



24 July 2018

**Tova O'Brien
Newshub**

by email

Dear **Ms O'Brien**

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your Official Information Act 1982 ("**OIA**") request to the Guardians of New Zealand Superannuation ("**Guardians**"), which we received on **26 June 2018**.

Your Request

Your request, as clarified in a phone conversation with our Head of Communications on 27 June 2018, was for:

- **All material briefings, advice and reports (internal or provided by external partners/advisers/consultants) relating to any potential funding by the NZ Super Fund of the Government's Kiwibuild programme**
- **All correspondence, such as emails, between the Super Fund Guardians and the Minister of Finance and Minister of Transport's offices relating to any potential funding by the NZ Super Fund of the Government's Kiwibuild programme**

Thank you for agreeing to refine the scope of the request; it has been of great assistance to us in processing our response.

Based on this agreement, and for administrative reasons, please note that we have not included:

- duplicates (e.g. emails duplicated in email correspondence chains or duplicates of documents released to you under the OIA);
- information provided to you in your other OIA request (relating to the Auckland Light Rail project);
- publically available research and reports; and
- drafts of reports, advice or briefings. We have focused on the final versions.

Background Information

The Guardians, the manager of the NZ Super Fund ("**Fund**"), is a double-arms-length Crown entity that makes investment decisions independently of the Government of the day. All investment decisions are made on an purely commercial basis.

The NZ Super Fund has an existing interest in large-scale housing infrastructure development in New Zealand. The Fund is currently developing houses at Hobsonville, Auckland, in partnership with Ngai Tahu and New Ground Capital. The Guardians is interested in expanding the Fund's development capabilities by exploring commercial investment opportunities in modular/pre-fabricated housing. This was supported by staff recently visiting Europe to research technology and potential partners for a pre-fabricated housing factory in NZ. At this stage our interest is exploratory in nature. While we have kept the Minister of Housing and Urban Development informed of the work we are doing, it remains at an early stage and no specific proposals have been developed or presented.

Similarly, the Guardians is potentially interested in exploring a range of opportunities to develop Kiwibuild housing in Auckland; however, our work on these opportunities remains at a very early stage. We do not hold any material briefings, advice or reports in respect of these

potential opportunities given their preliminary nature, but mention our interest here for completeness.

Our Response

In **Appendix 1** we have identified the information we have found which we consider to be within the scope of your request. The information we are releasing to you is attached at **Appendix 2**.

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

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. In **Appendix 1** we have also identified the particular grounds that apply to each document.

By way of context, the NZ Super Fund is in competition with private sector investors for investment opportunities associated with Kiwibuild. These private sector investors are not subject to the OIA.

Our response to your request reflects both the currency of this prospective investment opportunity and the strong public interest in ensuring that there is a level playing field amongst prospective investors so that the Fund's commercial position is not prejudiced through disclosure of commercially sensitive information which its competitors are not required to disclose.

A. Section 9(2)(a) – “protect the privacy of natural persons”

In the interests of protecting the privacy of individuals, we have redacted the names of individuals mentioned in the documents other than the names of senior managers. We cannot see any public interest in, or public benefit from, the release of this personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians' activities. There is no good reason why these individuals in particular should be subjected to potential public scrutiny.

B. 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”

We carry out commercial activities in relation to the Fund. In investing the Fund we compete in a global market for access to the best investment advisers, business partners and investment opportunities. Our business partners and suppliers are each commercial entities in their own highly competitive markets. They are very concerned about protecting sensitive commercial information. They will not work with us if we cannot uphold the confidentiality of this truly sensitive information. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity with those we work with.

Some of the information concerning our potential investment in a modular/pre-fabricated housing factory is commercially sensitive and was supplied specifically to enable us to consider the investment. We operate in a very competitive market and non-public information that relates to our commercial position (such as our preferred strategies, focus areas and transaction requirements) has been withheld where disclosure would diminish the value of that information or disadvantage the NZ Super Fund by making the information known to its

competitors. Our business partners also operate in a competitive market and non-public information that is commercially valuable to them has been withheld where disclosure would diminish the value of that information or their competitive advantage.

- C. 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”.**

The Guardians’ research regarding the NZ Super Fund’s potential investment in a modular/pre-fabricated housing factory has been conducted on a confidential basis, and information concerning the proposed investment opportunity, has been provided to us subject to an obligation of confidence. We would not have been able to properly evaluate the investment opportunity without receiving this confidential information.

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 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 enter into a substantive commercial arrangement or discussions with 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.

- D. Section 9(2)(g)(i) – “maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to 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 freely and frankly. The documents noted in Appendix I as having information withheld under this ground include opinions of staff members who prepared those materials. 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.

- E. 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, business partners and advisers. Our ability to compete will be prejudiced or disadvantaged if non-public information concerning our strategy and likely future investment actions were made known to the relevant market participants ahead of any such actions. It would also be prejudicial to our negotiating position on potential future investments for information to be disclosed that gives potential future counterparties insights into the basis on which the Guardians is prepared to transact (including what concessions or trade-offs the Guardians may be prepared to accept in order to secure an investment opportunity). Potential future counterparties to investment transactions and suppliers 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 in the course of a transaction. 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.

- F. Section 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)”.** Should the Guardians proceed with an investment in a modular/pre-fabricating housing factory we would be required to negotiate with a range of third parties, potentially including the Government, business advisers, co-investors, vendors and other suppliers. The effectiveness of such negotiations would be undermined by disclosure of the information and insights into the Guardians’ and Government’s ideas and intentions contained in the relevant documents.
- G. Section 9(2)(k) – “prevent the disclosure or use of official information for improper gain or improper advantage”.** Withholding confidential and commercially sensitive information relating to the NZ Super Fund’s possible investment in a modular/pre-fabricated housing factory is necessary to prevent that information being used for improper gain or improper advantage. The reasons for this are the same as those set out above in respect of commercial prejudice. Disclosure of this information would enable competitors and counterparties of the NZ Super Fund and 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 investment reports prepared in respect of the Guardians’ prospective investment in a modular/pre-fabricated housing factory would provide other parties, who might wish in future to explore opportunities to invest in such a factory, with the benefit of the work undertaken 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.

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: <http://www.ombudsmen.parliament.nz>.

Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.co.nz.

Yours sincerely



Mark Fennell
Acting Chief Investment Officer

Appendix I

Page no.	Document number	Date ¹	Title	Relevant Sections	Status	Withholding grounds if applicable
1	2493781	1/5/2018	RE: Prefab housing - potential for NZ Super Fund to invest in domestic capacity Emails between NZSF and the Office of the Minister of Finance	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
3	2526904	27/2/2018	NZ Super Fund partnership aspirations with MBIE in the residential development sector	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
7	2526908	2/3/2018	NZ Super and MBIE partnership strawman	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
12	2526893 and Attachment	13/3/2018	NZSF – MBIE Email from NZSF to MBIE Attachment: “NZSF & MBIE – PARTNERSHIP OPPORTUNITIES IN RESIDENTIAL PROPERTY”	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
19	2526091	15/3/2018	NZSF meeting yesterday Email from NZSF to MBIE	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain

¹ In the case of an email chain, the date is of the most recent email

Page no.	Document number	Date	Title	Relevant Sections	Status	Withholding grounds if applicable
21	2489990	16/3/2018	RE: Meeting with Minister Twyford Emails between Minister Twyford's offices and NZSF	All	Partially released	Section 9(2)(a) – Privacy The email at the top of the page that is redacted is out of scope of the request.
23	2489999	6/4/2018	Re: Meeting notes – NZ Building value chain Internal NZSF emails	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
25	2490004	6/4/2018	Re: Meeting with Minister Twyford and officials	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
29	2489665	3/5/2018	Filenote: Affordable Housing Meeting at Parliament	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
31	2521379	13/6/2018	FYI: summary of Kiwibuild engagement Email from NZSF staff member to Matt Whineray, CC Mark Fennell and others	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
33	2529059	22/6/2018	Minister of Housing to comment on Super Fund interest on the Nation tomorrow – For your info Email from NZSF to Minister of Finance's Office	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy

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34	2529066	22/06/2018	RE: Confirming NZ Super OK Emails between Minister of Transport's office and NZSF	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
35	2527628	26/6/2018	Filenote: Kiwibuild - Introduction to New Head (Stephen Barclay)	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
36	2530011	29/06/2018	Filenote: Meeting with Minister Twyford on shared equity models for affordable housing	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
N/A	2485091	25/4/2018	Modular Housing – trip business case	All	Withheld in full	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
N/A	2512885	7/6/2018	Modular Housing – European trip notes	All	Withheld in full	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain