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Annex A

TERMS OF REFERENCE

Investigation into Public Service recruitment and employment of Madeleine Setchell

Terms of Reference

Madeleine Setchell left the employment of the Ministry for the Environment in June 2007. Subsequently, concerns have been raised publicly about Ms Setchell's treatment, and the reputation of New Zealand's politically neutral Public Service.

Pursuant to provisions of the State Sector Act 1988 the State Services Commissioner has decided to investigate the issues raised, particularly relating to the management of actual or perceived conflicts of interest and the duty to maintain political neutrality. He will determine the lessons that can be learned and shared to improve the understanding and management of such cases.

The State Services Commissioner will:

- Investigate the relevant facts of the Public Service's recent handling of their recruitment and employment processes relating to Madeleine Setchell.
- Report on the lessons for the Public Service arising from the above investigation.

The Commissioner will be assisted in this investigation by David Shanks, Chief Legal Advisor.

ANNEX B

PEOPLE INTERVIEWED

Position	Organisation
Ms Madeleine Setchell	Former Communications Manager, Ministry for the Environment
Former Minister for the Environment	
Minister of Agriculture	
Minister of State Services	
State Services Commissioner	State Services Commission
Deputy State Services Commissioner	State Services Commission
Deputy Commissioner	State Services Commission, now at Ministry of Social Development
Deputy Commissioner	State Services Commission
Chief Legal Adviser	State Services Commission
Communications Manager	State Services Commission
State Services Commission Performance Specialist	State Services Commission
Executive Assistant	State Services Commission
Chief Executive & Secretary for the Environment	Ministry for the Environment
Deputy Chief Executive	Ministry for the Environment
General Manager (Policy)	Ministry for the Environment
Former General Manager (Reporting and Review)	Formerly employed by Ministry for the Environment
General Manager – Corporate and Community Group	Ministry for the Environment
Contractor	Former Acting Communications Manager, Ministry for the Environment
Manager, Human Resources	Ministry for the Environment
Manager – Information Management, Corporate and Community Group	Ministry for the Environment
Senior Operator, Human Resources Team	Ministry for the Environment
Communications Team member	Formerly employed by Ministry for the Environment
Chief Executive & Director-General	Ministry of Agriculture & Forestry
Acting Director of Communications	Ministry of Agriculture & Forestry
Communications Manager	Ministry of Education
Ministerial Adviser	Formerly employed in Office of the Minister for the Environment
Chief of Staff	Office of Leader of the Opposition
Referee	Formerly employed by Dairy InSight
Barrister	External lawyer advising Ministry for the Environment on employment matters

ANNEX C

TABLE OF DEPARTMENTS WHOSE INTERVIEW PROCEDURES AND CODES OF CONDUCT SCANNED

MINISTRY	DOCUMENT	CONTENT
Agriculture and Forestry	Code of Conduct	Section on Private Activities – Conflict of Interest or Integrity. States employees responsibility to inform manager of any (or potential) conflict
	Draft Guideline for Dealing with Conflicts of interest Policy	Include Conflict of Interest Declaration Form
	Cover letter	Conflicts dealt with through Ministry's Code of Conduct, acceptance of terms of employment include terms of Code of Conduct
Economic Development	Recruitment	In train – specific section in application form asking about whether applicant has any real or perceived conflicts of interest
	Code of Conduct	Section on Integrity and Avoidance of Conflicts of Interest
Education	Identifying and Managing Conflicts of Interest Policy	Includes form for register of conflicts
Environment	Guide to Recruitment and Selection Process, Interview pack and supporting documents including guidelines on interviewing process	
	Offer of Employment	Refers to Code on Conduct and Ministry document “Our Responsibilities” as a condition of employment. “Our Responsibilities” document in section on Objectivity and Integrity states: “...ensuring we do not put ourselves at risk of real or perceived conflicts of interest”
Health	Conflicts of Interest Policy and Declaration form	
	Notification of Acceptance Form	Check box for “read, understood and agree to comply with” Ministry’s Code of Conduct
	Personal Relationships Declaration of Conflict of Interest	Policy designed to ensure effect of personal relationships on the workplace minimised. In particular, personal relationships should not be allowed to place doubt on the fairness and impartiality of individuals or processes – Where conflict of interest has been identified a Declaration of Conflict of Interest form must be completed.
Inland Revenue	Code of Conduct and Code of Conduct Acknowledgement Form	Acknowledging have read and attended a briefing on the Code of Conduct.
	Collective Agreement 025	Paragraph on Conflict of Interest (para 11.2)
	Collective agreement PSA	Paragraph on Conflict of Interest (para 11.2)
	Example of Tier 2 contract	Two paragraphs on disclosure and use of information and engagement in activities which impinge or are likely too impinge on proper performance of responsibilities
	Human Resources intranet HR Manual	Conflict of interest policy
	Individual employment agreement	Includes paragraph on Conflict of interest (para 11.2)

MINISTRY	DOCUMENT	CONTENT
Justice	Standard terms employment agreement	Paragraph on Conflict of interest
	Cover email	Does not have stand alone process around conflicts of interest – Code of Conduct discusses conflicts. When conflict identified - usually relies on staff member recognising actual or potential conflict and raising with manager, or relies on manager asking, during recruitment process whether any or potential conflicts might exist if individual was recruited – manager then considers whether manageable; if manageable how it needs to be managed and puts controls in place.
Labour	Code of Conduct and Acknowledgement form	
	Draft and current Recruitment Policy Draft Employment of Near Relatives Policy and Near Relatives Declaration	Refers to Code of Conduct Employee required to declare any near relative relationships with another employee working in the same group, person is a near relative is they are, related by blood, marriage, civil union, adoption or affinity, or wholly or mainly dependent on the employee or a member of the employee's household
Social Development	Code of Conduct	Sections on Conflict and Compromise and Breaches of the Code of Conduct
	Offer of Employment documents	Offer pack includes Conflicts of Interest, Values and Politics Policy
	Recruitment and Offer and Appointment checklists	Check box for completion that appointee provided with MSD Code of Conduct and Conflict of Interest, Values and Politics papers Code of Conduct Acknowledgement form to be completed
	Shortlisted Applicants – form for completion prior to interview	Section on conflicts of interest asks “are you aware of any current or potential conflicts of interest? If yes, provide brief details.
	State Sector Standards Board report 2001	Paragraphs around Integrity states “avoid and manage conflicts of interest”

ANNEX D

LIST OF PEOPLE INVITED TO COMMENT

1. Victoria University of Wellington School of Government
 - 1.1 Jonathan Boston
 - 1.2 Chris Eichelbaum
2. New Zealand Institute of Public Administration (to come)
3. New Zealand Public Service Association (to come)

ANNEX E

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ANNEX F

**CHRONOLOGY OF EVENTS PREPARED BY THE STATE SERVICES
COMMISSION**

Timeline – Madeleine Setchell relevant events

Timeline prepared by State Services Commission focussing on those issues with which the Commission was involved. Matters that the Commission were not involved directly in are included where necessary to provide context and continuity.

- 2 July
- Approach from National Party Chief of Staff to the Deputy State Services Commissioner – meeting where the National Party Chief of Staff noted concerns about treatment of Ms Setchell and previous advertising by the Ministry for the Environment (“MfE”).
 - The Deputy State Services Commissioner phones the Chief Executive of the Ministry for the Environment (“the CE, MfE”) to check his understanding of the issues. The Deputy State Services Commissioner also conveyed the issues the National Party Chief of Staff had raised with him in relation to the employment of Ms Setchell. The CE, MfE confirmed that the Ministerial Advisor, Office of the Minister for Environment had raised with him issues of a potential conflict. The CE, MfE advised he had made an independent decision about the employment of Ms Setchell. The Deputy State Services Commissioner understood from the discussion that Ms Setchell left the employment of MfE on amicable terms and that there had been a small payment made to her in lieu of notice.
 - The Deputy State Services Commissioner phoned the Chief Executive of the Ministry of Agriculture and Forestry (“the CE, MAF”) to check their understanding of the issues. The CE, MAF confirmed he had sought his Minister’s views on possible employment of Ms Setchell, but the CE, MAF was comfortable he had made an independent decision about her possible employment.
 - The Deputy State Services Commissioner checked with the Deputy Commissioner, Development about the issues that had been brought to his attention. She suggested the Deputy State Services Commissioner talk to the State Services Commissioner (“the Commissioner”) about them.
- 3 July
- Verbal briefing to the Minister of State Services. The Deputy State Services Commissioner outlined his understanding of the matters.
 - The Deputy State Services Commissioner phoned the Commissioner in the UK regarding the issue that the National Party Chief of Staff had brought to his attention. The Deputy State Services Commissioner took the Commissioner through his understanding gained from his discussions with the CE, MfE and the CE, MAF, and noted his briefing to the Minister of State Services. The Commissioner recounted to the Deputy State Services Commissioner the assurances he had received from the CE, MfE on 29 June. The Deputy State Services Commissioner informed the Commissioner about the MAF issue with Ms Setchell, noting that it appeared to him that the CE, MAF may have made decisions on the basis of his discussion with the Minister – this

was concerning for the Commissioner, more so than the MfE issue (given his understanding of it).

4 July

- Enquiry to SSC Communications Manager from the Dom Post regarding SSC involvement in 'termination' of employment of Ms Setchell. SSC Communications Manager speaks to the Commissioner's Executive Assistant, the Deputy Commissioner, Development and the Deputy State Services Commissioner. Response that the Commissioner had been called upon to help the CE, MfE "exercise his best judgement in the interests of the department".
- On or about this date the Deputy Commissioner, Development phoned the CE, MfE, querying the media reference to "termination" – the CE, MfE confirmed that Ms Setchell's employment had not been "terminated", rather an agreed settlement had been entered into. The Deputy Commissioner, Development suggests that the CE, MfE not use "termination" phrase, and advised that the CE, MfE should front media requests himself.

6 July

- Dom Post runs first Ms Setchell story, including reference to SSC Communications Manager's statement of 4 July which had confirmed that advice had been offered to MfE on the matter. The article stated "Mr Prebble is normally called in only to mediate employment disputes of a serious nature", implying a more active role than the SSC had actually taken. The report also stated that the Minister for the Environment refused to confirm whether he was involved in the decision, or if he regarded Ms Setchell's relationship as a problem.
- On or about this date the Deputy State Services Commissioner phones the CE, MAF about the media coverage and asks for SSC to be advised if MAF receive queries regarding Ms Setchell.
- Media OIA faxed requesting response by 11 July. Required urgent reply. Forwarded to the Chief Legal Advisor on 9 July. The SSC Performance Specialist and the Chief Legal Advisor consider response and prepare draft reply. Decide that consultation with MfE and the CE, MfE required – the CE, MfE not in Wellington.
- The Deputy State Services Commissioner rang the National Party Chief of Staff advising him that in his view the advertisement run by MfE was inappropriate, that the CE, MfE agreed and the advertisement would not be running again in that form. The Deputy State Services Commissioner also informed the National Party Chief of Staff that he had spoken to the CE, MfE and the CE, MAF, and has been assured that they have made independent judgements – but the Deputy State Services Commissioner noted that he had concerns about some of the judgements and processes in each case.

13 July

- Deputy Commissioner, Development final day at SSC before going on secondment to MSD.

- 16 July
- Listener (21-27 July issue) received by SSC containing editorial referring to Ms Setchell issue, noting that the Commissioner knew from personal experience that perceptions of conflict of interest can be managed “[y]et, far from upholding Setchell’s right to do her job, and from protecting the apolitical nature of New Zealand’s public service, Prebble appears to have been complicit in Setchell’s departure.”
- 18 July
- Dom Post editorial published referring to the issue, plus extensive other media coverage of issue. The Dom Post editorial noted the Commissioner with his personal experience “should have known that professionalism can exist alongside personal relationships” and that he “should also have been mindful of his responsibilities to ensure that the public service remains politically neutral and professional. Further noted that the Minister, Environment “has refused to confirm whether he was involved in the decision”. The Dom Post and Listener editorials are referred to the Commissioner in the UK (he did not see other media coverage).
 - The Commissioner speaks to the SSC Communications Manager, discussing the editorials published, and advised he thought that SSC should be more proactive because of the misleading coverage. Discussion that it was of concern that MfE was not making any public comment on the matter.
 - The SSC Communications Manager telephoned the Commissioner late in the evening, advising that he should provide his response to this coverage – the Commissioner decided this was appropriate in light of his concerns that the Dominion Post and the Listener editorials he had seen had misconstrued the role of the State Services Commissioner generally, and in the particulars of this case he was concerned that the reporting was too misleading to leave without a response. The SSC Communications Manager takes notes from the Commissioner about the proposed item, emails an “Op Ed” draft to the Commissioner and receives editing comments back with instruction to check facts.
 - The Deputy State Services Commissioner departs for Australia.
- 19 July
- Draft “Op Ed” taken to the CE, MfE by the Commissioner’s Executive Assistant. The CE, MfE suggests changes, some of which are accepted. The draft included the phrase “the Minister was not involved”. The Commissioner had made this comment because at the time of preparing the “Op Ed” draft he did not recollect the Minister, Environment’s involvement.
 - Meeting Chief Legal Advisor, SSC Performance Specialist, Commissioner’s Executive Assistant, SSC Communications Manager and Deputy Commissioner, Performance to discuss “Op Ed”, finalisation required 12pm (approx).

- The Chief Legal Advisor understood from previous discussion with the SSC Performance Specialist there had been some contact between the CE, MfE and the Minister, Environment on the matter, so involved the SSC Performance Specialist in discussion on Op Ed.
- Discussion of comment 'The Minister was not involved', revised to read "The Minister was not involved in the decision", as the SSC Performance Specialist was able to confirm her understanding that there had been some contact between the CE, MfE and the Minister, Environment on the matter.
- The Deputy Commissioner, Performance provides final copy of "Op Ed" to the CE, MfE, who suggests further changes but these are too late to be considered.
- Final copy of "Op Ed" sent to the Minister of State Services' office. The Minister of State Services office contacts the SSC Communications Manager to request that a report be provided to the Minister of State Services on the matter.
- The Deputy Commissioner, Performance and the Commissioner's Executive Assistant met with the Minister of State Services regarding issues that had arisen in connection with MfE advertisements for pending vacancies that were considered to be overly "political" (the same issue raised by the National Party Chief of Staff with the Deputy State Services Commissioner on 2 July). The Minister of State Services was anticipating an interview for television news focussing on this issue. The discussions around this issue did not include discussion of the issues relating to Ms Setchell.
- The SSC Communications Manager contacts Ms Setchell about intention to publish "Op Ed" and reads out sections of the draft Op Ed directly mentioning her; the SSC Communications Manager remained in regular contact with Ms Setchell on the issue from this date onwards.
- Media Reports in the evening – the Minister of State Services advises "will have SSC report in 12 hrs"
- The Commissioner's Executive Assistant prepares first draft of report to the Minister of State Services.

20 July

- "Op Ed" published in Dom Post.
- The Deputy State Services Commissioner returns to work after Australia visit.
- The Deputy Commissioner, Performance starts redraft of the Minister of State Services report early in the morning, but receives news of a relative's death and she goes on bereavement leave at about 8.30am, without being able to finish the redraft.
- Report provided to the Minister of State Services (dated 19 July in error) summarising points made in "Op Ed" in am.
- The Deputy State Services Commissioner and the Commissioner's Executive Assistant meets with the Minister of State Services, and

agree that the Minister of State Services would be provided with additional content clarifying SSC's understanding that the CE, MfE had made an independent employment decision on the matter.

- The Deputy State Services Commissioner telephones the CE, MfE (who was in Palmerston North all day, chairing a meeting of non-government organisations). The Deputy State Services Commissioner notes that there was an important additional fact in the proposed additional report to the Minister of State Services, being confirmation that the CE, MfE had personally briefed the Minister, Environment on the matter. The CE, MfE confirmed to the Deputy State Services Commissioner that Ms Setchell had received a payment in lieu of notice and commented that the SSC Performance Specialist had been close to discussions around this.
- The Deputy State Services Commissioner checked with the SSC Performance Specialist about her understanding of the settlement – she confirmed she was not aware of the details of this.
- The Deputy State Services Commissioner then spoke to the Group Manager, Corporate and Community who provided additional detail on the content of the settlement with Ms Setchell.
- The Deputy State Services Commissioner, Chief Legal Advisor, the Commissioner's Executive Assistant and the SSC Performance Specialist work under time pressure to provide additional report that pm – the Chief Legal Advisor advised important to contact Ms Setchell and the CE, MfE about revised report
- The Chief Legal Advisor and the Deputy State Services Commissioner speak to the CE, MfE by cell phone again about the content of the report. The CE, MfE confirms the content of the report to the Chief Legal Advisor, and suggested some small revisions to the text. The Deputy State Services Commissioner spoke to the CE, MfE about his understanding of the settlement with Ms Setchell, based on his discussion with the Group Manager, Corporate and Community. The CE, MfE said that the further information about the settlement provided by the Group Manager, Corporate and Community did not match his recollection, and that he would check on that.
- Draft report provided to the Minister of State Services office early afternoon so that the Prime Minister's staff could be briefed (so that they could brief the Prime Minister).
- The Deputy State Services Commissioner calls the Commissioner in the evening. Relates events of the day, including further information gained regarding settlement between MfE and Ms Setchell. The Commissioner asks the Deputy State Services Commissioner to make contact with Ms Setchell to check on her welfare. The Commissioner also asks the Deputy State Services Commissioner to contact the CE, MAF to make clear to him that the Commissioner did not approve of what the CE, MAF had done in connection with Ms Setchell (given his understanding of the facts at that time).

23 July

- Meeting Chief Legal Advisor and the SSC Performance Specialist with the CE, MfE and other MfE staff. Focus on SSC OIA response, at this stage it was proposed to withhold extensive detail of meeting between the CE, MfE and the Commissioner. The CE, MfE agreed with that approach.
- Brief discussion about contact with the Minister, Environment by the CE, MfE. The CE, MfE confirmed that he had informed the Minister, Environment that he had a potential conflict of interest issue with the employment of Ms Setchell, that he was dealing with the issue and was speaking with the Commissioner about it. He also advised that he was aware the Minister, Environment was displeased from 'body language'. The CE, MfE indicated he thought this may have been because the CE, MfE hadn't been across the matter, rather than the fact of the appointment. The Chief Legal Advisor emphasised it was important for the CE, MfE to carefully consider his recollections of his contact with the Minister, Environment – he also noted there may be some grounds for withholding some of this information eg to protect privacy.
- Draft OIA provided to the Minister of State Services.
- The CE, MAF rings the Deputy State Services Commissioner to advise he had worked through communications roles available in MAF and that some might be suitable for Ms Setchell, he wished to have the Deputy State Services Commissioner's advice on this. The Deputy State Services Commissioner said the CE, MAF's staff should contact Ms Setchell directly. The Deputy State Services Commissioner confirmed that he was arranging to meet with Ms Setchell and he would advise her that MAF would likely be in touch with her. The Deputy State Services Commissioner said he had discussed further with the Commissioner the interactions the CE, MAF had had with his Minister, and said that the CE, MAF needed to be clear that the Commissioner and the Deputy State Services Commissioner were concerned about that issue. The CE, MAF responded that he thought he had behaved appropriately in the matter.
- The Deputy State Services Commissioner makes contact with Ms Setchell to arrange a meeting.
- Extensive media coverage on matter.

24 July

- Meetings between the Deputy State Services Commissioner, SSC Communications Manager and Ms Setchell take place. From this meeting it becomes clearer to SSC as to what had happened in the course of the discussions which had resulted in Ms Setchell ceasing to be employed by MfE.
- Urgent debate in the House on the SSC 20 July report. The Minister of State Services office seeks additional information for use in House if needed. Briefing note provided – 'not an inquiry or detailed investigation' – 'Mr Logan clear Minister and Minister's office stressed staff issues responsibility of the CE'

- The Deputy State Services Commissioner calls the CE, MfE. The Deputy State Services Commissioner notes that it had been suggested in the House during the day that public servants in SSC and MfE were improperly seeking to protect Ministers. The Deputy State Services Commissioner said that he thought it was important that the CE, MfE make a public statement on the issues. The Deputy State Services Commissioner also advised the CE, MfE that his meeting with Ms Setchell had raised questions in his mind about her treatment by MfE. The Deputy State Services Commissioner and the CE, MfE agreed to meet the following day to discuss the matter.

25 July

- Morning meeting Chief Legal Advisor, Deputy State Services Commissioner, Commissioner's Executive Assistant and SSC Communications Manager – discussed that the growing public interest in the matter required a revised approach to OIA requests received on the matter, and it was important to discuss those issues again with the CE, MfE.
- Afternoon meeting the Deputy State Services Commissioner and the Chief Legal Advisor with the CE, MfE. The CE, MfE provided notes he had made on the issue. After the course of some discussion the CE, MfE provided specific details of his conversation with the Minister, Environment, including the comments by the Minister, Environment to the effect that the Minister, Environment would be likely to be less than free and frank in discussing sensitive matters in the presence of Ms Setchell.
- Meeting expanded to include other MfE employees and communication advisors including SSC Communications Manager. Discussion of possible public statement next day.
- The Deputy State Services Commissioner verbally briefs the Minister of Services' office. The Minister of State Services' office contacts and The Prime Minister's office and refers the Deputy State Services Commissioner to the Prime Minister's office to provide that office with a briefing.
- Phone calls Deputy State Services Commissioner to the Commissioner, the Deputy State Services Commissioner relayed the events of the day including the confirmation by the CE, MfE about the nature of the comment made by the Minister, Environment. Following this call the Commissioner reflected on his previous discussions with the CE, MfE and whether he had already been advised of this detail.

26 July

- Answer in House by the Minister, Environment confirming detail of comment to the CE, MfE .
- Intensive work on statements/OIAs.
- Press release deferred to ensure OIA's covered.
- Contact with the Prime Minister's office (Deputy State Services Commissioner and Ms Simpson) to brief on progress with release of

OIAs and planned scheduling of media conference with the Deputy State Services Commissioner and the CE, MfE.

- The Chief Legal Advisor telephoned the Commissioner to advise of recent events and of the fact that a press conference was proposed to take place the next day; also to confirm accuracy of a proposed OIA response in relation to the matter.

27 July

- The Deputy State Services Commissioner learns during Chief Executive's meeting held at DPMC that the CE, MfE had met with Ms Setchell prior to his confirming her appointment.
- The Minister, Environment resigns – Prime Minister press conference.
- SSC press conference.
- OIA released to enquirer.
- The Deputy State Services Commissioner departs for Australia.

28 July

- TVNZ 'Agenda' interview where the Prime Minister says she was unhappy that when SSC compiled the report of 20 July the CE, MfE did not disclose the extent of the conversation with the Minister, Environment, as things would have been a lot easier if that had happened.
- The Commissioner returns to New Zealand.

29 July

- The Commissioner reads additional media coverage of issue and starts to appreciate the significance that the CE, MfE had previously informed him about the Minister, Environment's comments to the CE, MfE on the matter.
- The Commissioner rings the Deputy State Services Commissioner in Australia, noting that he now clearly understood the issue that had arisen in relation to the Minister, Environment's public comments on the matter.
- The Commissioner and the CE, MfE make telephone contact – the CE, MfE reminds the Commissioner that he had previously discussed with the Commissioner the conversation with the Minister, Environment. The Commissioner confirmed that he could now recall this.
- The Commissioner rings the Minister of State Services to request that she advise the Prime Minister that the Commissioner had recalled the advice from the CE, MfE about the Minister, Environment's comments and that the Commissioner has now been reminded of this.

30 July

- Meetings between the Commissioner, the Chief Legal Advisor and the Deputy Commissioner, Performance to discuss the issue; agreed the Commissioner and the Chief Legal Advisor to focus on review of the matter with the Deputy Commissioner, Performance to continue as liaison with the CE, MfE and MfE.

- The Commissioner and the Deputy State Services Commissioner meet with the Minister of State Services – advise that SSC envisaged holding an inquiry; not just MfE but all of Ms Setchell’s employment issues.
 - Meeting Deputy State Services Commissioner, the Commissioner and Chief Legal Advisor to discuss approach to a potential review and possible terms of reference for a review.
- 31 July
- On or about this date the Commissioner phones the CE, MAF, and the Chief Executive, Ministry of Education, advising them that an inquiry would be announced with Terms of Reference broad enough to include issues between Ms Setchell and MfE, MAF and Education. The Commissioner and Deputy State Services Commissioner meet with the CE, MfE to advise the CE, MfE that an inquiry would be announced.
- 2 August
- Terms of Reference released for investigation.
 - The Commissioner has media interviews to discuss Terms of Reference, the Commissioner volunteers at these interviews that he had failed to previously recollect that the CE, MfE had spoken to him about the content of the CE, MfE’s and the Minister, Environment’s discussion on the matter.
 - In evening, the Minister of State Services calls the Commissioner, expressing concern about whether the Commissioner was best placed to conduct inquiry without independent assistance.
 - Gerry Brownlee expresses concerns about whether the Commissioner can stay on in his role as State Services Commissioner during the time that the inquiry is taking place. The Prime Minister said that she was advised that the Commissioner was now considering whether someone outside the State Services Commission should conduct the inquiry.
- 3 August
- Before 8am, the Commissioner speaks to the Deputy State Services Commissioner and to the Chief Legal Advisor about approach to inquiry, advising that he was considering the appointment of an independent person to assist the inquiry. The Commissioner also makes contact with the Minister of State Services to advise the same. The Commissioner also very briefly reports his intention to Ms Simpson, immediately prior to conducting his morning report radio interview. During that interview he confirms that he was considering the appointment of an independent person to assist in the inquiry.
 - Further media release – the Commissioner would consider need for independent assistance.
 - The Commissioner contacts Mr Hunn on 2 August to check his availability.
- 4 August
- Meeting the Commissioner, Deputy State Services Commissioner, Chief Legal Advisor and Solicitor General to discuss the potential approach to the inquiry. Agreed that it would be appropriate for Mr

Hunn to assist as an independent inquirer. Contact made with Mr Hunn to discuss appointment and terms of reference.

- 6 August - Confirmation released that Mr Hunn appointed under the State Sector Act to assist the Commissioner in inquiry.

ANNEX G

**STATEMENT BY HUGH LOGAN, CHIEF EXECUTIVE OF MINISTRY FOR
THE ENVIRONMENT, TO JOINT PRESS CONFERENCE, 27 JULY 2007**



Statement from Hugh Logan

I am pleased to be able to talk to you today. I want to set out the reasons for my decisions.

The decisions regarding conflict of interest were mine to make. I made them and I stand by those decisions.

However, I deeply regret that this situation has caused distress for Madeleine Setchell.

This is how I saw it. I was not aware when Madeleine was appointed to the position of Communications Manager that her partner was the Leader of the Opposition's chief media adviser. This is something that I should have been told. If I had been told, I would have recognised before she was employed that I had a potential conflict of interest to consider.

The first I knew of it was through a phone call requesting information from the Minister's adviser. I realised that, if Madeleine's partner was a top adviser, there was a potential conflict of interest. Steve Hurring said that any decisions were mine to make, but he would like to know if what he had heard was correct.

There were three further phone calls with Steve Hurring. Two were simply to say that we had no details yet. It was not until the fourth of the phone calls between us that I could confirm details.

Subsequently I phoned the State Services Commissioner to tell him that my preliminary view was that I needed to manage a potential conflict of interest and was seeking his advice. He set out principles for me. These included that employment issues were for Chief Executives to handle and that I should exercise my judgement.

I also knew I would be seeing the Minister that afternoon. I took that opportunity to talk to him on the basis of a Chief Executive's "no surprises" relationship with Ministers. I told him that there was a potential conflict of interest that I needed to manage and that I was seeking advice from the State Services Commissioner.

The Minister informed me that he was likely to be less free and frank in conversations over sensitive matters with Madeleine Setchell present. He also said that the decision was mine to make.

Next day I had a meeting with the Commissioner. He re-emphasised the principles he had given me the previous day, including that a Minister should not be involved in any decisions. He noted his personal experience in dealing with potential conflicts of interest.

We discussed additional details about this case. Mark confirmed that it was a decision I needed to make and that I should use my judgement. The State Services Commission would offer advice and support. He also reminded me that Ministers have a say in who they deal with.

I then sought legal advice prior to making my final decision.

I want to stress that, in making these decisions, I took into account a number of factors.

- First, the Communications Manager needs to be in regular contact with Ministers and senior officials dealing with forthcoming policy and programme announcements – and for the Ministry for the Environment at the moment this involves initiatives at the heart of the government's policy and political agenda
- Second, Madeleine's partner, as chief media adviser to the Leader of the Opposition, would likely be advising on how to respond to the same government policies and issues
- In addition, I considered that Ministers and their staff might be much less open in discussions in Madeleine's presence, which could compromise the Ministry's role in providing advice and co-ordinating key government initiatives
- Finally, I considered whether I might be able to ring-fence parts of the role. There are other instances of potential conflict of interest in the Ministry which have been managed in this way. However, because the Communications Manager's role is so wide-ranging, I felt that it could not be proscribed. It is also the case that as a good employer I should not put Madeleine in a position where she might be perceived to have a conflict of interest.

So I asked Madeleine Setchell to take on an appropriate alternative manager's role, at the same level, and I sought to support her in making the change.

Subsequently Madeleine decided not to take the role.

After my decision was made and I had offered Madeleine Setchell an alternative position, I informed Steve Hurring of what I had done.

I did not speak to the Minister about my decisions until after Madeleine had left the Ministry and we were about to advertise the vacancy.

This situation is unusual because of the roles of the two people involved.

This particular case has demonstrated to me that the Ministry needs to have better processes for identifying actual or potential conflicts of interest. This is something I am addressing at the moment.

To wrap up – this was my decision to make, I took it and I stand by it. I want to emphasise, though, that I deeply regret the distress this has caused. I will be doing my best to ensure that this situation is not repeated.

ANNEX H

**TWO PRESS STATEMENTS ISSUED BY THE STATE SERVICES
COMMISSIONER ON 3 AND 6 AUGUST 2007**

SSC Media Release
Update on the State Services Commission investigation
3 August 2007

The State Services Commissioner, Mark Prebble, is currently undertaking an investigation into the public service recruitment and employment of Madeleine Setchell. Mark Prebble has stated that he will be assisted in this investigation by David Shanks, Chief Legal Advisor.

Because the employment process involved some interactions between the Ministry for the Environment and the State Services Commission, Mark Prebble will also involve an independent inquirer.

“In order to reach an informed judgement about the role of the Public Service in this matter, I need all the facts.

“It is important that this is a methodical process. I must not rush to judgement on this and, for this reason, I will do this carefully and thoroughly. It is my legal obligation to carry out this investigation and I intend to discharge it with independent assistance.

“As is commonly the case in such matters, I intend to seek the advice of the Solicitor General to ensure the investigation is robust. I will also be seeking his advice in identifying what independent assistance will be appropriate.

“I cannot avoid my responsibility to assess the chief executive’s handling of these employment matters myself. Having independent assistance will ensure that all aspects of the investigation are conducted objectively.

“The central issue here is a public service employment one. I am required to form my view independently of any public or political commentary.

“As is usually the case with inquiries, I do not propose to comment further at this time,” Mark Prebble said.

The investigation is expected to take between 6-8 weeks.

ENDS

Media release

State Services Commissioner appoints Don Hunn to assist with investigation

6 August 2007

The State Services Commissioner, Mark Prebble, today announced the appointment of an independent inquirer to assist with the investigation into the public service recruitment and employment of Madeleine Setchell.

"I have discussed with the Solicitor General, David Collins, how best to discharge my statutory functions and ensure that the investigation is a robust and credible one.

"Following that discussion, I have determined the next steps in the inquiry. I am pleased to announce that I will be assisted in this inquiry by Don Hunn.

"Don Hunn has a wealth of relevant experience from his previous tenure as State Services Commissioner that he will be able to bring to bear on this investigation. He has also been involved in a number of high profile investigations over the 10 year period since he left the Commission.

"Don Hunn will provide me with a report on the relevant facts, as well as any conclusions he has about the performance of myself or other State Services Commission staff.

"As my letter of appointment to Don Hunn makes clear, I am intending to publish his report alongside my own. If there are compelling reasons not to publish some specific material in his report, then I expect that he will document those reasons," Mark Prebble said.

ENDS

ATTACHED: Letter of Appointment