

# Auckland Council Eke Panuku – Conflicts of Interest Controls Assessment

Report  
1 December 2022



**Phil Wilson | Director Governance and CCO Partnerships (Auckland Council)**  
**Emma Burke | GM Risk and Assurance (Auckland Council)**

1 December 2022

## **Eke Panuku – Conflicts of Interest Controls Assessment Report**

Dear Phil and Emma

In accordance with our Statement of Work dated 13 June 2022 and the Master Services Agreement between Auckland Council and PricewaterhouseCoopers dated Monday, 3 July 2017, we performed an assessment of Eke Panuku's Conflicts of Interest Controls. Our fieldwork was performed from June to September 2022. Our Report is included herein. The purpose of the Report is to enable you to understand the outcome of our assessment of Eke Panuku's Conflicts of Interest Controls and our recommendation, so you can determine the next course of actions on these matters.

Please refer to Disclaimer on the next page in respect to this work and the Report.

We would like to extend our appreciation to your teams for their support and cooperation throughout this engagement.

Yours sincerely,



Lara Hillier | PwC New Zealand | Partner



Stephen Drain | PwC New Zealand | Partner

# Disclaimer

- This document has been prepared solely for Auckland Council for the purposes stated herein. Unless required by law you shall not provide this report to any third party, publish it on a website or refer to us or the services without our prior written consent. In no event, regardless of whether consent has been provided, shall we assume any responsibility to any third party to whom our report is disclosed or otherwise made available. No copy, extract or quote from our report may be made available to any other person without our prior written consent to the form and content of the disclosure contained within the report.
- We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect to the company. Accordingly, we express no opinion on the reliability, accuracy or completeness of the information provided to us, and upon which we have relied.
- This assignment does not constitute a review, audit, or assurance engagement as defined in the standards issued by the External Reporting Board. Accordingly, this engagement is not an assurance engagement, nor is it intended to, and will not result in, the expression of an assurance, audit or review opinion, or the fulfilling of any statutory audit or other assurance requirement.
- To the fullest extent permitted by law, PwC accepts no duty of care to any third party in connection with the provision of this document and/or any related information or explanation (together, the “Information”).
- Accordingly, regardless of the form of action, whether in contract, tort (including without limitation, negligence) or otherwise, and to the extent permitted by applicable law, PwC accepts no liability of any kind to any third party and disclaims all responsibility for the consequences of any third party acting or refraining to act in reliance on the Information.
- This document has been prepared with care and diligence and the statements and opinions within it are given in good faith and in the belief on reasonable grounds that such statements and opinions are not false or misleading. No responsibility arising in any way for errors or omissions (including responsibility to any person for negligence) is assumed by us or any of our partners or employees for the preparation of the document to the extent that such errors or omissions result from our reasonable reliance on information provided by others or assumptions disclosed in the document or assumptions reasonably taken as implicit.
- We reserve the right, but are under no obligation, to revise or amend the document if any additional information (particularly as regards the assumptions we have relied upon) which exists at the date of this document, but was not drawn to our attention during its preparation, subsequently comes to light.
- This document is issued pursuant to the terms and conditions set out in our Statement of Work with Auckland Council dated 13 June 2022.



## Objective and Scope

On 19 May 2022, Auckland Council received a letter from Ngāti Whātua Ōrākei, detailing concerns it had relating to potential Board Conflicts of Interest (COI) at Eke Panuku and the potential impact of those conflicts on the fairness of its process for sourcing and evaluating development proposals. This was followed by subsequent correspondence with Ngāti Whātua Ōrākei on this subject. Ngāti Whātua Ōrākei explained they were not questioning the integrity of the Eke Panuku Board members.

In light of the above context, the **objective** of this engagement was to answer the following questions, with a specific focus on Board COI:

- Is there any evidence around the actual allegations of direct COI and/or individual benefit?
- Are Eke Panuku's COI policies and practices aligned with good practice, fit for purpose to protect the public interest, and do they provide the necessary safeguards to the Board members and staff?
- Have these policies and practices been well embedded with the Board, Executive and staff?

In answering the objective questions above our **scope** was to:

**Part 1:** Consider and provide feedback on Eke Panuku's conflicts of interest policy against good practice (including OAG guidelines, Australian Standard (AS) 8001-2021 Fraud and Corruption Control) and how this policy has been operationalised.

**Part 2:** Assess the **design** of key controls to ensure COI are identified, managed and reported across the Board of Directors, Executive and staff, leveraging our understanding from the assessment we performed in 2019-20.

**Part 3:** Assess the operating effectiveness of these controls by performing fact-finding procedures over the targeted sample relating to those perceived conflicts that form a part of the concerns raised in the letter dated 19 May 2022 (agreed sample size of four out of the 10 or so instances of conflicts named in the complaint). This included:

- i) review of relevant records in relation to the perceived COI such as – project related documentation, information from the Companies' Office Register, board minutes, etc.
- ii) discussions with relevant individuals.



## Background

Actual or potential COI may arise from personal relationships, familiarity with and/or formal roles and responsibilities with industry participants and vendors, and also gifts and hospitality received. These interests can be perceived as or actually result in a COI where the interested Board or staff member can either influence or approve decisions on procurement or disposal activity, or obtain information that may give an unfair advantage if exploited.

Eke Panuku has two core functions:

- i) Urban regeneration programmes across Tāmaki Makaurau (Auckland)
- ii) Managing approximately \$2.4 billion of Auckland Council's property portfolio.

Eke Panuku also has a role in supporting mana whenua as the kaitiaki [guardians] of Tāmaki Makaurau.

To ensure that Eke Panuku has the right experience and knowledge of the Industry to meet its commercial and social objectives, the Council has determined since the outset of this CCO in 2015 that for the effective governance and operation of Eke Panuku, the Board should include members with direct and current experience in New Zealand's, and particularly Auckland's, construction, property development and infrastructure sector/s. This decision means that Eke Panuku Board members have other roles and responsibilities, and relationships, whether personal or professional, within the industry that have the inherent potential for COI. In order to ensure commercial outcomes are met, a balance is required to be maintained between realising the benefits of the Board and staff's experience and the management of COI that may arise from their relationships.

For Eke Panuku, procurement and disposal of property are some of the key events in which a COI can arise. These are effected via two means:

- Tender process - where market participants are provided with a Request for Expression of Interest or Proposal, and invited to submit their proposals and offers;
- Direct negotiations - typically via direct approach to Eke Panuku from a known party wishing to buy a specific property. This may be facilitated through Eke Panuku's early information sharing.

Eke Panuku's Board of Directors is involved at multiple points through the different stages of the development lifecycle, and specifically, significant procurement and disposal of property are subject to final approval from the Board. Procurement and property disposal may span a few years and at each stage there may be multiple interactions with the Board.



## Key messages

Eke Panuku has implemented Auckland Council's policies on COI, gifts and hospitality which are available to staff on the Eke Panuku intranet, and we found no clear evidence of unmitigated conflicts, lack of integrity or direct personal benefit arising from a breach of those policies. For Board members, the expectation in relation to COI is set out in its Board Charter.

Eke Panuku's approach to managing COI is to exclude conflicted persons from being involved in activities where a potential conflict has been declared.

- For Board Members, management assess the Board agenda and papers in light of declared conflicts, and for the Board Member/s who has declared a conflict, redact information from the agenda and papers which relate to the activity for which the Board Member has declared a potential conflict
- Board Members are required to recuse themselves from the discussion of agenda items where they are conflicted.

Appreciating the sensitivity of its procurement and disposal activities, Eke Panuku publishes key information, and the outcomes intended from procurement or disposal of property, in the public domain either in the Board minutes or in the Request for Development Proposal (RFDP) documents.

Eke Panuku considers these mitigations are sufficient to prevent actual COI. However, in our assessment, in practice, this approach may not always be adequate and more detailed COI management plans are required. The procurement and disposal of property activities are complex and span multiple years meaning:

- Board members could influence the high-level plans or broader strategy that may impact the disposal process even before they had a potential conflict which met a threshold for disclosure.

- Even without direct influence in an area, board members have broader visibility of the organisation's strategic intent that may give them an information advantage that might cause a potential COI.
- Certain sensitive information may be redacted when board minutes are published, which conflicted Board members may have already received.

Even with the proper operation of the controls in place, and the recommended control improvements noted in this report, the perception of, and potential for COI may persist given the Board composition. In saying this, we recognise the role Council has in determining the make-up of the board in alignment with the OAG guidance which advises that it may be acceptable to appoint directors with interests in related fields (for their specialist knowledge) provided there are robust processes for managing interests and mitigating conflicts, and those processes are followed. The State Services Commission's guidance on Board Appointments cautions that some interests may be "unmanageable" and may affect the board's activities so that management mechanisms would not be practicable and it would be unlikely for a director appointment to proceed.

You have told us that the Council considered these matters in the past. The Council should re-assess the risks posed by COI to the integrity of Eke Panuku's operations and maintaining its public trust, against its Director appointment policy settings, to determine whether its Board appointment policy is fit for purpose

For example, the Council could consider:

- appointing a minimum number of independent Board Members,
- appointing an independent Board Chair,
- limits on the extent of the business relationships Board Members may have with the organisation, or
- a combination of these measures.

Ultimately, a joint approach between Council and Eke Panuku, where these matters are canvassed, and decisions made balancing the commercial considerations against the COI realities should result in the best outcome.

Our findings are set out for the three key questions below.

### Question 1: Is there any evidence around the actual allegations of direct COI and/or individual benefit?

We note that Ngāti Whātua Ōrākei made it clear to us that they were not questioning the integrity of the Eke Panuku board members. From our procedures, we found no clear evidence of unmitigated conflicts, lack of integrity or direct personal benefit arising from COI.

While Eke Panuku has obligations for all staff and board directors to disclose COI and staff are required to follow the requirements of the Auckland Council policy 'Our Charter', our procedures have revealed control improvement opportunities that would enable the Board Members to better demonstrate that COI have been managed appropriately. Additionally, we were not always able to evidence the steps management asserted had been undertaken to mitigate the identified COI due to the lack of management plans.

### Question 2: Are Eke Panuku's COI policies and practices aligned with good practice, fit for purpose to protect the public interest, and do they provide the necessary safeguards to the Board members and staff?

The controls to identify and manage COI can be made more robust to safeguard the interests of Eke Panuku and protect the Board and staff.

#### Management of declared COI:

While from the point a Board COI is identified, adequate steps may be taken, we were unable to evidence Management's consideration of information received by Board members prior to them being conflicted and the steps taken to ensure the potential or perceived COI did not result in an actual COI.

Management informed us there has been no actual COI identified for staff. However, the missing controls to identify COI listed below may mean that certain staff COI may not be identified.

#### Identification of COI:

We note the processes to identify COI are missing key elements to enable a more robust proactive detection of COI – (this applies to staff and Board COI):

- COI declarations are not obtained from everyone involved and at every stage in the procurement and disposal of property processes, including in one instance where an inaccurate COI declaration was made, although because of earlier declarations and actions, we do not consider that this resulted in an unmitigated conflict.

- The COI declarations do not require declaration of gifts and hospitality, The declaration of gifts and hospitality for Eke Panuku staff is managed under a separate process which is not considered during procurement or disposal of property.
- There is no cross-check against the central COI, Board Interest Register, gifts and hospitality registers to ensure that previously declared conflicts are considered and managed.
- There is no requirement for directors to obtain pre-approval and/or pre-clearance from Eke Panuku, prior to taking director appointments outside of Eke Panuku.

Some of these observations were raised as a part of our report in 2020.

The absence of robust mechanisms to identify and manage perceived and actual COI could erode public trust in Eke Panuku.

Eke Panuku and Auckland Council should consider the board appointment settings with respect to ensuring that there is an appropriate balance between the necessary commercial expertise whilst ensuring public trust. These settings could include one or more measures such as a minimum number of independent Board Members, an independent Board Chair, limits on the extent of the business relationships Board Members may have with Eke Panuku. Such measures will more fully protect the Board from COI in its dealings and the perception of COI breaches.

We do not consider that all of Eke Panuku's COI risks can be mitigated by management controls. While there is relevant transaction information made publicly available through the Board Minutes and RFP documentation:

- Board members could influence the high-level plans or broader strategy that may impact the disposal process even before they had a potential conflict which met a threshold for disclosure.
- Even without direct influence in an area, Board Members have broader visibility of the organisation's strategic intent that may give them an information advantage that might cause a potential COI.
- Certain sensitive information may be redacted when board minutes are published, which conflicted Board members may have received.
- The process for redacting information from the Board agenda when a Board member is conflicted is manual and subject to human error.

This perception of COI is a risk to the public trust that is important to public entities.

**Question 3: Have these policies and practices been well embedded with the Board, Executive and staff?**

Training and guidance can be improved to support effective management of COI.

The existing policies do not provide guidance on:

- risk assessing declared COI and how an identified conflict should be managed
- reporting requirements to the Executive and Board
- crisis management plans for incidents arising from conflicts.

Training and awareness should be improved:

- For Directors – Training and awareness should be provided on Eke Panuku's COI policies which provide a broader definition of a COI than the Board Charter which points to a narrower Companies Act definition.
- For management and staff - Refresher training on COI, gifts and hospitality policies for staff has not occurred over the past 2 years, at least partly due to the COVID lockdowns.

As in all areas of business risk, a lack of training and guidance on how to manage and report on COI may hamper Eke Panuku's ability to effectively identify and manage conflicts of interest.

