



**Government
of South Australia**

TRS19D1356

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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 21 May 2019.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘SAHMRI 2 – Progress of Conditions Precedent and Agreement to Lease Land’ as described on the Objective document management system, between 12 July 2018 and 21 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 full to 1 document; a copy of which is enclosed.

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

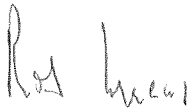
can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

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

6 August 2020

RELEASE

MINUTE



Government
of South Australia

Department of Treasury
and Finance

MINUTES forming ENCLOSURE

File T&F18/0614

Doc No TF18D01206

To The Treasurer

SAHMRI 2 – PROGRESS OF CONDITIONS PRECEDENT AND AGREEMENT TO LEASE LAND

Timing: ROUTINE

Recommendations/Issues: It is recommended that you:

Note the contents of this briefing and the status of Conditions Precedent under the Agreement to Lease Land for the 'SAHMRI 2' project.

Noted

Hon Rob Lucas MLC
Treasurer

/ /

Key Points:

- Since meeting on 5 October 2018 Commercial and Economics (C&E) Branch has met with South Australian Health and Medical Research Institute (SAHMRI) and Commercial and General (C&G) representatives to assess the status of SAHMRI 2. Further, how best to work under the renewed DTF-led project governance arrangements.
- C&E Branch has reviewed drafts of SAHMRI's correspondence to you and there is now a shared view on the status of the Conditions Precedents (CPs) under the Agreement to Lease.
- A summary of the status of each is provided at Attachment 1 and this should be consistent with advice you receive from SAHMRI. Some of the key issues discussed with SAHMRI include the following:
 - *No "Satisfaction Notices" have been issued* — there is a formal contractual mechanism for the Minister for Transport and Infrastructure to advise the completion of a CPs, however to date there has been no governance or authorising mechanism. Consistent with your lead role, C&E Branch is preparing an instrument of delegation from the Minister for

Transport and Infrastructure to enable you to issue Satisfaction Notices for each CP. The Steering Committee will provide advice on each of these CPs, progressively as they are completed, to recommend your formal approval.

- o *Number of Conditions Precedent* — while there are formally 10 CPs under the Agreement to Lease, some of these are multi-faceted and interdependent. It is possible that some sub-components of CPs may be completed, which will not be sufficient for a formal Satisfaction Notice. We will provide regular reporting of progress against each.
 - o *Planning and Development Conditions Precedent* —two CPs in relation to planning and design approvals and building design and appearance appear to be practically complete. We are seeking to have the Steering Committee recommend you issue a Satisfaction Notice in respect of these CPs as soon as possible, to demonstrate immediate progress to SAHMRI/C&G.
 - o *National Partnership Agreement* — DTF received the Australia Nuclear Science and Technology Organisation (ANSTO) final report on 12 October, a key precursor to the Commonwealth proceeding the finalisation of the National Partnership Agreement. At this time we do not have any advice from the Commonwealth to confirm that this report meets its requirements.
 - o *Technical due diligence* — while the Commonwealth introduced ANSTO advice as its relevant test for proceeding with the NPA, the State (through the Steering Committee) is yet to consider the appropriate test for it to recommend completion of the CP.
- In addition to the above CPs, the grant agreement between the Premier and SAHMRI provides further requirement on SAHMRI to produce an Operating Plan as a condition of funding. The Operating Plan deals with the interface of SAHMRI Proton Therapy Unit and SA Health, as well as how South Australian patients access services and are charged. This also has a 31 December 2018 deadline. Work on this document has been commenced by Department of Health and Ageing but yet to be reviewed by DTF. No extension to this date has been contemplated by SAHMRI or DTF at this time.



Stuart Hocking
A/CHIEF EXECUTIVE

12 October 2018

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Attachment 1 — Agreement to Lease: Status of Conditions Precedent

Clause No	Condition	Status / comment	Next step
3.1.1(a)	The Lessor is satisfied (acting reasonably) that the business case for the operation of the Proton Therapy Unit clearly indicates that its long term commercial operation will be commercially and financially viable and sustainable	EY Business Case (revised following input from Federal Department of Health and SA Government) was sent to the SA Government on 18 September 2018	State to finalise its position re business case under its new governance structure, for advice to the Treasurer
3.1.1(b)	The Lessor is satisfied (acting reasonably) that the Proton Therapy Unit to be procured is fit for its intended use and purpose and has the technical capability to deliver the intended treatments	ANSTO final Technical Due Diligence report provided to DTF on 12 October SAHMRI also provided a mitigation plan for risks identified by ANSTO	DTF to confirm this is sufficient to progress the NPA with the Commonwealth
3.1.1(c)	The Lessor is satisfied (acting reasonably) with the long term commercial arrangements concerning the operation of the Proton Therapy Unit, including the joint venture among the shareholders of the Operating Co	Joint Venture key commercial principles to be provided to SA Government	SAHMRI to provide key commercial principles SAHMRI to provide details of draft agreement suite and likely timing for consideration by State
3.1.2	The Lessor, the Lessee, Australian Bragg Centre, Operating Co, the Owner and the Owner's financier entering into a side deed granting to the Lessor the right to step into the Lease and Sub-Ground Lease of both the PTU Premises and the equipment lease relating to the Proton Therapy Unit in the event of a relevant insolvency or breach in order to enable and empower the Lessor to	Discussions have occurred between SAHMRI and the State regarding the possibility that the State may require a "step in right"	State to consider whether it wishes to proceed with step in right regime and to discuss potential principles with SAHMRI

Clause No	Condition	Status / comment	Next step
	take possession and control of, and if necessary operate, the PTU Premises as well as dealing with all other matters that the Lessor considers appropriate to facilitate this objective		
3.1.3	The Owner securing finance to construct the Facility.	Following satisfaction of the other CPs, Developer has advised that it will be in a position to close finance	SAHMRI to provide update on this, on advice from the Developer SAHMRI / State to establish a mechanism for regular reporting of Developer progress
3.1.4	The Minister for Health and the Commonwealth enter into a National Partnership Agreement pursuant to which the Commonwealth provides to the Minister for Health \$68 million for the purchase of the Proton Therapy Unit by the Lessee	Advice from SA Health is that discussions regarding the terms of the NPA are ongoing with the Commonwealth	Commonwealth Government to finalise terms and make formal offer to State, for consideration by Cabinet SA Health drafting Cabinet Submission
3.1.5	The Minister for Health and the Lessee enter into a grant agreement for the provision of not less than \$68 million plus the balance of the \$44 million less Train Control Centre relocation costs to the Lessee for the Lessee's purchase of the Proton Therapy Unit.	State has advised that once the NPA is concluded, it will be in a position to provide a draft agreement to SAHMRI for consideration. Note that the grant for the balance of the Train Control Centre allocation has already been provided.	State to provide draft agreement for grant of \$68 million based on terms of the NPA (when finalised)
3.1.6(a)	The Lessor approving the terms and conditions of: (a) the Sub-Ground Lease between the Lessee and the Owner over the Premises	SAHMRI provided the draft document to State	State to consider the draft document under its new governance structure

Clause No	Condition	Status / comment	Next step
	<p>and the Lessee agrees that the Sub-Ground Lease must provide that:</p> <p>(i) the Lease terms and conditions are incorporated into the Sub-Ground Lease (other than clauses 3.2 and 16 of the Lease); and</p> <p>(ii) the Owner as Sub-Ground Lessee will perform and comply with the Lessee's obligations pursuant to the Lease (other than clauses 3.2, 3.3, 3.4 and 16 of the Lease);</p>		
3.1.6(b), (c)	<p>The Lessor approving the terms and conditions of:</p> <p>(b) the sub-underlease for the PTU Premises to be granted by the Owner to the Australian Bragg Centre;</p> <p>(c) the sublease of the PTU Premises from Australian Bragg Centre to Operating Co</p>	SAHMRI has provided the draft document to SA Government	State to consider the draft document under its new governance structure
3.1.6(d)	<p>The Lessor approving the terms and conditions of:</p> <p>(d) the equipment leases to be granted by the Lessee to Australian Bragg Centre, and from Australian Bragg Centre to Operating Co,</p>	SAHMRI to provide key commercial principles for the equipment lease	SAHMRI to provide
3.1.7	<p>The Lessee has satisfied all conditions precedent contained in the Project Deed other than the grant of the Lease</p>	A separate paper will be provided on the CPs in the Project Deed.	SAHMRI to provide

Clause No	Condition	Status / comment	Next step
3.1.8	<p>The Lessor has approved the external appearance and dimensions of the Facility that the Owner intends to construct on the Land and the manner in which the Facility will integrate into and interface with the Precinct.</p>	<p>Architects renders showing the proposed external appearance of the building and other information have been provided to the State</p>	<p>State to advise whether this CP is satisfied, under its new governance structure, and confirm with Satisfaction Notice</p>
3.1.9	<p>(a) The Lessor has carried out all necessary works to relocate all operations of the Train Control Centre to Dry Creek and all train operations have ceased on the Land, provided that nothing in this clause requires the Lessor to remove any physical structure buildings, sheds fences or other infrastructure on the Land.</p> <p>(b) The Lessor shall use reasonable endeavours to complete all necessary works to satisfy this Condition Precedent prior to the Satisfaction Date.</p> <p>(c) The parties acknowledge that the relocation of the Train Control Centre is a complex, important and inherently risky exercise where reasonably foreseeable delays may occur beyond the Lessor's reasonable control due to safety, prudence or network operation concerns.</p> <p>(d) The Lessor is not liable to the Lessee, the Owner, Australian Bragg Centre or Operating Co for any Claim arising from or in connection with any delays in the Lessor's relocation of the Train Control Centre.</p>	<p>Process is being managed by DPTI</p>	<p>State to provide progress update</p>

Clause No	Condition	Status / comment	Next step
3.1.10	Development plan consent under the Development Act 1993 has been obtained for the development and construction of the Facility.	Development Plan consent has been obtained	State to confirm that this CP has been satisfied, under its new governance structure, and confirm with Satisfaction Notice