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New Zealand Transport Agency - Project Zero

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1 Executive summary

1.1 The New Zealand Transport Agency ("NZTA" or "the Agency") instructed Deloitte ("us" or "we") to undertake a review of activities in relation to health and safety app development in the Zero Harm team.

1.2 This review focuses on the Zero Harm Manager's involvement in the procurement of a Zero Harm safety app, the establishment of the ConstructSafe Competency Scheme and his undeclared conflicts of interests. This review also looked at NZTA's involvement with ConstructSafe Limited. The purpose of this document is to report on those activities, during the period 2014 to 2018.

Investigative steps taken

1.3 We undertook a range of investigative steps including:

- Reviewing documentation provided to us by NZTA employees;
- Undertaking interviews and collecting further information from NZTA employees;
- Collecting and reviewing electronic information; and
- Interviewing former NZTA employees and stakeholders in NZTA health and safety projects.

1.4 In preparing the report we did not interview the ZHM, the ZHA, Person A or representatives of CHASNZ. Given the timing of the release of this report, we have not been able to engage with these parties in detail. Of those who have communicated with us:

- The ZHM believes that the report is factually flawed;
- Person A disputes the description of facts in, and the conclusions of, the Report;

Our findings

1.5 Our overall finding is that the Zero Harm Manager had unmanaged and enduring conflicts of interest. These conflicts led to the enrichment of a long-time friend, blurred the focus on delivering quality health and safety programmes and breached public sector rules of sourcing.

1.6 The former Zero Harm Manager was provided a high degree of autonomy and used his NZTA position to influence decision making at an industry level for the benefit of a friend (Person A).

1.7 He did this by engaging Person A to develop an in-house technology application (app) called Zero Harm. The app was designed to allow real-time reporting of health and safety incidents, with version two providing greater reporting functionality. The Zero Harm Team and/or Person A went on to develop additional apps that referenced NZTA and other parties.

1.8 Person A amended the standard NZTA intellectual property ("IP") clause and this was agreed to by the Acting Zero Harm Manager (while the former Zero Harm Manager was promoted to [redacted]). The variation enabled the supplier to retain all IP rights and further commercialise the deliverables specified in the contract. This variation was executed within the Zero Harm team and did not involve anyone from NZTA's legal or procurement teams.

1.9 Person A went on to develop an additional nine apps, which used the source code of the Zero Harm app. These apps used a combination of NZTA trademarks and logos, implying an association with or endorsement by the Agency.

1.10 The most significant decision affecting the industry and betterment of Person A, was NZTA's mandated variation to all state highway projects contracts. Contractual minimum requirements were introduced to use the Zero Harm reporting tool and comply with the ConstructSafe scheme. This resulted in around 70,000 contractors and their employees using the ConstructSafe scheme, producing around $1.5 million in revenue for a company associated with Person A. It is unclear what direct or indirect benefit the Zero Harm Manager received (if any).

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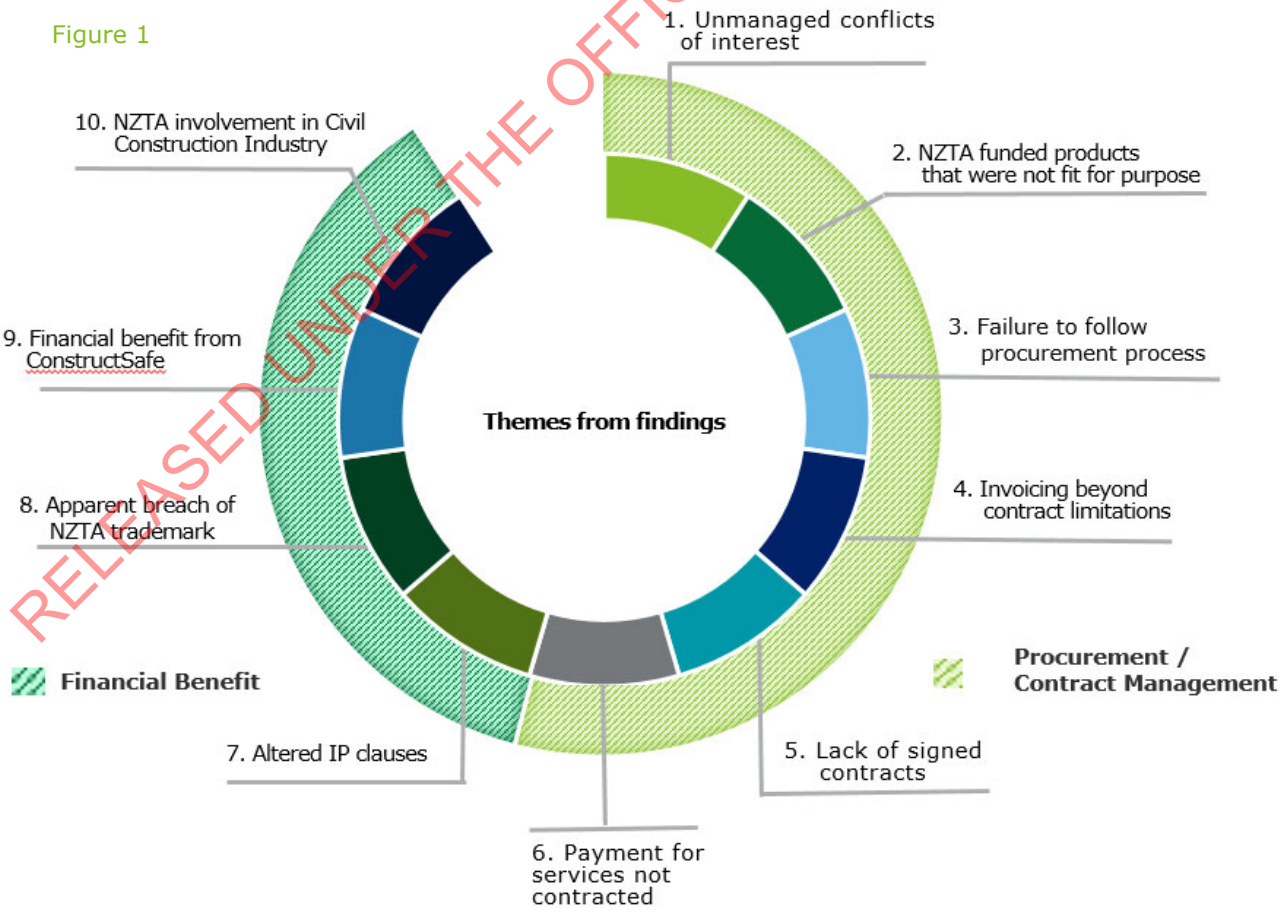
1.11 The most material findings are:

- The Zero Harm Manager direct sourced services and approved payments to entities that belonged to his friend and former colleague. NZTA paid a combined value to these entities of $381,786.04 (excluding GST);
- The Zero Harm Manager led the mandated variation to all contractors working on state highway projects which, based on information made available to us, resulted in Person A's company, [redacted] Limited, receiving revenue in excess of $1.5 million from payments made from NZTA contractors across the industry;
- The $100,000 contract for Zero Harm Version 2, was awarded to [redacted] Limited, a company owned by Person A. The company was recommended as the preferred vendor before the Request for Proposal ("RFP") cut-off time and was selected prior to another submission being received;
- [redacted] was working on the Zero Harm Version 2 project prior to the tender being awarded and without a contract in place. [redacted] Limited began invoicing NZTA in October 2015, the tender process took place in January and February 2016 and a contract was not in place until December 2016;
- The procurement plan for Zero Harm Version 2 was (retrospectively) created in December 2016, to support the awarding of the contract to [redacted] Limited in February 2016; and
- The [redacted] contract was for $100,000, although an additional $97,000 (excluding GST) was invoiced without any documented agreed variations.

1.12 Our review identified a large number of issues. The findings are grouped under ten themes in Figure 1, with various findings beneath each. We have grouped the themes into two categories, Procurement and Financial Benefit, as per the scope.

Figure 1



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1.13 Our key findings are subject to the limitations in **Appendix E**.

Our recommendations

1.14 We have made recommendations based on our observations under each of the ten themes. Our recommendations are based on observations of historical events and do not necessarily reflect NZTA's current control environment.

1.15 The recommendations raised in this report are only those which came to our attention during the course of performing our review. They are not necessarily a comprehensive statement of all the weaknesses that exist or improvements that might be made.

1.16 Refer to section *5 Recommendations* on page 28 for the key recommendations relating to each theme that contributed to the events under investigation.

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2 Introduction

2.1 The New Zealand Transport Agency ("NZTA" or "the Agency") instructed Deloitte ("us" or "we") to undertake a review of activities in relation to health and safety app development in the Zero Harm team.

2.2 The Zero Harm Manager ("ZHM") was responsible for NZTA's health and safety and was part of the People and Capability Group. This review focuses on the Zero Harm Manager's involvement in the procurement of a Zero Harm safety app, the establishment of the ConstructSafe Competency Scheme and his undeclared conflicts of interests. This review also looked at NZTA's involvement with ConstructSafe Limited. The purpose of this document is to report on those activities, during the period 2014 to 2018.

Parties involved

2.3 The following table introduces the key individuals and entities central to this investigation. The relationship map in **Appendix B** provides further information on connections.

Table 1 Key Individuals and Entities

Person / Entity	Role / Purpose	Notes
Zero Harm Manager ("ZHM")	The NZTA employee who led the team we were instructed to focus on.	Initially employed at NZTA as the ZHM.
Zero Harm Advisor ("ZHA")	Supported the ZHM.	Worked closely with the former Manager (ZHM).
Acting Zero Harm Manager ("AZHM")	Formerly the ZHA. Acting in the ZHM role from 2015 to November 2016.	Worked closely with the former Manager (ZHM) and approved the contract variation ceding NZTA IP.
Person A	A friend of the ZHM and consultant delivering services to NZTA.	Refer to Figure 3 and **Appendix B** for further details.
[redacted] Ltd (no longer trading)	To develop an online monthly safety data capture portal and an application called Zero Harm.	Initially incorporated by the ZHM. Person A was a director when contracting to NZTA.
[redacted] Ltd	To produce a vehicle pre use app, a taxi pre use app, operational support and health and safety advice for NZTA.	Person A is the sole director.
[redacted] Ltd	To update the Zero Harm app.	Person A is the sole shareholder and director.
[redacted] Ltd	Invoiced NZTA for services related to the ConstructSafe Scheme.	Person A is the sole shareholder and director.
ConstructSafe Ltd	Administers the ConstructSafe Scheme and is the primary revenue stream for CHASNZ.	The sole shareholder is CHASNZ.
Construction Health and Safety New Zealand (CHASNZ) Trust	A charitable trust representing the construction industry to raise the standard of health and safety across the sector.	Responsible for administering the ConstructSafe Scheme, the civil construction industry's health and safety competency scheme.

Timeline

2.4 The timeline on the following page (**Figure 2**) outlines a high level view of the ZHM's activities which have been the subject of our review. This timeline demonstrates that all four companies (associated with

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Person A) were incorporated and shortly after received contracts from NZTA. In [redacted] instance, within twelve days. Within a short period of commencing work, invoicing would start. In [redacted] instance, $78,000 was invoiced within nine days.

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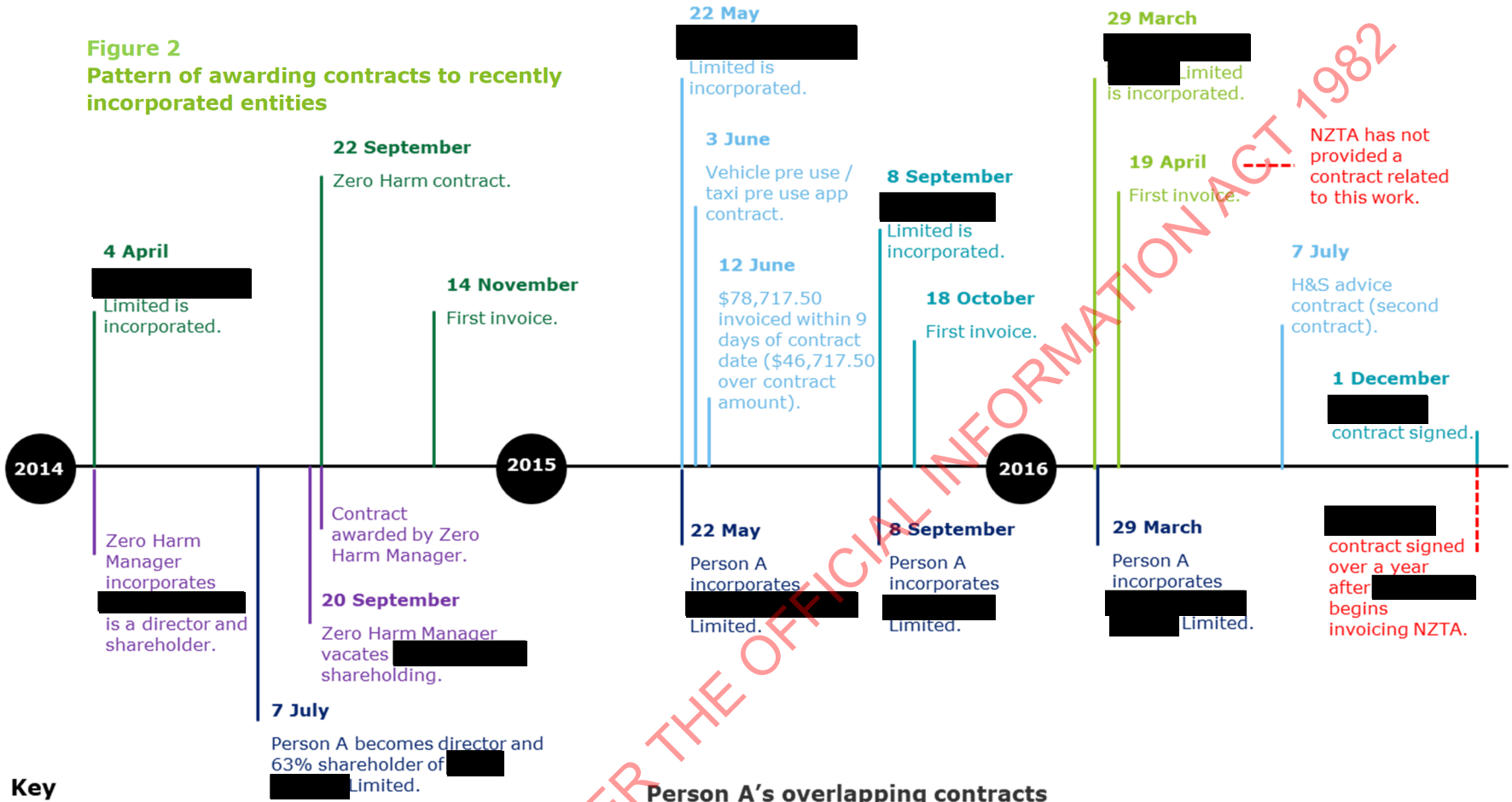
Figure 2
Pattern of awarding contracts to recently incorporated entities



Key

Text Colour	Person / Entity
	Zero Harm Manager
	Person A
	[redacted] Limited
	[redacted] Limited
	[redacted] Limited
	[redacted] Limited
	NZTA

Person A's overlapping contracts

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Scope of our investigation

2.5 Our independent investigation has focused on the following areas in relation to the Zero Harm Team:

- Assess NZTA's actions regarding procurement, contracting and conflict of interest issues, in particular if they were appropriate under public sector rules of sourcing at the time and the NZTA's objectives and functions;
- Determine the circumstances, including who (if anyone) was financially benefiting, when it became a requirement for NZTA contractors to complete a compulsory competency assessment before they can work on NZTA projects; and
- Determine the circumstances and scope of "core business" relating to the establishment and funding of Construction Health and Safety New Zealand ("CHASNZ") by NZTA.

2.6 During the course of the investigation, additional information came to light which required further investigation. The two primary areas related to:

- Relinquishing intellectual property rights to a consultant, resulting in their enrichment; and
- Online applications which made unauthorised use of NZTA trademarks, logo and implied an association or endorsement by the Agency.

Approach

2.7 We have followed our global forensic investigation methodology. The primary steps of this involved:

- Planning the focus of the investigation;
- Information gathering within a forensic due process. Sources have included electronic information, interviews and third party information;
- Analysis and interpretation of information has been tailored to the different issues and sources of data; and
- Reporting and closing the investigation.

Investigation

Work completed

2.8 We have completed the following work to date:

- Reviewed documents provided to us by NZTA employees relating to the concerns outlined at 1.2. This has included contract documents, invoices, payment data, and email correspondence between the ZHM and others.
- Completed meetings and interviews with NZTA employees, former employees and former stakeholders in NZTA health and safety projects.
- Processed the data sources set out in **Appendix D** according to the Deloitte Forensic standard discovery process as attached at **Appendix A**;
- Reviewed a selection of documents. We have included schedules of the documents:

Returned by keyword searches and the documents reviewed at **Appendix D**.

Limitations

2.9 The limitations in respect of this report are set out in **Appendix E**.

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3 Procurement and Contract Management

3.1 In this section, we set out the issues in respect of procurement and contract management, our key findings and a summary of the evidence gathered to date. Our key recommendations relating to matters that arose during our investigation are outlined in section 5.

Introduction

3.2 We were asked to independently assess NZTA's actions regarding procurement, contracting and conflict of interest issues in the Zero Harm Team. We were asked to determine if the actions and decisions were appropriate under public sector rules of sourcing at the time and the Agency's objectives and functions.

Key Findings

3.3 We identified six themes from our findings relating to procurement and contract management. There were several issues in relation to each theme. We set out each theme and the related issues below. The six procurement and contract management themes we discuss are:

- Unmanaged conflicts of interests;
- NZTA funded products that were not fit for purpose;
- Failure to follow procurement process;
- Invoicing beyond contract limitations;
- Lack of signed contracts; and
- Payment for services not contracted.

Unmanaged conflicts of interest

3.4 Summary of key unmanaged conflicts of interest issues:

- The ZHM procured services and approved payments to entities that belonged to his friend and former colleague (Person A). Person A established four companies which immediately received contracts and funding from NZTA and the civil construction industry;
- A contract between NZTA and [redacted] Ltd was agreed less than two weeks after [redacted] Ltd was incorporated. The Companies Office records show the same residential address for this company as [redacted]. Three invoices worth $78,000 were approved by the ZHM within nine days of the contract being signed by Person A on behalf of [redacted] Ltd. NZTA does not hold a contract that is countersigned by NZTA;
- The ZHM procured over $51,950 (excluding GST) in technology services from [redacted] Ltd, a company the ZHM had established five months earlier. He vacated his shareholding in the company two days before the contract was signed by Person A (there is no record of a NZTA countersigned copy). Company records show that Person A recorded the same address as the ZHM;
- The ZHM declared (in a 2018 internal protected disclosure investigation) that in 2015 he had handed over responsibility to the Acting ZHM for managing contracts relating to Person A and "as the initial reviewer of invoices")[1]. However, he continued to approve invoices for three years after 2015; and

[1] 3E9 – 2018 May Final Protected Disclosures report

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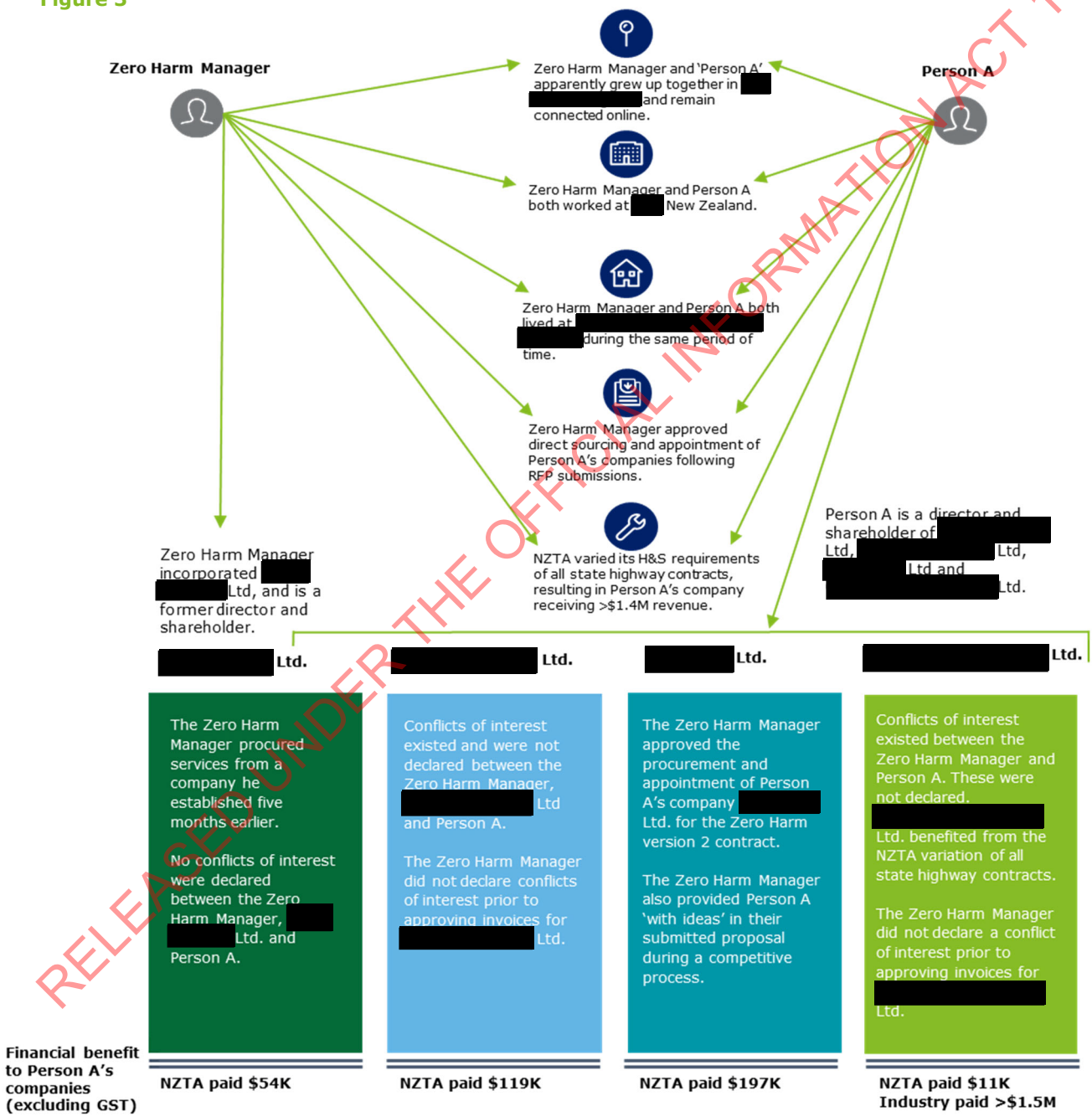
- The awarding of the Zero Harm Version 2 contract, in response to the RFP, appears predetermined. The Request to Appoint Memo was created to award the contract to [redacted] Limited, Person A's company, prior to the receipt of all tenders and before the cut-off time for submissions. The 'request to appoint' was approved by the ZHM[2]. Additionally, Person A made reference to having some ideas based on feedback from the ZHA and ZHM during the tender process.

3.5 The ZHM failed to declare personal and financial conflicts of interests he had with Person A. The extent of the undeclared conflicts are summarised below in Figure 3[3]:

Figure 3 Conflicts of interests between the Zero Harm Manager and Person A



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[2] 3E29

[3] The above information has been compiled from publicly available information such as the Companies Office Registry, Facebook (where the ZHM and Person A are friends), LinkedIn (where they are connected, having both worked at [redacted] together), as well as NZTA records.

3.6 Table 2 of Person A's companies below demonstrates:

- ZHM incorporated one of these companies and was the initial shareholder;
- Person A's companies received contracts with NZTA shortly after incorporation;
- Person A's companies and/or Person A's addresses are all related to ZHM's personal address;
- ZHM did not declare a conflict of interest in relation to Person A's companies; and
- ZHM approved invoices in relation to Person A's companies.

Table 2 Person A's entities and respective contracts with NZTA

Entity	Incorporated	Contract date	Address	ZHM COI Declared?[4]	ZHM DFA approver?[5]
[redacted] Ltd *Incorporated by ZHM[6]	04/04/2014	22/09/2014[7] *20/9/2014 ZHM ceased shareholding[8]	**Registered office:** [redacted] ***ZHM:** [redacted]	No	Yes – (6/6)
[redacted] Ltd	22/05/2015	1. 3/06/2015[10] 2. 14/07/2016[11]	**Registered office:** [redacted] **Person A:** [redacted]	No	Yes (6/9)
[redacted] Ltd	8/09/2015	Invoices began 18/10/2015[13] – contract signed 1/12/2016[14]	**Registered office:** [redacted] **Person A:** [redacted]	No	Yes (5/11)
[redacted] Ltd	29/03/2016	No contract located - invoices began 19/04/2016	**Registered office:** [redacted] **Person A:** [redacted]	No	Yes (1/3)

3.7 According to NZTA's internal Protected Disclosure Report, the ZHM declared that he handed over the responsibility for managing the Zero Harm contract and reviewing invoices to the ZHA in February 2015"[18]. However, NZTA Accounts Payable data records show that the ZHM continued to approve invoices beyond this:

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[4] 3E9 – 2018 May Final Protected Disclosures report
[5] 3E68 – NZTA Accounts Payable data; "DFA" = Delegated Financial Authority.
[6] 3B(iv)14 – Companies Office, [redacted], New Company Incorporation document.
[7] 3E2 – [redacted] Provision of Service Agreement.
[8] 3B(iv) 1 – Companies Office, [redacted] Limited, shareholder information
[9] #3B(iv)14 – Companies Office, [redacted] Limited, New Company Incorporation document.
[10] 3E90 – [redacted] Provision of Service Agreement.
[11] 3E47 – [redacted] Short Form Contract
[12] #3B(iv)32 – Companies Office, [redacted] Limited, New Company Incorporation document.
[13] 3E68 – NZTA Accounts Payable data.
[14] 3E5 – [redacted] Contract for Services.
[15] 3B(iv)39 – Companies Office, [redacted] Limited, New Company Incorporation document.
[16] 3B(iv)36 – Companies Office, [redacted] Limited, New Company Incorporation document.
[17] 3B(iv)52 – Companies Office, [redacted] Limited, Consent of Shareholder of Proposed Company document.
[18] NZTA Protected Disclosure Investigation Assurance Report May 2018, page 4.

Table 3 Date of last invoice approved by ZHM

Entity	Date of last invoice approved by ZHM
[redacted] Ltd	19/08/2015
[redacted] Ltd	30/06/2016
[redacted] Ltd	25/03/2016
[redacted] Ltd	19/04/2016

NZTA funded products that were not fit for purpose

3.8 Our key findings in respect of this theme are:

- Purchasing and procurement decisions by the ZHM failed to produce public value;
- NZTA funded the provision of health and safety advice and operations systems support services which do not appear to have been delivered;
- NZTA funded the development of products that did not meet users expectations (e.g. ISNetworld);
- In December 2016, NZTA contracted the Learning Wave (apparently unrelated to Person A and ZHM) to deliver an IOSH accredited Managing Safely programme for $99,760.00 (excluding GST). Funding was also provided by ACC. The programme failed to receive IOSH accreditation.

Products and services developed by Zero Harm, [redacted] Limited and [redacted] Limited

3.9 NZTA already had an incident reporting capability which was not fully utilised, provided by Impac, at the time the Zero Harm app was created[19]. NZTA had an existing contractual relationship with Impac as their Health and Safety service provider.

3.10 NZTA staff widely reported to us that the Zero Harm app did not work well, was complicated and was ultimately not fit for purpose[20]. This was supported by an internal staff survey undertaken in 2018[21]. The results from this survey factored into NZTA's decision in late 2018 to decommission the Zero Harm app and replace it with an Impac solution, following consideration of a solutions options paper recommending alternative technology options.

3.11 A member of the Zero Harm team reported that Person A was meant to provide a certain amount of hours service per month to resolve issues with the Zero Harm app. NZTA staff *"were forever going to him with issues to be fixed […] his service became non-existent towards the end"*[22].

3.12 When a senior member of the Safety and Wellness team joined NZTA in 2017, they conducted an internal product review on the Zero Harm reporting system and found that it was not aligned with NZTA's current structure, did not have the requisite functionality and had *"a load of operational issues"*, such as some users not being able to logon to the system[23].

3.13 The Zero Harm app also suffered a privacy breach, where the personal information relating to 110 users (such as incident information and email addresses) was made visible to all users. This breach reportedly occurred due to Person A performing testing in a live environment. This resulted in the privacy team and Chief Legal Counsel becoming involved. We note that at the time we undertook our fieldwork this app was in the process of being decommissioned[24].

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[19] 3C3 – Interview, 13 June 2019.
[20] 3C1 – Interview, 18 June 2019.
[21] 3C1 – Interview, 18 June 2019.
[22] 3C1 – Interview, 18 June 2019.
[23] 3C2 – Interview, 14 June 2019.
[24] 3C3 – Interview, 13 June 2019.

Health and Safety advice and operations systems support – provided by [redacted] Limited

3.14 Person A (through his company [redacted]) was contracted by NZTA to provide 2-3 days a week of *"ad-hoc competent health and safety advice and support"* as well as operational systems support[25].

3.15 This Contract for Services (contract number 2016-656) was signed by the AZHM and Person A on 5 July 2016 and 14 July 2016 respectively. Under the contract, the Daily Fee Rate was $1,000.00 (excluding GST), up to a total of $40,000.00 (excluding GST)[26].

3.16 Person A's reporting requirements under the contract included the delivery of a Monthly Progress Report and a monthly invoice detailing days/hours worked. NZTA could not locate any Monthly Progress Reports or any other documentation to evidence any work completed by Person A.

3.17 A member of the Zero Harm team stated that they did not see any deliverables from Person A in regard to the ad-hoc advice and support[27].

3.18 A senior member of the Zero Harm team reported that it was *"unclear what [Person A] was paid to* do*"*. When people in the Zero Harm team sought to understand what Person A did they *"received shrugged shoulders" - "normally consultants sit with the team and have a clear scope of work […] he would breeze in and out"*[28].

ConstructSafe Competency Assessment Scheme

3.19 The ConstructSafe Scheme was a competency assessment to assess workers health and safety knowledge. NZTA adopted this scheme as a baseline competency requirement for all persons engaged in projects on the network. NZTA made it a contractual requirement for all workers to have completed the ConstructSafe assessment before entering construction sites.

3.20 It was relayed to us by two NZTA employees that it was not clear why NZTA both supported the development of the ConstructSafe scheme and then made the decision to contractually require all workers to complete their prequalification with ConstructSafe.

3.21 A former NZTA employee, during their interview, stated that *"all the main players [in the industry] were scratching their heads"* and did not understand the value add of ConstructSafe[29].

ISNetworld System

3.22 The ISNetworld system is an American online data management system used for vetting and pre-qualifying contractors for work. Contractors and suppliers submit information into the system and ISNetworld then review this self-reported information against regulatory and hiring client requirements. The objective of this system was to simplify the tendering process. NZTA required physical works contractors to subscribe to ISNetworld to help manage prequalification requirements[30]. The ZHM was the project lead for the selection of ISNetworld.

3.23 In December 2015, NZTA conducted an internal review into the procurement of ISNetworld system, following complaints raised by two New Zealand suppliers that NZTA had not run a competitive process. The resulting Assurance Report found that NZTA's procurement policies had not been followed. A fair and transparent process was not used to give all suppliers a contestable process to compete, there was no procurement plan and the approach was not documented prior to selection taking place. For completeness, we note that the conclusions from the audit findings were not supported by the GM People and Capability and GM Highways and Network Operations. Both General Managers cite different reasons

[25] 3E47 – Short Form Contract [Person A], page 3.
[26] 3E47 – Short Form Contract [Person A], page 3.
[27] 3C1 – Interview, Zero Harm Coordinator, 18 June 2019.
[28] 3C2 – Interview, Senior Manager:Safety and Wellness, 14 June 2019.
[29] 3C1 – Interview, 18 June 2019.
[30] https://www.nzta.govt.nz/about-us/tenders-and-contracts/contractor-prequalification/

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for their stance, such as the procurement manual needing enhancement and the original low cost estimate ($52,000) for the tender was reasonable.

3.24 The Assurance Report also found that the direct appointment method was used as the contract value had been incorrectly calculated at $52,000 (per annum)[31], below the $100,000 threshold that would require a tendered procurement process. The ZHM did not consider all elements of the delivery of services, such as any revenue streams that ISNetworld would receive. NZTA assessed the contract value as approximately $550,000, well beyond the $100,000 threshold[32].

3.25 Stakeholders from the civil construction industry told us that ISNetworld was not meeting their needs. This lack of fit was attributed to the fact that ISNetworld had been imported from the American oil and gas industry and did not fit the purposes of New Zealand's civil construction industry. As a result, there was *"a lot of push back from industry"* because the system was *"too complex and too expensive"*[33]. It appears that this is another example of a procurement decision, led by the ZHM, that did not provide value as it was not fit for purpose.

3.26 Zero Harm team members noted that this was the system used by the ZHM and Person A when they both worked at [redacted] between 2012 and 2014[34].

NZTA and ACC funding of the CSC Managing Safely course

3.27 The CSC Managing Safely course was a three day programme designed and delivered by the Learning Wave in 2017. The Learning Wave website states that Managing Safely is *"aligned with the ConstructSafe Tier 3 and 4 competency assessment"* and is designed to improve the health and safety standard and competency of all workers[35].

Timeline

2016

3.28 The ZHM approached the ACC for seed funding to develop a New Zealand version of the IOSH Managing Safely course. The ZHM invited ACC to partner with NZTA in developing a training programme for site supervisors working on construction sites. The Managing Safely scheme was led by the ZHM, as per the NZTA proposal[36].

3.29 On 9 May 2016, the ACC Chief Customer Officer provided funding approval for ACC to contribute $140,000.00 (excluding GST) to NZTA's estimated costs of $280,000.00. The $140,000.00 contribution covered[37]:

- $90,000 for the development of a prototype training programme, based on the IOSH Managing Safely programme;
- $30,000 for the evaluation of the prototype programme and incorporation of subsequent improvements into the programme; and
- $20,000 for the development of an implementation plan for the trial.

3.30 Sometime before June 2016, NZTA published a RFP for the Managing Safely programme (it is noted that the RFP is not dated, but the due date is 10 June 2016)[38]:

> *"ACC working in partnership with the NZ Transport Agency and the NZ Construction Industry are seeking a request for proposal to design a learning solution for supervisors*

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[31] 3E22 – NDP BUDMT Adoption of ISN, 27 March 2015.
[32] 3E14 – NZTA Probity Review Assurance Report, December 2015.
[33] 3C2 – Interview, 14 June 2019.
[34] 3B(iv)17 – ZHM, LinkedIn page; 3B(iv)15 – Person A, LinkedIn page.
[35] 3B49 – the Learning Wave webpage, Managing Safely.
[36] 3L1 - NZTA Proposal document
[37] 3L1 – ACC Recommendation to Select and Direct Source, dated 23 June 2016.
[38] 3L5 – NZTA – Managing Safely Request for Proposal document, undated.

> *and managers in the construction industry based on the foundations of IOSH Managing Safely."*

3.31 On 1 December 2016, the Learning Wave contract was signed by the AZHM and [redacted] on behalf of Learning Wave. The contract amount was $99,760 (excluding GST)[39].

3.32 It is noted that the contract states, *"There is a future view for the Construction Safety Council to provide a trainer to deliver the training program to NZ construction businesses"*[40].

2017

3.33 The contract refers to creating a customized New Zealand version of the IOSH course. However the course was not accredited by IOSH, despite this being the core element of the contract with the Learning Wave[41]:

- *"the key objective […] is to deliver 'IOSH Managing Safely' Health & Safety Training"*; and
- *"The solution must: meet requirements for the IOSH Managing Safely course".*

3.34 In May 2017, ACC and NZTA retrospectively signed the Funding Agreement for $140,000.00. The ACC Contract Approval Memorandum notes *"it has taken some time to get the contract through the Supplier [NZTA]"*[42].

3.35 In December 2017, Quigley and Watts Limited and Almsa Consulting Limited provided a proposal to the Construction Safety Council to conduct an evaluation of the Managing Safely programme[43]. Their proposal makes no mention of NZTA:

> *"the evaluation has* ***other important stakeholders beyond CSC: ACC and The Learning Wave.*** *Both organisations will be involved in the design and implementation of the evaluation, and receive the results."*
>
> [Emphasis added]

2018

3.36 The ConstructSafe Limited financial budget and Statement of financial performance for the year ended 31 March 2018, shows that actual income for the year from "ACC Managing Safely Training" was [redacted][44].

3.37 It is unclear what ConstructSafe Limited's involvement in Managing Safely is.

2019

3.38 The Managing Safely programme is now the "LeadSafe Supervisors training programme", also run by the Learning Wave and in line with ConstructSafe Tier 3. The training is also endorsed by CHASNZ[45]. NZTA is no longer associated with this training[46].

Failure to follow procurement process

3.39 Our key findings in respect of this issue are:

- The Zero Harm Version 2 RFP occurred in January 2016, yet [redacted] began invoicing NZTA in October 2015 without a contract;
- A four day RFP was run in January 2016. The same day that [redacted] submitted its proposal to NZTA, it invoiced NZTA for Zero Harm Version 2 work (suggesting that work has taken place prior to the tender being awarded);

[39] 3L3 – NZTA – Learning Wave contract, signed 1 December 2016.
[40] 3L3 – NZTA – Learning Wave contract, signed 1 December 2016.
[41] 3L3 – NZTA – Learning Wave contract, signed 1 December 2016.
[42] 3L1 - ACC Contract Approval Memorandum, dated 19 May 2017; ACC – NZTA Funding Agreement.
[43] 3L4 – Proposal for CSC, December 2017.
[44] 3F3 – ConstructSafe Financial Report, 31 March 2018.
[45] 3B(iv)50 – ACC website – staff training.
[46] 3B(iv)51 – LeadSafe website, Leadsafe Supervisors programme.

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- The procurement plan was retrospectively created in December 2016 to support the awarding of the contract to [redacted] Limited; and
- The [redacted] contract was for $100,000, although an additional $98,000 was invoiced without any documented agreed variations.

[redacted] Limited and Zero Harm Version 2

3.40 The first [redacted] invoice was dated 18 October 2015[47]. This means that NZTA had awarded and were paying for services related to the Zero Harm Version 2 contract prior to going to market.

3.41 The only [redacted] contract held by NZTA is for $100,000.00 (excluding GST)[48], meeting the threshold requiring the application of the Government Rules of Sourcing (3rd edition). However, the evidence set out below demonstrates that the rules of sourcing were not followed – NZTA did not encourage an open competitive procurement process, or openly advertise the Zero Harm Version 2 contract, prior to [redacted] invoicing for this work.

3.42 The Request for Proposal ("RFP") document, for the delivery of Zero Harm Version 2, was created on 22 January 2016 and last modified on 25 January 2016[49]. The RFP sets out:

> *"Proposals shall be sent to [ZHA]@nzta.govt.nz* ***before 15:00 Friday 29 January 2016****. The vendor will be selected on* ***Tuesday 2 February 2016*** *and a contract will be signed on that day. The project start meeting will be on Wednesday 3 February 2016 and all work will be completed (with the system live) on 1 April 2016"*[50]*.*
>
> [Emphasis added]

3.43 As the RFP document was last modified on 25 January 2016 and proposals were due on 29 January 2016, this gave suppliers only four business days in which to provide a proposal to NZTA. In the event that NZTA had not already awarded this contract to [redacted], this timeframe would still have been in breach of the Government Rules of Sourcing. Rule 31 states that a minimum of 25 business days is required for a Request for Proposal procurement process[51]. Refer to **Figure 4**.

Timeline

3.44 The dates and times in the timeline below demonstrate that:

- [redacted] were invoicing NZTA prior to the creation of the RFP document for the same services;
- [redacted] was selected as the vendor prior to the alleged cut-off time of 3pm on 29 January 2016 for receipt of proposals, as per the RFP;
- [redacted] was chosen before Tuesday 2 February, the date the vendor would be selected, as per the RFP;
- [redacted] was selected prior to NZTA's receipt of a second vendor's proposal document, who were also invited by NZTA to tender; and
- The only [redacted] contract held by NZTA was finalised over a year after they began invoicing NZTA.

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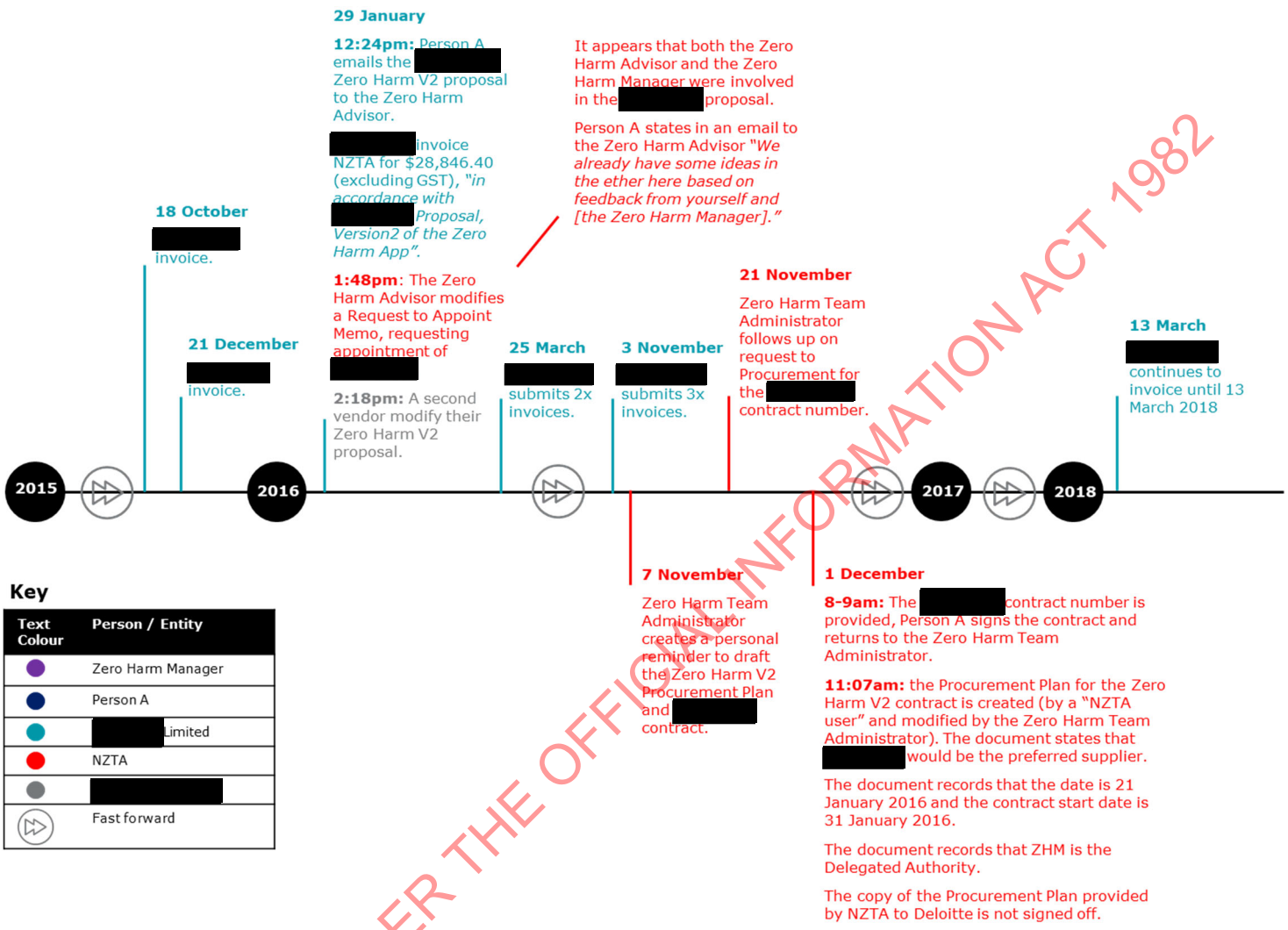
[47] 3E68 – NZTA Accounts Payable data.
[48] 3E5 – [redacted] Limited Contract for Services, signed 1 December 2016.
[49] 3E27(b) – Screen capture of "Request for Proposal document to develop NZTA Zero Harm App V2 Final" document metadata.
[50] 3E27 – "Request for Proposal document to develop NZTA Zero Harm App V2 Final" document.
[51] 3B(iv)29 – Government Rules of Sourcing, 3rd edition 2015, page 35.

Figure 4 [52], [53], [54], [55], [56], [57], [58], [59], [60], [61]

Timeline outlining breach of procurement process



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[52] 3E7 – Email from Person A to ZHA, Friday 29 January 2016, 12:24pm, Subject: ZeroHarmApp v2 Proposals.
[53] 3E62 – [redacted] Limited, invoice dated 29 January 2016.
[54] 3E68 – NZTA Accounts Payable data.
[55] 3E29(b) – Screen capture of the "Request to Appoint Shortlist Memo" document metadata.
[56] 3E29 – "Request to Appoint Shortlist Memo" document.
[57] 3E69 – Screen capture of a second vendor's "NZTA – Zero Harm v2 Proposal" document.
[58] 3E55 - [redacted] Limited, invoice dated 23 March 2016.
[59] 3E68 – NZTA Accounts Payable data.
[60] 3E61 - [redacted] Limited, invoice dated 23 March 2016.
[61] 3E68 – NZTA Accounts Payable data.

Invoicing beyond contract limitations

3.45 Our key finding for this issue is that Person A's companies' contracts amounted to $192,000 (excluding GST) but they were ultimately paid $381,786 by NZTA[62]. Person A's invoice narrations do not provide sufficient detail to determine whether the overcharging relates to invoicing beyond contract amounts or to work that was not performed. The scope of this review did not include analysis of the value of work completed by Person A. The ZHM approved $252,356 of the $381,786 total, as outlined below:

Table 4 Value of contracts and amounts paid by NZTA

Entity	Contract	Contract Value (excluding GST)	Amount invoiced and paid by NZTA (excluding GST)[63]	Additional amount invoiced (excluding GST)	Approved by the ZHM (excluding GST)[64]*
[redacted]	Zero Harm	$20,000.00	$53,950.00	$33,950.00	$53,950.00
[redacted] Ltd	Vehicle pre use app and taxi pre use app	$32,000.00	$119,249.20	$47,249.20	$85,589.20
	Health & Safety advice and operational systems support	$40,000.00			
[redacted] Ltd	Zero Harm Version 2	$100,000.00	$196,708.58	$96,708.58	$101,216.50
[redacted] [redacted] Ltd	No contract located	No contract located	$11,878.26	No contract located	$11,600.00
	Total	**$192,000.00**	**$381,786.04**	**$177,907.78**	**$252,355.70**

* The remaining invoices were approved by the AZHM / former ZHA and other NZTA employees.

Missing signed contracts

3.46 Our key findings in respect of this issue, demonstrated in table 5 on the following page, are:

- We have found no evidence of a countersigned contract between NZTA and [redacted];
- We have found no evidence of a signed agreement between NZTA and [redacted] for the Vehicle pre-use and Taxi Pre-use app; and
- NZTA could not locate contracts with [redacted] for the Thumb a Ride app or with [redacted] for set up of the ConstructSafe testing centres.

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[62] 3E68 – NZTA Accounts Payable data.
[63] 4A2 – Deloitte invoice analysis.
[64] 3E68 – NZTA Accounts Payable data.

Table 5 Evidence of signed contracts

Entity	Contract	Contract signed by Person A?	Contract signed by NZTA?
[redacted] Ltd	Zero Harm[1]	Yes	No
[redacted] Ltd	Vehicle Pre-use, Taxi Pre-use[1]	No	No
[redacted] Ltd	Health and safety advice[1]	Yes	Yes
[redacted] Ltd	Thumb a Ride[1]	No contract located	
[redacted] Ltd	Zero Harm Version 2[1]	Yes	Yes
[redacted] Ltd	Set up of ConstructSafe testing centres[1]	No contract located	

Payment for services not contracted

3.47 Our key findings in respect of this issue are:

- Person A's companies appear to invoice for work unrelated to their respective contract deliverables; and
- There appears to be additional contracts with Person A's companies that could not be located by NZTA.

[redacted]

3.48 [redacted] invoiced for work that appears unrelated to the Zero Harm contract – this work appears to be in relation to the Construction Safety Council[65]:

- Invoice date 7 April 2015, description *"CSC – Handover meetings and time – Handover between [ZHM] and [ZHA], meetings, CSC explanation […] Marketing activity outside the scope of CSC trial".*

[redacted]

3.49 [redacted] invoices made reference to an additional agreement regarding a *"competency scheme"* and *"competency database"* that could not be located by NZTA:

- An invoice dated 12 June 2015, for $15,500.00 (excluding GST), referenced *"Development and framework required to create competency scheme. In accordance with proposal dated 10.06.2015 and signed by NZ Transport Agency on 10.06.2015"*[66].
- Another invoice dated 12 June 2015, for $26,950.00 (excluding GST), referenced: *"Development of a Competency Database, dated 06/06/2015 and signed by NZ Transport 10/06/2015. Support Service"*[67].

3.50 [redacted] invoiced for work completed for "ConstructSafe", which does not appear related to the contract for the vehicle pre use and taxi pre use apps:

- An invoice dated 29 April 2016, for $4,639.20 (excluding GST), referenced *"ConstructSafe launch team. Time only (at cost). Week April 11-15. Week April 18-22. Week April 25-29. Flights (CCNZ)"*[68].

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[65] 3E75 – [redacted] invoice, dated 7 April 2015.
[66] 3E51 – [redacted] Limited invoice, dated 12 June 2015.
[67] 3E53 – [redacted] Limited invoice, dated 12 June 2015.
68 3E48 – [redacted] Limited invoice, dated 29 April 2016.

4 Financial Benefit

4.1 In this section we set out the concerns in respect of financial benefit to three parties, our key findings and a summary of the evidence gathered to date. Our key recommendations relating to matters that arose during our investigation are outlined in section 5.

Introduction

4.2 We were asked to determine the circumstances, including who (if anyone) was financially benefitting, when it became a requirement for NZTA contractors to complete a compulsory competency assessment before they can work on NZTA projects.

Entities involved

4.3 As per Table 1, the key entities in respect of financial benefit are as follows:

Table 6 Financial benefit - entities involved

Entity	Role / Purpose	Notes
[redacted] Ltd	Invoiced NZTA for services related to the ConstructSafe Scheme.	Person A is the sole shareholder and director.
ConstructSafe Ltd	Administers the ConstructSafe Scheme and is the primary revenue stream for CHASNZ.	The sole shareholder is CHASNZ.
Construction Health and Safety New Zealand (CHASNZ) Trust	A charitable trust representing the construction industry to raise the standard of health and safety across the sector.	Responsible for administering the ConstructSafe Scheme, the civil construction industry's health and safety competency scheme.

Key findings

4.4 We identified five themes from our findings relating to financial benefit. There were several issues in relation to each theme. They are set out below, along with the evidence for each:

- Altered Intellectual Property clauses;
- Apparent breach of NZTA trademark;
- Financial benefit from ConstructSafe;
- Other financial benefit; and
- NZTA involvement in Civil Construction Industry.

Altered Intellectual Property clauses

4.5 Our key findings in respect of this issue relate to SafetyApp Limited and are:

- NZTA allowed Person A to write his own intellectual property clauses in the [redacted] contract;
- One of the changes was that Person A's company "*retains all intellectual property rights*"; and
- Both instances (point (a) and (b)) deviate from NZTA standard contracting practice.

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4.6 The following emails relate to the AZHM advising Person A to amend the IP clauses for the contract:

- 24 November 2016 – Person A sent an email to the AZHM with the subject *"Re: Draft Contract"*. The email records that[69]:

  "we need to make some amendments to this, hopefully we can cover off tomorrow. ***It all relates to IP,*** *so hopefully we can put that in place and get moving."*

  [Emphasis added]

- 24 November 2016 – the AZHM replied to Person A:

  "That's great; that was the bit we didn't think we had correct. I know we agree on what that needs to look like, so ***please feel free to amend it*** *to a format that better suits our needs."*

  [Emphasis added]

- 28 November 2016 – Person A replied to the AZHM[70]:

  *"****I have attached the two amendments*** *that I think make this contract for our agreement"*

  [Emphasis added]

- 28 November 2016 – the AZHM forwards this contract to a Zero Harm team member[71]:

  "This is the amended version. Can you please arrange for [Person A] and I to sign this week. You can leave the contract number blank and add it by hand when it comes through."

4.7 The IP amendments are as follows:

Table 7 Intellectual Property contract clause amendments

Clause	Original NZTA clause	Person A's amended clause [emphasis added]
12.2	*"The supplier retains all intellectual property brought to the contract. This includes already commercially available, or otherwise, concepts developed for the purpose of Health and Safety reporting. Where the buyer believes that new intellectual property is being developed, it shall be agreed in writing by both parties that this is the case, and intellectual property shall be shared."*	Person A's comment: **"As an amendment to clause [12.2]:"** *"All tools and/or systems delivered will be owned by the NZ Transport Agency for the purpose of internal transport activity Zero Harm reporting, and will be provided by the supplier as an on going service. Intellectual property brought by the supplier in the form of software services will remain the intellectual property of the supplier. Any data inputted by NZ Transport Agency remains the sole property of the client."*
12.3	*"The Supplier grants to the Buyer a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables."*	Person A's comment: **"This clause is to be removed or Replaced with:"** *"The supplier grants to the buyer, non-exclusive, worldwide and royalty-free licence to use, for the purposes of Zero Harm reporting, the software services in this arrangement as part of the pre existing software as a service agreement.* ***The supplier retains all intellectual property rights to copy, modify, distribute, and further commercialize the deliverables as part of its normal business activity."***

[69] 3H2 – Email thread between Person A and AZHM, 24 November 2016.
[70] 3H15(b) - Email thread between Person A and AZHM, 28 November 2016.
[71] 3H15(b) - Email thread between Person A and AZHM, 28 November 2016.

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The replacement of clause 12.3 emphasises that the supplier (Person A) is granted all IP rights to further commercialise the deliverables under the contract. Prior to the bold text, the amended clause also introduces that "*…the software services in this arrangement as part of the pre-existing software as a service agreement…"*. This reference in this clause to "pre-existing software" appears to be an attempt to make this application retrospective.

4.8 The contract was signed on 1 December 2016 by the AZHM and Person A. The signed version retains the original clause, Person A's comments to remove/replace/amend these clauses and his amended version of the clauses. It has not been refined and has instead been signed in the state that Person A sent it to NZTA in[72].

4.9 It is unclear how and why the decision was made to amend the clauses. Our document review did not identify any evidence of any consideration of the proposed changes that we would expect e.g. consulting with Legal or Procurement teams. The suggested changes from Person A were forwarded from the AZHM directly onto the team administrator, to complete the execution of the contract.

Apparent breach of NZTA trademark

4.10 Our key findings in respect of this issue are:

- [redacted] and [redacted] have both published multiple apps that use NZTA branding;
- [redacted] and/or [redacted] published three apps using NZTA source code data, prior to 1 December 2016, when a favourable variation to Person A was made to the standard IP clause. We have not identified signed contacts for these three apps. At the time these apps were published, Person A did not have authorisation to reuse NZTA source code IP.
- [redacted] has published an app that has a high percentage of identical code to the NZTA Zero Harm App; and
- [redacted] did not have authority to use NZTA branding.

4.11 Refer to **Appendix C** for full analysis of this issue.

Table 8 Apps published by Person A's entities with NZTA branding

NZTA contracted apps[73]	Apps published by [redacted] with NZTA branding[74]	Apps published by [redacted] with NZTA branding[75]
Vehicle Pre-use ([redacted])	Car Pre-use	NZTA Pre-use
Taxi Pre-use ([redacted])	Taxi Pre-use checks	Taxi Pre-use checks
Zero Harm ([redacted])	NZTA Pre-use	CCNZ Safety
Zero Harm Version 2 ([redacted])	M2PP Verifi	
	NZTA Thumb a Ride	
	CCNZ Safety	

*Apps published by Person A's companies where a contract has not been located by NZTA.

[72] 3E5 – [redacted] Limited, Contract for Services, signed 1 December 2016.
[73] According to contracts located by NZTA.
[74] https://androidappsapk.co/developer/[redacted] ; https://developers.soft112.com/[redacted] ltd.html; https://apkpure.ai/developer/[redacted]
[75] 4A5

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4.12 All apps appear to use NZTA's branding as a form of endorsement. All apps are similar in that they fall under the umbrella of health and safety and the importance of reporting incidents or conducting pre-use checks.

4.13 The apps M2PP Verifi, NZTA Pre-Use, and CCNZ Safety, were all published prior to 1 December 2016. At the point they were published, NZTA had not yet surrendered all IP rights for Person A. Refer to **Appendix C** for further analysis on the publication dates and locations of these apps.

4.14 CCNZ is the app that has the strongest similarities with the NZTA Zero Harm app. We undertook a deeper analysis of this app.

Summary findings - CCNZ Safety App

4.15 We chose the CCNZ Safety App for deep analysis because:

- CCNZ was available on both the Apple Store and Google Play (the two biggest app store platforms) at the time of our fieldwork. It was also publically available for download on third-party app stores.
- The Billing and Payment section states[76]:

  > *"1. Billing.* [redacted] *is offered as a free resource to the customer provided that they have less than 150 employees, including full time, part time, casual and sub contracted labour.*
  >
  > *2. A customer who employs more than the stated number of employees in 2.1 may use the service for an* ***agreed fee between*** [redacted] ***and it member bodies****.*
  >
  > *3.* [redacted] *reserves the right to charge a usage fee and holds the right to implement such a fee following 30 days of written notice to all customers through the portal."*
  >
  > [Emphasis added]

- The CCNZ Safety App has very similar functionality to the NZTA Zero Harm App (i.e reporting incidents).
- The CCNZ app uses NZTA's 'Zero Harm' advertisement and in some places in the app has mentioned *"Provided by the NZ Transport Agency".*

4.16 The 'deep analysis' we performed included:

- Image metadata analysis; and
- Code analysis.

Metadata

4.17 Within the CCNZ Safety App, there are NZTA branding images. The metadata for the images used inside the CCNZ Safety App and the NZTA Zero Harm App indicate that the exact same image has been used across both apps.

Code Analysis

4.18 We compared the code from the NZTA Zero Harm App with the code from the CCNZ Safety App and can confirm with a high level of certainty that the CCNZ Safety App has re-used the code from the NZTA Zero Harm App. This is evident due to:

- Identical .html filenames used in both apps; and
- There is a high percentage (greater than 70%) of identical code (exact one-to one match) used in the CCNZ Safety App across 4 files. Two of these files are the integral parts of the apps functionality – providing the ability to report incidents and near misses.

[76] http://safetyapp.co.nz/terms.html

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Financial Benefit from ConstructSafe

4.19 Our key findings in respect of this issue are:

- Person A, the sole director and shareholder of [redacted] Limited, financially benefited from NZTA's requirement for all workers on state highway projects/work sites to complete a compulsory competency assessment (ConstructSafe scheme); and
- CHASNZ (through ConstructSafe Limited) financially benefited from the requirement for NZTA contractors to complete a compulsory competency assessment (ConstructSafe scheme).

Background

4.20 The ConstructSafe Scheme assesses workers health and safety competency. In July 2016, NZTA made it a contractual requirement for all state highway projects/work sites contractors to sit the ConstructSafe assessment[77]. Workers are required to attend an accredited testing centre to complete the assessment[78]. The cost of this assessment is $60 per worker[79]. The ConstructSafe scheme is led by the Construction Safety Council ("CSC")[80].

4.21 NZTA stated that the purpose of this scheme is to[81]:

> *"provide the construction industry with a framework for individuals to prove health and safety competence. It allows sites to reduce the potential for untrained or inexperienced workers from creating hazardous situations for themselves or others. It helps raise the health and safety standards and creates a safer and more competent New Zealand workforce."*

Timeline

2014

4.22 The ZHM, Person A and a member of the Construction Council New Zealand ("CCNZ") were involved in the genesis of ConstructSafe. This is shown in an email calendar invite (subject *"ConstructSafe kick off meeting"*) that was held at NZTA, in 2014[82].

2015

4.23 NZTA reports that it has worked with CSC on ConstructSafe, in partnership with Auckland Transport and ACC and in consultation with key industry stakeholders, in 2015[83]. It appears that CSC was intended to be the industry representative body in charge of the ConstructSafe Scheme[84]. The ZHM sat on the CSC Board of Directors[85].

2016

4.24 On 4 April 2016, the CSC held a ConstructSafe launch event[86].

4.25 On 27 April 2016, NZTA published the first Technical Advice Notice ("TAN"), #16-05, to internal and external registered users. TAN #16-05 states[87]:

[77] 3B(iv)45 – Technical Advice Notice #16-11, published 16 June 2016.
[78] 3E93 – Construction Safety Council, ConstructSafe scheme overview document.
[79] 3E31 – "About ConstructSafe" presentation, 2016.
[80] 3B(iv)42 – ConstructSafe – "What clients and contractors need to know" document.
[81] https://www.nzta.govt.nz/resources/16-05-state-highway-contractor-health-and-safety/?back=10211
[82] 3H40 – Email calendar invite dated 24 October 2014, subject "Construct Safe kick of meeting", Attendees: [ZHM], [Person A], [CCNZ member].
[83] 3I1 – NZTA response to OIA 5183, dated 10 July 2019.
[84] 3E35 – Construction Safety Council project implementation plan draft, dated 2 February 2016.
[85] 3I1 – NZTA response to OIA 5183, dated 10 July 2019.
[86] 3E32 – Construction Safety Council Briefing note; 3E92 – Construction Safety Council, ConstructSafe industry launch invitation.
[87] 3B(iv)44 – Technical Advice Notice #16-05, published 27 April 2016.

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> *"**From 1 July 2016** the NZ Transport Agency **mandates the minimum requirement of ConstructSafe** Tier 1 for entry across all contracts/work sites."*
>
> [Emphasis added]

4.26 TAN #16-05 states that the new contract wording is as follows:

> *"All state highway projects/work sites have a minimum entry requirement of ConstructSafe Tier 1 for all workers entering the site. People entering the site who have not attained Tier 1 certification are not authorised to enter the site or must be supervised at all times."*

4.27 On 28 April 2016, NZTA Valuation Assessment Committee ("VAC") retrospectively approved ConstructSafe and agreed the following[88]:

- to adopt ConstructSafe;
- that NZTA will take a leadership role over the next 12 months and meet costs for assessments; and
- ConstructSafe will be a principal requirement immediately with new and existing physical works and maintenance contracts.

4.28 On 16 June 2016, NZTA published TAN #16-11 to replace TAN #16-05 – "*please disregard the* incorrect *TAN"*[89]. TAN #16-11 differs from TAN #16-05 by:

- Allowing suppliers to advance an alternative that provides the same levels of assurance during the 12 month implementation period starting 1 July 2016, allowing organizations time to plan and deliver ConstructSafe testing to their workers;
- Once the implementation period is over all highway projects/work sites will be expected have set a minimum entry requirement of ConstructSafe Tier 1 for all workers entering the site; and
- Contract wording is specific to the type of contract. There is specific wording for each of the following: highway construction, highway maintenance and highway professional services contracts.

4.29 On 28 September 2016, ConstructSafe Limited was incorporated[90]. The sole shareholder at time of incorporation was New Zealand Construction Industry Council ("NZCIC") – the umbrella organisation under which CSC sat[91].

4.30 In December 2016, the ZHM, on behalf of CSC, organized the recruitment of a General Manager ("GM") for CSC and ConstructSafe[92].

2017

4.31 On 27 February 2017, the former AZHM (who was also the former ZHA) interviewed for the position of GM CSC/ConstructSafe[93].

4.32 On 2 March 2017, a CSC "Recommendation to Appoint" document was created, from the ZHM and two other CSC board members, recommending the appointment of the former AZHM/ZHA. This document is from the ZHM and two other CSC members. The fixed remuneration is recorded as [redacted][94].

4.33 On 13 March 2017, the ZHM emailed the former AZHM/ZHA[95]:

> *"Please see attached offer of employment as discussed.*

[88] 3E45 – VAC April 2016 minutes and agenda – this document does not record attendance.
[89] 3B(iv)45 – Technical Advice Notice #16-11, published 16 June 2016.
[90] 3B(iv)46 – Companies Office, ConstructSafe Limited, new company incorporation document.
[91] 3B(iv)47 – Companies Office, ConstructSafe Limited, shareholder information.
[92] 3H21 – Email thread beginning 21 December 2016, subject "Re: PLEASE ACTION AQ – ASAP CSC GM Safety Ad Dec 16.docx", between the ZHM and [redacted].
[93] 3H25 – Email dated 3 February 2017, subject "Interview Times – Please confirm you are happy with the dates and times", from [redacted] to the ZHM.
[94] 3H8 – CSC Recommendation to Appoint document, 2 March 2017.
[95] 3H58 – Email dated 13 March 2017, subject "CSC – GM – Offer of employment", from the ZHM to the former Acting Manager Zero Harm / ZHA.

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On behalf of the CSC I am delighted that you will be joining us to continue the work we have all started to drive change in H&S throughout the Construction Industry."

4.34 On 1 July 2017, the 12 month implementation period ended and ConstructSafe became a mandatory requirement for all NZTA contracts for workers on state highways projects/work sites.

2018

4.35 According to ConstructSafe Limited's statement of financial performance for the year ended 31 March 2018, provided by a ConstructSafe scheme stakeholder, annual income from *"Test Centre Fees"* was [redacted] (excluding GST)[96].

4.36 In March 2018, the NZCIC and ConstructSafe Limited sought advice regarding the best structure of the entity going forward and what to do with ConstructSafe Limited's cash surplus. A summary of key comments made in emails from NZCIC members is captured below[97]:

- [redacted]

4.37 On 26 March 2018, a Deed of Trust was signed establishing CHASNZ[98]. Refer to *Table 6 Financial benefit - entities involved*.

4.38 On 27 March 2018, NZCIC sought the approval of the NZCIC members to approve the transfer of [redacted] to CHASNZ.

4.39 [redacted]

- [redacted]

4.40 As it was outside of our scope, we have not conducted further investigation of the concerns that this stakeholder raised or sought the views of other parties.

4.41 On 6 November 2018, Construction Health and Safety New Zealand Trust ("CHASNZ") became the new sole shareholder of ConstructSafe Limited, replacing New Zealand Construction Industry Council[100].

[96] 3F1 – ConstructSafe Financial Report, 31 March 2018.
[97] 3F7 – Email thread involving NZCIC members and other stakeholders. Further details not provided to protect anonymity of source.
[98] 3F10 – Trust Deed.
[99] [redacted]
[100] 3B(iv)47 – Companies Office, ConstructSafe Limited.

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Quantification of financial benefit

4.42 According to a NZCIC stakeholder who we spoke to, payments are made to [redacted] Limited to administer the scheme as follows:

- Test centre first year licence - $2,900.00;
- Test centre year licence (yearly thereafter) - $1,450.00;
- Set-up of each test supervisor - $140.00; and
- Each test - $60.00: $40.00 of which is paid to ConstructSafe Limited.

4.43 As set out in Table 6, Person A is the sole shareholder of [redacted] Limited, which he incorporated in March 2016. According to the NZCIC stakeholder, there had been about 47,000 billable tests as at 24 January 2018. A testing provider's website reports that over 75,000 people have completed the Tier 1 test, although it is not clear at what date this number is achieved[101].

4.44 Using the payment structure provided by the NZCIC stakeholder above, this means that for the cost of the tests alone, a minimum of $4,500,000[102] has been generated from the scheme. At $60 per test, [redacted] Limited and ConstructSafe Limited have received the following financial benefit:

- [redacted] Limited would have received $1,500,000 from tier 1 testing to date[103]; and
- ConstructSafe Limited would have received $3,000,000 from tier 1 testing to date[104].

NZTA involvement in the civil construction industry

4.45 Our key finding in respect of this issue is that the ZHM directed time and money be invested in an industry outside of NZTA's core objectives.

4.46 We are unable to quantify the level of NZTA resources directed at the civil construction industry. However, a NZTA employee was seconded to the Zero Harm team to provide additional capacity in 2015 and 2016. He indicated he spent the equivalent of around two to three months (of an eight month secondment) focusing on activities related to the civil construction industry. This was at the direction of the ZHM.

4.47 The NZTA website states that its primary function is to *"promote an affordable, integrated, safe, responsive and sustainable **land transport system**"* [emphasis added][105]. It also states that the Zero Harm industry group focus is to *provide "practical recommendations that allow work on **the state highway network** to be carried out safely, effectively, and to a high standard"* [emphasis added][106].

4.48 During our review, we heard from more than one civil construction industry stakeholder that the industry was unclear on what was driving NZTA's increased level of activity in the sector's health and safety activities. The perception presented to us was scepticism of the ZHM's involvement in an area outside of his role with NZTA and a perceived conflict of interest[107].

4.49 In interviews, we were told that the ZHM had the support from his General Manager and other senior leaders, including the NZTA Chief Executive, to focus on health and safety externally, such as partnering with Auckland Transport[108]. It was known by senior leadership that the ZHM was active in the Transport Agency's Zero Harm Industry Group, which agitated for change to introduce Zero Harm minimum standards and guidelines. However, the senior manager who worked closely with the ZHM on highways, network operations and the Zero Harm Industry Group was not aware the ZHM had become an advisory board member of the Construction Safety Council (**CSC**) forum[109].

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[101] 3B(iv)43 – ConstructTesting website.
[102] $60 x 75,000 = $4,500,000
[103] ($60-40) x 75,000 = $1,500,000.
[104] $40 x 75,000 = $3,000,000.
[105] https://www.nzta.govt.nz/resources/annual-report-nzta/summary-report/about-nzta
[106] https://www.nzta.govt.nz/safety/zero-harm/latest-news/minimum-standards-for-zero-harm/
[107] 3C - Further details not provided to protect anonymity of source.
[108] 3C6
[109] 3C6

5 Recommendations

5.1 Our recommendations are based on observations of historical events that came to our attention during the course of performing our review. We have not tested the design or operation of current controls and processes. Therefore the recommendations do not necessarily reflect NZTA's current control environment.

5.2 Our recommendations have focused primarily on opportunities for NZTA to enhance their controls to prevent a recurrence of the issues that have come to light.

5.3 The recommendations focus on internal controls, rather than broader legal issues (including the apparent wrongdoing on the part of the ZHM or Person A). We understand NZTA are considering next steps in addition to our recommendations, including consideration of the legal issues. We support this further action.

5.4 Our additional recommendation is for NZTA to consider where our findings have impacted other government and non-government entities and notify them accordingly. Each entity may wish to consider their own response to our findings. For example, at paragraph 4.39, we outline concerns raised by a NZCIC stakeholder about the establishment of the CHASNZ trust. The existing board members of CHASNZ and other government departments may not be aware of their concerns.

Key

CR = control requirements, where not already in place, should be prioritised. We consider these to be a minimum level of acceptable practice.

BP = better practice recommendations that will further improve processes. The priority with respect to implementing these will be informed by NZTA's risk appetite and tolerance levels.

Table 9 Recommendations

Themes	Recommendations
1. Unmanaged conflicts of interest	• Ensure the process of loading new vendors into the Accounts Payable vendor master file includes checking companies office register i.e. check if the current and historic directors and shareholders are NZTA employees or close associates (e.g. family, partners or next of kin (as listed in HRIS)). If there is a match then the management of conflict of interest process should be engaged (**CR**); • Ensure a management of conflict of interest process is in place which reflects the principles of independence, transparency and consultation. The management of conflicts should be documented, signed by appropriate parties and retained in a contract management system (**CR**); • If not already in place, introduce a "new vendor form" for Accounts Payable to capture all required information about any new vendors, and require dual sign off (e.g. project sponsor and business owner of a project)(**CR**); • Ensure finance is updated when managers move internally, preventing managers from approving invoices which are no longer related to their current role (**CR**); • Undertake refresher training for all staff on what conflicts of interests are, how they should be managed and how to raise concerns. Training should incorporate best practice guidance[110] (**CR**); • Make the declaration of conflicts mandatory for all NZTA roles, regardless of tier, and ensure existing policies and procedures are updated to remove any ambiguity (**CR**); and

[110] http://www.ssc.govt.nz/assets/Legacy/conflicts-of-interest-model-standards.pdf

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Themes	Recommendations
	• Consider undertaking analytics across vendor master file and HRIS data to detect undeclared conflicts within your existing suppliers; (**BP**).
2. NZTA funded products and services that were not fit for purpose	• Ensure processes for introducing new Information Communication Technology projects follow best ICT project management practice e.g. solution options paper, benefits analysis, consideration of technology integration and existing platforms etc. (**CR**); and • Ensure principles and practices from projects management governance are implemented that provide transparency and accountability (**CR**).
3. Falsified and backdated procurement process documentation	• At the time of activities under investigation, a decentralised procurement model was in operation. Consider reviewing the thresholds where procurement involvement is required e.g. reviewing all procurement plans, and recommendation to appoint etc. (**CR**); and • Procurement to consider providing education and training to increase awareness across the agency of good practice and obligations under government rules of sourcing, particularly around estimating whole of life costs (**BP**).
4. Invoicing beyond contract limitations	• Ensure the FMIS has an identifier to alert the business when a contract is approaching its stated limit and ensure this is monitored and reported on (**CR**).
5. Missing signed contracts	• Ensure that Accounts Payable processes for loading new vendors or resuming payments to vendors require a counter signed copy of the contract is provided (**CR**); and • Ensure the delegations framework covers the topic of entering into contracts. Ensure this delegation has an appropriate condition requiring consultation prior to exercising the delegation. All decisions made under the delegation framework, including satisfying the conditions of delegations, should be documented and able to be evidenced at a later time (**CR**).
6. Payment for services not contracted	• Review relevant existing policies and processes to strengthen management accountability (e.g. disciplinary procedures), in relation to financial management decisions – in this case, a manager was authorising payment under a DFA where services were not provided as scoped (**CR**).
7. Altered Intellectual Property Clauses	• Ensure that where NZTA consider the release of IP for re-use and using Creative Commons licences, that the New Zealand Government open access and licensing framework[111] is followed (**CR**); • Adopt the software extension (NZGOAL-SE) for licensing and releasing copyright software works under free and open source software licences (**CR**); • Ensure there is adequate knowledge within the business, or seek external expertise where questions arise to distinguish between "managing data and information held by the New Zealand Government" versus 'know how' and other 'creations of the mind' that can form one of the four types of intellectual property (**CR**); and • Consider introducing a master terms of business as an umbrella document for all contracts, with clauses, including IP, which cannot be modified without sign off from Legal and / or Procurement (**BP**).
8. Apparent breach of NZTA trademark	• Ensure that the cease and desist process relating to Person A, commenced during our investigation, is seen through to its final conclusion (**CR**); and • Consider the use of logo and trademark recognition and detection API to monitor and protect your brand (**BP**).

[111] https://www.digital.govt.nz/standards-and-guidance/governance/copyright-and-licensing/

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Themes	Recommendations
9. Financial benefit from ConstructSafe	• Refer to recommendations relating to theme 1 (conflicts of interests).
10. NZTA involvement in the civil construction industry	• Similar to theme 6, review existing management accountability processes and ensure there is widespread awareness of the state sector integrity and conduct standards and NZTA's code of conduct (**CR**).

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Appendix A - Deloitte Forensic Standard Discovery Process

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Appendix B – Relationship Mapping

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Appendix C – Analysis of Apps

Conclusion

5.5 [redacted] has published six applications that use NZTA branding. This excludes the NZTA Zero Harm application. They are as follows:

- Car Pre Use;
- Taxi Pre-Use checks;
- M2PP Verifi;
- NZTA Thumb A Ride;
- NZTA Pre-use; and
- CCNZ Safety.

5.6 [redacted] has published three applications that uses NZTA branding. They are as follows:

- NZTA Pre-Use;
- CCNZ Safety; and
- Taxi Pre-Use checks.

5.7 All of the apps seem to use NZTA's branding as a form of endorsement. All apps are similar in that they fall under the umbrella of health and safety and the importance of reporting incidents or conducting pre-use checks.

Deeper Analysis

5.8 Due to time restrictions, we were unable to perform deep analysis on all six applications. We focused on 'CCNZ Safety' for the following reasons:

- CCNZ is currently available on both Apple Store and Google Play (two biggest app store platforms) as well as publically available for download on third-party app stores;
- CCNZ is likely one of the applications [redacted] is profiting off;
- Refer to http:/[redacted].co.nz/terms.html - Billing and Payment;
- The CCNZ app has very similar functionality to the NZTA Zero Harm (reporting incidents); and
- The CCNZ app uses NZTA's 'Zero Harm' advertisement and in some places in the app has mentioned 'Provided by the NZ Transport Agency'.

5.9 We undertook the following steps.

- Image Metadata analysis

we analysed metadata on the images used in each app; and

We compared the NZTA branding images used in Zero Harm with the images used in CCNZ Safety app. The Metadata analysis is a very strong indication that the NZTA images/branding used in the CCNZ Safety App are identical to the NZTA images/branding used in NZTA Zero Harm (see Metadata page for more information).

- Code Analysis

we compared the code from NZTA Zero Harm with the code from CCNZ (see Code Comparison page for more information); and

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With a high level of certainty we can claim that the CCNZ Safety app has re-used code from the NZTA Zero Harm App. This is evident due to:

- Identical .html filenames used in both apps, such as'nztagoodpractice.html', 'nztasuggestion.html', 'nztaincidentreport.html', 'App_NearMiss.html'

5.10 There is a high percentage (greater than 70%) of identical code used in the CCNZ Safety app across 4 files. Two of these files are the integral parts of the apps functionality - providing the ability to report incidents and near misses.

5.11 The 'nztaincidentreport.html' file used in the CCNZ Safety app has 2,947 words of code, of which 74% is identical (exact one-to-one match) with the 'nztaincidentreport.html' file inside the NZTA Zero Harm App.

5.12 The 'App_NearMiss.html' file used in the CCNZ Safety app has 2,979 words of code, of which 71% is identical (exact one-to-one match) with the 'App_NearMiss.html' file inside the NZTA Zero Harm App.

5.13 The 'nztasuggestion.html' file used in the CCNZ Safety app has 2,429 words of code, of which 71% is identical (exact one-to-one match) with the 'nztasuggestion.html' file inside the NZTA Zero Harm App.

5.14 The **'nztagoodpractice.html'** file used in the CCNZ Safety app has 2,607 words of code, of which 76% is identical (exact one-to-one match) with the **'nztagoodpractice.html'** file inside the NZTA Zero Harm App.

Metadata Analysis and Code Analysis

5.15 We are able to supply the metadata analysis and code as required, as the images need to be in high resolution in order to follow them.

Main Findings

Apps With NZTA Branding

Car Pre Use

- **Description**: NZ Transport Agency brings you the Car pre-use checks app. This application is free for all NZ based taxi, private vehicle hire and fleet companies, and helps you undertake pre-use safety checks on company vehicles.
- **Publish Date**: 2016-06-14
- **Published by:** [redacted] - https://apkpure.com/developer/[redacted]
- **Accessible on:**
  - https://apkpure.com/car-pre-use/comcarpreuseapp.carpreuseapp
  - https://apkgk.com/comcarpreuseapp.carpreuseapp
- **Accessed on:** 22/07/2019
- Removed from Google Play store. Used to be published at: https://play.google.com/store/apps/details? id=comcarpreuseapp.carpreuseapp

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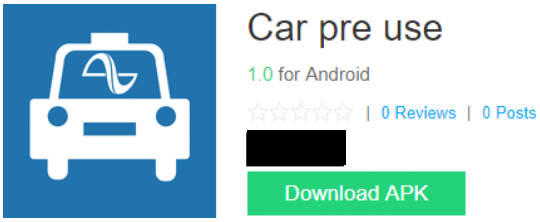
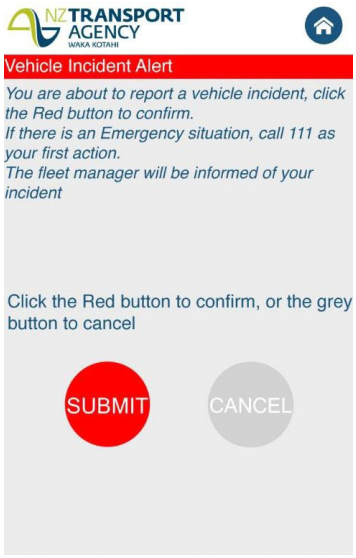
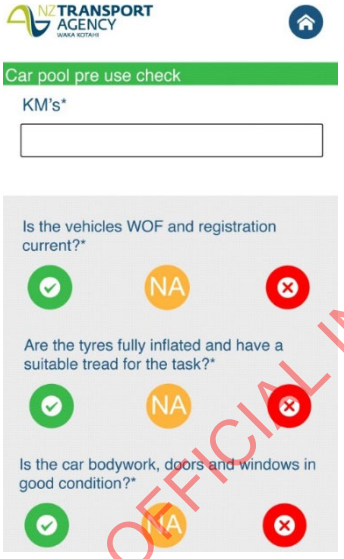
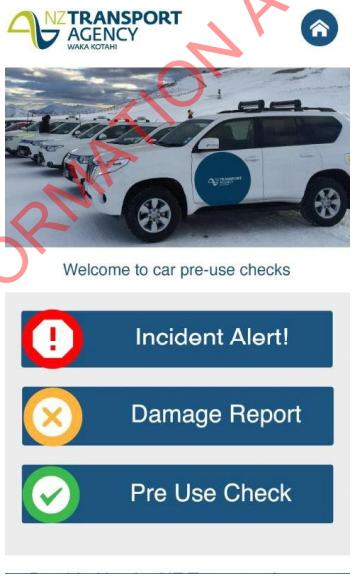
- **Images:**









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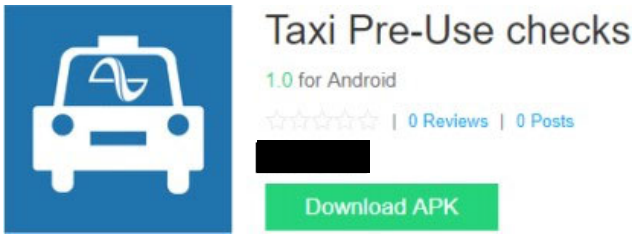
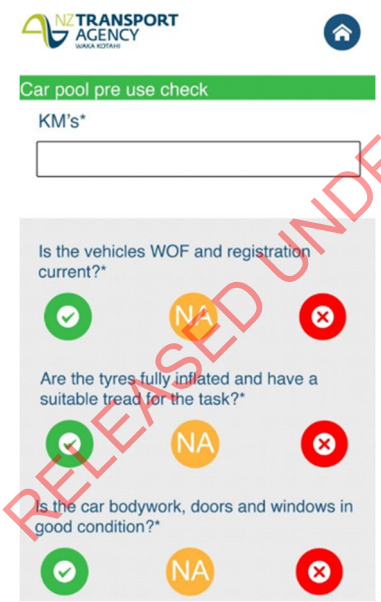
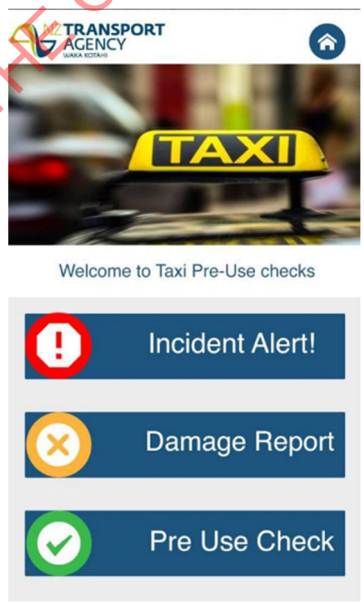
Taxi Pre-Use checks

- **Description:** This application is free for all NZ based taxi and private vehicle hire companies, and helps you undertake Pre-Use safety checks on company vehicles.
- **Publish Date:** 2015-09-21
- **Published by:** [redacted] - https://apkpure.com/developer/[redacted]
- **Accessible on**:
    - https://apkpure.com/taxi-pre-use-checks/com.taxipreuseapp.taxipreuseapp
    - https://apkgk.com/com.taxipreuseapp.taxipreuseapp
- **Accessed on:** 22/07/2019
- Removed from Google Play store: Used to be published at: https://play.google.com/store/apps/details?id=com.taxipreuseapp.taxipreuseapp
- **Note:** This app does not appear on the [redacted] publisher page
- **Images:**







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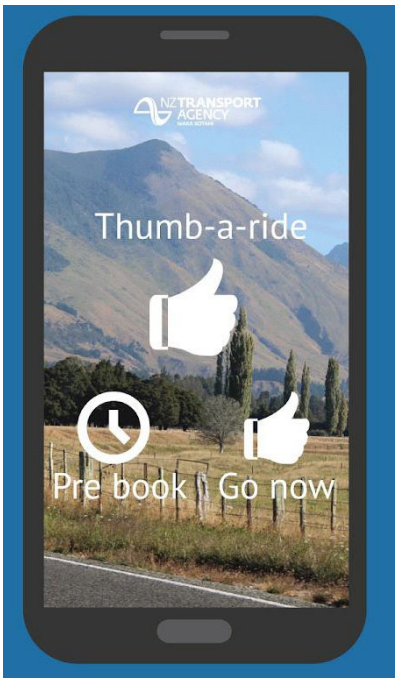
M2PP Verifi

- **Description:** The MacKays to Peka Peka landmark project 'M2PP Induction and Assessment Records app' is the competency tool for assessors, managers and safety team on site. Allowing you to check competencies from out in the field, to induct workers to site, and to assess a workers competency in real time, the M2PP Induction and Assessment Records streamlines administration, allowing you to focus on site competency and productivity.
- **Published by:** [redacted]
- **Publish date:** 26/11/2015
- **Accessible on:** https://androidappsapk.co/detail-m2pp-verifi/
- **Accessed on:** 22/07/2019
- **Images:**

NZTA Thumb a ride

- **Description:** This application allows NZ Transport Agency employees to work together to make ride sharing easy!
- **Publish date:** 06/10/2017
- **Published by:** [redacted]
- **Accessible on:**
  - https://apkpure.ai/nzta-thumb-a-ride or
  - https://apk.tools/details-nzta-thumb-a-ride-apk/
- **Accessed on:** 22/07/2019
- **Images:**



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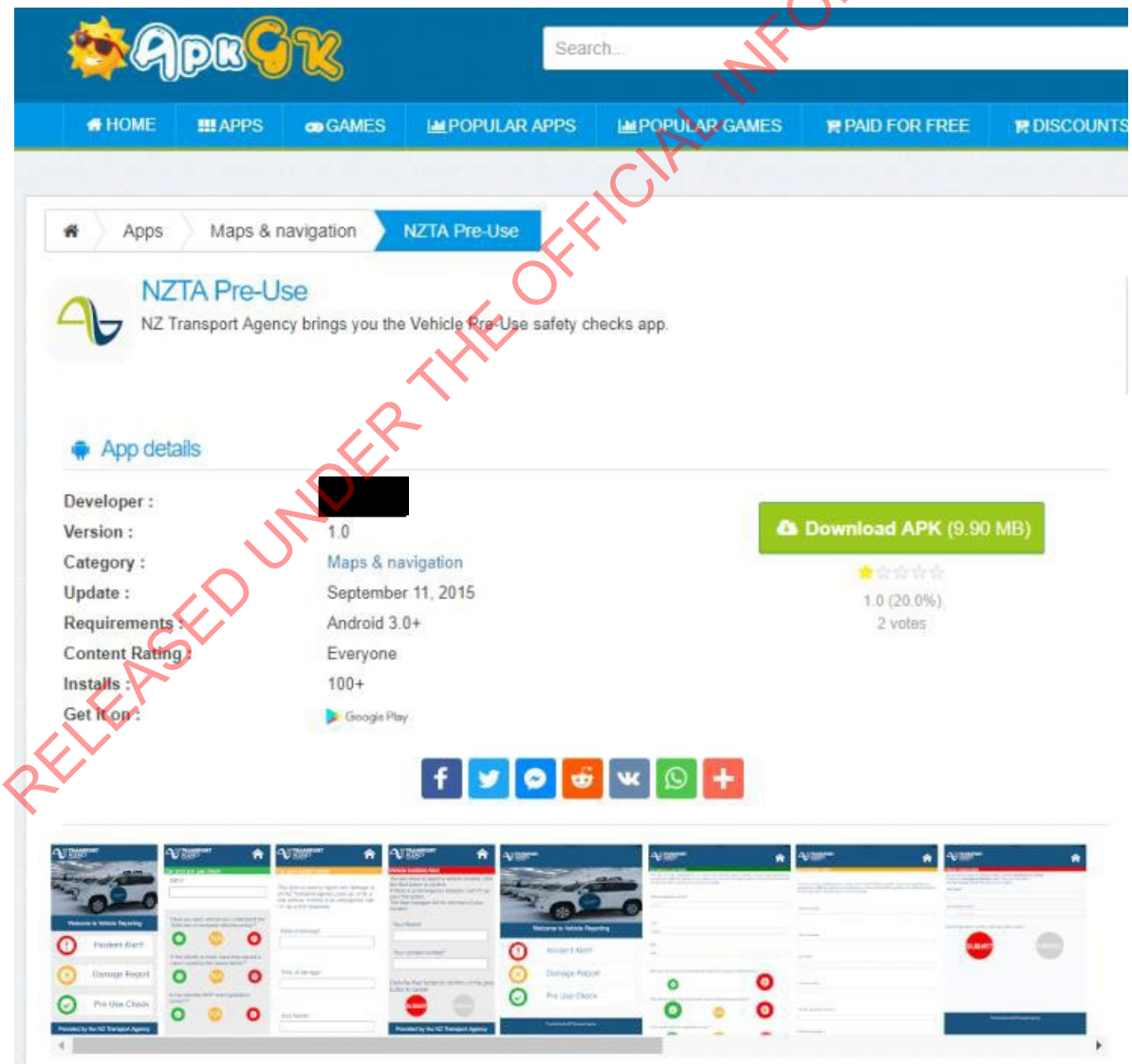
NZTA Pre-Use

- **Description:** NZ Transport Agency brings you the Vehicle Pre-Use checks app. Simple to use, Pre-Use checks makes your working day safer, easier, and helps you to fulfil safety requirements in line with the 'Safe Use of Company Vehicles Policy. This application is free for all NZ Transport Agency staff, and helps you undertake Pre-Use safety checks on company vehicles. Download the Pre-Use checks app and get started! Pre-Use checks is a Zero Harm initiative from the NZ Transport Agency
- **Publish Date:** 11/07/2015
- **Published by:** [redacted]
- **Accessible on:**
    - https://apkgk.com/com.nztavehicleapp.nztavehicleapp/download
    - https://apkcombo.com/nzta-pre-use/com.nztavehicleapp.nztavehicleapp/
    - https://androidappsapk.co/detail-nzta-pre-use/
- **Accessed on:** 22/07/2019
- **Images:**



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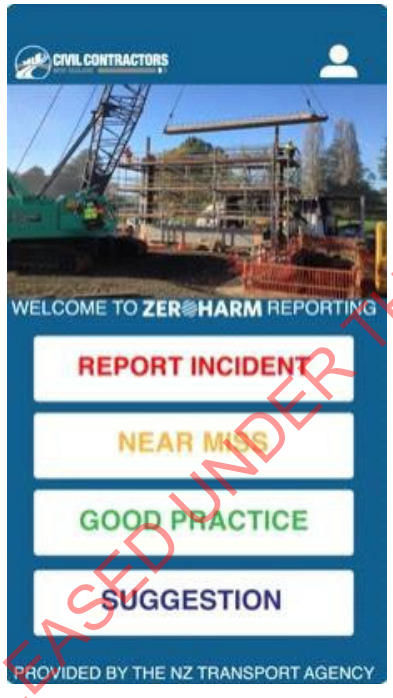
CCNZ Safety

- **Description:** Civil Contractors New Zealand with support of the NZ Transport Agency bring you the Safety Reporting app. The app is available for free to all small to medium sized businesses in New Zealand and is used to report to the Safety reporting dashboard, available through the website.
- **Publish Date:** 22/06/2016
- **Published By:** [redacted]
- **Accessible on:**
    - https://apkpure.ai/ccnz-safety
    - https://apkgk.com/com.ccnzhub.ccnzapp
    - https://play.google.com/store/apps/details?id=com.ccnzhub.ccnzapp
    - https://apps.apple.com/us/app/ccnz-safety/id1012804290
- **Accessed on:** 23/07/2019
- **Note:** This app was published on both Apple Store and Google Play
- **Images:**



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Appendix D – Document Review

5.16 We reviewed **1,925** documents during our investigation. These documents include emails provided by NZTA, documents provided by NZTA and documents provided by key industry stakeholders.

Emails provided by NZTA

5.17 NZTA provided .PST file extensions relating to three employees and additional files relating to tranche 2. These files were loaded into our document review platform Relativity.

Tranche 1 – NZ405.001

Step	Comment
1	Top level de-duplication of the 3 PST data files.
2	**29,256** documents were uploaded into relativity.
3	This set was reduced to **3,328** based on a set of search terms based on known people, entities and issues.
4	As this set was too large for one reviewer to go through, the following terms were set as priority: • "Apple Store", "AuditApp", "App", "car pre use", "CCNZ Safety", "CHASNZ", "Charit*", "Competency App", "construction Health and Safety New Zealand Trust", "Google store", "Hugo [redacted]", "IVerify Asbestos", "[redacted]", "[redacted]", "Learning Wave", "M2PP verify", "Prequalification", "[redacted]", "Taxi Pre use", "Vehicle pre use", and "Zero Harm" With the following email search terms applied: • Email From: "[redacted]", "[redacted]", "[redacted]", "[redacted]", "[redacted]", "[redacted]", and "[redacted]" • All Recipients: "[redacted]", "[redacted]", "[redacted]", "[redacted]", "[redacted]", "[redacted]", and "[redacted]" This produced a total of **253. 211** documents were reviewed before switching to Active Learning due to low levels of relevance.
5	**Active learning** was applied to help reduce this burden. However due to the return with using active learning (i.e. number of irrelevant documents) it was decided that reviewing documents based on smaller sets of targeted documents was more viable[112]. With Active Learning running, a total of **890** documents were reviewed (of the subset 3,328).
6	Based on documents sighted during the Active Learning review, it was decided that email communication between "[redacted]" and "[redacted]" would be an additional search term. This brought back **31** documents which were all reviewed.

Tranche 2 – NZ405.002

Step	Comment
1	The source of the tranche 2 documents set came from the client's office outlook 365 server, which brought **91,930** documents. • The following terms were applied: "[redacted]", [redacted]

[112] Active Learning is a machine learning function built into our review platform, Relativity.

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Step	Comment
	[redacted]
2	After the above search terms were applied, **62,674** documents were uploaded into Relativity.
3	The following searches were performed in the "Email from" and "All Recipients" fields: • Email From: [redacted] "civilcontractors", • All Recipients: [redacted] "civilcontractors", [redacted] This search brought down our document count to **631**. We reviewed all 631 documents

In total, we reviewed **1,763** NZTA emails and documents in Relativity.

Documents provided by NZTA

- **136** documents were provided by NZTA and reviewed[113].

Documents provided by key industry stakeholders

- **26** documents were provided by key industry stakeholders and reviewed[114].

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[113] 3A; 3E; 3I
[114] 3F; 3L

Appendix E - Limitations

Limitations

We note the following limitations in respect of this report:

a. This report was prepared for the specific purpose of assisting NZTA;

b. No party is to be provided with this report or a copy of it, or may rely on it or our work, without our express prior written approval. Deloitte accepts no liability whatsoever to any party who relies on our report and/or our work except to the extent set out in our engagement letter and Master Terms of Business;

c. We are not qualified to provide legal advice and are not responsible for any legal issues associated with or arising from this engagement. Legal advice should be sought on legal matters;

d. This report has been prepared based on work completed as at August 2019. We assume no responsibility for updating this report for events and circumstances occurring after that date;

e. We reserve the right, but are under no obligation, to alter the findings reached in this report should information that is relevant to our findings subsequently be identified;

f. For the purposes of preparing this report, reliance has been placed upon the material, representations, information and instructions provided to us. Original documentation has not been seen (unless otherwise stated) and no audit or examination of the validity of the documentation, representations, information and instructions provided has been undertaken, except where it is expressly stated to have been;

g. We note the limitations to the Standard Discovery process outlined in **Appendix A**. Further, given the nature of this investigation we note:

   i. There could be further relevant custodians;

   ii. The custodians could potentially have further documents that we have not collected;

   iii. Further processing of those documents could potentially identify further relevant documents;

   iv. The application of additional filtering could result in further relevant document being identified;

   v. The review of documents is not a precise science. For example, documents that seem irrelevant at the start of the review process could be highly relevant as the investigation proceeds;

h. Evidence obtained by Deloitte includes information provided at interviews which may not be factually correct or capable of corroboration. As a result, no warranty of completeness, accuracy, or reliability is given in relation to the statements and representations made by, and the information and documentation provided by NZTA. We accept no responsibility for the reliability of the information provided to us to the extent it is inaccurate, incomplete or misleading, or for matters not covered by our report or omitted due to the limited nature of our work;

i. Our work does not constitute an assurance engagement in accordance with New Zealand standards for assurance engagements, nor does it represent any form of audit under New Zealand standards on auditing (International Standards on Auditing (New Zealand)). Consequently, no assurance conclusion nor audit opinion is provided. We do not warrant that our enquiries will identify or reveal any matter which an assurance engagement or audit might disclose; and

j. Deloitte is not responsible for ensuring any party's compliance with the requirements of the Privacy Act 1993 or similar requirements in other jurisdictions.

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