

Minutes of Counties Manukau District Health Board

Held on Wednesday, 23 March 2016 at 1.30 – 4.30pm Room 101, Ko Awatea, Middlemore Hospital, Hospital Road, Otahuhu, Auckland

Present: Dr Lee Mathias (Chair), Mrs Dianne Glenn, Apulu Reece Autagavaia, Dr Lyn Murphy, Mrs Sandra Alofivae, Mrs Kathy Maxwell, Mrs Colleen Brown, Ms Wendy Lai, Anae Arthur Anae

In attendance: Mr Geraint Martin (Chief Executive), Mr Ron Pearson (Deputy CEO), Mrs Lyn Butler (Board Secretary)

Apologies: Mr George Ngatai, Mr David Collings (lateness)

1. Welcome

The Chair welcomed everyone to the meeting.

2. Governance

2.1 Attendance & Apologies

Noted.

2.2 Conflicts of Interest/Specific Interests

Noted.

2.3 Confirmation of Public Minutes – 10 February 2016

Resolution

That the public Minutes of the Board Meeting held on **Wednesday, 10 February 2016**, were taken as read and confirmed as a true and correct record.

Moved: Sandra Alofivae

Seconded: Wendy Lai **Carried:** Unanimously

2.4 Action Items Register

Noted.

Mr Anae left at 3.50pm.

6.6 Rehab & Wellbeing Services & Facilities/Strategic Assessment (Dana Ralph-Smith/Louise Zacest)

The paper was taken as read.

The Chair advised that Mr Martin presented this to RGG prior to Christmas as an introduction. The paper unfortunately did not help to build the case, so RGG requested that it come back. Socialising has since been done with the Region, who were surprised at the scope, but do not believe that this should be cut back in any way.

Mrs Ralph-Smith said that this is a fantastic opportunity to develop regional rehab, with spinal services as an anchor. Most models in Australia and the US have community rehab as well as hospital. It is very much community integrated overseas, and very important that the community is able to use these facilities.

Mrs Zacest said that ACC engaged early in the process, and are now looking at a much more integrated model. Their purchasing strategy has been presented to CMDHB, as well as their priorities. This will require a creative approach and will have a philanthropic component also, with multiple funding streams.

Mrs Brown queried the reference to disabilities, and asked whether it would include all disabilities, or just spinal injuries. Mrs Ralph-Smith said that both these would be looked at.

Resolution

That the Board:

Endorse the Strategic Assessment for investment in Specialised Rehabilitation & Community Wellbeing Services and Facilities

Agree that the Strategic Assessment can be submitted to the Regional and National Capital Committees for endorsement.

Moved: David Collings

Seconded: Dianne Glenn

Carried: Unanimously

Minutes of Counties Manukau District Health Board

Held on Wednesday, 30 November 2016 at 1.30 – 4.30pm Room 107, Ko Awatea, Middlemore Hospital, Hospital Road, Otahuhu, Auckland

Present: Dr Lee Mathias (Chair), Mrs Dianne Glenn, Mrs Sandra Alofivae, Mrs Kathy Maxwell, Mr David Collings, Dr Lyn Murphy, Mrs Colleen Brown

In attendance: Mr Geraint Martin (Chief Executive), Mr Ron Pearson (Deputy CEO), Mrs Lyn Butler (Board Secretary)

Apologies: Ms Wendy Lai, Mr George Ngatai, Apulu Reece Autagavaia

1. Welcome

The Chair welcomed everyone to the meeting, including Mrs Catherine Abel-Pattinson and Mrs Katrina Bungard (incoming Board members), and Dr Colin Thompson, who were in attendance.

2. Governance

2.1 Attendance & Apologies

Noted.

2.2 Conflicts of Interest/Specific Interests

Noted.

2.3 Confirmation of Public Minutes – 19 October 2016

Resolution

That the public Minutes of the Board Meeting held on **Wednesday, 19 October 2016**, were taken as read and confirmed as a true and correct record.

Moved: David Collings **Seconded:** Dianne Glenn **Carried:** Unanimously

6.7 Scott Building Recladding (John Hanson)

The paper was taken as read.

Note 1

Mr Hanson updated the Board on the dispute between CMDHB and Hawkins Construction, following the cladding falling off the Scott Building and revealing issues. An independent report by Mr John Green [REDACTED] A portion of the claim is 'out of time'. There is \$6M of work to be done to remedy the situation, split 50/50. A meeting will be held with senior management of Hawkins as soon as possible, and if an agreement cannot be reached, then it will proceed to mediation in the New Year to resolve.

Resolution

That the Board:

Receive the Scott Re-clad Progress Report.

Note that this paper was endorsed by the ELT Committee on 8 November 2016 and the Audit Risk & Finance Committee on 9 November.

Moved: Kathy Maxwell **Seconded:** Sandra Alofivae **Carried:** Unanimously

- 1 - The reaction is made under clause 9(2)(ba)(ii) of the OIA. CMH and Hawkins agreed to engage with a Building Disputes Expert with a view to settling the litigation relating to the Scott Building cladding. The parties disclosed information of a confidential basis to the Expert to enable the Expert to draw certain conclusions to allow settlement discussions. The conclusions drawn by the Expert were for these purposes only. Withholding the Expert's view is necessary to enable similar approaches to dispute resolution in the future. There are no countervailing public interest considerations. Any public interest considerations would support DHBs in this approach to dispute resolution including the full and frank disclosure of information to enable resolution along with confidential findings designed to enable settlement;

Minutes of the Meeting of the Counties Manukau District Health Board

Wednesday, 29 March 2017

Held at Counties Manukau DHB, Room 107, Ko Awatea, Middlemore Hospital,
Hospital Road, Otahuhu

PART II – Items considered in public excluded meeting

BOARD MEMBERS PRESENT:

Lester Levy (Board Chair)
Rabin Rabindran (Deputy Chair)
Colleen Brown
Catherine Abel-Pattinson
Dianne Glenn
Lyn Murphy
Katrina Bungard
Mark Darrow
Ashraf Choudhary
Reece Autagavaia
George Ngatai

ALSO PRESENT:

Geraint Martin (Chief Executive)
Ron Pearson (Deputy CEO/Director Corporate & Business Services)
Gloria Johnson (Chief Medical Officer)
Jenny Parr (Director of Patient Care, Chief Nurse & Allied Health Professions Officer)
Lyn Butler (Board Secretary)

APOLOGIES:

Colleen Brown for early departure.

1 AGENDA ORDER AND TIMING

Items were taking in the same order as listed on the Agenda.

3.4 Scott Building Reclad Business Case (Ron Pearson/Louise Zacest/John Hanson/Chester Buller)

The report was taken as read, and has also been considered by the Audit Risk & Finance Committee, and subsequent feedback incorporated into the paper.

Hawkins Construction have agreed to contribute \$3M. No other construction company is likely to take on this work.

Comments from Board:

- Concerns still using Hawkins to do remedial work. No confidence demonstrated by fact. \$3M completely unacceptable contribution from them. *Response: Hawkins have carried out other major works to a high standard. They have a good name – Tier 1 construction company. Mr Mark Katterns has given his personal commitment to see this work through. Measures will be put in place such as a Clerk of Works, supervision, etc., plus they have knowledge of the building. This is a high risk project with patients remaining in the building. Hawkins will have the best highest ranking façade applicators involved. High level of confidence in methodology.*
- Concerned that more issues will be uncovered once work is underway, creating further cost escalation. *Response: Hawkins/Facilities have a strong view that work will not be as bad as thought. Important to get settlement now.*
- Other independent assessment? *Response: Facilities have removed panels. Rider Levell Bucknell have applied a conservative approach and are confident on costs outlined.*

Risks will be managed as well as practically achievable through a written Contractual arrangement. The Chair confirmed that he had comfort in the fact that Mr Mark Katterns would be involved in the project. Hawkins have a provided liability for this in their Annual Report.

Further comments from the Board:

- Unfair deal, but need to get on and fix it. *Response: no-one else is likely do the work, or have the expertise.*
- Building Disputes Tribunal and obligation to pay half?
- Full Health & Safety Plan to be signed off by CMDHB – would rather this say that CMDHB has no objection to it. *Response: as owner of the site, Worksafe will put to CMDHB in any event.*
- Confirm funding available for this? *Response: application will be submitted to CIC.*
- Contractual arrangement – termination? *Response: right of termination.*
- Manufacturer liability? *Response: time has lapsed.*
- Financing Risk? *Response: Hawkins will pay \$3M up front. Open book accounting intended to be in place to ensure transparency.*
- This will be required to go to Regional Capital Group, Regional Governance Group and Capital Investment Committee for approval.
- \$3M agreed five years ago – interest since? *Response: been trying hard to get Hawkins up to \$4M, but they have refused.*

The Board agreed to delegate the signing of the Settlement Agreement to the Board Deputy Chair/Chair, Audit Risk & Finance Committee.

Resolution (Moved: Dianne Glenn/Seconded: Lyn Murphy)

That the Board:

Receive the Scott Re-Clad Business Case.

Approve submission of the Business Case to regional capital, executive and governance groups for endorsement prior to the case being submitted to the national Health Capital Investment Committee for approval.

Note the Audit Risk and Finance Committee has reviewed and provided input to the content of the Business Case and approved submission of the case to the Board subject to requested amendments.

Note the attached Business Case is Confidential as it references negotiations with Hawkins Construction which are commercially sensitive.

Delegate the signing of the Settlement Agreement to the Board Deputy Chair and Chair, Audit Risk & Finance Committee.

Carried

Minutes of the Meeting of the Counties Manukau District Health Board

Wednesday, 25 October 2017

Held at Counties Manukau DHB, Room 101, Ko Awatea, Middlemore Hospital,
Hospital Road, Otahuhu

PART II – Items considered in public excluded meeting

BOARD MEMBERS PRESENT:

Lester Levy (Board Chair)
Rabin Rabindran
Colleen Brown
Catherine Abel-Pattinson
Dianne Glenn
Lyn Murphy
Mark Darrow
George Ngatai
Katrina Bungard
Reece Autagavaia

ALSO PRESENT:

Gloria Johnson (acting Chief Executive)
Margaret White (Chief Financial Officer)
Jenny Parr (Director Patient Care, Chief Nurse & Allied Health Professions Officer)
Vanessa Thornton (acting Chief Medical Officer)
Dinah Nicholas (acting Board Secretary)

APOLOGIES:

Ashraf Choudhary
Lyn Murphy (for early departure)

1 AGENDA ORDER AND TIMING

Items were taken in the same order as listed on the Agenda.

(George Ngatai departed at 2.30pm)

3.4 Facilities Master Plan Strategic Assessment (Margie Apa)

The report was taken as read.

Unprecedented service demand increases since winter 2016 and more recent regional long-term investment planning processes have required an update to the Facilities Master Plan. Management have considered the most urgent demand and operational pressures and translated the 2016 Long Term Investment Plan into logical groups of projects (programmes). There are five facilities investment programmes in addition to approved facilities projects already in progress (ie) the Acute Mental Health Unit.

The first FMP programmes prioritised by the ELT for implementation in 2017 are the:

- **Facilities Remediation Programme** – this includes a whole of district approach to independent building condition assessments and delivery of priority facility remediation (ie) seismic, asbestos, cladding and general core infrastructure issues.
- **Immediate Demand Programme** – includes a range of whole of district options to address the most urgent short term pressures on hospital services to cope with unprecedented service growth in the short term.

The Strategic Assessments for the above two programme cases provide great insights and clearly lay out what is in front of the DHB but there are a number of further steps in the process before the Board will be asked to commit to capital.

It was noted on Page 156 **Immediate Demand Programme Total \$56.85m** that a number of those projects have already been approved by the Board but have now been pulled into the programme cases because some of them are tied to the Facilities Remediation, through their link with the Galbraith Building, and others have been found to be better aligned together.

Board comments included:

- Great insights, really important work.
- Given the cash-flow forecast, it is hard to start committing to a capital programme when we don't have the funds to do it.
- The DHB needs to be recapitalised.

Resolution (Moved: Apulu Reece Autagavaia/Seconded: Catherine Abel-Pattinson)

That the Board:

Received the final draft Immediate Demand and Facilities Remediation Programme Strategic Assessments as the first implementation deliverables for CM Health's 2017 Facilities Master Plan.

Noted that on 10 October 2017 the ELT approved the draft Strategic Assessments for forwarding to the Board.

Approved the draft Immediate Demand and Facilities Remediation Programme Strategic Assessments for forwarding to the Northern Region Capital Group to endorse submissions to the Ministry of Health and Treasury.

Recommended a fast track Northern Region review and approval processes for the Immediate Demand and Facilities Remediation Programme Cases in December 2017 prior to the case being put before the CM Health Board.

Carried

DRAFT

Minutes of the Meeting of the Counties Manukau District Health Board

Wednesday, 6 December 2017

Held at Counties Manukau DHB, Room 101, Ko Awatea, Middlemore Hospital,
Hospital Road, Otahuhu

PART II – Items considered in public excluded meeting

BOARD MEMBERS PRESENT

Lester Levy (Board Chair)
Rabin Rabindran
Ashraf Choudhary
Colleen Brown
Catherine Abel-Pattinson
Dianne Glenn
George Ngatai
Lyn Murphy
Mark Darrow
Katrina Bungard
Reece Autagavaia

ALSO PRESENT

Gloria Johnson (acting Chief Executive)
Margaret White (Chief Financial Officer)
Jenny Parr (Director Patient Care, Chief Nurse & Allied Health Professions Officer)
Vanessa Thornton (acting Chief Medical Officer)
Dinah Nicholas (acting Board Secretary)

APOLOGIES

George Ngatai (for early departure)

1 AGENDA ORDER AND TIMING

Items were taken in the same order as listed on the Agenda.

2 BOARD MINUTES

2.1 Minutes of the Meeting of the Board – Public Excluded – 25 October 2017

Amendment to Page 3 – Oz Road's design should be AusRoad's design.

Resolution (Moved: George Ngatai/Seconded: Mark Darrow)

That the Minutes of the Board Meeting – Public Excluded - held on the 25 October 2017 be approved.

3.2 Facilities Master Planning Update

The paper was taken as read.

Resolution (Moved: Lester Levy/Seconded: Colleen Brown)

That the Board:

Received the Facilities Master Plan update regarding progress of the Immediate Demand and Facilities Remediation Programmes that ELT approved 28 November 2017 for forwarding to the CMDHB Board.

Noted that the Strategic Assessments regional review and endorsements were completed in November 2017 to support Capital Investment Committee review 8 December 2017.

Noted that alongside the submission of the Immediate Demand and Facilities Remediation Programme Case a series of project business cases will be completed and submitted for the first tranche (group) of immediate demand projects (Cardiac Catheter Laboratory, Scott Dialysis, Gastroenterology Unit and Histology expansions).

Carried

3.3 Scott Building Recladding Works Contract (Chester Buller, John Hanson, Marwa Al-Memar and Hamish Bolland, Chapman Tripp)

The paper was taken as read and the Board was updated on negotiations or actions since the Board paper was submitted last week.

Some progress has been made on all aspects of the agreed works programme with Hawkins. At the time the Board paper was written, negotiations were ongoing with Hawkins at a price of \$18.3m, an increase of \$4m from the 2016 figure. RLB and Hawkins have both reviewed the price. After 6 working days, Hawkins advised that the revised price was \$18.8m, a \$500k increase which includes some carpentry and other general costs that they had not included previously but felt they should.

RLB believe we should go back and negotiate with Hawkins, that there is room to challenge them on lowering their margin and some of the other general costs they have increased in their quote. Their advice is if they do not reduce their price, we should not accept it and go out to market.

RCP, one of the engineers the DHB has appointed to work with it on this piece of work, believe that there is less likelihood that there are contractors in the market that have the relevant health experience for the complexity of this work (ie) the consequences of running an operating hospital whilst the recladding is undertaken.

There are additional issues that will require Board support in between Board meetings. One of these is that the total cost of the project has increased by \$10m and we will need to seek funding from the Centre for this.

There are three options to be considered:

1. Negotiate pricing with Hawkins back down closer to the \$16m to sign the contract by 8 December.
2. Accept Hawkins price at \$18.8m (against RLBs advice) to sign the contract by 8 December.
3. Don't accept Hawkins price and go to market for the recladding work.

Management comments included:

- We are a long way down the road with Hawkins in terms of contract negotiations. In terms of risk, putting price to one side at the moment, we believe we are close to getting a good contract, believe we will get a robust parent company guarantee from Downer on terms that a lawyer could sign off on, we will get a performance bond we are comfortable with for market value of around [REDACTED] of contract price and will get a good thermo-sash warranty.
- In relation to price and the option of going back to market, we don't believe we would be in a position to do anything meaningful this side of 31 January next year, followed by a 3-4 procurement phase, signing of contracts mid-2018 with a two year build phase. The delay and transactional costs associated with a further market exercise carries a significant cost and should be factored into the decision-making.

Note 2

There is also a sewerage issue in the building which is a further complication and if we did go to market, it would be artificial to have a market exercise based around the cladding when there is the sewerage issue sitting alongside it. Therefore, the procurement strategy would have to change to include this.

We should try to negotiate a deal with Hawkins but don't believe we will get them back to the \$16m that RLB think we should be trying to get back to.

- The settlement agreement, which related to the settlement of the litigation which the DHB received \$3m from, required Hawkins to negotiate in good faith with a view to entering into a deal for the purposes of fixing the Scott Building. Hawkins don't need to do anything after Friday 8 December, their obligations under that settlement agreement largely come to an end. It is possible that Hawkins might just walk away on Friday.
- If we do agree to this contract, we don't know that we will get the additional funding to actually progress so any contract would have to be dependent on the DHB getting funding. The Finance Team are negotiating with the Ministry and Treasury to agree a process to have an open-ended arrangement. There is a CIC meeting this Friday who will verbally update the Committee that at least a further \$10m will be needed to be tagged for this project. We would need to submit an additional case to the February CIC meeting.
- There is no risk to patients within the next 6-months, the panels are deteriorating but can be externally fixed to stop them falling off.

Board comments included:

- Going out to tender always has a risk but at the same time when our cost consultants are telling us that the price is too high, if we are going to go against that advice, we would need a very good reason to do that.
- It feels like we are being time-crunched. We are getting a price that is 45% up on this time last year, we are being advised by our cost consultants not to take it, Hawkins are being inflexible and have an [REDACTED] The \$18.8m is not the problem, the problem will be when the building is opened up and what might be found.
- What about the contingency on this building, likely to be 50% on top.
- This project spills out into \$32m and will get reviewed by the Office of the Auditor General. What would they say about the decision we are going to make now - the margin was [REDACTED] you had advice from external experts; and, it was a sole source arrangement.

Note 2

The Chair confirmed he would call Bruce Cullen, a senior executive at Downer, to seek a deferral of the Friday decision date.

Resolution (Moved : Dianne Glenn/Seconded: Katrina Bungard)

That the Board:

Received the update on the Scott Building Re-cladding Works Design and Build Contract ("Contract") between CM Health and Hawkins 2017 Limited ("Hawkins").

Noted that:

- Ministerial approval for \$13m of Crown funding was received in September 2017 and the following responses to conditions were sent to Hon Jonathan Coleman:
 - an independent peer review of the quantity surveyor's report has been undertaken by Alexander & Co Ltd and provided to the Ministry of Health. This review has confirmed the original costs obtained in later 2016 were appropriately assessed but notes some areas of risk;
 - legal documents have been entered into with Hawkins in relation to the \$3 million settlement and the monies have been received by the DHB; and
 - in relation to the general conditions outlined in the approval, Counties Manukau DHB will ensure that quarterly project assurance reports are provided to the Ministry of Health and that funding is managed in accordance with Ministerial requirements.
- The Contract is significantly driven by the agreed Works Methodology which was developed jointly with Hawkins to determine a method for construction which aims for zero-bed reductions and reduced disruption to clinical services delivered within the Scott Building.
- Known risks have been mitigated through the Works Methodology and Contract, however there remain a number of unquantifiable risks which will only be known once the works are in progress, primarily the scope of the cladding works and any sewage works requiring remediation.
- The total project cost is likely to require an additional \$7.25m due to a) recently revised, increased pricing from Hawkins b) increased costs for CM Health c) a higher level of contingency. An additional amount would be required for sewage works remediation for the Scott building; indicative estimates of [REDACTED] will be tested. As CM Health currently has no

note 3

available capital, there is a requirement to apply for additional Crown funding for this project. The Contract is conditional upon finance.

- As per the Settlement Agreement with Hawkins earlier in 2017, the negotiation and finalisation of the Contract must be reached between Hawkins and CM Health **by 08 December 2017** (with Hawkins required to act in good faith throughout negotiations). After this point, Hawkins is free to walk away from negotiations and is under no obligation to negotiate any further with CM Health. Should this happen, CM Health would have little or no alternative but to undertake a market-based procurement exercise to secure an appropriate contractor.
- By the time the Board meets on the 6th December, final agreement on price may not have been reached. A work-plan has been arranged to enable the Contract and pricing to be finalised for signature by 08 December. Hawkins' parent company, Downer is also yet to approve the Contract and pricing. It is recognised that remediation work needs to be undertaken as a matter of urgency to reduce the risk to building integrity and to clinical service delivery.
- The paper was endorsed by ARF at its meeting of 15 November 2017 to proceed to the CM Health Board for its meeting on 06 December 2017.
- There are options which have been considered by CM Health:
 - Option A: negotiate pricing with Hawkins with purpose to sign the Contract by 08 December as the Preferred Option OR
 - Option B: accept Hawkins price at \$18.8m with purpose to sign the Contract by 08 December OR
 - Option C: move away from Hawkins and go to market for the re-cladding work.

The analysis recommends that CM Health Board proceeds with Hawkins, as per the preferred option (Option A above). Prior to the Board meeting, if CM Health and Hawkins are unable to agree on pricing as per the preferred option, cost consultant advice will be sought on whether CM Health should go to market or progress with the current Hawkins price.

Agreed:

- CM Health to continue to progress the Contract with Hawkins.
- Delegated signature of the Contract to the Board Deputy Chair and Chair, Audit Risk & Finance Committee by 08 December 2017, provided that the pricing parameters remain within the levels presented in this paper.
- In early 2018, CM Health Executive Team seek additional funding from Treasury/MoH for the re-cladding and sewage works.

Carried

- 2 - The redaction is made under clause 9(2)(i) and (j).

This redaction is necessary to preserve the DHB's ability to properly negotiate commercial terms with construction firms as it looks to contract for various works needed to remediate its buildings. Releasing this information would declare the DHB's hand to the market about the terms it is prepared to accept, lessening the DHB's negotiating position. The principal public interest at stake here is in ensuring the DHB obtains strong commercial terms for its construction arrangements. Release would be counter to this; and

- 3 - The redaction is made under clause 9(2)(i) and (j).

This redaction is also necessary to preserve the DHB's ability to properly negotiate commercial terms with construction firms as it looks to contract for various works needed to remediate its buildings. The figure set out is an estimate only. Declaring it here would prejudice the DHB's position in any subsequent negotiations. The only public interest here is in a DHB allowed to obtain best price for its remediation work. Disclosure would cut across this.