

Kāinga Ora - Investment and Delivery Committee

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Business Group:	Urban Development and Delivery
Title:	PIRITAHU – CONTRACT EXTENSION

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Purpose

1. This paper seeks Investment and Delivery Committee agreement to enter into negotiations with the Non-Owner Participants (NOPs) of the Piritahi Alliance (the Alliance) for the extension of the Alliance Civil Alliance Programme Agreement (ACAPA), which has a completion date of 6 December 2023.
2. While there are no direct financial implications associated with the extension of the ACAPA, we are presenting this paper to IDC as the total value of the overall programme of works associated with this contract extension should have IDC visibility.

Recommendations

3. It is recommended that the Kāinga Ora Investment and Delivery Committee:
 - a) **note** that Kāinga Ora needs to consider the extension of the ACAPA at this time to provide certainty to the Piritahi Alliance participants for its forward work programme;
 - b) **note** that three scenarios have been considered, and that an extension of the ACAPA is the recommended approach to ensure recent investment and efforts to improve performance can continue to be realised;
 - c) **note** that the recommended approach has been endorsed by Construction Programme Assurance Panel (CPAP) who we will continue to work with for advice through the contract extension process. This approach was also endorsed by the Large-Scale Project Programme Governance Board at its meeting of 16 September 2022;
 - d) **agree** to Kāinga Ora entering into negotiations with the Non-Owner Participants (NOPs) to extend the ACAPA for a further term of three years, and
 - e) **agree** to delegate execution of the contract extension to the General Manager Urban Development & Delivery, subject to the negotiations being successful.

Background / Context

4. On 7 December 2018, the ACAPA was entered into for the purpose of forming the Piritahi Alliance to design and deliver civil infrastructure required for Kāinga Ora Large-Scale Projects (LSPs) in Auckland.
5. The original procurement process was undertaken by what was then HLC, prior to the establishment of Kāinga Ora. The procurement process was robust, to ensure it met and aligned with government procurement rules and expectations. The Tender Evaluation Panel included a cross section of internal employees, and also an independent external party. A probity auditor from PWC was also engaged to observe the procurement process to ensure integrity was maintained.
6. The ACAPA has a term of five years from date the ACAPA was executed, and its current completion date is 6 December 2023. An extension of the ACAPA is being considered now to provide the Alliance participants with certainty of forward work within a reasonable timeframe.
7. In accordance with clause 18.1(b) of the ACAPA, Kāinga Ora, as the Owner Participant of the Alliance, may at its sole and absolute discretion extend the completion date of the ACAPA. The option to extend the ACAPA was a part of the Open Market RFP and was therefore visible to all tenderers during the procurement process.
8. The initial focus for the Alliance was 'Scale and Pace'. To date Piritahi has delivered \$600m of works and enabled over 4,000 homes. This work programme is set to increase significantly, as noted in paragraph 19.
9. The Alliance has delivered a significant amount of infrastructure over the past four years but has not been focused enough on the basics of project delivery, including efficient processes and systems.
10. As a result, programme and cost performance has not aligned with Kāinga Ora's expectations in these areas. However, it should be noted that communications and direction from Kāinga Ora has varied on these matters, creating confusion within Piritahi.
11. In the last 12 months, a deliberate effort to shift and align Piritahi with Kāinga Ora's expectations has occurred, accompanied by upskilling and more focused communication and direction from Kāinga Ora.
12. In late 2021, BRS Consulting was engaged by the Alliance to assist with providing Alliance 101 training for the Piritahi team and those within Kāinga Ora working with the Alliance, to help develop a high-performance plan and provide leadership coaching for the Alliance Management Team (AMT). In addition the following initiatives have been undertaken:

- a) Appointment of a new Chair for the Programme Alliance Board (PAB)
 - b) Establishment of the Owner Interface Management Team
 - c) Development of a new Alliance Charter
 - d) Introduction of the KRA (Key Result Area) and KPI (Key Performance Indicator) Framework.
13. These actions are expected to catalyse improved performance of the Alliance and deliver on Kāinga Ora's expectations. Some early signs of success are showing, but these improvements will take time to be fully realised. These actions and initiatives are also summarised in the attachment to this paper.
 14. BRS was also asked to undertake a strategic review (health check) of the Alliance to guide both Kāinga Ora and the Non-Owner Participants (NOPs). The Health Check Report provided a number of recommendations. An important recommendation was that with the significant investment made into the Alliance, and the participants' willingness to improve the Alliance's performance, the NOPs should be provided with the opportunity to provide a proposal for the contract extension.
 15. Given the recent efforts and investment, the UDD team agrees with the recommendation and is now presenting this approach to IDC to enter into negotiations with the NOPs to extend the ACAPA completion date for a further term of three years.
 16. We note that, given the principles under which an Alliance achieves the best value, a collaborative approach will be required to develop the proposal for the contract extension. This will allow Kāinga Ora to table the areas of the contract that need addressing, and also to be a part of any solution.
 17. There is a risk that the NOPs may not agree with the possible solutions required to extend the contract to ensure it provides value to Kāinga Ora. At present this seems unlikely and all participants have clearly expressed their desire to stay involved and improve.

Discussion

18. The recent LSP approvals allow us to plan more holistically which has improved our ability to brief and provide certainty of forward work.
19. The Programme Business Cases approved by cabinet in Mangere, Roskill and Tamaki set up UDD to deliver over 13,500 homes over the next 10 years including \$2.6b of land development and infrastructure work. We estimate that Piritahi will deliver land for over 6,000 homes and may get up to \$1bn of capital spend in the coming four years (the remaining year and proposed three-year extension).

20. To align with this forward planning, we now need to consider whether the ACAPA should be extended. The following three scenarios have been considered in the below Risks and Benefits assessment table:

	Benefits	Risk
Extend the ACAPA	<p>Risk is shared between Kāinga Ora and the NOPs.</p> <p>Provides a cost-effective procurement approach as the Alliance participants are well established.</p> <p>Provides an opportunity for the Alliance participants to implement lessons learned since the Alliance was formed.</p> <p>Continue the development of Tier 2 contractors in the industry</p> <p>Gives time for new structures and recent investment to bed in and take effect.</p> <p>Continue and build on the processes that are working well (e.g. waste minimisation, Watercare Certificates of Acceptance)</p>	<p>While there is an opportunity to look at rates and multipliers, there is a risk of no healthy price tension.</p> <p>Current performance issues in programme and cost management have the potential to continue.</p> <p>Alliance participants do not have the capability and systems that a Tier 1 contractor would provide.</p> <p>The parties may not be able to adequately address the areas that Kāinga Ora raises and therefore the contract may not be extended.</p>
Procure new Alliance	<p>Provides the opportunity for competitive price tension.</p> <p>Opportunity to utilising Tier 1 contractors with greater Alliance experience</p> <p>Opportunity to establish new efficient systems.</p>	<p>Delay to delivery as a result of having to go to market and undertake an interim alliance phase with new partners.</p> <p>Loss of motivation by existing team.</p> <p>Increase in cost to establish new alliance.</p> <p>Programme of work may not be attractive to Tier 1 contractors.</p>

<p>Return to traditional delivery model</p>	<p>Allows a potential return to the CCCS / 3910 traditional contracting model which could be advantageous to the market and Tier 2 contractors.</p> <p>Kāinga Ora will have higher control of delivery and scope outcomes.</p> <p>Reduced capital expenditure through lower management / P&G costs.</p> <p>Clearer “ownership” of programmes of certainty of work for our external partners.</p>	<p>Loss of progress made over the past three years, such as building lines of communication with Auckland Council, and CCOs</p> <p>Capacity of the existing market is constrained.</p> <p>Reputational damage due to the Alliance being viewed as a failure</p> <p>Loss of non-financial benefits and wider potential “value” outcomes (such as growth of future Tier 1 contractors)</p> <p>Potential loss of current suppliers and established relationships</p> <p>Increased reliance, and therefore resource requirements, on other Kāinga Ora teams (e.g. place based teams, external communications, procurement)</p> <p>Risk of failing to meet SPE targets.</p>
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Proposal

21. UDD’s preferred approach is to provide the opportunity to the existing Alliance Participant to extend the ACAPA as per the original RFP. This will provide time to embed recent investments from Kāinga Ora, as well as the efforts being made by the Piritahi team and the NOPs to shift the Alliance’s direction to align with Kāinga Ora’s expectations. This will also help to realise the wider value proposition the Alliance model should present.

22. If the decision is made to commence negotiations with the NOPs, the following is a summary of the areas we will address as part of the negotiations:

- a) Review of the ACAPA (contract agreement), including various changes and tidy-ups of last three years, for example practical completion requirements
- b) General cost management and programme performance
- c) Financial establishment audit to re-establish Kāinga Ora expectations from NOPs in terms of systems and processes, home organisation support
- d) Review of risk management including how risk is allocated between the Alliance and the Owner Participant.

23. To provide the Alliance participants with certainty within a reasonable timeframe, the following timeline will be set:

<i>Completed</i>	PGB and CPAP endorsement to extend ACAPA
October 2022	Agreement from IDC to enter into negotiations for ACAPA extension
November 2022	Request for Proposal released to NOPs
January 2023	Contract negotiations commence with Alliance participants
March/April 2023	Proposal received from NOPs
April 2023	Agreement on extension of ACAPA
December 2023	New contract commences

Risks and Mitigation

24. Key risks associated with this paper are that the NOPs may not wish to extend the ACAPA. To mitigate this risk, Kāinga Ora will work collaboratively to develop the proposal to be considered for the extension. Further risks are detailed in the risk and benefits assessment in paragraph 20.

25. We note that although there is some risks in extending the Alliance as per the above comments, there will remain an exit clause (as per the existing ACAPA) should the Alliance's performance not meet Kāinga Ora's expectations. We also note that extending the ACAPA does not commit Kāinga Ora to using Piritahi, and an option to have a combination of models could be investigated if desired.

Consultation

26. Consultation has been undertaken with UDD including the Infrastructure and Civil Construction, Commercial and Governance and Large-Scale Project teams. Consultation was also undertaken as part of the Health Check Review of the Alliance which informed this paper.

27. Input was provided by the team that undertook the original procurement for HLC. Commercial Group - procurement has been informed of the preferred approach. Advice and guidance has been sought from CPAP on the approach to the contract extension and CPAP was supportive. We will continue to work with CPAP for advice through the contract extension process.

Implications

Legal Implications

28. Kāinga Ora has sought legal advice on the revision of the ACAPA and a review of employment implications.

Financial Implications

29. Financial Implications of the preferred option include costs associated with:

- a) BRS - Consulting advice on contract extension approach
- b) Legal Costs - contract extension agreement.

People and Resource Implication

30. Resourcing levels are not directly affected by the preferred approach. However, if the ACAPA is not extended with the existing participants, Kāinga Ora resources will be affected as identified in the Risks and Benefits assessment table (paragraph 20).

Treaty of Waitangi and Māori Outcomes Obligations

31. The Piritahi Alliance operates under the Te Haumi Mana Whenua Engagement Framework, which establishes principles for engagement and working practices between Piritahi and Ngā Mana Whenua o Tāmaki Makaurau. The delivery of this framework focuses on four key areas: working together, regulatory processes for early and meaningful engagement, cultural capability and expertise, and Resourcing Ngā Mana Whenua o Tāmaki Makaurau through procurement and growing industry capacity.

Delegations

32. As Owner Participant, Kāinga Ora UDD has sole delegation rights to extend or end the ACAPA, however we are seeking IDC agreement on this approach as the total value of the overall programme of works associated with this contract extension should have IDC visibility.

Next Steps

33. Following agreement from IDC, the following next steps will be undertaken:

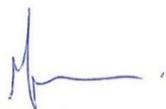
- a) Inform the PAB of the decision
- b) Engage BRS to assist with development of Procurement Plan
- c) Complete review of the ACAPA
- d) Develop plan for contract extension negotiations.

Attachments

34. There is one attachment to this paper:

- Piritahi Presentation to IDC

Signature



Mark Fraser

General Manager, Urban Development and Delivery

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