2015 meeting (Exhibit 25, page 256), supported the expansion of Ko Awatea subject to remaining within the \$10m delegated authority limit of the Board. Anything over \$10m would require CIC approval as per Delegated Authority Policy (Exhibit 44, page 22 – note 5).</p>  |
| <p>3. Sales-Leaseback Funding Source</p> | <p>Board approval: N</p> <p>Date of approval: No specific Board approval for a Sale and Lease Back option evident in the minutes of meetings.</p> <p>Exhibit reference # of minutes evidencing approval: N/A</p> <p>Verified with signed minutes: N/A</p> <p>Comment on quality of document (see below):</p> <p>While the paper presented to the Board on 10 December 2015 discussed two funding options - a capital expenditure allocation of \$5m for 2 years and a sales and lease back agreement (refer to Exhibit 24, page 303); the Board did not give explicit approval that the sale and lease back option can be used to fund the Ko Awatea expansion. The Board only gave approval for the CEO and Deputy CEO to negotiate the funding source (Exhibit 25, page 256).</p> <p>No further discussion around the selection of the sale and lease back option to fund Ko Awatea Stage 2 was evident in the minutes of Board meetings between December 2015 and January 2017.</p> <p>Sales and Leaseback Schedule signed [redacted] on 12/1/17. Assets sold valued at \$9.98M and Lease for \$2.5M per year for 4 years. [redacted] Board Approval for assets sales above \$100,000 (Exhibit 44, page 21) and lease payments over \$200K pa (Exhibit 44, page 22).</p> <p>The agreement on Sales and Lease Back of operating assets with MCL Capital (Exhibit 11), which was signed on 12/01/17 [redacted] was not presented to the Board for approval. The cost of leased assets amounted to less than \$10m, which should have gone to the Board for approval, as required by the Delegated Authority Policy (Exhibit 44, pages 21 - sale and disposal of assets and 24 - lease agreement).</p> |
| <p>4. Construction Contract</p>          | <p>Board approval: N</p> <p>Date of approval: It cannot be verified from the minutes that the construction contract between CMDHB</p>  |

Appendix - Board Approvals Verification for Ko Awatea Stage 2

| Key Stages Requiring Board Approvals | Audit Findings   |
|--------------------------------------|--|
|                                      | <p>and Leighs Construction had been presented to the Board for approval.</p> <p>Exhibit reference # of minutes evidencing approval: N/A</p> <p>Verified with signed minutes: N/A</p> <p>Comment on quality of document (see below):</p> <p>The Board was only informed through a brief update from the Chief Executive Report on 30 November 2016 Board meeting that Leighs Construction had been engaged for the construction of the Ko Awatea extension (Exhibit 31, page 26).</p> <p>The minutes of the 30 November meeting did not have any indication that the Board noted and approved the engagement of Leighs Construction (Exhibit 32, page 69).</p> <p>In the 15 February 2017 Board meeting, the Chief Executive's Report indicated that the site establishment and full construction of Ko Awatea extension was due to start in March 2017 (Exhibit 32, page 55). However, no construction contract had been presented to the Board for approval by this date.</p> <p>Pending signing of Construction Contract, [REDACTED] signed a Letter of Acceptance for \$8.5M on 13/3/17 (Exhibit 57). [REDACTED] the Board has the authority to enter into a Construction Contract (Exhibit 44, page 23). Construction started 20/3/17 with the Construction Contract with Leighs Construction is still unsigned.</p> <p>[REDACTED]</p> |

| Exhibit Ref   | Details  |   |   |                     |               |   |                                |                                    |   |
|---|--|---|---|---------------------|---------------|---|--------------------------------|------------------------------------|---|
| 11  | <p><b>Sales and Lease Back agreement</b></p> <div style="text-align: right;"> </div> <p>Lease Schedule no: CM004 dated 12<sup>th</sup> January 2017</p> <p>MCL Capital Limited ( Lessor )</p> <p>Counties Manukau District Health Board ('Lessee')</p> <ol style="list-style-type: none"> <li><b>Interpretation and Incorporation of Terms:</b> Capitalised terms used but not defined in this Lease Schedule have the meanings given to them in the Master Lease Agreement dated on 26<sup>th</sup> of September 2016 between the Lessor and the Lessee ( <b>Master Lease Agreement</b> )</li> <li><b>Lease of Assets:</b> The Lessee offers to lease from the Lessor the assets described below ('Assets'), and the Lessor agrees to lease to the Lessee the Assets, on the terms and conditions set out in this Lease Schedule</li> <li><b>Assets</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Description (including model if applicable)</th> <th>Serial Nos. (if applicable)</th> <th>Original Asset Cost</th> <th>Lease Payment</th> </tr> </thead> <tbody> <tr> <td>Sale and Lease Back of Clinical equipment<br/><br/>As detailed in the attached Asset List</td> <td>As per the attached Asset List</td> <td>NZ\$9 978,195.00 plus GST (if any)</td> <td>NZ\$624 488.72 plus GST (if any), payable quarterly in advance on each Payment Date</td> </tr> </tbody> </table> </li> <li><b>Sale and leaseback:</b> Yes. If yes, an invoice for the Original Asset Cost (plus GST) (addressed to the Lessor) is attached to this Lease Schedule. The original supplier's invoice is also attached to this Lease Schedule, or, if such invoice is unavailable, any evidence supporting the agreed value (determined by the Assets' depreciated value (according to the Lessee's asset register) or a market value, in each case as agreed between the parties (each acting reasonably);</li> <li><b>Commencement Date:</b> 1<sup>st</sup> of April 2017</li> <li><b>Term:</b> 16 quarters, commencing on the Commencement Date</li> <li><b>Residual Consideration Percentage:</b> 30%</li> <li><b>Settlement Date (if different to the Commencement Date):</b> 31<sup>st</sup> January 2017</li> <li><b>Interim Payment:</b> NZ\$416,312.48 plus GST (if any), being 1/6<sup>th</sup> of the Lease Payment multiplied by the number of days in the Interim Period, payable in advance on the Settlement Date</li> <li><b>Insurance required:</b> Yes</li> <li><b>Treatment of lease:</b> The Lessee confirms the Lessee is treating the lease of the Assets as an operating lease.</li> <li><b>Location of Assets:</b> Middlemore Hospital and other clinical locations within CMDHB</li> </ol> | Description (including model if applicable) | Serial Nos. (if applicable)   | Original Asset Cost | Lease Payment | Sale and Lease Back of Clinical equipment<br><br>As detailed in the attached Asset List | As per the attached Asset List | NZ\$9 978,195.00 plus GST (if any) | NZ\$624 488.72 plus GST (if any), payable quarterly in advance on each Payment Date |
| Description (including model if applicable)   | Serial Nos. (if applicable)  | Original Asset Cost                         | Lease Payment   |                     |               |   |                                |                                    |   |
| Sale and Lease Back of Clinical equipment<br><br>As detailed in the attached Asset List | As per the attached Asset List   | NZ\$9 978,195.00 plus GST (if any)          | NZ\$624 488.72 plus GST (if any), payable quarterly in advance on each Payment Date |                     |               |   |                                |                                    |   |
|   | <p>Contract # CM004 <span style="float: right;">Page 1 of 2</span></p>   |   |   |                     |               |   |                                |                                    |   |

| Exhibit Ref | Details  |
|-------------|--|
| 11          | <p><i>Sale and Leaseback agreement signature page.</i></p> <div style="text-align: right; margin-right: 100px;">  </div> <p>13. Other terms:</p> <p>By signing below, each signatory (other than any witness) also confirms that the party on whose behalf that signatory has signed has taken all necessary action required in order to approve the entry into and execution of this Lease Schedule, and that this Lease Schedule has consequently been properly executed by that party in accordance with all relevant delegated authorities.</p> <p>Signed for Counties Manukau District Health Board by:      Acknowledged and agreed by MCL Capital Limited</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="width: 45%; text-align: center;">  <p>Signature of Authorised Signatory</p> <p>Date <i>12-01-17</i></p> </div> <div style="width: 45%; text-align: center;"> <p>Signature of Authorised Signatory</p> <p>Date <i>12.01.17</i></p> </div> </div> |

| Exhibit Ref | Details   |
|-------------|---|
| 24          | <p data-bbox="347 324 1077 353"><i>CMDHB - Board Meeting Agenda for 2 December 2015, pages 303</i></p> <p data-bbox="400 432 1294 483">However, from preliminary discussions, drawings and costings, it is very clear that all the above cannot be achieved within the \$10m capital envelope imposed on this project.</p> <p data-bbox="400 510 1219 537">The priority areas for immediate consideration and discussion will be the areas described as:</p> <ul data-bbox="400 539 1098 618" style="list-style-type: none"> <li>• The Forum (including patient learning, tiered lecture and teaching spaces)</li> <li>• The Academy (office space for Ko Awatea growth)</li> <li>• Parking on grade outside footprint of the building.</li> </ul> <p data-bbox="400 645 1294 696">This is estimated to cost \$7.620m excluding FP&amp;E, GST, services infrastructure upgrade (if required) or any escalation costs and is the optimum combination in order to remain under \$10m.</p> <p data-bbox="400 723 1294 801">This is the core proposal for which we are seeking Board approval but will be seeking to review and revise the Research Institute proposal described below to allow this to be incorporated within a \$10m cap.</p> <p data-bbox="355 828 1294 907">However, this dollar limit therefore currently excludes the following two key areas, which require further consideration in terms of how these might be funded within the required cap or the provision of external capital by third parties in order to provide these services.</p> <ul data-bbox="400 909 1294 1122" style="list-style-type: none"> <li>• Provision of the Ko Awatea Research Institute (with parking below the building) is estimated to cost \$3.6m. Note that the inclusion of this important investment in our future, within the above core proposal takes the total cost to marginally over the \$10m cap at \$11.220m and may be achievable with aggressive but realistic value management.</li> <li>• The Population Health regional facility only (including parking below the building) is estimated at \$8.4m.</li> <li>• OR a combined Institute and Population Health facility (including parking below building) of \$9.6m.</li> </ul> <p data-bbox="400 1149 480 1176"><b>Funding</b></p> <p data-bbox="400 1178 826 1205">Two options are available to fund this proposal:</p> <ol data-bbox="400 1207 1294 1361" style="list-style-type: none"> <li>1. As the project build is over two financial years, a requirement for up to \$5m per year from existing capital expenditure / cash flow resources is feasible but will depend on prioritisation against other capital requests.</li> <li>2. A sale and lease back of operating assets has been negotiated and prepared in draft at this stage. Further discussions / negotiations are required to ensure this is a viable option, both in terms of avoiding free cash flow use and the borrowing costs of the lease.</li> </ol> <hr data-bbox="368 1417 1326 1422"/> <p data-bbox="368 1424 788 1447">Counties Manukau District Health Board Agenda</p> <p data-bbox="1091 1424 1249 1447">2 December 2015</p> <p data-bbox="1289 1447 1326 1469">303</p> |



| Exhibit Ref | Details  |
|-------------|--|
| 25          | <p><i>CMDHB - Board Meeting Agenda for February 2016 containing Minutes of previous meeting of 2 December 2015, pages 255 -256</i></p>   |
|             | <p>6.5 Ko Awatea Stage II (Geraint Martin/Ron Pearson)<br/>The paper was taken as read.</p> <p>Mr Martin advised that as well as replacing the previous tiered Lecture Theatre which was lost when CSB was built, there is a pressing need for additional space. The cost will be \$7.5M over two years. Some of these costs will be offset by leasing. [REDACTED] South Auckland Clinical School, has provided a letter of support.</p>   |
|             | <hr/> <p>Counties Manukau District Health Board Agenda <span style="float: right;">10 February 2016</span></p> <p style="text-align: right;">255</p>   |
|             | <p>Resolution<br/>That the Board:<br/>Receive the concept plans, preliminary report and total cost summary from [REDACTED] (Jasmax).<br/>Note that the various options are still under active consideration but the final proposal will be within the \$10m capital funding limit for the Board.<br/>Approve the intent, within the above capital constraints, to support the expansion of Ko Awatea to incorporate patient learning, tiered lecture theatre and teaching spaces as well as office space for Ko Awatea growth within the final plan / option to be presented to the December 2015 Board, subject to remaining within the \$10m delegated authority limit of the Board.<br/>Note that the Finance &amp; Audit Committee endorse and recommended this proposal to the Board<br/>Approve the CEO and Deputy CEO to negotiate the funding source for this approval, noting that since the Finance &amp; Audit Committee meeting two funding options have been confirmed as options to fund this proposal as described in the section below.<br/>Moved: Wendy Lai    Seconded: tyn Murphy    Carried: Unanimously</p> |
|             | <hr/> <p>Counties Manukau District Health Board Agenda <span style="float: right;">10 February 2016</span></p> <p style="text-align: right;">256</p>   |

| Exhibit Ref | Details  |
|-------------|--|
| 31          | <p><i>CMDHB - Board Meeting Agenda for November 2016, page 26</i></p> <p><b>6.0 Ko Awatea</b></p> <p><b>Ko Awatea Extension</b><br/>                     The project to extend the KA facility has progressed well to the extent Leighs Construction has been engaged as the contractor, alongside Jasmox and the other consultants, to deliver the final design and a Guaranteed Maximum Price; which is currently being worked through. Engagement with key stakeholders including co-design of spaces with staff, patient and whanau has also progressed well. With resource consent being secured, early site works to commence in December 2016 and full construction due to start in February 2017, the communications with both internal and external parties has ramped up. In conjunction with the facility extension, the design of the new carpark is finalised and resource consent will allow construction to kick-off with the removal of some trees and clearing of the site.</p> <hr/> <p>Counties Manukau District Health Board Agenda <span style="float: right;">30 November 2016</span></p> <p style="text-align: right;">26</p> |
| 32          | <p><i>CMDHB - Board Meeting Agenda for February 2017, page 55</i></p> <p><b>Ko Awatea Extension</b><br/>                     Ongoing engagement with key stakeholders including co-design of spaces with staff, patient and whanau is still progressing well. Resource consent saw some early site works to establish pile loadings for the new facility and was completed in December. Site establishment and full construction is due to start in March 2017 with communications with both internal and external parties now in full swing including a dedicated webpage of information and updates. In conjunction with the facility extension, the new carpark construction is well underway and scheduled to have the bulk of the works completed by early March.</p> <hr/> <p>Counties Manukau District Health Board <span style="float: right;">15 February 2017</span></p> <p style="text-align: right;">55</p>  |



| Exhibit Ref | Details   |
|-------------|---|
| 32          | <p><i>CMDHB - Board Meeting Agenda for February 2017, page 69</i></p> <p>3.2 <u>Chief Executive's Report</u><br/>The report was taken as read.</p> <p>Mr David Lenihan provided an update on the Target Operating Model (TOM) work. He has been with CMDHB for five months and advised that it is a privilege to be part of such a passionate organisation. The CMH Vision and Strategy is clear, but a much more structured way of delivering integrated and holistic system is required.</p> <p>A TOM has been created to see how we do what we do. This is building on work done previously and identifying how things fit together. The first draft will be available in 2-3 weeks' time, and will provide coherence, so that the organisation is focussed and clear in financially challenging times. Clinicians have been involved in leadership of design. The Chair thanked Mr Lenihan for his update.</p> <p>The Chair acknowledged the Faster Cancer Treatment results.</p> <p><b>Resolution</b><br/>That the Chief Executive's Report be received.<br/>Moved: Lee Mathias      Seconded: Kathy Maxwell      Carried: Unanimously</p> <hr/> <p>Counties Manukau District Health Board Agenda <span style="float: right;">15 February 2017</span></p> <p style="text-align: right;">69</p> |

| Exhibit Ref                 | Details  |  |   |
|-----------------------------|--|--|---|
| 44                          | <i>Delegated Authority Policy, section 20 page 21</i>  |  |   |
| <b>20 Finance – General</b> |  |  |   |
|                             | <i>Authority to:</i>   | <i>Delegated to:</i>   | <i>Conditions applying:</i>   |
|                             | Operate CMDHB bank accounts including:<br>- authorising sending of payroll files to the bank to make payments to staff<br>- authorising electronic payments for supplies and services. | Finance Director   | Can be delegated to Senior Finance personnel authorised in writing by the Finance director<br>Two signatories are required for each account or major transaction<br>Accounts to be with registered banks only |
|                             | Approve changes of cheque bank account signatories and payroll signatories   | Finance Director and CEO jointly.  | To be reported to Chair of the Board and Chair of the Audit Risk & Finance Committee  |
|                             | Enter into forward exchange contracts  | Finance Director   | To be reported to the Audit Risk & Finance Committee  |
|                             | Enter into borrowing and treasury instrument transactions  | Finance Director   | Within Board's Treasury Policy limits.<br>Transactions to be reported to the Audit Risk & Finance Committee   |
|                             | Review financial reconciliations   | Finance Director or delegated service business manager monthly.  |   |
|                             | Authorise issue of credit notes  | - Rebilling for admin purposes <\$50K GM revenue<br>- Other purpose or over \$50K, Finance Director or COO   |   |
|                             | Write off unrecoverable debts, including non-resident payments but excluding salaries.   | - \$50k -GM Revenue<br>- \$50k COO/CEO/FD  |   |
|                             | Approve sale or disposal of an asset   | - Finance Director to book value of \$50,000.<br>- Chief Executive to book value of \$100,000<br>- Audit, Risk and Finance Committee above \$100,000 | If an asset is being sold, the greater of the current market value or book value will be sought.  |



| Exhibit Ref  | Details   |                      |   |  |
|--|---|----------------------|---|--|
| 44   | Delegated Authority Policy section 21 – Note 5, page 22 |                      |   |  |
| <b>21 Capital Expenditure – excluding facilities management and infrastructure projects related to facilities management</b>                               |   |                      |   |  |
| <i>Authority to:</i>   |   | <i>Delegated to:</i> |   |  |
|  | Board   | CEO                  | FD, COO and Director Of Service Integration | GMs (can be subdelegated in writing to service managers within delegation limit) |
| Approve purchase of an asset or start of a project that is on the approved capex list and is within budget   | \$1,000,000   | \$1,000,000          | \$250,000                                   | \$25,000   |
| Approve purchase of an asset or start of a project that is <b>NOT</b> on the approved capex list (See Note 6)  | \$500,000   | \$500,000            | \$150,000                                   | Nil  |
| Approve leasing of an asset  | > \$200,000 p/a   | \$200,000 p/a        | \$100,000 p/a                               | Nil  |
| <b>Notes:</b>  |   |                      |   |  |
| 1. All purchases must be undertaken in accordance with the CMDHB Procurement Policy.   |   |                      |   |  |
| 2. Capital expenditure in the financial year must not exceed the total approved by the Board   |   |                      |   |  |
| 3. Capex proposals over \$1,000,000 must be put to the Audit Risk & Finance Committee, which will make a recommendation to the full Board.                 |   |                      |   |  |
| 4. Capex proposals over \$500,000 must also be submitted to the Regional Capital Group.  |   |                      |   |  |
| 5. Capex proposals over \$10 million (\$0.5million for I.T. projects), whether funded internally or externally, must go to the National Capital Committee. |   |                      |   |  |

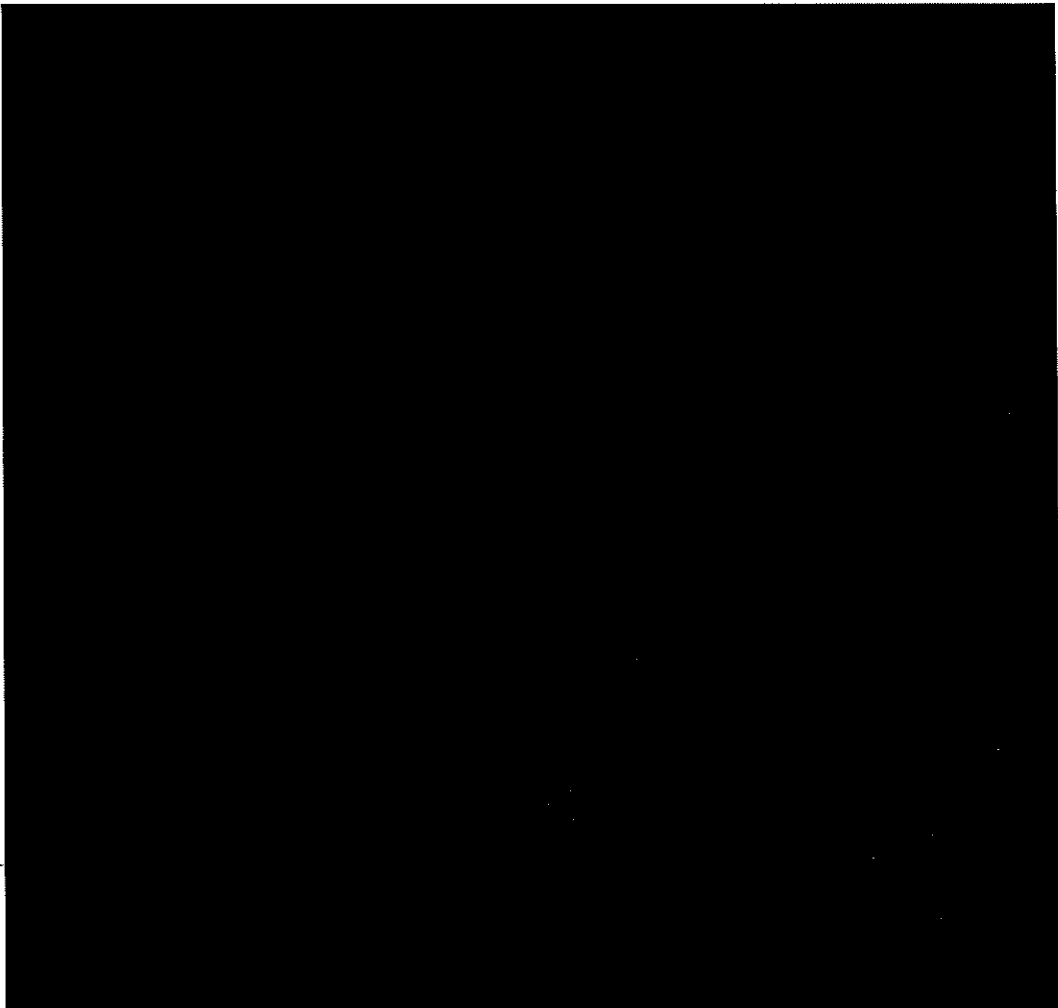
| Exhibit Ref  | Details  |           |                         |               |                         |               |
|--|--|-----------|-------------------------|---------------|-------------------------|---------------|
| 44   | Delegated Authority Policy, section 22 on page 23  |           |                         |               |                         |               |
| <p><b>Facilities Management</b></p>  |  |           |                         |               |                         |               |
| <p><b>Delegated Powers to Authorise Financial Expenditure for Facilities Management and Capital Infrastructure Projects</b></p>  |  |           |                         |               |                         |               |
| <p><b>22 Facilities Management and Building Projects</b></p>   |  |           |                         |               |                         |               |
| <p><i>Authority to</i></p>   | <p><i>Delegated to:</i></p>  |           |                         |               |                         |               |
|  | <table border="1" data-bbox="667 719 1426 790"> <thead> <tr> <th data-bbox="667 719 778 790">Board</th> <th data-bbox="778 719 938 790">FMP Committee</th> <th data-bbox="938 719 1091 790">CEO</th> <th data-bbox="1091 719 1251 790">Finance Director or COO</th> <th data-bbox="1251 719 1426 790">GM-Facilities</th> </tr> </thead> </table>   | Board     | FMP Committee           | CEO           | Finance Director or COO | GM-Facilities |
| Board  | FMP Committee  | CEO       | Finance Director or COO | GM-Facilities |                         |               |
| <p>Approve for execution a business case, project and its overall project budget for expenditure of any value that has been proposed by management. Execution is subject to the powers delegated elsewhere in this table and such approval may be given unconditionally or subject to conditions such as obtaining Ministerial consent, etc.</p> | <table border="1" data-bbox="667 790 1426 1025"> <tbody> <tr> <td data-bbox="667 790 778 1025" style="text-align: center;">Any value</td> <td data-bbox="778 790 938 1025" style="text-align: center;">n/a</td> <td data-bbox="938 790 1091 1025" style="text-align: center;">n/a</td> <td data-bbox="1091 790 1251 1025" style="text-align: center;">n/a</td> <td data-bbox="1251 790 1426 1025" style="text-align: center;">n/a</td> </tr> </tbody> </table> | Any value | n/a                     | n/a           | n/a                     | n/a           |
| Any value  | n/a  | n/a       | n/a                     | n/a           |                         |               |
| <p>Approve CMDHB entering into a specific capex contract for greater than \$2.5 million for a project already approved for execution by the Board.</p>   | <table border="1" data-bbox="667 1025 1426 1162"> <tbody> <tr> <td data-bbox="667 1025 778 1162" style="text-align: center;">Yes</td> <td data-bbox="778 1025 938 1162" style="text-align: center;">No</td> <td data-bbox="938 1025 1091 1162" style="text-align: center;">No</td> <td data-bbox="1091 1025 1251 1162" style="text-align: center;">No</td> <td data-bbox="1251 1025 1426 1162" style="text-align: center;">No</td> </tr> </tbody> </table>     | Yes       | No                      | No            | No                      | No            |
| Yes  | No   | No        | No                      | No            |                         |               |

| Exhibit Ref | Details  |   |   |   |                         |   |
|-------------|--|---|---|---|-------------------------|---|
| 44          | Delegated Authority Policy, page 24  |   |   |   |                         |   |
|             | <i>Authority to</i>  | <i>Delegated to:</i>  |   |   |                         |   |
|             |  | Board   | FMP Committee   | CEO   | Finance Director or COO | GM-Facilities   |
|             | Enter into a contract for 3 years or less for maintenance or minor new works, routine property maintenance and equipment servicing within overall maintenance and facilities budget  | > \$2.5 million or greater than three year term   | between \$500,000 and \$2.5 million or greater than 3 year term | \$500,000   | \$500,000               | \$250,000   |
|             | Approve the engagement of an architect, quantity surveyor, project manager, engineer or other building consultant for preliminary scoping work on a potential project (within the approved Preliminary Investigation Fund budget). | \$2.5million  | Up to \$2.5million  | Nil   | Nil                     | Nil   |
|             | Authorise expenditure from an approved budget allocated specifically for the use of the FMP Committee for a proposal put forward by management   | \$2.5 million   | Up to \$2.5 million   | Nil   | Nil                     | Nil   |
|             | Make or authorise a contract progress payment which is determined in accordance with a properly executed and approved contract and provision of appropriate engineers and quantity surveyor certificates where relevant.           | n/a   | n/a   | n/a   | n/a                     | Any value with prior notification to Finance Director if over \$500,000 for any single payment. |
|             | Grant a lease, licence or tenancy agreement over CMDHB land or buildings.  | > \$500,000 p/a (any term over 5 years, including rights of renewal, requires Ministerial approval) | Nil   | \$500,000 p/a and less than 5 years including rights of renewal p/a | Nil                     | Nil   |
|             | Enter into a lease, licence or tenancy agreement where CMDHB is the lessee, licensee or tenant.  | > \$1,000,000 p/a   | Nil   | Up to \$1,000,000 p/a and 3 years or less                           | Nil                     | Nil   |

| Exhibit Ref | Details  |
|-------------|--|
| 57          | <p data-bbox="347 331 1070 360"><i>Construction Contract - Signed Letter of Acceptance from CMDHB</i></p> <div data-bbox="842 421 1284 533" style="text-align: right;"></div> <p data-bbox="379 577 518 600">13 March 2017</p> <p data-bbox="379 651 625 741">Leighs Construction Limited<br/>Level 1,<br/>19 Hargreaves Street,<br/>Auckland 1011</p> <p data-bbox="379 768 571 790">Attention [REDACTED]</p> <p data-bbox="1098 768 1189 790" style="text-align: right;">BY EMAIL</p> <p data-bbox="379 835 470 857">Dear [REDACTED]</p> <p data-bbox="379 884 1136 907"><b>Construction Contract - Ko Awatea 2 Project (the Project) – Letter of acceptance</b></p> <p data-bbox="379 929 1220 996">Following receipt of the developed design, and your Lump Sum price submission, Counties Manukau District Health Board (Principal), as Principal under the construction contract, confirms the following contract terms and conditions</p> <ol data-bbox="384 1019 1225 1160" style="list-style-type: none"><li>1 The Lump Sum price (and composition) as well as schedule of prices for design and construction elements, is \$8,457,778.00 (Eight million, four hundred and fifty seven thousand, seven hundred and seventy eight dollars and zero cents) excl GST as set out in the attached.</li><li>2 The form of Construction Contract – including the Principal's Requirements - is otherwise as attached</li></ol> <p data-bbox="379 1182 1220 1294">Subject to your confirmation of acceptance of the above as the agreed contract documents, and of your appointment (by signing and returning a copy of this letter within one working day of receipt), Counties Manukau District Health Board advises its acceptance of your lump sum price and confirms engagement of you as Contractor for the Project, and note that the provisions of 2.6B of the contract apply.</p> <p data-bbox="379 1323 1232 1368">Access to the main site shall be available 27 March 2017, after the receipt of your acceptance (or such other date as may be subsequently agreed between us)</p> <p data-bbox="379 1391 1232 1435">The provisions of clause 2.5 of the construction contract shall apply in relation to execution of the formal contract document.</p> <p data-bbox="379 1458 893 1480">We look forward to working further with you on this project</p> <p data-bbox="379 1503 766 1570">Yours sincerely<br/>Counties Manukau District Health Board,<br/>by:</p> <div data-bbox="331 1570 651 1785" style="background-color: black; width: 200px; height: 100px; margin-left: 20px;"></div> |



| Exhibit Ref                            | Details  |                     |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |
|--|--|---------------------|----------|-------------|------------|----------|-----------|--------------------------------|----------|-----------|----------------|----------|-----------|--|--|------------|-----------------------|--|---------------------|
| 57                                     | <p><b>Construction Contract – Signed Letter of Acceptance from Leighs Construction Limited</b></p> <p>Acceptance</p> <p>Leighs Construction Limited hereby confirms acceptance of the above as the agreed contract documents, and of appointment as Contractor under the Construction Contract for the Project, as above</p> <p>Dated 16<sup>th</sup> day of March 2017</p> <p>Signed for<br/>Leighs Construction Limited<br/>by </p> <p>Authorised Signatory<br/></p> <p>Name of Authorised Signatory</p><br><p><b>Annexure C – Lump Sum Price composition</b></p> <table border="1"> <tr> <td>construction sum</td> <td>Lump sum</td> <td>\$6,601,556</td> </tr> <tr> <td>design sum</td> <td>Lump sum</td> <td>\$464,533</td> </tr> <tr> <td>preliminaries sum<sup>1</sup></td> <td>Lump sum</td> <td>\$927,478</td> </tr> <tr> <td>margin sum and</td> <td>Lump sum</td> <td>\$364,211</td> </tr> <tr> <td>provisional sums (if any)<sup>2</sup></td> <td></td> <td>\$ 100,000</td> </tr> <tr> <td><b>Lump Sum Price</b></td> <td></td> <td><b>\$ 8,457,778</b></td> </tr> </table><br><p><sup>1</sup> Is the Novated Fees (retainer fee remaining to be paid by the Contractor to the design consultant for the period from 1/3/17)</p> <p><sup>2</sup> List of preliminaries (preliminary and general items) to which the preliminaries sum appears to be included in contract for execution</p> <p><sup>3</sup> List of provisional sum items, and breakdown of provisional sum total against each item</p> <ul style="list-style-type: none"> <li>a. Bids - \$20,000</li> <li>b. Signage - \$20,000</li> <li>c. Asbestos Removal (to any / all areas) - \$20,000</li> <li>d. Landscaping - \$40,000</li> </ul> | construction sum    | Lump sum | \$6,601,556 | design sum | Lump sum | \$464,533 | preliminaries sum <sup>1</sup> | Lump sum | \$927,478 | margin sum and | Lump sum | \$364,211 | provisional sums (if any) <sup>2</sup> |  | \$ 100,000 | <b>Lump Sum Price</b> |  | <b>\$ 8,457,778</b> |
| construction sum                       | Lump sum   | \$6,601,556         |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |
| design sum                             | Lump sum   | \$464,533           |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |
| preliminaries sum <sup>1</sup>         | Lump sum   | \$927,478           |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |
| margin sum and                         | Lump sum   | \$364,211           |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |
| provisional sums (if any) <sup>2</sup> |  | \$ 100,000          |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |
| <b>Lump Sum Price</b>                  |  | <b>\$ 8,457,778</b> |          |             |            |          |           |                                |          |           |                |          |           |  |  |            |                       |  |                     |

| Exhibit Ref   | Details  |
|---|--|
| 61 & 62   | <i>Txt from CFO to Project Manager &amp; Further information from Project Manager to CFO</i> |
|  |  |

| Exhibit Ref                                    | Details   |                           |            |  |            |   |            |
|--|---|---------------------------|------------|--|------------|---|------------|
| 63   | <div data-bbox="343 392 1460 548"> <p>Confirming KA Extension GMP Process and Documents - Message (HTML) (Read-Only)</p> <p>Message Adobe PDF</p> <p> </p> </div> <p data-bbox="343 548 614 571">This message was sent with High importance.</p> <p data-bbox="343 571 1460 616">                     From: [Redacted] Sent: Fri 24/02/2017 11:59<br/>                     To: [Redacted]<br/>                     CC: [Redacted]                 </p> <p data-bbox="343 616 1460 683">                     Subject: Confirming KA Extension GMP Process and Documents<br/>                     Message: 17888874-2_CIMDHS - KA2 - Letter of acceptance to Contractor.docx 178888787-1_CIMDHS - Ko Awatea 2 - DRAFT Construction Contract.PDF<br/>                     KA2 Tender Recommendation final.pdf                 </p> <p data-bbox="343 705 1460 728">All</p> <p data-bbox="343 750 1460 817">                     We have now reached the point of having a GMP (Guaranteed Maximum Price) issued by Leighs Construction on Monday 27/02/2017. This will be given an initial review by Neil Taylor (RLB), Bruce Walker and Myself and issued to Steering Group on the 01/03/2017. We will continue reviewing and negotiating the GMP with Leighs up to Friday 03/03, with the outcome being a figure and recommendation for final Sign Off on the 08/03/2017 and execution of the contract.                 </p> <p data-bbox="343 828 1460 862">                     The steering group have previously signed off on this process (attached Tender Recommendation Report). This agreed to proceed if the GMP meets budget and meets CE approval including executing the Contract (attached and produced by Minter Ellison Rudd Watts).                 </p> <p data-bbox="343 884 1460 907">Key Dates:</p> <table data-bbox="375 918 790 974"> <tr> <td>1. Finalised GMP Received</td> <td>27/02/2017</td> </tr> <tr> <td>2. GMP initial review for Steering Group Issue</td> <td>01/03/2017</td> </tr> <tr> <td>3. Steering Group Approval and Sign Off</td> <td>08/03/2017</td> </tr> </table> <p data-bbox="343 996 1460 1019">Please find attached the following documents that we have been finalising over the last couple of months for your information that support this process.</p> <ol data-bbox="375 1030 630 1086" style="list-style-type: none"> <li>1. Draft Construction Contract</li> <li>2. Contractor Acceptance Letter</li> <li>3. Tender Recommendation Report</li> </ol> <p data-bbox="343 1108 1460 1131">Any questions please contact me.</p> <p data-bbox="343 1142 1460 1164">Cheers</p> <div data-bbox="359 1187 478 1288"> </div> <p data-bbox="343 1288 1460 1310">Ko Awatea - Health System Innovation and Improvement</p> <p data-bbox="343 1321 1460 1344">M +64 21 710 907</p> | 1. Finalised GMP Received | 27/02/2017 | 2. GMP initial review for Steering Group Issue | 01/03/2017 | 3. Steering Group Approval and Sign Off | 08/03/2017 |
| 1. Finalised GMP Received                      | 27/02/2017  |                           |            |  |            |   |            |
| 2. GMP initial review for Steering Group Issue | 01/03/2017  |                           |            |  |            |   |            |
| 3. Steering Group Approval and Sign Off        | 08/03/2017  |                           |            |  |            |   |            |

| Exhibit Ref   | Details                                       |
|---|---|
| 64  | Project Manager's Notes re: Verbal discussion |
| <b>PROJECT NOTES</b>  |   |
|   | GMP Sign Off and Acceptance                   |
| Date:   | 16 <sup>th</sup> March 2017                   |
| <b>Notes</b>  |   |
| Email sent to SG 24/02 outlining process and approval   |   |
| <p>██████████ 24/02 briefing email sent and meeting request for week of the 6<sup>th</sup> March. Reply of "Excellent" received back.</p>   |   |
| <p>Meeting agreed with ██████████ unable to make appointment, no meeting.</p>   |   |
| <p>Sent further text message on 10/03 reconfirming position of the confirmed Lump Sum contract to ██████ No reply by text.</p>  |   |
| <p>Received phone call from ██████ saying he would be in KA on 13/03 and we can meet then.</p>  |   |
| <p>██████████ outlined final position and need to issue letter as per contract and asked if he had discussed ██████████ stated that he had discussed with Geraint and that he was happy. We discussed the need to insure that we kicked back on any changes and he required us to manage the contract conditions tightly. I outlined start dates on site for Leighs. Ron asked if they could start any earlier. I stated that at this stage their programed start was set but would ask. We agreed to send acceptance letter on 13/03 unless I heard any different.</p> |   |
| <p>Sent text message 13/03 stating I would send acceptance letter as discussed unless I heard otherwise. No reply.</p>  |   |
| <p>Sent acceptance letter 13/03 as agreed.</p>  |   |

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**CONFIDENTIAL – INFORMATION PAPER**  
**Counties Manukau District Health Board**  
**Audit Risk & Finance Committee**  
**Ko Awatea Stage II - Extension Contractor Procurement Process**

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### Recommendation

It is recommended that the Audit Risk and Finance Committee:

Receive the Ko Awatea Stage II - Extension Contractor Procurement Process report.

Note the lessons learnt that can be applied to future procurements.

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Prepared & Submitted by: Ramon Manzano, General Manager – Regional Internal Audit

### Purpose

To inform the Audit, Risk and Finance Committee (Committee) of the results of Regional Internal Audit's (RIA) review of the Ko Awatea Stage II - Extension Contractor Procurement Process.

### Background

RIA was requested by the Committee to review the procurement process leading to the selection of the main contractor for the construction of the Ko Awatea Stage II Project. Leighs Construction had been engaged for the construction project. From 1 February 2015 MBIE's<sup>1</sup> Government Rules of Sourcing ('Rules') became compulsory. Under Rule 7<sup>2</sup>, Ko Awatea Stage II Project must apply the Rules to the procurement process and there is no 'opt out' or exemption from this Rule.

### Executive Summary

The objective of the audit is to determine whether there was a transparent, objective, independent and fair process in the selection of the main contractor for Ko Awatea Stage II.

Our review found elements of fair and transparent processes such as:

- Project Procurement process was advertised in accordance with the Rules on GETS<sup>3</sup>.
- The Methodology report and Procurement strategy were well written covering relevant aspects of a procurement plan.
- The process was run in accordance with the Methodology report and Procurement strategy.

However, we observed some areas of the procurement process that could have been done better. These were:

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<sup>1</sup> Ministry of Business, Innovation and Employment

<sup>2</sup> The Rules apply:

- a. To the procurement of goods or services or refurbishment works, or a combination of goods or services or *refurbishment works*, when
- b. The *maximum total estimated value* of the procurement meets or exceeds the value threshold of \$100,000 (excluding GST).

<sup>3</sup> Government Electronic Tenders Service

- 
- Following strictly the criteria for shortlisting suppliers to maintain fairness and compliance with the Rules.
  - Setting clear scope and limits<sup>4</sup> to the decision making responsibilities of the various committees overseeing the procurement process.
  - Having complete documentation to support decisions. For example, conflict of interest forms for four of the Ko Awatea Steering Group (sole approvers of significant procurement decisions) were not completed.
  - Staying within delegated financial authority (DFA). The Ko Awatea Steering Group exceeded its DFA by authorising the signing of the letter of acceptance without Board authorisation.

### **Conclusion**

We issued our report to Management on 2 November 2017. We were unable to discuss our findings with members of the Ko Awatea Steering Group as they are no longer employees of CMDHB. We however obtained management responses from Facilities who are overseeing the construction.

The issues noted cannot be retrospectively rectified as the contract had already been awarded and work commenced. However, lessons from this procurement activity can be applied to future projects and have been shared with Facilities Managers and their responses are included in this report.

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<sup>4</sup> Terms of Reference

# AUDIT REPORT

Project Name: Ko Awatea Procurement Process  
Project ID: 027.014.000



| PROJECT DETAILS      |   |
|----------------------|---|
| <b>Project Title</b> | <b>Ko Awatea Stage II Extension Main Contractor Procurement Process</b> |
| <b>To</b>            | Gloria Johnson Acting Chief Executive                                   |
| <b>Copy</b>          | Margaret White Chief Financial<br>Audit, Risk and Finance Committee     |
| <b>From</b>          | Ramon Manzano GM, Regional Internal Audit                               |

| DOCUMENT CONTROL        |                                   |                |                     |
|-------------------------|-----------------------------------|----------------|---------------------|
| <b>Document History</b> | <b>Revision Notes</b>             | <b>Version</b> | <b>Release Date</b> |
|                         | Draft to Ramon Manzano for review | 1              | 09/08/17            |
|                         | Received Comments                 | 2              | 09/10/17            |
|                         | Final Report                      | Final          | 07/11/17            |

# AUDIT REPORT

Project Name: Ko Awatea Procurement Process  
Project ID: 027.014.000



| TABLE OF CONTENTS        | Page |
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| AUDIT CONCLUSION         | 5    |
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## EXECUTIVE SUMMARY

### BACKGROUND

The Audit, Risk and Finance Committee (ARFC) approved the Terms-of-Reference (ToR) for the audit of Ko Awatea on 2 April 2017. This included a review of the procurement process leading to the selection of the main contractor for the construction of the Ko Awatea Stage II Project. Leighs Construction had been engaged for this construction project.

The Government Rules of Sourcing (referred to in the report as 'Rules') became compulsory for all DHBs from 1 February 2015. Under Rule 7<sup>1</sup> of the Rules, Ko Awatea Stage II Project must apply the Rules to the procurement process.

Five essential principles promoting probity are:

1. Use of a competitive process wherever possible.
2. Transparency of the process.
3. Identification and resolution of conflicts of interests.
4. Fairness and impartiality.
5. Security and confidentiality.

### OBJECTIVES

Determine whether there was a transparent, objective, independent and fair process in the selection of the main contractor for Ko Awatea Stage II.

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<sup>1</sup> The Rules apply:

- a. To the procurement of goods or services or refurbishment works, or a combination of goods or services or *refurbishment works*, when
- b. The *maximum total estimated value* of the procurement meets or exceeds the value threshold of \$100,000 (excluding GST).

Definition of refurbishment from the Rules - *Refurbishment works* cover renovating, repairing or extending an existing construction. *Refurbishment works* does not include replacing a construction. That is deemed to be *new construction*.



## AUDIT REPORT

Project Name: Ko Awatea Procurement Process  
Project ID: 027.014.000



### SCOPE

Our review focused on the procurement process for the main contractor of the Ko Awatea Stage II extension leading to the engagement of Leighs Construction.

### OUT OF SCOPE

We did not review the procurement process followed for the selection of consultants who were engaged to run the procurement process of the Ko Awatea Stage II project.

### AUDIT PROCEDURES

We have reviewed the following documentation provided by the Ko Awatea Project Manager:

- Procurement Methodology Report
- Procurement Strategy Review
- The ROI<sup>2</sup>
- RFP<sup>3</sup>
- Emails
- Conflict of Interest Forms
- Receipt Registers
- Notice to Tenderers (NTTs)
- Evaluation Score Sheets
- We evaluated the above documentation against relevant procurement policy and standards, such as: MBIE<sup>4</sup> Rules of Sourcing
- OAG<sup>5</sup> Procurement Guidelines for Public Entities
- CMDHB Procurement Policy
- CMDHB Delegated Authority Policy
- CMDHB Effective Decision Making Manual For Management and Executive Governance.

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<sup>2</sup> Registration of Interest - A formal request from an agency asking potential suppliers to register their interest in an opportunity to supply specific goods, services or works.

<sup>3</sup> Request For Tender - A formal request from an agency asking for offers from potential suppliers to supply clearly defined goods or services or works.

<sup>4</sup> Ministry of Business Innovation and Employment

<sup>5</sup> Office of the Auditor General

# AUDIT REPORT

Project Name: Ko Awatea Procurement Process  
Project ID: 027.014.000



## PROCUREMENT TIMELINE

We determined the following procurement process timeline from the documentation reviewed:

| Procurement Process                                      | Date              |
|--|-------------------|
| Business Case issued                                     | 23 November 2015  |
| Procurement Strategy Report issued                       | 20 July 2016      |
| Procurement Lead engaged                                 | 20 July 2016      |
| ROI completed  | 21 July 2016      |
| ROI on GETs  | 29 July 2016      |
| ROI closes   | 16 August 2016    |
| Procurement panel evaluate ROIs.                         | 22 August 2016    |
| Suppliers to proceed to RFT approved                     | 22 August 2016    |
| Procurement Methodology Report issued                    | 28 August 2016    |
| RFT issued   | 30 August 2016    |
| RFT closes   | 20 September 2016 |
| Tenders received electronically                          | 20 September 2016 |
| Evaluation of tenders                                    | 26 September 2016 |
| Top two tenders interviewed                              | 29 September 2016 |
| Main contractor recommended & approved by Steering Group | 3 October 2016    |
| Acceptance letter sent                                   | 13 March 2017     |
| Contract signed  | 12 July 2017      |

## SUMMARY OF ISSUES

The following summarises the issues that were noted during our audit:

1. Suppliers that did not meet the shortlisting pre-conditions were still permitted to submit tenders.
2. Terms of Reference were not prepared for the Steering Group involved in significant procurement decisions.
3. Conflict of Interest Forms were not completed by all decision makers.
4. Ko Awatea Steering Group exceeded their Delegated Authority when awarding the contract and giving the go ahead to commence the construction work.
5. Procurement documentation for the project was not always retained.

**AUDIT CONCLUSION**

The procurement process for the main contractor of the Ko Awatea Stage II project had some of the elements of a fair and transparent process, such as:

- The project procurement process for the main contractor was advertised in accordance with the Rules on GETS<sup>6</sup>.
- The Methodology Report and the Procurement Strategy were well-written and adequately covered relevant aspects of a procurement plan.
- The process was run in accordance with the Methodology Report and Procurement Strategy.

However, we also observed a number of areas in the procurement process that could have been done better. It is important that adequate documentation is maintained to display robustness of the process followed. It is also important to follow the agreed criteria for shortlisting of suppliers to maintain fairness and compliance with the Rules. As much as possible, construction activity should only commence once there is a signed contract to avoid any disputes or unnecessary costs in the future.

The purpose of our recommendations is twofold:

First, we want to increase the chances of selecting the right contractor.

Second, we want to have a robust procurement process that will withstand public scrutiny.

We were unable to discuss our findings with the original Ko Awatea Management involved in the Project as all had left CMDHB by the time we completed the review. However, we were able to obtain comments from the Facilities & Engineering Service and others involved in the construction project.

The issues we had noted cannot be retrospectively rectified as the contract had been awarded and work has commenced. However, lessons from this procurement activity can be applied to future projects.

**OVERALL MANAGEMENT COMMENTS****████████████████████ Facilities, Engineering & Asset Management**

- It is a matter of record that this project was not supported by Facilities (GS –e-mails) and that the previous DCE<sup>7</sup> & GM<sup>8</sup> Facilities were in conflict over Facilities exclusion upon this project.
- Facilities were not involved or engaged in the procurement process or the contracting strategy (KAII & CMDHB Executives Sub-Committee)

<sup>6</sup> Government Electronic Tenders Service

<sup>7</sup> Deputy Chief Executive

<sup>8</sup> General Manager

# AUDIT REPORT

Project Name: Ko Awatea Procurement Process  
Project ID: 027.014.000



- Facilities GM's (both previous & current) challenged the KAI management processes (master planning, governance, contractual, commercial and construction management approach)
- Subsequent to a Board challenge on construction management processes (H&S) the project was informally novated to Facilities Management



Hence the report referenced to a Facilities Management PM engagement in the procurement process and to the disbanded FMP Committee<sup>9</sup>, would appear to be incorrect or misrepresentations of the facts. Although I note we have subsequently taken over the project we further requested official confirmation of this fact and key documentation on multiple occasions.

**[Redacted]** *External Procurement Lead and Quantity Surveyor*

The issues identified are minor and would not have altered the outcome of the process.

**[Redacted]** *Facilities & Engineering Services*

General comment is the Procurement lead **[Redacted]**, one of the most experienced construction procurement leads in the county for many years. He has acted for CMDHB for at least 20 years and at time has acted as the independent auditor for the Board (a current role).

*John Hanson, CMDHB Chief Legal Advisor*

In passing I note, the question is really about whether the process was reasonable and fair and substantially in line with the Rules/good practise (and by implication the tender conditions). Any technical failings ought to be given limited weight. I am not passing any judgment on the process here but simply suggesting that any full review take context into proper account.

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<sup>9</sup> **Auditors note:** The CMDHB Delegated Authority Policy, which is still in use, references the FMP Committee.

**ISSUES****1. Suppliers that did not meet the shortlisting pre-conditions were still permitted to submit tenders.****Criteria**

*Government Rules of Sourcing Rule. 3<sup>rd</sup> Edition, 25.2:*

Suppliers **must** meet all of the pre-conditions to be considered for the contract opportunity.

*Application to agencies*

The Rules are **mandatory** for the agencies listed in Rules 6.1 and 6.2. For these agencies, where the Rules use the term **must**, the **Rule is compulsory** and non-compliance is a breach of the Rules. Where the Rules use the term **should**, this indicates **good practice**.

**Observation**

The ROI closing date for submissions was 2pm on 16 August 2016. The pre-conditions<sup>10</sup> included in the ROI for shortlisting to the RFT stage were the following:

- Proven track record in design build projects \$8m and above
- Bank letter confirming they would provide the contractor with a \$1 million bond
- Comprehensive Health and Safety Systems and track record<sup>11</sup>

Four submissions were received from the following companies:

| <b>Company Name</b>                  | <b>Time</b>                              |
|--------------------------------------|--|
| NZ Strong (email)                    | Thursday 11 <sup>th</sup> August @ 11:20 |
| Arrow International (NZ) Ltd (email) | Tuesday 15 <sup>th</sup> August @ 09:58  |
| Leighs Construction (email)          | Tuesday 15 <sup>th</sup> August @ 10:52  |
| Ebert Construction (GETs)            | Tuesday 15 <sup>th</sup> August @ 11:58  |

We noted two instances at the ROI stage when a supplier did not meet the shortlisting criteria before the closing date but was still permitted to proceed to the RFT stage.

- A supplier did not send a bank letter confirming the bank would provide the contractor with a \$1 million bond<sup>12</sup>. This was supplied 5 days after the closing of the ROI.
- Another supplier failed to supply documentation of a proven track record in build projects \$8 million and above<sup>13</sup>.

<sup>10</sup> See Exhibit 160.

<sup>11</sup> The extent of interfaces with public and staff has considerable health and safety risks. The contractor selected needed to prove they were well versed and experienced in constructing on a 24x7 site.

<sup>12</sup> See Exhibits 160a, 160b & 161.

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The procurement lead, although being very specific about not shortlisting incomplete ROIs<sup>14</sup>, allowed the two suppliers to proceed to the RFT stage. This is not consistent with Rule 25.2 of the Government Rules of Sourcing.

### Implication

In the event that a procurement decision is challenged or subjected to a judicial review, any instances of non-compliance with the DHBs' procurement policies or poorly defined procurement processes and practices may potentially bring into question the integrity of the entire procurement process.

### Management Comments

#### External Procurement Lead and Quantity Surveyor

We only had four interested parties in a very busy market – it was the panel's decision they were all capable of executing the project. The ROI info was complete; the panel agreed to accept later supply of some info and complied with the ROI which states 'CMDHB may, at its discretion, waive any informality or non-compliance with this ROI'.

#### Facilities

The ROI received four respondents. Would two have been rejected for what can only be regarded as minor transgressions we would have been left with two, insufficient to meet our minimum requirements for at least 3. So for commercial reasons, we take a pragmatic view. Further, the Panel has discretionary powers that it can, by agreement, exercise. At the ROI stage, where we are only getting together those capable of bidding, we traditionally take a more conciliatory approach than at the RFP stage. So, if not all the information is provided, then it is common practice to at least consider the response.

#### John Hanson, CMDHB Chief Legal Advisor

Discretion is available to the panel. This is an important point in any procurement. The terms for any ROI/RFP almost unfailingly give a good deal of discretion to the Principal running the process. The process must of course accord with the Rules of Sourcing or good public sector procurement practise. Both give some degree of flexibility to Principal's within the bounds of fairness requiring each respondent to be treated fairly.

### Auditor's Response

Rule 25.2 is mandatory as shown in the agencies application of the use of 'must' in the Rule. There is no 'opt out' clause once the pre-conditions are included in the Notice of Procurement.

<sup>13</sup> See Exhibits 160a, 160b & 160d.

<sup>14</sup> See Exhibit 160.

**2. Terms of Reference were not prepared for the Steering Group involved in significant procurement decisions.****Criteria**

*CMDHB Effective Decision Making Manual, For Management and Executive Governance, section 3.3.*

'Groups that are established to govern work programmes or services must have clear Terms of References that describes the scope of decision making appropriate for that group'<sup>15</sup>.

**Observations**

Two groups were formed to facilitate the project's procurement process.

- A Procurement Panel was formed to evaluate responses to the ROI and RFT for the Ko Awatea Stage II project. The date the panel was formed is not clear from the documents reviewed. A consultant was engaged to provide project advisory services, including running the procurement<sup>16</sup>. The Procurement Panel had a total of five members which included three consultants, the Ko Awatea Project Manager and a Facilities Management Project Manager.
- A Steering Group was formed to oversee the procurement process of the Ko Awatea Stage II project. This group was comprised mainly of the Deputy CEO and the Ko Awatea Management team. The Steering Group approved the procurement processes and documentation for the project.

The roles and responsibilities of the Procurement Panel were outlined in the Methodology Report. However, the Ko Awatea Project Manager was unable to provide RIA with a TOR for the Steering Group.

A TOR would typically illustrate the following:

- How members of the Procurement Panel were selected.
- The skill set of experience of the panel members.
- Whether third party agents were appointed to manage the procurement process.
- The roles and responsibilities of the Procurement Panel and Steering Group.
- The process and indicative timeline for the procurement process.
- Extent of decision making authority.

A TOR for the Steering Group involved in significant procurement decisions would also assist in demonstrating that an accountable, transparent and fair process had been carried out.

**Implication**

Without a TOR, it is not possible to give assurance that the selection, appointment and responsibilities executed by the Steering Group members were appropriate.

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<sup>15</sup> See Exhibit 184.

<sup>16</sup> See Exhibit 178.

**3. COI forms were not completed by all decision makers.****Criteria**

*CMDHB Procurement Policy & Government Rules of Sourcing, Principle 5, 'PLAY BY THE RULES*

- Be accountable, transparent and reasonable.
- Make sure everyone involved in the process acts responsibly, lawfully and with integrity.
- Stay impartial – **identify and manage conflicts of interest**'.

**Observation**

The **Ko Awatea Steering Group** were the sole approvers of significant procurement decisions for the project. This included approval of the following:

- The procurement method to be used.
- The ROI and RFT issued.
- Suppliers to proceed to the RFT stage.
- Awarding the contract.

Only two of the six members in the Steering Group had completed conflict of interest forms.

**Implication**

Potential conflicts of interest that are not disclosed and managed could jeopardise the integrity of the procurement process. This could lead to additional costs for the DHB if the procurement process is scrapped due to probity issues.

**Management Comment**

██████████ *External Procurement Lead and Quantity Surveyor*

They were completed by the entire procurement panel.

**Auditor's Response**

For clarification, the issue is related to the Ko Awatea Steering Group not the Procurement Panel.



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## 4. Ko Awatea Steering Group exceeded their Delegated Authority when awarding the contract and giving the go ahead to commence the construction work.

### Criteria

CMDHB Delegated Authority Policy - Facilities Management Delegated Powers to Authorise Financial Expenditure for Facilities Management and Capital Infrastructure Projects.

| Authority to:   | Delegated to: |                             |                  |     |                      |
|---|---------------|-----------------------------|------------------|-----|----------------------|
|   | Board         | FMP <sup>17</sup> Committee | Finance Director | CEO | COO or GM-Facilities |
| Approve CMDHB entering into a specific capex contract for greater than \$2.5 million for a project already approved for execution by the Board. | Yes           | No                          | No               | No  | No                   |

### Observation

Preliminary construction work for the Ko Awatea Stage II extension had commenced in December 2016. The awarding of the contract and the go-ahead to commence the construction was given by the Ko Awatea Steering Committee<sup>18</sup>. There was no Board approved contract around this time.

This is not in line with the CMDHB Delegated Authority (DA) Policy which stipulates that only the Board can approve entering into a contract of such value.

Also the Letter of Acceptance<sup>19</sup> was not signed until 13 March 2017. The letter was approved outside the CMDHB DA having been signed only by the Ko Awatea Project Manager.

The Board approved the contract only on 21 June 2017<sup>20</sup> and signed it on 12 July 2017<sup>21</sup>.

### Implication

This practice is non-compliant with the CMDHB Delegated Authority Policy.

A high value project commencing without a signed Letter of Acceptance or contract put CMDHB at risk of incurring additional costs if any disputes had arisen.

### Management Comments

██████████ External Procurement Lead and Quantity Surveyor

I have never seen this happen in 40 years, and the Procurement Methodology defined that a letter would be issued. In addition, no real risk to CMDHB in any part of the process, ROI says;

<sup>17</sup> Facilities Management Planning Committee has since been disbanded but the DA policy still references this committee.  
<sup>18</sup> See Exhibit 165.  
<sup>19</sup> See Exhibit 57.  
<sup>20</sup> See Exhibit 186.  
<sup>21</sup> See Exhibit 187.

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*Notwithstanding any other provisions in this ROI, and to the extent that CMDHB is found to have any liability to Respondents on whatever basis, CMDHB's liability is, in all circumstances, capped at \$1.00.*

*It is acknowledged that CMDHB is at liberty, at any time, to terminate the ROI/Tender process or to negotiate an agreement with a party other than through the process identified herein.*

### **[REDACTED]** Facilities Management

The issue of the contract award letter confirms a contract is in place (that is also John Hanson's view). All the full contract sign does is ensure that there is absolutely no disagreement on all the conditions. What forms the contract should already be known and stated. It is very common practice to commence works well ahead of the signing of the compiled contract, the compilation of that documentation is very time extensive and sadly often contracts are not fully signed off for many months. Our standard conditions required the contracts to be signed before the first payment however it is often CMDHB itself that is in default. It would be highly unusual to wait to the commencement of work before the document is signed off – it would result in months of delay. It is apparent the auditor has little understanding of this practice that to my knowledge has been so for a generation.

*John Hanson, CMDHB Chief Legal Advisor*

I reiterate Chester's point on the contract. While it is dependent on the conditions of tender etc., typically the letter of award is an acceptance. Once that happens both parties are bound to each other. That is what happened here.

### **Auditor's Response**

We agree with the Chief Legal Advisor's opinion that the Letter of Acceptance bounds both parties. However, the issue is the absence of authorisation by the Board to enter into a construction agreement either by a Letter of Acceptance or a Contract.

The fact remains, the Letter of Acceptance was signed without Board approval and that work commenced before either was signed.

**5. Procurement documentation for the project was not always retained.****Criteria**

*CMDHB Procurement Policy, Record Keeping:*

'7.1 Accurate records relating to procurement activities, contract negotiations and any resultant contracts must be generated, retained and stored so that they are readily accessible for the purposes of audit, review and publication where required.

7.2 Disposal of records is subject to the authorisation of the Chief Archivist in accordance with the Public Records Act 2005.'

**Observation**

Some documentation relevant to the procurement of the Ko Awatea Stage II project was not created and retained. This includes the following:

- Conflict of interest forms for the Ko Awatea Steering Group
- One of the individual evaluation score sheets for the RFT
- Minutes for tenderer interviews or presentations.

**Implication**

In the event that procurement decision is challenged or subjected to further review, it could be difficult to support the procurement decision made by Management.

**Management Comment**

██████████ *External Procurement Lead and Quantity Surveyor*

I am only aware of 1 item – my separate RFT score was not kept as I used this to insert the scores of the other panel members. The final agreed panel score was kept.

One sheet, but the agreed panel score is the only relevant score (refer Methodology).

There was no ROI briefing and only a site visit for the RFT.

The Recommendation report was issued within a few days of the interviews, and the record of the interview was directly recorded in the recommendation report (and no separate record was deemed required). On 29 September 2016, the Tender Panel interviewed the two tenderers. The purpose of the interview was to enable each tenderer to present its team, programme, methodology, and clarify issues identified and advised by the Panel to the tenderers to be addressed at the interview. Each tenderer gave a presentation, followed by questions. Overall, each interview was allotted one hour. Immediately after the interviews, the Panel discussed their observations against each of the attributes, and each panel member was given the opportunity to adjust their non-priced attribute scores that had been based on the information preceding the interviews. On completion of the interviews and scoring review, the attributes scores were:

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1. NZ Strong 70%
2. Leighs 80%

The panel scoring process is industry standard to support selection decisions.



28 June 2017

Michael Hundleby  
Director Critical Projects  
Ministry of Health

E-mail: [Michael\\_Hundleby@moh.govt.nz](mailto:Michael_Hundleby@moh.govt.nz)

Dear Michael

As previously discussed, I wish to notify you of a capital project and related funding arrangement, which it appears should have been sent to the National Capital Investment Committee (CIC).

On 2 December 2015, the Counties Manukau Board received a paper and Business Case, including concept plans, preliminary report and total cost summary, for a facility to expand Ko Awatea, to incorporate patient learning, tiered lecture theatre, teaching spaces and office space. It was noted that various options were still under consideration, but the final proposal would be within the \$10M capital funding limit for the Board.

The proposed capital cost was \$7.62M for patient learning, teaching space, tiered lecture theatre, administration space and parking. However, approval was sought for up to \$9.9M if a research institute could be included within the capital cap of \$10M.

Approval was given for the intent within this capital constraint to support this expansion of Ko Awatea. Approval was also given to the Chief Executive and Deputy Chief Executive to negotiate the funding source. Two possible funding options were noted - \$5M p.a. from existing capital/cashflow resources, to be prioritised against other capital requests, or a sale and leaseback of operating assets, negotiated and prepared in draft at that stage.

On 10 February 2016, the Board received a decision paper regarding the Ko Awatea expansion and noted redrafted usage of space and an updated capital cost of \$9.895M. A Steering Committee was formed and a procurement process was followed over several months in 2016.

On 7 September 2016, a Capital Expenditure Request for \$9.895M for the Ko Awatea extension was authorised by the Chair of the Board. A preferred contractor was selected and a letter of acceptance for the construction contract was issued to the contractor on the 13 March 2017. However, neither the construction contract, nor the design contract, had been taken to, or signed off by the former Board in 2016, and the new Board, which had been appointed in December 2016, had no knowledge of it. The construction contract was signed by the contractor and forwarded to the Chief Executive for signature on 31 March 2017. It remained unsigned by CMDHB at the time the Chief Executive was replaced by the current Acting Chief Executive on 24 April 2017. Construction has already commenced on 31 March 2017, and preliminary payments had been made by CMDHB to the contractor. Legal advice obtained on 9 May 2017 confirmed that the contract was legally binding

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Counties Manukau District Health Board

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even though still unsigned by CMDHB, and Board execution of the contract documentation was recommended.

The construction contract to the value of \$8,457,778, exclusive of GST, went to the CMDHB Audit Risk & Finance Committee on 31 May 2017, and it was recommended that it go forward to the 21 June Board Meeting for signature. This duly occurred on 21 June 2017.

In the meantime, there has been detailed analysis just finalised of the costs of the project. This indicates that the costs of the project will have clearly exceeded \$10M by the time it is completed, and the current estimate is that the final total cost will be \$11,964,800.

The components of this total cost are as follows:

|  |                     |
|--|---------------------|
| Construction Sum                                   | \$6,601,556         |
| Design Sum   | \$464,533           |
| Preliminaries Sum                                  | \$927,478           |
| Margin Sum   | \$364,211           |
| Provisionals Sum                                   | \$100,000           |
| <b>Total:</b>                                      | <b>\$8,457,778</b>  |
|  |                     |
| AV Equipment & Data Installation                   | \$550,000           |
| FF&E   | \$457,000           |
| Plant Room   | \$30,000            |
| Consent & Consultants Fees                         | \$1,523,198         |
| Contingency  | \$54,024            |
| CMH Capitalised Costs (Clerk of Works & PM)        | \$248,000           |
| <b>Building Total:</b>                             | <b>\$11,320,000</b> |
|  |                     |
| Car Park Replacement                               | \$644,800           |
| <b>Building &amp; Carpark Replacement Combined</b> | <b>\$11,964,800</b> |

The additional costs, taking the overall cost of the project over the \$10M limit, could reasonably have been foreseen at the time of the initial Board approval, and certainly should have become apparent to the Steering Group in the course of the procurement process and project implementation during 2016. It is therefore my view that the project should have been referred to the National CIC for consideration and approval before it commenced, and certainly before the construction contract came into effect. It was obviously too late to rectify this by the time I and the current Board became aware of the situation, as CMDHB was by then already bound by the contract.

An additional issue to bring to your attention is the sale and leaseback, which is being used to finance the project. Under this sale and leaseback arrangement implemented on 29 January 2017, 29 items of clinical equipment were purchased for the 'original asset costs', being \$9,978,195. CMDHB is

required to make an interim payment then quarterly lease payments over the four year term of the lease, bringing the total amount payable by CMDHB under the lease agreement to \$10,407,812. At the end of the term, CMDHB must either return the assets to the purchaser, or enter into a new lease agreement with them. An additional commitment of some sort at the end of the four year term seems inevitable, given the nature of the assets. On 19 May 2017, we received a legal opinion that as the lease agreement results in commitments with a net present value of more than \$10M, the lease agreement should have also been submitted to CIC. However, it was obviously too late for us to do that by the time I and the Board became aware of this, as the sale and leaseback had already occurred.

I am unsure of the usual procedure when approval processes have not been followed in these circumstances. However, I have assumed that you should at least be made aware of these matters, which should have been referred to CIC for approval. Lester Levy, as Chair, is also going to notify the Chair of CIC.

I assure you that moving forward, the current executive team and Board at CMDHB will make every endeavour to ensure that all matters requiring CIC approval are referred in a timely manner.

Yours sincerely

A handwritten signature in black ink, appearing to be 'GJ', with a long horizontal flourish extending to the right.

Dr Gloria Johnson  
Acting Chief Executive

cc: Dr Lester Levy, Board Chairman

30 June 2017

Dr Gloria Johnson  
Acting Chief Executive  
Counties Manukau DHB  
Private Bag 94052  
Manukau  
Auckland 2241

[Gloria.johnson@middlemore.co.nz](mailto:Gloria.johnson@middlemore.co.nz)

Dear Gloria

Thank you for your letter dated 28 June 2017.

It is very disappointing to learn Counties Manukau DHB has significantly breached the rules around Capital Investment Committee approvals. This is especially troubling for a DHB assessed as having an "A" rating under Treasury's Investor Confidence Rating framework.

We recognise once the current Chair and Acting CEO became aware of this you immediately investigated cancelling the relevant contracts but this was not possible. We also recognise you have at your own volition brought this to our attention and have put in processes to provide assurance that there cannot be a repeat of this.

The financial review the Ministry will commission at your DHB's request may also identify further steps that can be taken to prevent this happening again.

Thank you again for notifying us of this breach.

Kind regards



Michael Hundleby  
Director Critical Projects

cc: Dr Lester Levy, Board Chairman