

20 December 2022

Michael Reddell
mhreddell@gmail.com

Dear Michael

Thank you for agreeing to reframe your request of 1 November 2022 to the Reserve Bank of New Zealand – Te Pūtea Matua made under the Official Information Act 1982 (OIA), as follows:

Without limitation, any material, documents, papers, memos, discussions and/or communications relating to decisions about and appointments to the RBNZ Governance Board and the RBNZ Transition Board, including issues around conflict of interest policy and procedures and the application (or otherwise) to the specific cases of Rodger Finlay and Byron Pepper. Materials in scope include, but are not limited to:

- *internal RBNZ emails (including (but not limited to) those to/from Governor Adrian Orr and Assistant Governor and GM Strategy, Governance and Sustainability Simone Robbers)*
- *internal papers, reports, memos generated within the RBNZ, including any consultation on conflict of interest matters with any senior managers responsible for bank regulation/supervision*
- *emails to/from the RBNZ Board Chair Neil Quigley and all other former and current RBNZ Board members*
- *RBNZ communications/emails/contact to/from journalists from 10 June 2022 (as an example papers released by the Minister of Finance in response to a similar OIA request*
- *refer to a statement provided to Rob Stock (Stuff) on 21 June 2022)*
- *any advice to/from or discussions with The Treasury, including documents and emails. and including any engagement with or participation in the Treasury-led interview programme for Board members*
- *and any advice to and/or interaction with the Minister of Finance or his office.*

The time period of your request was 1 April 2021 to 30 September 2022.

Response

As advised on 30 November 2022, we considered there to be sufficient grounds to refuse your request under section 18(f) of the OIA, because to fulfil the request would require substantial collation and research. Before refusing a request under section 18(f), the OIA requires that we consider other options that would allow us to meet your request. We considered other options, including:

- Charging: We did not consider charging an adequate solution, as any amount recovered would fall well short of the cost of meeting the request. The cost to the RBNZ could only be truly mitigated by limiting the size of your request.
- Extending: We extended the due date to 19 December 2022 to provide us with the time needed to meet this request in another way, as outlined below. To have continued to process the request as reframed on 1 November 2022, we estimated, with the pending holiday period, that an extension date to at least the end of March 2023 would be required. As noted above, reducing the size of the request was necessary.
- Consulting the requester: You were consulted by the Senior Adviser, Government and Industry Relations, and agreed to narrow the date range for the relevant information covered by the request, but without significantly lessening the scope.
- Meeting the request in another way: This includes the provision of a subset or sample of the information. This is the approach we proposed to take and to which you accepted on 5 December 2022. The following documents now released to you and enclosed with this letter:

Ref	Date	Description
1	19/12/2022	A summary of the internal emails and legal advice concerning Rodger Finlay's appointment prepared by the RBNZ General Counsel
2	27/07/2022	A letter from the RBNZ Board Chair to Byron Pepper outlining the management of the potential conflicts of interest he declared at the time of his appointment to the RBNZ board

These documents reflect the underlying substantive correspondence within the scope of your reframed request and appear to address the concern you have about the RBNZ's treatment of Rodger Finlay's appointment. Providing the information in this manner removes the significant and unreasonable impact meeting your request would have had on the RBNZ.

Please note that some information has been withheld under the following sections of the OIA:

9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons.

9(2)(b)(ii) – to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

Please also note that to the extent any summarised correspondence may be subject to legal privilege, the RBNZ is not waiving legal professional privilege.

In terms of section 9(1) of the OIA, we are satisfied that the withholding of the redacted information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the OIA. The relevant details can be found on the Ombudsman's website at www.ombudsman.parliament.nz.

Please note that we intend to publish a copy of this response on the RBNZ website: www.rbnz.govt.nz/research-and-publications/official-information-requests. Responses to requests are published in order to improve public transparency and provide an additional resource for anyone seeking information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Adrienne Martin', with a stylized flourish at the end.

Adrienne Martin
Manager, Government and Industry Relations
Reserve Bank of New Zealand – Te Pūtea Matua

Document 1

Purpose

This note summarises internal correspondence concerning the appointment of Rodger Finlay to the RBNZ board and the management of his potential conflicts of interest. Only correspondence involving the General Counsel is summarised.

To the extent any correspondence may be subject to legal professional privilege, RBNZ is not waiving legal privilege in any of the underlying documents summarised in this note and those documents will remain fully subject to professional legal privilege.

Summary of correspondence

Date	Summary of correspondence
18 October 2021	Board Secretary forwarded to General Counsel Rodger Finlay's declaration of interests, based on the form used for RBNZ advisory board directors, and reflecting the Conflict of Interest (COI) policy in place for the advisory board at the time. Rodger Finlay outlined all interests that might potentially be relevant. In particular, he declared interests (as a director of) NZ Post and Ngāi Tahu Holdings.
20 October 2021	<p>The Governor announced to all RBNZ staff that the Minister of Finance had appointed Rodger Finlay (among others) to the RBNZ board, and that he would be part of a "transition board" whose role was to oversee the changes to the RBNZ's governance arrangements.</p> <p>The Governor sought clarification from the Chair and General Counsel on what Rodger Finlay had committed to regarding his current board roles and management of conflicts of interest with respect to NZ Post/Kiwibank and Ngāi Tahu Holdings.</p> <p>General Counsel offered to draft some guidance on COI framed around risk appetite, with more detailed guidance to follow.</p> <p>The Chair replied that RBNZ needed to remain conservative on this front and maintain a very low risk appetite, particularly regarding Kiwibank, and that he was happy for General Counsel to draft guidance.</p>
16 November 2021	General Counsel emailed the Chair and the Governor advising that he would be speaking to Rodger Finlay the following day, and had not followed up with the guidance offered on 20 October as the RBNZ Act 2021 was reasonably clear on COI management leaving less room for judgement than anticipated.
17 November 2021	<p>Board Secretary and General Counsel met with Rodger Finlay to talk through the requirements of the RBNZ Act 2021 and the RBNZ policy concerning declaration of interest and COI management.</p> <p>Rodger Finlay outlined how particular interests could be eliminated before 1 July 2022 and how any COIs that could not be eliminated could be managed post 1 July 2022, when his role as director would take full effect.</p>

IN CONFIDENCE

Date	Summary of correspondence
22 November 2021	<p>General Counsel received an email from Malcolm Shaw, General Counsel/Chief Governance & Sustainability Officer at NZ Post, enclosing two documents he was sending to Kiwi Group Holdings Ltd.</p> <p>One attachment was a letter from Malcolm Shaw to the Chair of Kiwi Group Holdings Limited dated 21 November 2021, explaining that NZ Post had arrangements in place preventing Rodger Finlay from being involved in the governance or management of KGH or Kiwibank. Further, while the NZ Post Board receives monthly reports on the performance of KGH and its subsidiaries, the information in those reports is at a level similar to a bank's General Disclosure Statement. Detailed information would be handled by two KGH appointed directors (neither of whom was Rodger Finlay). Lastly, while Rodger Finlay would be part of considerations of the future of NZ Post's shareholding, those discussions were only at a strategic level.</p> <p>The other attachment summarised how the terms of the shareholders agreement between Kiwi Group Holdings Ltd, ACC and the NZ Super Fund limited NZ Post's effective control of Kiwibank. In summary: NZ Post's Board and management do not direct KGH's board or management, and NZ Post's Chairman and CEO do not have responsibility to or for KGH's board or management. Half of KGH's directors (including the board chair); NZ Post's Chairman and CEO are not members of the nominations committee that appoints these directors. Their remuneration is not linked to KGH's performance or that of its subsidiaries. To manage any conflict of interest (actual or perceived), NZ Post Board Chairman and CEO were now excluded from any governance or direct engagement with the investment in KGH and Kiwibank. Regardless, major shareholder decisions on strategic matters such as capital management and asset restructures that may impact Kiwibank are made by the three shareholders of KGH jointly.</p>
23 November 2021	<p>General Counsel emailed the Governor and Chair informing them of the meeting that took place on 17 November 2021 with Rodger Finlay and Board Secretary, and General Counsel's correspondence with Malcolm Shaw.</p> <p>General Counsel advised that the protocols between Kiwibank Holdings and NZ Post (described above) could assist to manage any potential conflict of interest, but in any case it was understood between all parties that conflicts would not crystallise until 1 July 2022 next year, and Rodger Finlay was not, in the meantime, receiving NZ Post/Kiwibank information more detailed than would be contained in a bank's General Disclosure Statement (see above).</p> <p>The Governor replied noting that Kiwibank's ownership structure would be resolved by July 2022 (i.e. when NZ Post was no longer expected to be an owner of Kiwibank). The Governor sought more information on how any conflicts through Ngāi Tahu Holdings could be managed.</p> <p>The Chair replied noting that it is as important to avoid or resolve perceived COIs as it is to avoid or resolve actual COIs. He also noted he would be catching up with Rodger Finlay the following week and would discuss Ngāi Tahu Holdings further, and that he expected NZ Post will resolve itself by July 2022.</p>

IN CONFIDENCE

IN CONFIDENCE

Date	Summary of correspondence
26 November 2021	<p>General Counsel emailed the Chair with a draft COI policy that incorporated requirements from the RBNZ Act 2021 into the existing COI policy applying to the current advisory board.</p> <p>The Chair replied that it would be a useful document to have prior to his upcoming meeting with Rodger Finlay.</p>
17 March 2022	<p>Rodger Finlay emailed the Chair and Governor updating them both on the treatment of the interests he had disclosed to RBNZ on 18 October 2022, including that he was advised NZ Post's divestment from Kiwibank would be complete before 1 July 2022, resolving COI issues arising from NZ Post's effective ownership of Kiwibank. He also advised he was no longer Chair of the Ngāi Tahu Holdings Audit Committee.</p> <p>The Governor forwarded this email to General Counsel and Board Secretary.</p>
14 June 2022	<p>General Counsel and a Senior Communications Adviser briefed the Minister of Finance's Office following media queries concerning Rodger Finlay's position with NZ Post. They explained the RBNZ legal team's position was that although at the time of his appointment to the transition board Rodger Finlay had interests that would conflict him from being in a decision making role, we (Rodger Finlay, RBNZ and NZ Post) had taken the time between appointment and 1 July 2022 (the date when Rodger Finlay would assume a decision making role with RBNZ) to divest those interests or work out how any COIs that could not be eliminated could be managed post 1 July 2022.</p>
21 June 2022	<p>In responding to further media queries RBNZ confirmed Rodger Finlay would be stepping down as Chair from NZ Post, so that from 1 July 2022 when Rodger Finlay assumed a decision making role with RBNZ he would harbour no material conflict of interest relating to Kiwibank. The response also noted that the role of the "transition board" was to prepare for changes to the RBNZ's governance arrangements required by the RBNZ Act 2021. That role held no decision-making power relevant to Rodger Finlay's declared interests.</p>

Key points

The RBNZ board assumed its decision making role on 1 July 2022 when the RBNZ Act 2021 came fully into effect. On 1 July 2022, section 24 of the RBNZ Act 2021, outlining the RBNZ board's role, came into effect.

The "transition board" had no formal status under the RBNZ Act 2021. It is an informal term referring to the "appointed members" defined in clause 17 of Schedule 1 of the RBNZ Act 2021. The transition board undertook various activities to prepare the new board for its decision-making role from 1 July 2022, none of which presented any conflict of interest for Rodger Finlay.

While a transition board member, Rodger Finlay had no decision-making role with RBNZ, received no inside information about Kiwibank, prudential supervision or prudential policy, and was in no position to exercise any influence within RBNZ over those matters.

IN CONFIDENCE

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Kiwibank's ownership was under review by the Government at the time of Rodger Finlay's appointment as a member in October 2021. It was anticipated that the review would lead to Kiwibank's divestment from the ownership of NZ Post, ACC and NZ Super Fund before 1 July 2022.

Completion of the divestment transaction would resolve any perceived COI for Rodger Finlay arising from NZ Post's shareholding in Kiwibank. Prior to 1 July 2022, the nature of NZ Post's ownership of Kiwibank and the restrictions on Rodger Finlay's role (i.e. no involvement in the governance or management of Kiwibank) presented a perceived conflict of interest rather than an actual conflict of interest.

Prior to 1 July 2022, information about the review of Kiwibank's ownership was commercially sensitive, under "active consideration" by the Minister of Finance, and not widely known within or outside RBNZ, so therefore not explicitly referred to in Cabinet papers or internal RBNZ or Treasury advice.

The divestment transaction was not effected before 1 July 2022. When Rodger Finlay was told that the transaction was delayed by seven weeks he declined to accept reappointment as Chair of NZ Post.

Arrangements have been put in place to ensure Rodger Finlay does not receive any information or participate in any discussions on Ngāi Tahu Holdings' investment in Fidelity Life. This was considered separately and is not covered by the correspondence summarised above.

19 December 2022

IN CONFIDENCE

Document 2

27 July 2022

Mr Byron Pepper
Member of the Board
Reserve Bank of New Zealand

Dear Byron

Outcome of My Consideration of Issues Raised by Your Interest in Ando Insurance s 9(2)(a), s 9(2)(b)(ii) s 9(2)(a), s 9(2)(b)(ii)

As you are aware, I have been taking advice on the issues raised by your role as a director of Ando Insurance (Ando) and by your beneficial ownership (settlement pending) of a small equity stake in Ando. In addition, s 9(2)(a), s 9(2)(b)(ii)

I also consider those issues in this letter. To consider these matters I have received two pieces of advice, one from Mr McBride, the RBNZ General Counsel, and one from Mr Wallis, Partner, Chapman Tripp.

The pre-existing interests that you have declared, and my understanding of them, are as follows:

1. You are a director of Ando Insurance, which is a distributor but not an underwriter of insurance in the New Zealand insurance market, and as such is not regulated by the RBNZ.
2. You will be (settlement is pending) the beneficial owner of non-voting equity shares in Ando Insurance (representing <1% of Ando).
3. s 9(2)(a), 9(2)(b)(ii)

I acknowledge that you have pro-active and transparent in declaring the above interests in each of your pre-appointment discussions with RBNZ board members and senior executives of The Treasury, and that you subsequently confirmed these in your pre-appointment interests disclosure to RBNZ staff. Nonetheless, as Chair of the Board of the Reserve Bank of New Zealand (RBNZ), I have the responsibility to assess the implications of any interests that are declared by members of the Board, and to decide what actions should be taken as a result.

As you are aware, the Reserve Bank of New Zealand Act 2021 prohibits directors of the RBNZ from being directors, employees or office holders in a regulated institution. While Ando is not a regulated institution, Ando Insurance distributes insurance for Hollard Insurance (amongst other underwriters), Hollard Insurance is a 39% shareholder in Ando, and Hollard has a seat on the Board of Ando as a result of this ownership stake.

The Act also provides for the declaration and management of interests. The Act defines when a member is "interested in a matter" and the requirement to disclose those interests in the Board's interests register, and to the chairperson. Standing disclosures (disclosures with ongoing effect) may be made. The member must not vote or take part in any discussion or decision of the board or any committee relating to the matter, nor otherwise participate in an activity of the organisation that relates to the matter, nor sign related documents.

A member is "interested" in a matter if they (or their spouse, civil union partner, de facto partner, child or parent) might derive a financial benefit from it; or if they may have a financial interest in (or are a partner, director, officer, board member or trustee of) a person to whom the matter relates; or

if they are otherwise directly or indirectly interested in the matter. Certain exceptions apply, including where the member is a member or officer of a subsidiary, or where the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities. A person is not interested in a matter only because the person has past or current involvement in the relevant sector, industry or practice.

The RBNZ is a complex institution that has wide powers to make regulations applicable to regulated institutions, obtains from regulated institutions commercially sensitive information that may be of value to its competitors, and is under constant scrutiny from both its regulated institutions, market participants and interested members of the public as a whole. The RBNZ is also subject to the Official Information Act, and more generally as a public institution has an obligation to respond in good faith, and within the limits of privacy and commercial sensitivity, provide good faith responses to questions and enquiries received. As a result, the RBNZ needs to set the highest standards, and take appropriately conservative approaches to the management of interests and the avoidance of both actual and perceived conflicts of interest, as both Mr McBride and Mr Wallis point out in their advice to me. This also means that the RBNZ needs to avoid complexity and opaqueness in managing in the interests of Board members, because these are challenging to explain to journalists and to the public.

It is the case that RBNZ decisions could have implications for Hollard which could in turn have implications for Ando. In that case, your beneficial interest in Ando could be affected.

Mr Wallis does not consider that your involvement in RBNZ board discussions and decisions about prudential policy more generally should reasonably be regarded as a conflict of interest, given the remote nature of the Hollard connection, and the fact that you do not have a financial interest in Hollard itself. However, as is clear from the letter from the Insurance Council, this legal position will not stop interested members of the public from asking us to explain how we manage the situation. Mr Wallis suggests a strict prohibition on RBNZ information specifically relating to Hollard being provided to you, but as Mr McBride points out, a wide range of information and discussion relating to insurance supervision could be directly relevant to Hollard, and therefore possibly indirectly relevant to Ando.

Your non-voting equity shares in Ando fall within the general framework of the Board's requirement for disclosure of interest, but are material for your role on the RBNZ Board only where you have a direct beneficial interest in the shares and in combination with your role on the Ando Board. Making the beneficial interest and your ability to make decisions relating to it more remote may alleviate the issue.

I agree with Mr McBride's advice, that RBNZ directors should not be in situations or in other roles that are likely to result in any of (i) the need for continuous RBNZ management of agendas and documents to avoid interests, and continuous assessments of the areas in which those interests need to be managed, or (ii) the creation of cumbersome committee structures which channel work flows in ways designed to avoid interests. Both are high transaction cost for RBNZ staff and are likely to reduce the overall effectiveness of the Board.

While I appreciate Mr Wallis pointing out there is no formal conflict of interest in relation to your role on the Ando Board and the connection with Hollard that it creates, our discussions about the importance of perception and the costs to the Bank of management of perceived interests (on the basis even of a strictly legal interpretation of potential conflict) suggests a simpler and cleaner solution should be preferred by the Bank.

Persons with the level of corporate and business knowledge to be directors of the RBNZ may often be in decision-making roles in other organisations that are large enough to be acquirers or sellers of subsidiaries or major assets (such as real estate) and as a consequence may be party to decisions about capital structure (including the ratio of debt to equity and the term of any debt) which may be influenced by RBNZ decisions about interest rates or other matters. While the potential for interests to arise in these respects is an unavoidable consequence of being on the RBNZ Board, the Board has adopted an interest policy which is designed to ensure that members avoid the potential for interests to arise through advice offered by them.

Mr Wallis' advice points out that mere possession by you of commercially sensitive information about the activities of the RBNZ does not amount to a conflict of interest. Section 54 of the Act contains a separate duty of confidentiality in respect of such information. Members of the RBNZ board also have duties under section 51 of the Act to act with honesty and integrity, and under section 52 to act in good faith and to not pursue the member's own interests at the expense of the Bank's interests.

s 9(2)(a), s 9(2)(b)(ii)

Determination and Proposed Solution on Your Interest Disclosure

It is my view, following consideration of the above, that it is your seat on the Ando Board and the close connection with Hollard, that creates the potential perception of a problem. Absent your seat on the Ando Board, I do not see a need to limit your discussions and involvement as an RBNZ director.

I have therefore determined that your effective participation as a member of the Board of the RBNZ requires that:

1. You resign from your pre-existing membership of the Board of Ando. Whilst this might not be required from a strict legal perspective, it assists to avoid the potential perception of a conflict
2. In future, you consult me before you take any action in relation to your non-voting shares in Ando (noting that they are in any event non-voting shares and you have limited ability to take any action in relation to these shares).

s 9(2)(a), s 9(2)(b)(ii)

I have further determined that no general conflict of interest arises from your advisory work, but, as outlined in 3 above, following the Bank's Conflict of Interest policy you will alert the Chair to specific advice that may trigger a need to manage the information that you receive from the RBNZ.

Mr McBride has raised the potential for a "cooling off period" as an issue to consider. Given that we are dealing here with a perception of a conflict of interest, and given the provisions of s61(2)(e) of the Act, I do not consider that a cooling off period is necessary. Your full participation in the RBNZ

Board can resume immediately upon your resignation from the Ando Board taking effect, and you confirming the other provisions set out above.

Thank you for the integrity and patience with which you have approached these discussions. I know that you will be able to make an outstanding contribution to the Reserve Bank board. The above resolution is designed to ensure that you can make the fullest contribution to the business of the RBNZ Board with the least distraction.

You may advise the Chief Executive of Ando of the three actions above and also that, subject to these items, your pre-existing commitments to Ando may continue unaffected.

To indicate your agreement to the required actions outlined above, I will be grateful if you will confirm by return email to me.

Yours sincerely

A handwritten signature in dark ink, appearing to be 'N. Quigley', written in a cursive style.

Professor Neil Quigley
Chair of the Board
Reserve Bank of New Zealand