



## CONTROLLER and AUDITOR-GENERAL

KEVIN BRADY

SB04-0007-C

10 June 2003

Hon Pete Hodgson  
Minister Responsible for Crown Research Institutes  
Parliament Buildings  
WELLINGTON

Dear Minister

### **REPORT ON THE DISPOSAL OF 17 KELLY STREET BY THE INSTITUTE OF ENVIRONMENTAL SCIENCE AND RESEARCH LIMITED**

#### **What we were asked to do**

- 1 In July 2001 the Institute of Environmental Science and Research Limited (“ESR”) – a Crown Research Institute (“CRI”) – signed an agreement with Glenstone Limited (“Glenstone”) for the sale of its property at 17 Kelly Street, Mount Eden in Auckland (“the property”).
- 2 Over a period of time, local residents and the media expressed concerns about ESR’s disposal of the property. You asked us to undertake an independent audit of the process. Two issues emerged which became the main focus of our consideration:
  - ◆ The property was known to be contaminated with mercury – a legacy of its earlier use as a dental school. We considered how ESR managed the evolving issue of the contamination, and its impact on the method of disposing of the property in a way that met the Minister’s requirements; and
  - ◆ Glenstone was owned by a former Chief Financial Officer of ESR (“the former CFO”). We sought to establish why ESR chose to enter a private treaty sale arrangement with the former CFO, and what steps it took to ensure that it was proper and ethical to do so.
- 3 This report sets out our expectations and our findings.

## **What we did**

- 4 We agreed to undertake this audit under section 16 of the Public Audit Act 2001, using terms of reference fixed in consultation with the Crown Company Monitoring Advisory Unit (“CCMAU”), acting on your behalf. The terms of reference are reproduced in Appendix 1, and the text of section 16 in Appendix 2.
- 5 We completed the audit in two stages. The first stage involved:
  - ◆ review of documentary evidence;
  - ◆ interviews of the chief executive and former chair of ESR, its property consultant, and the former CFO; and
  - ◆ preparation of a draft report.
- 6 We also spoke to some of the members of the public who had independently approached us with their concerns about the matter.
- 7 The second stage of the audit involved discussion of the draft report with ESR, further interviews, and further review of documentary evidence. The need to complete the second stage meant that the audit became protracted.

## **Limitations in the scope of the audit**

- 8 Our audit did not address:
  - ◆ ESR’s decision to divest the business operations carried out at the property;
  - ◆ the cause of the contamination of the property and the consequent remediation requirements;
  - ◆ Glenstone’s proposed use of the property, other proposed uses, and the related planning and zoning issues; or
  - ◆ the former CFO’s business involvement with Glenstone and his relationship with his current employer.

## **ESR’s role and responsibilities**

- 9 CRIs are companies established under the Companies Act 1993 and the Crown Research Institutes Act 1992 (“CRI Act”). Their purpose is to undertake research (CRI Act, section 4). ESR’s web site describes its business in the following terms:

*ESR provides specialist science solutions related to public health, environmental health and forensic science. ESR’s applied science and research services and projects are centred around safe environments for people and build on expert*

*capabilities in chemical and microbiological contaminants, and surveillance of diseases and hazards.*

10 Section 5(1) to (3) of the CRI Act says:

*(1) Every Crown Research Institute shall, in fulfilling its purpose, operate in accordance with the following principles:*

*(a) That research undertaken by a Crown Research Institute should be undertaken for the benefit of New Zealand:*

*(b) That a Crown Research Institute should pursue excellence in all its activities:*

*(c) That in carrying out its activities a Crown Research Institute should comply with any applicable ethical standards:*

*(d) That a Crown Research Institute should promote and facilitate the application of—*

*(i) The results of research; and*

*(ii) Technological developments:*

*(e) That a Crown Research Institute should be a good employer:*

*(f) That a Crown Research Institute should be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage those interests when able to do so.*

*(2) Every Crown Research Institute shall, in fulfilling its purpose, operate in a financially responsible manner so that it maintains its financial viability.*

*(3) For the purposes of subsection (2) of this section, a Crown Research Institute is financially viable if—*

*(a) Regardless of whether or not it is required to pay dividends to the Crown, the activities of the Crown Research Institute generate, on the basis of generally accepted accounting principles, an adequate rate of return on shareholders' funds; and*

*(b) The Crown Research Institute is operating as a successful going concern.*

11 As was pointed out to us, ESR's business does not involve property development. Disposing of the property was therefore an administrative rather than an operational matter. Nevertheless, in our view the principles set out in section 5(1) were relevant, insofar as they were applicable, to the act of disposal.

12 The principle of ethical conduct (section 5(1)(c)) was especially relevant in this case, given the potential conflict of interest involved in disposing of the property to a company owned by a former senior employee. ESR's Ethics Committee is concerned

with ensuring compliance with *scientific* and *research* ethics, rather than the more general principle. However, ESR accepted that its Board had a responsibility to consider the ethical issues raised by the Glenstone proposal, and did so.

- 13 ESR is also subject to the oversight of its shareholding Ministers (who are represented on a day-to-day basis by CCMAU). The role and powers of shareholding Ministers are set out (generally) in the Companies Act 1993 and (specifically in respect of CRIs) in sections 6 and 15 and Part III of the CRI Act.
- 14 Consistent with these provisions, ESR was expected to, and did, seek shareholder approval to dispose of the property. As a Crown-owned entity, ESR was also required to comply with :
  - ◆ the “offer back” provisions of section 40 of the Public Works Act 1981; and
  - ◆ procedures enabling the Crown to consider whether the property should be used to satisfy its obligations to Maori under the Treaty of Waitangi.

### **Our audit expectations**

- 15 Consistent with the role and responsibilities of ESR as set out above, we expected to find that ESR had:
  1. met all applicable legal requirements in disposing of the property;
  2. defined the outcome it expected to achieve from the disposal, which was consistent with its statutory responsibilities, commercial imperatives, risk management and the expectations of its shareholders;
  3. adopted and implemented an approach to disposing of the property which:
    - realistically would have enabled it to achieve its desired outcome;
    - was appropriate given the nature of the property and all known business and other risks associated with it; and
    - was transparent, contestable and fair;
  4. identified and addressed any conflicts of interest arising (without limitation) from the former CFO’s previous association with ESR, and used a robust and arm’s length process to assess the Glenstone proposal and negotiate the terms and conditions of sale;
  5. adequately recorded all its key decisions and actions; and
  6. dealt in good faith with any enquiries about the property.

## What we found

- 16 This part of the report describes, in narrative form, the events from the time ESR decided to dispose of the property until the execution of the sale and purchase agreement with Glenstone.

### *Decision to dispose of the property*

- 17 The Board of ESR first considered disposing of the property in late-1997. It engaged a property consultant to evaluate the site and advise on its potential. The former CFO was given operational responsibility for the disposal once the Board decided to proceed.

- 18 On 22 December 1998 the Minister consented to the sale of the property subject to:

*ESR satisfying all of its obligations, statutory clearances and following the disposal of Crown property mechanisms.*

- 19 Property divestment options were explored through to April 1999, when activity lapsed during the lengthy clearance process. On 25 February 1999 ESR obtained a current market valuation report for the property, as required for offer back purposes under the Public Works Act. The report valued the property as if it was a “clean” site, at \$2.2 million plus GST.

- 20 Clearance was completed in August 2000. The former CFO left ESR shortly afterwards. On 10 October 2000 the Minister wrote to ESR approving the disposal of the property, with the expectation that:

*...the agreement for sale and purchase clearly details the extent of the contamination and ensures that neither the purchaser, nor anyone claiming through the purchaser, can have recourse to ESR or the Crown for any liability out of the that [sic] contamination; and be in the ... best commercial interests of the company.*

- 21 The full text of the Minister’s letter is reproduced in Appendix 3.

### *ESR’s approach to the disposal*

- 22 ESR managers and Board members told us that they were guided throughout by the need to meet the Minister’s objectives as set out in the letter of 10 October 2000. The objectives were, accordingly, to achieve the best possible sale price for the property while at the same time protecting ESR’s and the Minister’s interests in respect of liability for the contamination.

- 23 As a first step, the property consultant arranged for a new market valuation report on the property. This valuation was completed in early November 2000. It showed a current market valuation of \$1.65m plus GST. As in 1999, the valuation was based on the property being a “clean” site.

- 24 On 29 November 2000 the property consultant provided ESR with an analysis of the drop in the property’s value. At its December 2000 meeting the Board requested management to make some enquiries into property valuations, to test the validity of the

current valuation and the feasibility of marketing the property with the current building intact.

- 25 ESR was also, of course, aware that the property was contaminated. However, the full extent of the contamination did not begin to emerge until after ESR engaged Tonkin and Taylor, consultant engineers, to undertake an independent assessment of the contamination. This work began in December 2000 and continued into 2001.
- 26 The Board considered disposal options for the property at its January 2001 monthly meeting. Up until that meeting some form of public tender arrangement was being considered by the property consultant. At the meeting a real estate marketing proposal (suggesting a price range of \$1.42 to \$1.70 million plus GST) and the property consultant's proposal prepared in December 2000 were tabled and briefly discussed. Both contemplated a public tender arrangement.
- 27 The January 2001 minutes record that the Board noted the property consultant's advice (to appoint a real estate agent to manage the sale, and to use a competitive tender process) and instructed him to talk to Tonkin and Taylor about contamination solutions, discuss a strategy for the sale with one real estate agent, and report back to the February 2001 meeting – noting that a sale by 30 June 2001 should be the objective.
- 28 We formed the impression from the minutes that the Board, at its January 2001 meeting, was comfortable with putting the property to the market. However, it became apparent to us that the minutes of the meeting did not reflect the full extent of the discussion that took place about the disposal of the property. We were told that the Board also had before it, and discussed at length, a preliminary report by Tonkin and Taylor, which suggested that the extent of contamination was much worse than had previously been thought. One Board member described the Board's mood as one of dismay, given ESR's wish to dispose of the property as quickly as possible and the Minister's expectation that, in doing so, ESR should not expose itself or the Crown to any liability in relation to the contamination. We were told that the Board reacted to the worsening news by effectively deferring any decision as to the method by which the property should be disposed of, and leaving it to management (on advice from the property consultant) to determine the appropriate method once the full extent of the contamination became known.
- 29 The property consultant was present at the January Board meeting. Documentary evidence made available to us suggested that his advice that the property should be put out to tender could have been based on knowledge that the property was seriously contaminated. We found it difficult to reconcile that evidence with what we had been told of the discussion at the Board meeting. However, the evidence was in the form of an undated handwritten note that the consultant had post-dated, when providing it for our investigation, as having been written in December 2000. In a subsequent interview the property consultant told us that he believed he had mislabelled the document and that it had not originated until after the Board had discussed his advice at the January 2001 meeting. We accepted this explanation, and proceeded on the basis that the property consultant's advice that the property should be put to tender was based on the extent of knowledge of the contamination situation that existed before Tonkin and Taylor began their independent assessment.

- 30 There was also documentary evidence suggesting that ESR's management may have continued to pursue a strategy of a fully tendered sale of the property after the January 2001 Board meeting. This conflicted with the evidence of Board members that the Board wanted to keep its options open and would leave it to management (with advice from the property consultant) to determine the most appropriate method of disposing of the property once the full extent of the contamination became known.
- 31 However, the Chief Executive satisfied us that his approach was to rely on the property consultant's assessment of the situation. He told us that he accepted the property consultant's advice that it was not appropriate to settle a marketing strategy until the full extent of the contamination was known.
- 32 For his part, the property consultant told us that he reassessed his advice to ESR after the January 2001 meeting, in light of the worsening reports about the contamination. He formed the view that it would not be in ESR's interests for the property to be exposed to the market, or a firm strategy for disposal to be adopted, until the full extent of the contamination of the property was known. In particular, he believed that disclosure of the uncertain contamination situation to the market could adversely affect the market value and saleability of the property. Accordingly, the property consultant continued to develop, in discussion with the Chief Executive, an alternative disposal strategy (raised at the January Board meeting) that involved:
- ◆ selecting a possible single purchaser; and
  - ◆ negotiating a sale and purchase agreement that would enable the remediation of the contamination to be addressed in a collaborative yet confidential manner.
- 33 At the February meeting of the Board, after the Glenstone proposal was received, the Board requested a documented project plan.
- 34 To summarise thus far:
- ◆ The Minister approved disposal of the property in October 2000.
  - ◆ The value of the property had fallen since February 1999, leading the Board to consider whether it should retain it.
  - ◆ After advice from the property consultant explaining the fall in value, the Board decided to proceed, subject to the contamination situation being clarified.
  - ◆ Although advised initially to proceed by putting the property to the market by open tender, the Board did not decide on a sales process.
  - ◆ By February 2001, management was tending to the view that a single purchaser approach may be the best way to deal with the contamination issue and ensure that best value was received.

*Enquiries from potential purchasers and interested persons*

- 35 On 13 February 2001, an ESR employee reminded the property consultant of the Board's January 2001 requirements of him. The communication included this instruction:

*Discuss with one real estate agent the situation with the site to produce plans and ideas for vending.*

- 36 On the same day the property consultant received an unsolicited phone enquiry from the wife of an ex-employee of ESR, on the availability of the property for sale. The property consultant's file note on this conversation recorded that he told the enquirer that:

*...the property was required to be sold in a contestable process, in order to satisfy corporate requirements, but at that stage he was unsure whether that would be a public or discrete process.*

- 37 We found the reference to a "contestable process" to be somewhat at odds with the evidence that, by February 2001, management was tending toward a single purchaser approach. However, the property consultant told us that his advice about a "discrete" process contemplated the possibility of a sale to a single tenderer selected from a list of likely suitable purchasers.
- 38 The property consultant also undertook to advise ESR of the enquiry and that he would try to advise the enquirer when the property availability and selling details were confirmed. There were three other enquiries after the Glenstone proposal was received, and a further enquiry after the sale and purchase agreement with Glenstone was signed.
- 39 In all of these enquiries the property consultant advised the enquirers that the disposal of the property was under consideration and they would be contacted further. We are not aware of any follow-up action undertaken in this regard. However, the property consultant told us that, in his view, none of the enquirers were either seriously interested in purchasing the property or likely to be considered by ESR as suitable purchasers.
- 40 The property consultant also told us that, in some cases, the enquirer's stated intentions for the property would not have been consistent with the Auckland City Council's District Plan and that, in any event, remediation would have been needed before any development could have taken place.

*Receipt of the Glenstone proposal*

- 41 The former CFO had left ESR in August 2000, but undertook a consultancy project (unrelated to the property) with ESR on a contract basis. In mid-November 2000, he met socially with ESR staff, at which time he may have had some general discussion about progress in disposing of the property. He also met socially with the property consultant in late November 2000, when the matter was not discussed.

- 42 In early February 2001, the former CFO met with the Chief Executive at ESR's corporate office, to discuss the results of the consultancy work. The former CFO asked about the status of the property, and there was informal discussion about it. The Chief Executive did not recall disclosing any significant information about the property (in particular its valuation or the contamination – both of which, in any case, the former CFO was aware of) at the meeting.
- 43 The former CFO told us that he saw a business opportunity for himself arising from the meeting. On 20 February 2001 he incorporated Glenstone and wrote to the Chief Executive of ESR, referring to their meeting and making a proposal to purchase the property. In this letter he mentioned a proposed value in the range of \$1.4 to \$1.6 million, as discussed at their meeting.
- 44 The former CFO had experience in property management and construction, but had not personally undertaken a major property development before. It was clear to us that he made the proposal on his own initiative, without encouragement by ESR.
- 45 The proposal contained this acknowledgment by the former CFO:

*Because of my former employment by ESR there may be some issues for ESR to address in order [sic] take up this offer. I am happy to discuss these with you, and if you preferred the ESR Board to assist with resolution.*

*Consideration of the proposal*

- 46 From our interviews and some documentary evidence, we concluded that ESR considered the proposal in depth over February-July 2001, with the main issues being:
- ◆ the legal and ethical issues of dealing with a former employee;
  - ◆ the sale price; and
  - ◆ the design and acceptance of a suitable indemnity clause in respect of the contamination.
- 47 We are satisfied that ESR addressed the ethical and legal risks when considering whether or not to deal with the company of the former CFO. The Board:
- ◆ obtained independent legal advice;
  - ◆ obtained clarification that the property consultant, who had dealt with the former CFO prior to his departure, was acting independently and in ESR's best interests;
  - ◆ consulted with CCMAU and formally advised the Minister that it was dealing with the former CFO; and
  - ◆ was kept informed about the ethical and legal issues, and discussed them at some length at the February 2001 Board meeting.

- 48 However, the ethical risk (which could quickly have become a political risk for a CRI operating in the public sector environment) did not appear to have been raised by CCMAU when approached.
- 49 Price was another consideration during the negotiations. Glenstone's initial offer was for \$1.60 million plus GST. At that point, the most recent valuation information available to ESR was the November 2000 valuation and the January 2001 market assessment. In March 2001 the Board directed the Chief Executive to try and negotiate the price upwards. Negotiations over the terms and conditions of sale continued until July 2001, and no further valuation was obtained during this period. The price eventually agreed was \$1.61 million plus GST. The sale and purchase agreement also provided for the parties to share additional remediation costs, based on a remediation plan.
- 50 We are satisfied that the negotiation of the sale and purchase agreement was conducted on an arm's length basis, with appropriate advice being taken by ESR and solicitors being involved on behalf of each party. We were told that a particular emphasis in the negotiations was on the terms of an indemnity given by Glenstone in respect of liability arising from the contamination of the site. The importance of the indemnity arose from the Minister's expectation that neither ESR nor the Crown would be exposed to any ongoing liability risk.

#### **Our conclusions in respect of our expectations**

- 51 This part of the report sets out our conclusions in respect of whether ESR's management of the above events met our expectations.

***Our expectation: that ESR would have met all applicable legal requirements in disposing of the property***

- 52 We reviewed all documentation relating to the statutory and other clearance processes, and are satisfied that ESR met all applicable requirements.

***Our expectation: that ESR would have defined the outcome it expected to achieve from the disposal, which was consistent with its statutory responsibilities and the expectations of its shareholders***

- 53 We are satisfied that ESR adopted as its desired outcome the Minister's expectation that the sale would be in the best commercial interests of the company while, at the same time, detailing the extent of the contamination and ensuring that there would be no residual liability on ESR or the Crown for the contamination.

***Our expectation: that ESR would have adopted and implemented an approach to disposing of the property which:***

- ◆ ***realistically would have enabled it to achieve its desired outcome;***
- ◆ ***was appropriate given the nature of the property and all known business and other risks associated with it; and***

◆ *was transparent, contestable and fair*

54 Our conclusions under this expectation cover two aspects:

- ◆ the development of a disposal strategy; and
- ◆ ESR's response to the Glenstone proposal.

*Development of a disposal strategy*

55 We considered that, in the normal course of events, a property such as the one at stake here would have been disposed of by a contestable method in the open market. We initially expected to find evidence of a commitment to a contested disposal, with a documented project plan.

56 We found that the Board had requested at its February 2001 meeting that the disposal approach that took place be covered by a documented project plan. However, we found no evidence of a pre-determined strategy or process for the disposal. ESR's explanation for this was that, because the nature and extent of the site contamination was unclear, and unfolded throughout the period in which ESR was disposing of the property, it was necessary to react to the worsening situation as it unfolded.

57 In our view, ESR acted appropriately in the circumstances. The Board was clearly concerned about the worsening contamination situation, and anxious not to act precipitately and in a manner which might undermine its ability to meet the Minister's expectations in respect of achieving the best price while also addressing the issue of potential contamination liability. ESR continued to take advice from the property consultant on the most appropriate strategy for meeting that expectation while at the same time maintaining the market value of the property. We did not identify any substantial risks that were not effectively addressed by the actions of ESR.

*Evaluation of the Glenstone proposal*

58 Similarly, in normal circumstances we would have expected ESR to have evaluated Glenstone's proposal by seeking other expressions of interest and/or inviting it to participate in an open tender process. Instead, its response was to decide to treat with Glenstone on a private sale basis.

59 We accepted, on the basis of the interview evidence and other explanations provided by ESR, that at the time Glenstone's proposal was received on 20 February 2001, ESR was not committed to going to the market. Indeed, ESR had recently received advice from its property consultant that it would be unwise to do so.

60 The decision in February 2001 to settle on a private treaty approach with Glenstone was made because ESR thought it was the most likely means of achieving the Minister's objectives. In our view, the decision was consistent with the strategy which was emerging at that time from the property consultant's advice – that dealing with a single purchaser, selected as someone with whom ESR could work to address the contamination issue in the context of a sale and purchase agreement, would be the best

means of preserving the market value of the property while also addressing the potential contamination liability.

- 61 The confidentiality surrounding the contamination issue was appropriate in the circumstances, given the impact it could have had on the company's commercial outcomes. ESR's approach in these respects was also in accordance with the property consultant's advice.
- 62 We cannot comment on whether alternative sales methods – such as dealing with another party or placing the Glenstone proposal into a contestable process – would have achieved a better result for ESR. We were, however, concerned to ascertain whether ESR had adequately tested the price offered by Glenstone. In our view, it would have been difficult to say that the November 2000 valuation remained current. We think it would have been prudent for ESR to seek further evidence to verify that the price being offered was in line with market expectations. It could have done so by reaffirming the currency of the November 2000 valuation before concluding the negotiations with Glenstone in July 2001.
- 63 We were also concerned that the former CFO – while well known to ESR – was not experienced as a property developer. We asked ESR what the compelling reasons were for deciding to deal with Glenstone. We were told that:
- ◆ ESR sought and obtained positive assurance from the property consultant on the merits of the Glenstone proposal;
  - ◆ the property consultant made inquiries with Glenstone about the qualifications and experience of those who would be working with the former CFO, and advised ESR that in his view a competent team had been assembled to undertake the work;
  - ◆ ESR requested information, and assured itself, about Glenstone's financial backing underlying the proposal;
  - ◆ ESR believed that the former CFO understood its business, recognised the demands placed on ESR by the Minister's expectation in respect of the contamination issue (including the need for confidentiality), and was ultimately someone the Board knew and had confidence in; and
  - ◆ by dealing with Glenstone, ESR could achieve a price close to the "clean" valuation it had received in November 2000, while also ensuring that the risks in respect of the contamination shifted to the purchaser.

***Our expectation: that ESR would have identified and addressed any conflicts of interest arising (without limitation) from the former CFO's previous association with ESR, and used a robust and arms length process to assess the Glenstone proposal and negotiate the terms and conditions of sale***

64 Our conclusions are:

- ◆ Although fortuitous, given the contamination issue and its impact in leading ESR to the single purchaser approach, the proposal from Glenstone was unsolicited.
- ◆ The former CFO did not have access to any commercially sensitive information, or information that other potential bidders could not have got, before making the Glenstone proposal.
- ◆ ESR's Board was aware of the potential probity and conflict issues, and considered them thoroughly.
- ◆ ESR reasonably considered the risks associated with dealing with Glenstone and particularly the company's ability to perform its obligations under a sale and purchase agreement.
- ◆ The property consultant gave some help to Glenstone to put its team together. However, the property consultant at all times acted in ESR's interests and to its advantage.
- ◆ We are satisfied that an adequate level of professional and legal consultation was undertaken over the period until the signing of the sale and purchase agreement. ESR insisted on steps to ensure the negotiations were arm's length.

***Our expectation: that ESR would have adequately recorded all its key decisions and actions***

65 In our opinion, ESR should have better documented its decision to deal with the former CFO. The Chief Executive has undertaken to address the issue of the level of detail in Board minutes.

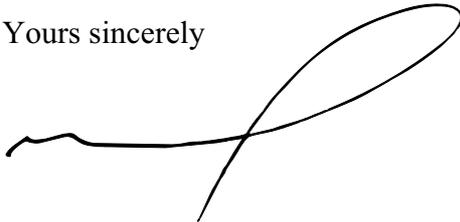
***Our expectation: that ESR would have dealt in good faith with any enquiries about the property***

66 We also considered whether ESR acted fairly and appropriately in dealing with local enquirers relating to the potential purchase of the property.

67 At the time of the first enquiry on 13 February 2001, the draft report from Tonkin and Taylor had been received. It was clear to us that ESR and the property consultant were concerned about information on the extent of the contamination getting into the public domain. We are satisfied that this concern was motivated by the impact that disclosure could have had on market value and saleability.

- 68 In considering whether ESR acted fairly in dealing with enquirers, we noted:
- ◆ The draft sale and purchase agreement contained a strict confidentiality clause, inserted at Glenstone's insistence. ESR received the draft after the first enquiry had been dealt with (on 13 February 2001). The confidentiality constraint was not therefore applicable in respect of that enquiry. In respect of subsequent enquiries, it is our view that ESR was right to respect Glenstone's wishes, and to take them into account when deciding what information it was appropriate to disclose.
  - ◆ The property consultant's advice to ESR as to the impact that disclosure of the contamination problem could have had on its ability to achieve its desired outcome for the disposal.
  - ◆ The fact that none of the enquirers had indicated any formal or definite interest in the property. For the most part, it appears, they were seeking information for possible consideration of an offer.
- 69 On balance, we are satisfied that the enquirers were treated fairly – although ESR's commitments made to keep them informed should have been met.

Yours sincerely

A handwritten signature in black ink, consisting of a horizontal line that curves upwards and loops back to the left, ending in a small hook.

Kevin Brady

**APPENDIX 1****TERMS OF REFERENCE FOR THE AUDIT OF INSTITUTE OF ENVIRONMENTAL SCIENCE AND RESEARCH LIMITED (ESR) - DISPOSAL OF PROPERTY LOCATED AT 17 KELLY STREET, MT EDEN, AUCKLAND****Purpose**

The purpose of this audit is to provide assurance to the Minister for Crown Research Institutes (the Minister) over the robustness and integrity of the process followed by ESR in the disposal of its property at 17 Kelly Street, Mt Eden, Auckland.

**Background**

ESR is a Crown Research Institute under the Crown Research Institutes Act 1992, and accordingly is a public entity under the Public Audit Act 2001.

ESR is currently in the process of disposing of a property located at 17 Kelly Street, Mt Eden, Auckland. Over a period of time local residents and more recently the media have expressed concerns about the disposal process, including that the person purchasing the property was a former employee of ESR.

To allay the current concerns over this transaction, the Minister has requested the Controller and Auditor-General to undertake an independent audit.

**Scope of the Review**

The audit will be conducted under section 16 of the Public Audit Act 2001 and will address:

- ◆ whether the disposal process was consistent with ESR's statutory obligations and with standards and expectations for disposal of assets by a Crown owned company; and
- ◆ whether the actions of ESR and its employees were consistent with standards of probity in the public sector.

**Reporting the Results of the Audit**

The Auditor-General will report to the Minister and ESR on the results of the audit and any other matters that it is desirable to draw to their attention. The Auditor-General may also report to the House of Representatives should this be appropriate.

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**APPENDIX 2****SECTION 16 OF THE PUBLIC AUDIT ACT 2001**

## 16. Performance audit—

- (1) The Auditor-General may at any time examine—
    - (a) the extent to which a public entity is carrying out its activities effectively and efficiently:
    - (b) a public entity's compliance with its statutory obligations:
    - (c) any act or omission of a public entity, in order to determine whether waste has resulted or may have resulted or may result:
    - (d) any act or omission showing or appearing to show a lack of probity or financial prudence by a public entity or 1 or more of its members, office holders, and employees.
  - (2) An audit under this section may relate to 1 or more public entities.
  - (3) Subsection (1)(a) does not apply to the Reserve Bank of New Zealand or any registered bank (as defined in section 2(1) of the Reserve Bank of New Zealand Act 1989).
  - (4) If subsection (1)(a) applies and there is an applicable government or local authority policy to which the public entity is required to adhere, the examination is to be limited to the extent to which activities are being carried out effectively and efficiently in a manner consistent with that policy.
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**APPENDIX 3**

Mr Malcom Don  
Chairman  
Institute of Environmental Science & Research Limited  
PO Box 12444  
WELLINGTON

Dear Malcolm

**Disposal of Surplus Property at Mt Eden, Auckland**

Thank you for your letter of 4 September 2000 seeking shareholding Minister's consent to dispose of the above property.

On behalf of shareholding Ministers, I hereby provide consent for ESR to dispose of the property. I note your advice that you have already processed the sale through the Crown's established mechanisms for the disposal of Crown property including:

- clearance under section 40 of the Public Works Act 1981; and
- clearance by the Office of Treaty Settlements to dispose of the property on the open market after its passage through the applicable protection mechanisms that address the Crown's obligations in the Treaty claim area and over Maori sites of significance.

Shareholding Ministers note that the property is subject to mercury contamination from its previous use as a Dental School and it is your intention to sell the property on the condition that the purchaser undertakes any remedial work for the contamination. Shareholding Ministers expect ESR to ensure that the agreement for sale and purchase clearly details the extent of the contamination and ensures that neither the purchaser, nor anyone claiming through the purchaser, can have recourse to ESR or the Crown for any liability arising out of the that [sic] contamination.

Your Board must also be satisfied that the sale is in the best commercial interests of the company, having regard to their responsibilities and obligations under the Crown Research Institutes Act 1992 and the Companies Act 1993.

Yours sincerely

Hon Pete Hodgson  
Minister for Crown Research Institutes  
*for and on behalf of shareholding Ministers*

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