



Government
of South Australia

TRS19D1206

Hon Stephen Mullighan MP
Member for Lee
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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 10 May 2019.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘SAHMRI 2 – Commonwealth-State Project Agreement’ as described on the Objective document management system, between 12 July 2018 and 10 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 1 is a briefing prepared by DTF for my information, on the Commonwealth-State Project Agreement for the Proton Therapy Facility. The Agreement (Attachment A) is publicly available and therefore has not been provided to you.

The table (Attachment B) is released in part as it contains information in a contract document that is confidential between SAHMRI and ProTom International, to which the state is not a party and does not have permission to disclose.

Disclosure can only be permitted by SAHMRI and ProTom. If this document was to be disclosed, it would result in a breach of SAHRMI's confidentiality obligation with ProTom.

It would not be in the public's interest to disclose as it would prejudice the state's gain of similar information useful in guiding its involvement in any such future projects.

I therefore determine this exempt pursuant to clause 13(1)(a) and (b) to the Act.

In addition, the briefing contains cabinet decisions, and as such, disclosure would divulge information concerning a deliberation of Cabinet. I therefore determine this exempt pursuant to clause 1(1)(e).

Exemptions

Clause 1 – Cabinet Documents

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

- (e) *if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet.*

Clause 13 – Documents containing confidential material

(1) *A document is an exempt document*

- (a) *if it contains matter the disclosure of which would found an action for breach of confidence; or*
- (b) *if it contains matter obtained in confidence the disclosure of which*
 - (i) *might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and*
 - (ii) *would, on balance, be contrary to the public interest.*

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.

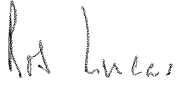
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit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

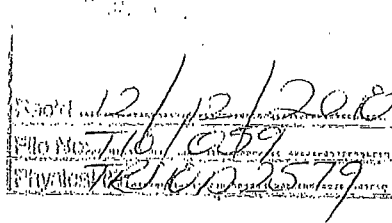
A handwritten signature in black ink that reads "Rob Lucas". The signature is written in a cursive style with a large initial 'R'.

Hon Rob Lucas MLC
Principal Officer

6 August 2020

RELEASE IN PART

MINUTE



MINUTES forming ENCLOSURE

File T&F18/0614

Doc No A976221

To The Treasurer

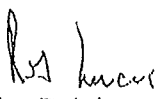
SAHMRI 2 - COMMONWEALTH-STATE PROJECT AGREEMENT

Timing: ROUTINE — For information only

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

- the Commonwealth Minister for Health has signed the Commonwealth-State Project Agreement for the Proton Therapy Facility; and
- the Agreement is scheduled to be considered by SA Cabinet on [REDACTED] for countersignature by the Minister for Health;
- the Commercial and Economics Branch in DTF will soon provide you for review the proposed terms for State-SAHMRI agreement to pass on Commonwealth funding to SAHMRI for the Project.

Noted


Hon Rob Lucas MLC
Treasurer

16/12/18

Key Points:

- On 15 November 2018, the Hon Greg Hunt, Commonwealth Minister for Health, signed the Project Agreement for the Commonwealth to contribute \$68 million towards South Australian Health and Medical Research Institute's (SAHMRI) purchase of a new Proton Therapy Unit (PTU) in South Australia. A copy of the signed Agreement is provided at Attachment A.
- The Project Agreement follows the Commonwealth Government's commitment in its 2018-19 Budget to fund SAHMRI's purchase of the PTU.

Sensitive: Cabinet in Confidence

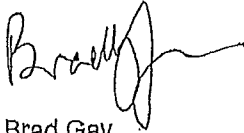


- The Agreement is scheduled to be considered by SA Cabinet on [REDACTED] the Hon Stephen Wade, Minister for Health and Wellbeing will propose to execute the Agreement on behalf of the State Government.
- Executing the Agreement is one of the Conditions Precedent (clause 3.1.4) to the Agreement to Lease between the State and SAHMRI for the intended site for the PTU on North Terrace.

Summary of the Project Agreement

- Under the Agreement, Commonwealth funding is payable to the State in milestone tranches contingent on SAHMRI demonstrating it meets four Project milestones:
 1. meeting the ten Conditions Precedent under the Agreement to Lease with the Minister for Transport, Infrastructure and Local Government;
 2. delivery and transfer of title for the PTU equipment to SAHMRI;
 3. successful testing of the equipment; and
 4. formal sign off that the equipment is fit for its designated use.
- The Agreement obligates the State to provide the Commonwealth with a Project Plan within 90 days of the Agreement being executed. As lead State coordinator for the Project, the Commercial and Economics Branch (CEB) of DTF will prepare a Plan in collaboration with DHW, DPTI and SAHMRI and its project partners. Subject to the endorsement of the Interagency Steering Committee for SAHMRI 2, CEB will provide you with a draft Plan for review before providing it to the Commonwealth.
- The Commercial and Economics Branch (CEB) of DTF has reviewed the timing of the milestone payments set out in the Project Agreement against the Purchase Agreement between SAHMRI and ProTom International (ProTom) for the supply of the PTU to SAHMRI. CEB confirms there is no risk of SAHMRI falling behind in its contractual payment obligations to ProTom as a result of Commonwealth payments occurring after the related milestone payments due from SAHMRI to ProTom under the Purchase Agreement. A comparison of the timing of payments between the State and the Commonwealth and from SAHMRI to ProTom is provided at Attachment B.
- The Agreement will expire by 30 June 2022 unless otherwise extended by the State and the Commonwealth. However, the Agreement provides flexibility around the timing of payments, allowing for them to be brought forward or carried over if the Project needs to depart from the scheduled milestones.
- CEB is working with the Crown Solicitor's Office (CSO) and SAHMRI to prepare a State-SAHMRI funding agreement to pass Commonwealth payments on to SAHMRI. The terms of the State-SAHMRI funding arrangement are envisaged as passing the Commonwealth's performance requirements down to SAHMRI and ProTom to the greatest extent possible. Subject to consideration by the Interagency Steering Committee for the SAHMRI 2 Project, CEB will provide you with a summary of proposed terms of that agreement before CSO commences drafting.

- CEB notes that milestone payments due from the Purchase Agreement between SAHMRI and ProTom are denominated in US dollars while the State-Commonwealth Agreement payments are in Australian dollars. SAHMRI recognises the foreign currency risk inherent in this arrangement and intends to enter foreign currency hedging strategies to mitigate that risk.



Brad Gay
EXECUTIVE DIRECTOR, COMMERCIAL AND ECONOMICS

12 December 2018

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|------------------|-----------------------|
| Contact Officer: | Andrew Cadd |
| Telephone: | 0434 076 557 |
| Email address: | andrew.cadd@sa.gov.au |

List of Attachments

- Attachment A: Commonwealth-State Project Agreement for the Proton Beam Facility -
Signed by Commonwealth Minister for Health
- Attachment B: Timing of payments by the Commonwealth and SAHMRI for the new
Proton Therapy Unit

Timing of payments by the Commonwealth and SAHMRI for the Proton Therapy Unit

| State - Commonwealth milestone payments | | |
|---|--|--|
| AUD | Effective milestone | |
| 26,720,000 | SAHMRI meeting the conditions precedent under the Agreement to lease between the SA Minister for Transport and SAHMRI. (Jan 2019) | |
| 14,000,000 | A report from SAHMRI confirming the transfer of title from ProTom to SAHMRI onside delivery of the Proton Therapy Unit. (April 2019) | |
| 27,280,000 | A report from SAHMRI confirming factory acceptance testing of PTU equipment. (April 2022) | |
| TOTAL | 68,000,000 | |