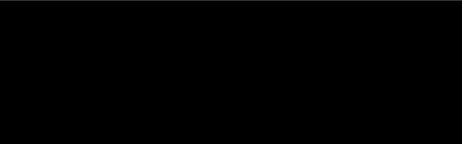


28 November 2016



Dear 

## REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request dated **29 September 2016** made pursuant to the Official Information Act 1982 ("OIA").

### Your Request

You have requested the following information:

1. *Inter-departmental memorandums, minutes of meetings, Phone recordings, file notes, note book entries and emails from 1 January 2008 to 20 June 2010 relating to:*
  - Any communications between the NZ Super Fund and PGC Group of related companies, Perpetual, Marac, PGGW (and PGGWFinance) including George Kerr, Torchlight (entity that invested in South Canterbury Finance and transferred its assets out of NZ – being Torchlight No 1 LP and its general partner Torchlight GP) now shell company in receivership) and associated person's with those groups George Kerr, Jeff Greenslade, Brian Mogridge, John Duncan and Bruce Irvine or First NZ Capital or associated Tim Robinson, Alan Isaac, Murray and Co.
  - Any communication between the NZ Super Fund and the Office of the Prime Minister, Securities Commission or any other Government Regulator including Companies Office and Bill English Minister of Finance and any of his other capacities (NZ Super Fund/Landcorp), Torchlight (entity that invested in South Canterbury Finance and transferred its assets out of NZ – Torchlight No 1 LP now shell company in receivership and its general partners Torchlight GP) and person's associated with those groups, George Kerr, Jeff Greenslade, Brian Mogridge, John Duncan and Bruce Irvine or acting on behalf First NZ Capital or associated Tim Robinson, Alan Isaac, Murray and Co.
  - Any investments made by the NZ Super Fund funds including on behalf of Tax Payer in which they related to any entity that's ultimate shareholder or director was a related company or person related to or representing George Kerr as above listed paragraph one and two....
2. *Inter-departmental memorandums, minutes of meetings, Phone recordings, file notes, note book entries and emails from 1 January 2012 to 20 September 2016 relating to:*
  - And any communications between any Government regulator such as FMA or Companies Office in relation to PGC Group of related companies, Perpetual, Marac, PGGW (and PGGWFinance) including George Kerr, Torchlight (entity that invested in South Canterbury Finance and transferred its assets out of NZ –

Torchlight No 1 LP now shell company in receivership and general partner Torchlight GP) and person's associated with those groups, (George Kerr, Jeff Greenslade, Brian Mogridge, John Duncan and Bruce Irvine) or First NZ Capital or associated Tim Robinson, Alan Isaac, Murray and Co.

Apologies for the delay in responding to you. Details of the information we have pertaining to your request, and our response in respect of that request, are set out below.

## Our Response

In determining the information that is captured by your request, please note that:

- we have relied on the names of companies and individuals provided by yourself and have not conducted independent research into related companies or individuals;
- we have excluded generic marketing documents such as broker reports into listed companies, and transactional information such as spreadsheets from our custodian (the Fund's banker); and
- in the interest of administrative efficiency, covering emails between the Guardians of New Zealand Superannuation ("**Guardians**") and Torchlight representatives in relation to the agreement of the Confidentiality Deed have not been included. These emails are purely administrative and contain no material information.

If you have any questions about the above please contact us.

The NZ Super Fund has previously held shares in Pyne Gould Corporation (last held 24 June 2011). We disclose the NZ Super Fund's listed equity investments on an annual basis. Lists from 2010-2016 are available on our website at:  
<https://www.nzsuperfund.co.nz/publications/annual-equity-listings>.

Lists of our asset and investment managers are published in our Annual Reports, available on our website at: <https://www.nzsuperfund.co.nz/publications/annual-reports>.

The below table summarises the information we hold. Please refer to **Appendix I** for copies of the released information. For your information, the Guardians had a single meeting with representatives of the Torchlight Fund in 2010. There were no further meetings and we did not invest the NZ Super Fund in the Torchlight Fund.

Document Reference	Document Date	Document Title	Sections Relevant to Request	Released	Reason/s for withholding	Ref. page in Appendix I
146627	2010-06-11	Torchlight / GNZS – Confidentiality Deed / Document Execution Form	All	Released in full	N/A	1
2042334	2010-06-XX	Torchlight – Information for New Zealand Superannuation Fund – June 2010	All	Withheld	Section 9(2)(b)(i) Section 9(2)(b)(ii) Section 9(2)(ba)(i) Section 9(2)(i)	N/A

In choosing to withhold document 2042334 ("Torchlight – Information for New Zealand Superannuation Fund – June 2010") we have relied on the following grounds.

- *Section 9(2)(b)(i) – "protect information where the making available of the information would disclose a trade secret"*. Some of the information in this document is non-public information about Torchlight's investment strategy and philosophy. We do not consider it to be in the public interest for us to disclose 'trade secret' information provided to us to enable us to evaluate investment opportunities.

- *Section 9(2)(b)(ii) - "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".* Some of the information contained in the document, which was supplied specifically to enable us to consider a potential investment in the Torchlight Fund, is commercially sensitive.
- *Section 9(2)(ba)(i) – "protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied".* Our discussions with Torchlight were conducted on a confidential basis, and the document concerned has been provided to us subject to an explicit obligation of confidence noted within it. We would not have been able to properly evaluate the investment opportunity without receiving confidential information concerning Torchlight. We operate in a competitive market and if we cannot uphold the confidentiality of commercially sensitive information provided to enable us to evaluate investments, the supply of such information in the future will be jeopardised. In the event the Guardians was to disclose this confidential information to the public, it is likely that other entities in which the Guardians might wish to invest (or other parties with which the Guardians might wish to contract) will be reluctant to engage with the Guardians because of the risk of disclosure of their confidential information. 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)(i) – "enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities".* Investing the Fund is a commercial activity. When we invest we compete in a global market for access to the best investment opportunities. Potential future counterparties to investment transactions will be discouraged from dealing with the Guardians if they do not have trust in our ability to maintain the confidentiality of sensitive information provided by them to us to enable us to consider investment proposals. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with, as well as our own commercial sensitivity.

We have considered whether the public interest in favour of disclosing this document outweighs our reasons for withholding it, and have concluded that it does not.

## General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Contact details for the Ombudsmen's Office can be found at: [www.ombudsmen.parliament.nz/](http://www.ombudsmen.parliament.nz/).

Please note that we may choose to publish our response on our website at [www.nzsuperfund.co.nz](http://www.nzsuperfund.co.nz).

Yours sincerely



**Sarah Owen**  
**General Manager Corporate Strategy**

**TORCHLIGHT (GP) 1 LIMITED** as General Partner on behalf of **TORCHLIGHT FUND  
No.1 LP**

**GUARDIANS OF NEW ZEALAND SUPERANNUATION**

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**CONFIDENTIALITY DEED**

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**RUSSELL McVEAGH**

DEED dated 11 June 2010

## PARTIES

**TORCHLIGHT (GP) 1 LIMITED** as General Partner on behalf of **TORCHLIGHT FUND No.1 LP** ("Discloser")

**GUARDIANS OF NEW ZEALAND SUPERANNUATION FUND** ("Recipient")

## INTRODUCTION

Discloser may, at the request of Recipient, disclose certain confidential information to Recipient.

## COVENANTS

### 1. INTERPRETATION

1.1 **Definitions:** In this deed unless the context otherwise requires:

"Information" means:

- (a) all information supplied or made available to Recipient or any Representative of Recipient by Discloser or any Representative of Discloser;
- (b) all notes, records, or copies of or in respect of information referred to in paragraph (a), created by Recipient or any Representative of Recipient;
- (c) any knowledge or information which Recipient or any Representative of Recipient may acquire as a direct result of acquiring or holding information referred to in paragraph (a) or paragraph (b); and
- (d) the fact of the Proposal, and all information regarding the existence and status of any negotiations or discussions between Discloser and Recipient in respect of the Proposal;

"Proposal" means the opportunity to invest in Torchlight Fund No.1 LP;

"Related Company" has the meaning in the Companies Act 1993;

"Representative" in respect of a party means a Related Company, director, employee, adviser, or agent of that party;

"Trade" has the meaning in the Securities Markets Act 1988; and

"Working Day" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year and ending on 2 January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

- 1.2 **Interpretation:** Unless the context otherwise requires or specifically otherwise stated:
- (a) any reference to information includes information in any form, whether provided orally, or provided or stored in a visible, electronic, or other form;
  - (b) headings are to be ignored;
  - (c) if a party comprises more than one person, each of those person's liability is joint and several;
  - (d) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
  - (e) singular includes plural and vice versa;
  - (f) any word or expression cognate with a definition in this deed has a meaning corresponding or construed to the definition;
  - (g) references to clauses or appendices are to those in this deed;
  - (h) this deed prevails if any ambiguity or inconsistency arises with any other document or agreement relating to it; and
  - (i) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form.

## 2. DISCLOSURE AND USE

2.1 Recipient shall not, except as allowed by clauses 3, 4 or 5:

- (a) disclose Information, or permit it to be disclosed, to any person; or
- (b) use or refer to Information for any purpose other than to evaluate the Proposal, or in any way which is detrimental to, or in competition with, Discloser or any Representative of Discloser.

## 3. EXCEPTIONS

3.1 Clause 2 does not apply to Information which:

- (a) already is, or becomes, public knowledge other than as a result of breach of this deed by Recipient or a Representative of Recipient;
- (b) is independently acquired or developed by Recipient without the benefit or use of Information; or
- (c) is lawfully received by Recipient from a third party not owing any obligation to Discloser or a Representative of Discloser.

## 4. DISCLOSURE TO REPRESENTATIVES

4.1 Recipient may disclose Information to such of its Representatives, and to such extent, as is absolutely necessary to enable those persons in the course of their duties to evaluate the Proposal. Recipient shall ensure that all of those persons comply with the provisions of this deed as if they were party to this deed. Before disclosing Information

to any Representative, Recipient shall advise Discloser of the name of that Representative, and cause that Representative to provide to Discloser a written confidentiality undertaking in the form in the appendix to this deed.

## 5. DISCLOSURE REQUIRED BY LAW

5.1 **Disclosure:** Recipient may, so long as Recipient complies with clause 5.2, disclose Information if, and to the extent that, Recipient is required to do so by law.

5.2 **Prior notification:** Recipient shall, before disclosing Information pursuant to clause 5.1:

- (a) give to Discloser the maximum notice reasonably practicable in the circumstances, specifying the requirement under which Recipient is required to disclose Information, and the precise Information which Recipient is required to disclose;

## 6. RETURN OF INFORMATION AND COPYING

6.1 **Return or destruction:** Recipient shall subject to any requirement to retain the Information by law, immediately on request by Discloser:

- (a) return to Discloser all Information in the possession or control of Recipient and Representatives of Recipient, or, if Discloser so agrees, destroy all such Information; and
- (b) provide to Discloser a certificate, in a form acceptable to Discloser, signed by a director of Recipient or any other officer of Recipient approved by Discloser, confirming that clause 6.1(a) has been complied with in full.

6.2 **Copying:** Recipient shall not copy or reproduce Information except to the extent absolutely necessary to enable Recipient and its Representatives effectively to evaluate the Proposal.

## 7. COVENANTS BY RECIPIENT

7.1 **General:** Recipient agrees that:

- (a) Recipient will not assert any rights in respect of, or contest Discloser's ownership of, Information;
- (b) Discloser has no obligation to disclose information to Recipient, and Discloser has an absolute discretion as to the information which Discloser chooses to disclose;
- (c) Information will be provided on a non-exclusive basis, and Discloser may disclose Information to, and enter into discussions or negotiations in respect of proposals similar to the Proposal with, other persons;
- (d) Discloser makes no warranty or representation as to the accuracy, adequacy, or completeness of any Information, or as to the materiality of any Information in the context of the Proposal;
- (e) Recipient is solely responsible for its own assessment and evaluation of Information, and of the Proposal; and

- (f) only those representations or warranties (if any) that are incorporated in a formal agreement relating to the Proposal (if and when such an agreement is entered into) will have any legal effect.

## 8. REMEDIES

- 8.1 Recipient acknowledges that, in the event of any alleged breach of this deed by Recipient or any Representative of Recipient, damages may not be an adequate remedy, and Discloser shall be entitled to seek equitable relief (including an injunction) in addition to damages. In any proceeding brought by Discloser seeking equitable relief for a breach of this deed, neither Recipient nor any Representative of Recipient shall claim that the breach is one which may not or ought not to be the subject of equitable relief.

## 9. NOTICES

- 9.1 **Notice:** Every notice or other communication ("**Notice**") for the purposes of this deed shall:

- (a) be in writing; and
- (b) be delivered in accordance with clause 9.2.

- 9.2 **Method of service:** A Notice may be given by:

- (a) delivery to the physical address of the relevant party; or
- (b) posting it by pre-paid post to the postal address of the relevant party; or
- (c) sending it by facsimile transmission to the facsimile number of the relevant party, so long as clause 9.4 is complied with; or
- (d) sending it by email to the email address of the relevant party, so long as clause 9.4 is complied with.

- 9.3 **Time of receipt:** A Notice given in the manner:

- (a) specified in clause 9.2(a) is deemed received at the time of delivery;
- (b) specified in clause 9.2(b) is deemed received three Working Days after (but exclusive of) the date of posting;
- (c) specified in clause 9.2(c) or clause 9.2(d) is deemed (subject to clause 9.4) received:
  - (i) if sent between the hours of 9am and 5pm (local time) on a local working day, at the time of transmission; or
  - (ii) if subclause (i) does not apply, at 9am (local time) on the local working day most immediately after the time of sending.

For this purpose "local time" is the time in the place of receipt of the Notice, and a "local working day" is a normal working day in that place.

- 9.4 **Facsimile and email notice:** A Notice given:



- (a) by facsimile, is not deemed received unless (if receipt is disputed) the party giving Notice produces a facsimile transmission report of the device from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given Notice;
- (b) by email, is not deemed received unless (if receipt is disputed) the party giving Notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given Notice.

9.5 **Addresses:** For the purposes of this clause the address details of each party are:

- (a) the details set out below; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause.

Discloser:

Physical address: Level 12, AMP Centre, 29 Customs Street West  
 Postal address: PO Box 3376, Auckland 1140  
 Facsimile number: +64 9 308 9027  
 Email address: zak.darby@torchlight.co.nz

Recipient:

Physical address: Level 17, AMP Centre, 29 Customs Street West  
 Postal address: PO Box 106-607, Auckland 1143  
 Facsimile number:  
 Email address: [dplummer@nzsuperfund.co.nz](mailto:dplummer@nzsuperfund.co.nz)

## 10. TIME LIMIT ON OBLIGATIONS

10.1 The obligations contained in this agreement will apply for a period of 2 years from the date of this agreement.

## 11. GENERAL

11.1 **Amendments:** No:

- (a) amendment to this deed;
- (b) agreement between the parties for the purpose of, or referred to in, this deed;
- (c) consent or approval for the purposes of, or referred to in, this deed;

is effective unless it is in writing and signed (if subclauses (a) or (b) apply) by both parties or (if subclause (c) applies) the party required to give the consent or approval.

11.2 **Counterparts:** This deed is deemed to be signed by a party if that party has signed or attached that party's signatures to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or

- (c) a photocopy; or
- (d) a PDF or email image copy;

and if each party has signed or attached that party's signatures to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding agreement between the parties.

- 11.3 **Entire agreement:** This deed constitutes the entire agreement between the parties relating to the subject matter of this deed and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.
- 11.4 **Further assurance:** Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this deed.
- 11.5 **Severance:** If any provision of this deed is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this deed without affecting the validity of the remainder of this deed and shall not affect the enforceability, legality, validity or application of any other provision of this deed.
- 11.6 **Governing law:** This deed is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this deed.

#### SIGNED AS A DEED

**TORCHLIGHT (GP) 1 LIMITED** as  
General Partner on behalf of  
**TORCHLIGHT FUND NO.1 LP** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

and witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

**Guardians of New Zealand  
Superannuation Fund by:**

Stewart Brooke  
Signature of attorney

[Signature]  
Signature of attorney

Stewart Brooke  
Name of attorney

[Signature]  
Name of attorney

and witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence



**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, Kenneth Stewart Brooks of Auckland in New Zealand, General Manager Finance, certify:

1. That by deed dated 10 May 2010 Guardians of New Zealand Superannuation of Level 17, AMP Centre, 29 Customs Street West, Auckland ("**Donor**") appointed me as its attorney.
2. That I have not received notice of any event revoking the power of attorney.

Dated

13/6/10

Kenneth Stewart Brooks

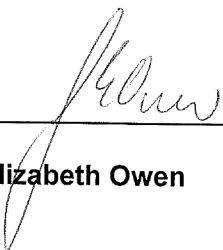
**Kenneth Stewart Brooks**

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, Sarah Elizabeth Owen of Auckland in New Zealand, General Counsel, certify:

1. That by deed dated 10 May 2010 Guardians of New Zealand Superannuation of Level 17, AMP Centre, 29 Customs Street West, Auckland ("**Donor**") appointed me as its attorney.
2. That I have not received notice of any event revoking the power of attorney.

**Dated**



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**Sarah Elizabeth Owen**

**C2 - Internal Use Only Document Execution Form<sup>20</sup>**

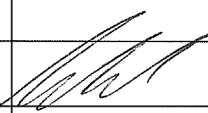
Date of Execution 15 June 2010 By GNZS:	<b>Superdocs Ref of Document:</b>
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<b>Parties:</b>	TORCHLIGHT (GP) 1 LIMITED as General Partner on behalf of TORCHLIGHT FUND No.1 LP
	Guardians of New Zealand Superannuation as Manager and Administrator of the New Zealand Superannuation Fund

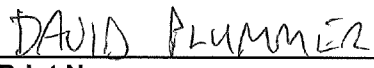
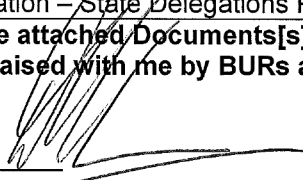
<b>Describe Documents:</b>	Confidentiality Deed	<b>Superdocs File Under: 146619</b>
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<b>Purpose of Document[s]:</b>	To gain access to confidential deal information for investment consideration
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The following business unit representatives (BURs) confirm that they have reviewed the Document(s) and confirm that they have addressed with the business owner any matters relevant to the Document.

Business Unit *	Position	Name	Signature	Date
Operations	Head of/GM	n/a		
Finance	Head of/GM	n/a		
Tax	Head of/GM	n/a		
Portfolio Risk and Compliance	Head of/GM	n/a		
Legal	GC/LC/GM	Cristina Bullett		15/6/10
RI	Head of/GM	n/a		
Treasury	Head of/GM	n/a		

\* If any sign off is not applicable to the Document Business Owner may state N/A and this must be initialed by any GM or GC/LC.

<b>Business Owner</b> Board Approval Required?: Yes/No (Delete as applicable) Authority to enter into transaction - State Delegations Policy Reference: Delegations for Signing Documentation - State Delegations Policy Reference:
<b>I confirm that I have reviewed the attached Documents[s] from a business perspective and taken into account any matters raised with me by BURs and confirm that it is in order for execution.</b>   <b>Print Name:</b> DAVID PLUMMER <b>Print Office:</b> PRIVATE EQUITY MANAGER  <b>Date:</b> 14 JUNE 2010

<b>Signatories to Documents:</b>  <b>Insert Name:</b> Stewart Brooks <b>Date:</b> 15/6/10	 <b>Insert Name:</b> Stuart Owen <b>Date:</b> 15/6/10
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<b>Storage of Document:</b> Original retained in Legal Section, Lundia Room , Level 17, AMP Centre, 29 Customs Street West, Auckland
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