



Government  
of South Australia

TRS19D1383

Hon Stephen Mullighan MP  
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*Stephen*  
Dear Mr Mullighan

**APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991***

I refer to your application made under the *Freedom of Information Act 1991* (the Act), dated 22 May 2019.

Your application seeks access to:

*“All minutes, briefings and correspondence titled ‘SAHMRI 2 Update, Status of Engagement with Protom Australia and Proposed Way Forward’ as described on the Objective document management system, between 12 July 2018 and 22 May 2019.”*

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 26 May 2019 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 1 document was identified as answering the terms of your application.

I grant you access in part to 1 document; a copy of which is enclosed.

**Document Released in Part**

Document 1 is released in part as the information contained in the briefing relates to a third party's affairs (SAHMRI).

The briefing contains information relating to the commercial and grant arrangements with ProTom and is commercial in confidence. This information should not be disclosed as it has the potential to prejudice the commercial agreement between the parties. I therefore determine this exempt pursuant to clause 7(1)(c).

The briefing also contains information concerning a Cabinet decision. I therefore determine this exempt pursuant to clause 1(1)(e) to the Act.

Given the extremely high value of these projects this could reasonably be expected to have a substantial (and ongoing) adverse effect on the financial interests of the agency and, depending on the magnitude of the effect could also potentially be expected to result in a substantial adverse effect on the financial interests of the State. I therefore determine this information exempt pursuant to clause 15(a)(b).

## **Exemptions**

### **Clause 1 – Cabinet Documents**

(1) *A document is an exempt document—*

- (a) *if it is a document that has been specifically prepared for submission to Cabinet (whether or not it has been so submitted); or*
- (b) *if it is a preliminary draft of a document referred to in paragraph (a); or*
- (c) *if it is a document that is a copy of or part of, or contains an extract from, a document referred to in paragraph (a) or (b).*
- (e) *if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; or*
- (f) *if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet.*

### **Clause 7 – Documents affecting business affairs concerning**

(1) *A document is an exempt document—*

- (b) *if it contains matter—*
  - (i) *consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and*
  - (ii) *the disclosure of which—*
    - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*
    - (B) *would, on balance, be contrary to the public interest; or*
- (c) *if it contains matter—*
  - (i) *consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and*
  - (ii) *the disclosure of which—*
    - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*

### **Clause 15 – Financial and property interests**

*A document is an exempt document if it contains matter the disclosure of which—*

- (a) *could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency.*

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the Act.

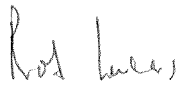
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely



**Hon Rob Lucas MLC**  
*Principal Officer*

7 August 2020

**RELEASE IN PART**

10/8/18  
T18/059  
TRS18D1494

MINUTE



MINUTES forming ENCLOSURE

File T&F18/0349

Doc No A909275

To: The Treasurer  
Cc: Chief Executive  
Deputy Chief Executive

**SAHMRI 2 UPDATE, STATUS OF ENGAGEMENT WITH PROTOM AUSTRALIA AND PROPOSED WAY FORWARD**

Timing: URGENT — Treasurer request for briefing by 9 August 2018

**Recommendations/Issues:** It is recommended that you:

1. Note the progress of the SAHMRI 2 project and the status of the State's engagement with ProTom Australia; and
2. Approve Commercial and Economics Branch taking interim lead project responsibility for SAHMRI 2, pending the commencement of the incoming Chief Executive of DPC.
3. Consider the recommended steps to expedite the SAHMRI 2 project, for further discussion with the Premier.

Noted / Approved

Hon Rob Lucas MLC  
Treasurer

11/8/18

**Key Points:**

- SAHMRI 2 is a private development led by SAHMRI with the assistance of commercial partners chose and managed by SAHMRI. These include ProTom International (supplier of Proton Therapy Unit) Commercial and General (Builder) and DEXUS (building owner).
- The Department of Premier and Cabinet (DPC) is leading the project and working to facilitate the project through the provision of land and funding support. This



Includes the state securing a \$68m Commonwealth contribution, which the Department of Health and Ageing will oversee and release to SAHMRI on terms set by the state.

- [REDACTED] The agreement struck between the state and SAHMRI in February this year requires key project fundamentals to be in place by 31 December 2018.

clause 15

- [REDACTED]

clause 15

- Related to this process, the State has also provided a letter of offer to ProTom Australia MFG Pty Ltd (ProTom Australia) for a [REDACTED] clause 7(1)
- The transaction involves the use of public land for the benefit of private development parties as well as Commonwealth funds. Like the Riverbank development, it is likely that the SAHMRI 2 project will be reviewed by the Auditor General. It is imperative that the highest standards of project governance and decision making are achieved to manage risks to the State associated with such review.

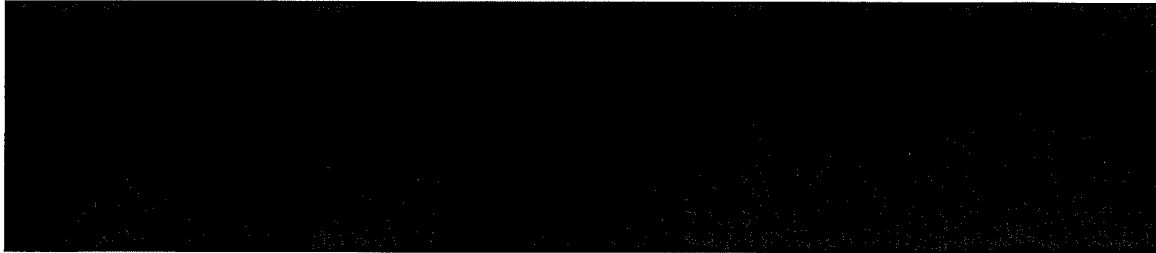
Agreement with ProTom Australia

- The State provided ProTom a letter of offer for the State's grant and loan on 26 February 2018 which was indicative of the terms that a grant and loan may be provided but non-binding.

clause 7(1)

- [REDACTED]
- [REDACTED]
- [REDACTED]

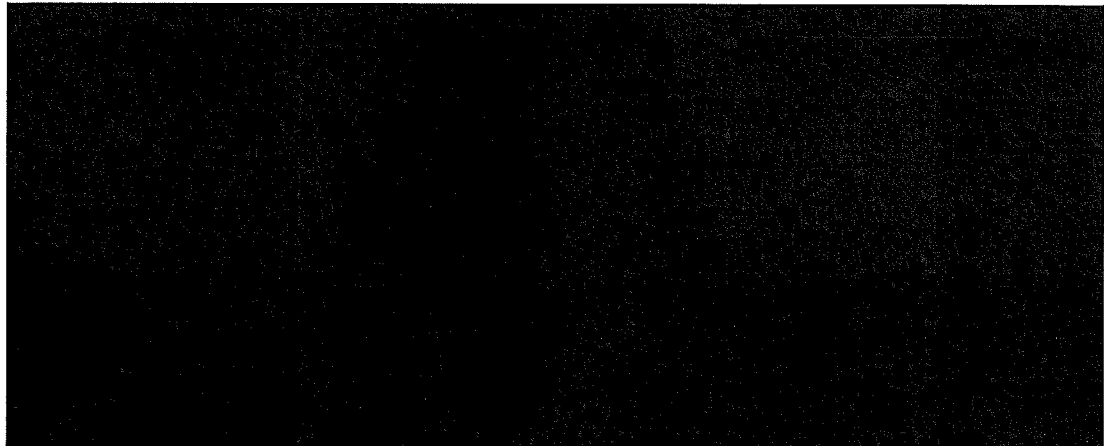
- The most recent contact from SAFA officers was on 8 August 2018, reiterating that their expectation is that ProTom would respond to the information request attached to the draft term sheet.



Project progress to date



- DPC has advised that it has sighted a signed Sale and Purchase Agreement, but has not seen the overarching Project Deed or any of the 25-30 underlying agreements that need to be assessed by the State as part of conditions precedent on the lease of land. Concluding the lease of land by 31 December 2018 looks increasingly unlikely.



Technical due diligence

- The most significant technical due diligence step outstanding remains the advice of the Australian Nuclear Science and Technology Organisation (ANSTO), which visited MGH several weeks ago to supervise testing. Advice from DHW is that it anticipates that its final report will be delivered in two weeks. Also, that it has received informal / verbal advice of there being no issues.
- The ANSTO sign off will be provided to SA Government and Commonwealth, and is a precedent to the resolution of the National Partnership Agreement.
- The '30 treatment days' precedent relates to a condition under the Sale and Purchase Agreement, in which the State will not make a final milestone payment to SAHMRI (nor

will SAHMRI make a final milestone payment to ProTom), until 30 consecutive treatment days are achieved.

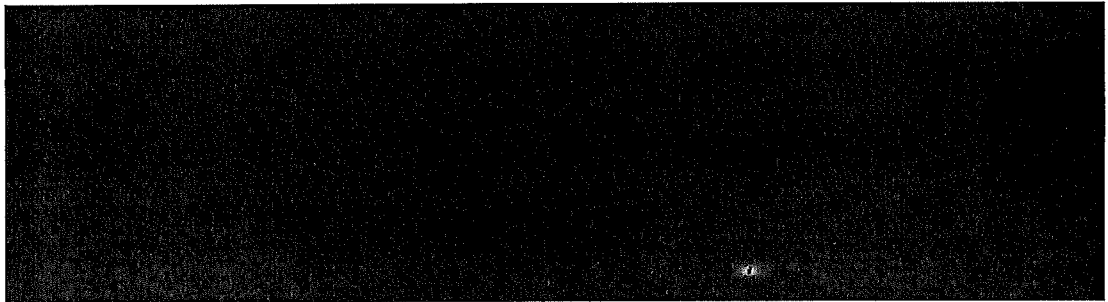
Strengthened project governance

- Further to the Chief Executive's verbal briefing to you, we confirm that the Commercial and Economics Branch of DTF is best placed to provide a strengthened project governance process over the SAHMRI 2 project.
- By having DTF manage the project, DTF would institute contemporary best practice governance, probity, communications and project management approaches which have been used effectively on other major transactions, have sign off by Crown Solicitor's Office and independent probity advisors, and have been robust to Auditor General review of projects.
- This approach would include whole of government governance approach with senior representatives from the various agencies. We would anticipate that this would involve the Chief Executive (or nominee) of DPC.
- Project leadership would fall under the accountability of the Executive Director of the Commercial and Economics Branch, who previously had purview of this project within DPC. A dedicated Project Director and project management support would also be provided.
- Such an arrangement could be put in place as an interim measure, pending the arrival of the incoming Chief Executive of DPC.

Proposed way forward

- The proposed way forward seeks to address the principal issues of certainty of the government's position on financial support to ProTom and provide further support to SAHMRI to develop the project. It is proposed that:

1.



clause 1(1)(e)

clause 7(1)

2. Bring forward of available grant funding to SAHMRI — communicate a willingness to SAHMRI to provide further funding based on strict terms, likely to include that SAHMRI must engage dedicated project manager and commercial counsel support and to agree milestones (e.g. monthly) on the development and finalisation of key commercial agreements; and
3. Implement strengthened project governance arrangements across agencies — agree the Commercial and Economics Branch Executive Director taking interim lead project responsibility for SAHMRI 2, pending the commencement of the incoming Chief Executive of DPC (at which time this will be reviewed);
4. SAHMRI communications — as member of the Board, that a meeting be arranged between you, the Executive Director of SAHMRI, the Executive Director of

*Approved*

*Approved*

*Approved*

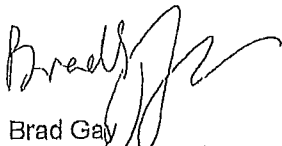


Commercial and Economics Branch to communicate the State's expectations of SAHMRI in the next stages of negotiations with the State.

5. Dtf to develop a strengthened governance framework to coordinate the input of agencies into (1) assessing the State conditions precedent to the lease of land; (2) to oversee other project activities to see the SAHMRI 2 project successfully delivered; and (3) oversee monthly progress reporting from SAHMRI.
  - o This framework would be put to you for noting in Cabinet, to ensure across government mandate to progress SAHMRI 2 planning activities.
6. Watching brief on SAHMRI 2 leasing — continue to keep a watching brief on the progress of leasing and pre-commitments, to inform DTF's assessment of the financial viability of the broader SAHMRI 2 building development.

*Handwritten initials*

*Handwritten signature*



Brad Gay  
EXECUTIVE DIRECTOR  
COMMERCIAL AND ECONOMICS BRANCH

9 August 2018

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