

11 April 2019

Dear [REDACTED]

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request to the Guardians of New Zealand Superannuation (“**Guardians**”), the manager of the New Zealand Superannuation Fund (“**NZ Super Fund**”, “**Fund**”), dated 26 February 2019 made pursuant to the Official Information Act 1982 (“**OIA**”).

Your Request

You have requested the following information:

- *All key RI- and ESG-related documents regarding the Fund's holdings in companies whose operations are in any way linked to Western Sahara (for example, companies importing phosphate from the territory). I do not require email communications or duplicated information.*
- *Minutes or briefings regarding the meeting between OCP and the Super Fund in April 2018.*
- *The briefing on Western Sahara provided to Finance Minister Grant Robertson and Prime Minister Jacinda Ardern in early 2018.*

Context

The Guardians is an active shareholder on this issue. We have engaged domestically, where the Fund has a portfolio of rural land investments that use products (particularly phosphates) that have been sourced from the Western Sahara. We are also active in respect of the Fund’s relatively small passive exposure to listed companies with operations linked to the Western Sahara.

Through our engagement with companies we have made it clear that we expect them to identify and manage the risks associated with the importation of phosphate from the Western Sahara appropriately.

This has included meeting with the organisations involved in importing phosphate from the Western Sahara to encourage them to explore and consider alternative sources where feasible. However, the supply of phosphate and its sourcing is an issue for the whole New Zealand agriculture industry. Our research indicates that for various reasons New Zealand’s supply chain has been designed around this particular type of phosphate and we recognise changes will take some time to implement.

Research undertaken in 2018 indicated that there were two listed companies held in our passive global equity portfolio that had not made a sufficient commitment (either partially or fully) to stop sourcing natural resources from the Western Sahara region. Engagement with these two companies is ongoing.

Our Responsible Investment Framework sets out how we integrate Environmental, Social and Corporate Governance (ESG) considerations as it relates to our investments. It uses New Zealand legislation, major Government policy positions, international conventions that New Zealand has signed and the UN Global Compact and other corporate standards as a guide for decision-making. We remain in contact with the Ministry of Foreign Affairs and Trade (MFAT) on this issue.

From here, we plan to continue our discussions with relevant officials and organisations to maintain a watching brief on the situation in relation to international standards and requirements, monitor reasonable alternative products and any new commitments by companies to stop sourcing phosphate or other resources from the Western Sahara.

Our Response

Details of the information we have identified from our searches as being within the scope of your request, and our response in respect of that request, are set out in **Table 1 below** this letter. The information we are releasing can be found **attached**, at **Appendix 1**.

We have withheld documents, as well as portions of certain documents, on the basis that we have a good reason for doing so under sections 6 and 9 of the OIA. In **Table 1** we have identified the key grounds that apply to each document.

The general bases on which it is necessary for us to withhold the information, and the grounds under the OIA that we refer to, are as follows.

Section 9(2)(a) – *“Protect the privacy of natural persons”*. Names and contact details pertaining to individuals other than senior managers have been withheld in order to protect the privacy of natural persons. We cannot see any public interest in, or benefit from, the release of such personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians’ activities.

Section 9(2)(b)(i) – *“Protect information where the making available of that information would disclose a trade secret.”* Some of the information captured by your request is non-public information that gives commercial entities a competitive advantage while the information remains generally unknown. We do not consider it to be in the public interest for us to disclose “trade secret” information of an entity provided to us in the course of our monitoring and/or engagement.

Section 9(2)(b)(ii) – *“Protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.”* Some of the information captured by this request relates to companies with commercial interests and who operate in competitive markets. Parts of this information are commercially sensitive (such as

information about business strategy) and was supplied specifically to the Guardians in confidence to enable us to conduct our engagement activities. Non-public information that relates to a company's commercial position has been withheld where disclosure would diminish the value of that information, jeopardise the company's negotiating position with its customers or suppliers, or disadvantage the company by making commercially sensitive information known to its competitors or the wider public.

Additionally, as part of our investment activity we contract with various suppliers, including responsible investment/ethical screening and research agencies. These agencies are commercial entities in their own competitive markets, and their subscription-based business model depends upon developing and selling proprietary advice and research. Given the reports are central to their business model and developed at considerable expense, these agencies are concerned about protecting their intellectual property and proprietary analysis. Disclosing such information to members of the public could limit their ability to sell their research to future clients, make their research available to competitors, or, because the information in question has been produced with recourse to third party sources, be in breach of their own licensing agreements and therefore expose them to financial litigation. The fact that information has been disclosed publicly may also undermine their ability to engage with issuers in the future, which could have a crippling effect on the ongoing viability of their business.

Section 9(2)(ba)(i) – *“Protect information which is subject to an obligation of confidence”*. We operate in a competitive market and if we cannot uphold the confidentiality of commercially sensitive information provided to enable us to evaluate and monitor investments, the supply of such information will be jeopardised. The documents you have requested include information about the Guardians' responsible investment engagement programme in connection with specific companies. The Guardians' engagements with investee companies on responsible investment issues are conducted on a confidential basis. For engagements to be successful, the Guardians needs to have a relationship of trust with the investee company in order to gain access to information and to develop influence. The companies the Guardians engage with are not likely to work with the Guardians if the confidentiality of both the fact of the engagements and the information supplied as part of the engagement process cannot be upheld. This creates a very real risk that the supply of information from the companies concerned would be jeopardised and would put future engagements on responsible investment issues at risk. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with, in order to compete on a level playing field with other investors and maximise returns to the Fund.

Section 9(2)(d) – *“Avoid prejudice to the substantial economic interests of New Zealand.”* On consultation the Guardians has been advised that the release of certain information could be prejudicial to the substantial economic interests of New Zealand.

Section 9(2)(f)(iv) – *“Maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.”* and **Section 9(2)(g)(i)** – *“Maintain the effective conduct of public affairs through the free and frank expression of opinions by or between Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.”* It is important for our efficient and effective operations that our staff and

officers are able to express their opinions, and that we can engage with officials, freely and frankly. Some of the documents concerned include opinions from staff members or imparted to staff members. The release of such information is likely to inhibit frankness and candour in the future which will be detrimental to good investment decision-making and contrary to the public interest.

Section 9(2)(g)(ii) – *“Maintain the effective conduct of public affairs through the protection of Ministers, members of organisations, officers, and employees from improper pressure or harassment.”* On consultation the Guardians has been advised that the release of certain information could risk subjecting Ministers, members of organisations, officers and employees to improper pressure or harassment.

Section 9(2)(h) – *“Maintain legal professional privilege”* The information includes certain legal advice provided to a third-party that is subject to legal professional privilege. It is necessary that we withhold that information to maintain legal professional privilege. Legal professional privilege is recognised as an important protection that will not be set aside except in the clearest cases. In this case, we do not consider that there is a public interest in the release of this legally privileged information that outweighs the third-party’s interest in protecting its rights to legal privilege.

Section 9(2)(i) – *“Enable a Minister of the Crown or any department or organisation holding this information to carry out, without prejudice or disadvantage, commercial activities.”* At the Guardians we engage with third parties including our investee companies in relation to our management of that investment and its ongoing operational due diligence. This engagement can involve negotiations with those entities. The effectiveness of such negotiations would be undermined if we disclosed the nature and details of the negotiations.

Section 6(a) – *“Prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.”* On consultation the Guardians has been advised that the release of certain information could be prejudicial to the international relations of the Government of New Zealand.

General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.nz.

Yours sincerely



Arti Prasad
Acting Head of Responsible Investment
Guardians of New Zealand Superannuation

Table 1:

Document Reference	Document Date	Document Title	Released	Reasons for Withholding	Page
299296	12/02/2012	PQ - Potash and FMC - February 2012	<i>In full</i>	n/a	1
299546	15/02/2012	Background to Parliamentary Question - FMC Corporation and Potash Corporation of Saskatchewan- 2012 February	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(a) 	2
797121	24/09/2012	Engagement Letter September 2012	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
797122	24/09/2012	Engagement Letter September 2012	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
829229	17/01/2013	Engagement Response to Request	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
	<i>Attachment</i>	Engagement Response to New Zealand Superannuation Fund 16Jan13	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
	<i>Attachment</i>	Supplier Code of Conduct FINAL June 2012	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
	<i>Attachment</i>	_CodeOfEthics_2012_English	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
884438	28/06/2013	Q4 CFIs - July 2013 combined papers	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	n/a
2317517	31/08/2017	Summary of <i>Western Sahara Resource Watch</i> "Report on Global Phosphate Trade from Occupied Western Sahara"	<i>In full</i>	n/a	4

2318236	04/09/2017	Western Sahara Research Project	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(i) • Section 9(2)(b)(ii) • Section 9(2)(ba)(ii) 	14
2402319	20/12/2017	Draft - Western Sahara Q&As to understand position - December 2017, updated May 2018	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) • Section 9(2)(d) • Section 9(2)(f)(iv) • Section 9(2)(g)(i) • Section 9(2)(g)(ii) • Section 9(2)(h) 	38
2456839	08/03/2018	Summary of Western Sahara phosphate rock situation 2018	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) • Section 9(2)(d) • Section 9(2)(f)(iv) • Section 9(2)(g)(i) • 	45
2462680	20/03/2018	MFAT Call re: Western Sahara Phosphate MINUTES 15 March 2018	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(g)(i) • Section 9(2)(h) 	47
2463127	21/03/2018	WS and phosphate rock sourcing - Internal meeting on 21 March 2018	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(f)(iv) • Section 9(2)(g)(i) 	54

2472764	06/04/2018	NZSF Quarterly Report to 31 March 2018	<i>Relevant section excerpted</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Out of scope 	55
2503940	17/05/2018	Global Phosphates 2018	<i>In Full</i>	<i>n/a</i>	57
2503943	17/05/2018	Phosphate Statistics 2018	<i>In Full</i>	<i>n/a</i>	58
2503944	17/05/2018	NZ Goods and Services Trade by Country: Year ended March 2017 (re Western Sahara- MFAT source)	<i>In Full</i>	<i>n/a</i>	59
2509462	22/05/2018	MFAT File Note Western Sahara Phosphate Update	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(g)(i) 	82
2512639	30/05/2018	MFAT meeting re. Western Sahara phosphate (29 May 2018)	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(d) • Section 9(2)(g)(i) • Out of Scope 	84
2526144	25/06/2018	Engagement letter	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
2526084	25/06/2018	Engagement tracker: Western Sahara (listed equity companies)	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
2526134	25/06/2018	Engagement letter	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
2549228	13/08/2018	CFI Briefing Paper: Sourcing phosphates from the Western Sahara	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	86

2595271	20/12/2018	Engagement letter follow up	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
2595267	20/12/2018	Engagement letter follow up	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
2608714	25/01/2019	Fwd: Phosphate Rock sourcing - Engagement Response	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
	<i>Attachment</i>	25012019115201-0001	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) • 	<i>n/a</i>
2608721	22/01/2019	Fwd: Engagement RESPONSE Jan 2019	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	<i>n/a</i>
2612169	26/02/2019	Western Sahara Meeting with OCP - April 2018	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) 	91
2613369	25/01/2019	FW New Risk Briefing Paper	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(a) • Out of Scope (attachment) 	93
2613370	04/03/2019	FW Ballance meeting raw notes	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(f)(iv) • Section 9(2)(g)(i) • Section 9(2)(h) 	96
2615926	12/03/2019	Western Sahara companies discussed at CFI RI Meeting Sept 2016	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Out of scope 	100
2614520	14/03/2019	RE: Boeing's Iran deal, Fund exposure to firearms, hazardous Child Labor on Indonesian tobacco farms [ref:_00D708dGg,_5003921wtKU:ref]	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(a) 	101
	<i>Attachment</i>	Jun 2016, ESG Controversies Report	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) 	<i>n/a</i>

	<i>Attachment</i>	Latest - ESG Controversies Report	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) 	n/a
2326708	25/09/2018	Filenote: BMO call to discuss confidentiality of engagements, Western Sahara and their voting service (25 Sept 2017)	<i>Relevant section excerpted</i>	<ul style="list-style-type: none"> • Section 9(2)(a) • Section 9(2)(b)(ii) 	104
2614321	18/12/2017	Notes from call with MFAT 18 Dec 2017	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(b)(i) • Section 9(2)(b)(ii) • Section 9(2)(g)(i) 	105
2614312	28/11/2018	File note: MFAT meeting 28 Nov 2018	<i>Partially Withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(g)(i) • Out of scope 	107