

4 November 2024

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By email

Dear [REDACTED]

Official Information Request – Auckland Light Rail

Thank you for your email of 6 October 2024 requesting information under the Official Information Act 1982 (OIA) relating to the NZ Super Fund’s involvement in Auckland Light Rail.

Background

We understand you are researching a book about Auckland Light Rail for publication.

In order to provide you with further context regarding the information you have requested, a useful summary of our light rail proposal and the process we went through was included in our 2020 Annual Report. This is attached at Appendix 1 and is also available on our website.

You may also be interested to know that CDPQ’s Montreal light rail project (the REM) is now operational with five stations having being in service for more than a year; testing on a new 14 km segment with four stations having commenced in September 2024; and construction of a airport station underway. Further information about the REM is available at:

<https://rem.info/en> and a useful news media article is available at:
<https://www.bloomberg.com/news/articles/2023-10-30/how-montreal-s-new-rapid-transit-line-saved-millions-per-mile>.

We note that information about Auckland Light Rail has already been released under the Official Information Act by both ourselves and other Government entities such as NZTA, Ministry of Transport and Treasury. Please refer to those entities’ websites for their disclosures. Information we have previously released (in addition to that already released to you) is available at the following links.

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| <p>All correspondence, including emails, between the NZ Super Fund and the Office of Hon Phil Twyford, Office of Hon Shane Jones and Office of the Prime Minister relating to Auckland light rail and the NZ Infra proposal, since 1 January 2020.</p> | <p>https://nzsuperfund.nz/assets/Disclosures/Official-Information-Act-Requests/OIA-2020-21/OIA_Response - ALR Project 2020.pdf</p> <p>https://nzsuperfund.nz/assets/Disclosures/Official-Information-Act-Requests/OIA-2020-21/Appendix-1-OIA-ALR.pdf</p> |
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| Gross expense from NZ Infra for costs to date (withheld but includes some background information) | https://nzsuperfund.nz/assets/Disclosures/Official-Information-Act-Requests/OIA-2020-21/OIA Response - July 2020 For-Web.pdf |
| All material briefings, advice and reports (internal or provided by external Partners / advisers / consultants) relating to the NZ Super Fund's proposal relating to Auckland's light rail network. | https://nzsuperfund.nz/assets/Disclosures/Official-Information-Act-Requests/OIA-2018-19/OIA response to Tova OBrien Light Rail-Corrected.pdf |
| All correspondence, such as emails, between the Guardians and the Minister of Finance's and Minister of Transport's offices relating to the NZ | https://nzsuperfund.nz/assets/Disclosures/Official-Information-Act-Requests/OIA-2018-19/OIA-Request-Tova-OBrien-Newshub-Light-Rail-Appendix-1-Part-1.pdf |
| Super Fund's proposal relating to Auckland's light rail network. | https://nzsuperfund.nz/assets/Disclosures/Official-Information-Act-Requests/OIA-2018-19/OIA-Request-Tova-OBrien-Newshub-Light-Rail-Appendix-1-Part-2.pdf |

Our Response

Our responses to your specific requests are set out below.

We have withheld certain information on the basis that we have good reason for doing so under section 9 of the OIA. We considered whether the public interest in favour of disclosure outweighs our reasons for withholding such information and concluded that it does not.

1. *A copy of the executive summary of the superfunds light rail proposal submitted on the 29th November 2019 under the 'twin-track process'.*

Withheld under:

- 9(2)(b)(i) protect information where the making available of the information would disclose a trade secret
- Sections 9(2)(b)(ii) and 9(2)(i) – “protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information” and “enable... any... organisation holding the information to carry out, without prejudice or disadvantage, commercial activities”.
- 9(2)(ba)(i) protect information which is subject to an obligation of confidence.
- 9(2)(j) – enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)
- Section 9(2)(k) – “prevent the disclosure or use of official information for improper gain or improper advantage”.

Our light rail proposal was a joint one with CDPQ Infra and was prepared on a commercial basis. The executive summary, bid documents and associated reports contain confidential trade

secrets and information developed using our respective institutional knowledge and collective expertise in light rail, infrastructure development, stakeholder engagement and financing, which has been developed over a number of years at considerable effort and cost.

Both CDPQ Infra and the NZ Super Fund are commercial investors negotiating and operating in competitive markets. Given both investors continue to explore and transact infrastructure investment opportunities, the executive summary of our proposal was and remains a confidential document which is commercially sensitive.

Furthermore, it is important that prospective and current investment consortium partners of the NZ Super Fund have confidence in our ability to keep commercially sensitive information confidential. Being able to attract co-investors with global expertise and aligned capital to work with us is fundamental to our investment model. If we are unable to protect this information, we will find that these global investors, which are not subject to the Official Information Act, will be reluctant to partner with us. As the NZ Super Fund is investing on behalf of all New Zealanders it is very much in the public interest that we are able to maintain the confidentiality of commercially sensitive information.

We are also concerned that releasing this information (and we note that you are seeking it for the purposes of publication) would enable the information to be used for improper gain or improper advantage. Disclosure of this information would enable competitors and counterparties of the NZ Super Fund and CDPQ Infra Guardians to obtain an improper advantage in circumstances where similar information about those competitors and counterparties is not available to the public. Further, disclosure of due diligence and investment reports prepared in respect of the Guardians' prospective investment in Auckland Light Rail would provide to other parties, who might wish in future to explore opportunities to invest in rapid transit either in New Zealand or globally, the benefit of the substantial work undertaken by the Guardians' various consultants and paid for by the Guardians. That would give those other parties an improper gain or advantage in that they would have the benefit of this work without having had to contribute to its cost.

In addition, our consortium's participation in the process to identify a Preferred Delivery Partner for ALR involved strict confidentiality protocols and commitments with the Government. These requirements remain in place for perpetuity. This again highlights the critical sensitivity of the information.

2. Letters and emails sent from the superfund to leadership in NZTA in 2018 and 2019, which may include those in NZTA as: Michael Stiasny, Fergus Gammie, Richard Hancy, Carl Devlin, Brian Roche, or Mark Ratcliffe.

The following table sets out the information our searches have identified and our decision in respect of each piece of information. The information we have disclosed can be found at Appendix 2.

| Date | Recipient | Title | Decision |
|--------------|---------------------------|----------|------------------|
| 25 July 2018 | Michael Stiasny, Chair | No title | Released in full |

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| 11 September 2018 | Fergus Gammie, Chief Executive | Information Request – Auckland Light Rail | Released in full |
| 20 September 2018 | Fergus Gammie, Chief Executive | Information Request – Auckland Light Rail | Released in full |
| 8 October 2018 | Fergus Gammie, Chief Executive | Further Submission and Market Engagement Presentation – Auckland Light Rail | Letter released in full Attached Presentation withheld in full: 9(2)(ba)(i) obligation of confidence 9(2)(b)(ii) commercial prejudice 9(2)(b)(i) trade secret 9(2)(b)(ii) commercial prejudice 9(2)(i) commercial activities 9(2)(j) – commercial negotiations 9(2)(k) improper advantage |
| 15 October 2018 | Richard Hancy, Project Director – Light Rail Project Office | Official Information Requests – Auckland Light Rail (ALR) | Released in full |
| 31 October 2018 | Michael Stiasny, Chair | NZSF and CDPQ’s Public-Public Investment Model for Auckland Light Rail | Letter Released in full Attached submission withheld in full: 9(2)(ba)(i) obligation of confidence 9(2)(b)(ii) commercial prejudice 9(2)(b)(i) trade secret 9(2)(b)(ii) commercial prejudice 9(2)(i) commercial activities 9(2)(j) – commercial negotiations 9(2)(k) improper |

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| 23 November 2018 | Fergus Gammie, Chief Executive | Information Request | Released in full |
| 6 December 2018 | Shane Avers, Lead Advisor Alternative Procurement | Auckland Light Rail – Response to NZTA’s Assessment of the Public Public Investment (PPI) Model | Released in full |
| 12 November 2019 | Ministry of Transport/NZTA | Light Metro Proposal (seeking to clarify regulatory regime assumptions) | Withheld in full 9(2)(ba)(i) - obligation of confidence 9(2)(b)(ii) commercial prejudice Section 9(2)(h) – maintain legal professional privilege |

3. Correspondence between the superfund and Phil Twyford in 2018, 2019 and 2020.

As you can see from the links above, we have previously released correspondence with Minister Twyford. We have reviewed this correspondence and remain satisfied with the disclosures as they stand.

We have identified one further letter that fell outside the time periods previously covered:

| Date | Recipient | Title | Decision |
|------------------|------------------|---------------------------------------|------------------|
| 30 November 2018 | Minister Twyford | Auckland Light Rail – Meeting Request | Released in full |

4. Communication between the Superfund and CDPQ between December 2019, and end of December 2020, relating to the outcome of the 'twin-track process'

This information is withheld in full based on the following grounds:

- 9(2)(ba)(i) - obligation of confidence
- Section 9(2)(g)(i) – free and frank expression of opinions
- Sections 9(2)(b)(ii) and 9(2)(i) – commercial prejudice and enable commercial activities

We consider internal communications between ourselves and our consortium partner CDPQ Infra remain confidential and commercially sensitive. It is critically important that investment partners are able to conduct confidential discussions and correspond with each other on the basis that this information will remain private. Disclosing this information would have a chilling effect on our ability to freely and frankly share information between consortium partners across a wide range of investments and projects. As noted above, it is important that

prospective and current partners of the NZ Super Fund have confidence in our ability to keep commercially sensitive information and private discussions confidential. Being able to attract co-investors with global expertise and aligned capital to work with us is fundamental to our investment model. If we are unable to protect this information, we will find that these global investors, which are not subject to the Official Information Act, will be reluctant to partner with us. As the NZ Super Fund is investing on behalf of all New Zealanders it is very much in the public interest that we are able to maintain the confidentiality of commercially sensitive information.

5. How much was spent on rapid transit work between 2018 and 2021, per year if possible.

6. How many staff were employed between 2018 and 2021 on such work, per year if possible.

These requests are refused on the basis of 18(g) of the OIA, in that the information requested is not held by the organisation. As noted in our previous OIA response of 2 July 2020, a link to which is provided above, an estimate of the precise cost of the human capital hours of the Guardians and CDPQ Infra staff working on the project has not been undertaken. Guardians staff work across multiple projects for varying lengths at time in any given day, week, or month. Given this, the number of employee hours spent on particular projects is not tracked, as it would be impractical to do so efficiently. For this reason, it is not possible to estimate how much was spent in total. Our previous OIA response of 2 July 2020 contains further information regarding costs. This includes our rationale for withholding what cost information we do hold, which we have reconsidered and believe still stands.

You have the right to seek an investigation and review by the Ombudsman of these decisions. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that it is our policy to proactively release our responses to official information requests where we consider the request to be a material one. Our response to your request will be published shortly, with your personal information removed, at: <https://www.nzsuperfund.nz/publications/disclosures/oia/>

Yours sincerely



Catherine Etheredge

Head of Communications

Appendix 1 – Annual Report Light Rail Summary

Appendix 2 – Consolidated set of released information