



**Government  
of South Australia**

TRS20D0209

**Treasurer**

Level 8

State Administration Centre

200 Victoria Square

Adelaide SA 5000

GPO Box 2264

Adelaide SA 5001

DX 56203 Victoria Square

Tel 08 8226 1866

treasurer.dtf@sa.gov.au

Hon Stephen Mullighan MP  
Member for Lee  
Unit 1, 62 Semaphore Road  
SEMAPHORE SA 5019

[lee@parliament.sa.gov.au](mailto:lee@parliament.sa.gov.au)

  
Dear Mr Mullighan

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

I refer to your applications made under the *Freedom of Information Act 1991* (FOI Act), dated 5 February 2020.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Execution of Agreement to Lease Contracts for Generators' as described on the Objective document management system, between 17 July 2019 and 5 February 2020."*

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 22 February 2020 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**

This document is a briefing prepared by the Department of Treasury and Finance and released in part as it contains legal advice which is subject to legal professional privilege pursuant to clause 10(1). It also contains information which, if released, would disclose details concerning a deliberation or decision of Cabinet. I therefore determine this exempt pursuant to clause 1(1)(e).

The document also contains matter consisting of information relating to the business and commercial affairs of both Nexif Energy and Infigen Energy. Disclosure of this information could reasonably be expected to have an adverse effect on these affairs. I therefore determine this exempt pursuant to clause 7(1)(c).

The Agreement to Lease and Lease Documents (Attachment 4) contain schedules which set out certain confidential information. I therefore determine this exempt pursuant to clause 13(2).

## **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*
    - (B) *would, on balance, be contrary to the public interest.*

### **Clause 10 – Documents subject to legal professional privilege**

- (1) *A document is an exempt document if it contain matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.*

**Clause 13 – Documents containing confidential material**

(2) A document that is a contract entered into by the Crown or an agency after the commencement of this subclause is not an exempt document by virtue of subclause unless—

- (a) it contains matter the disclosure of which would, under a term of the contract, constitute a breach of the contract or found an action for breach of confidence; and
- (b) that term of the contract has been approved by—
  - (i) in the case of a contract entered into by the Crown—a Minister; or
  - (ii) in the case of a contract entered into by a State Government agency—the responsible Minister for the agency; or
  - (iii) in the case of a contract entered into by an agency that is not a State Government agency—the 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 *Freedom of Information Act 1991*.

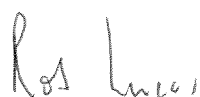
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit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

14 March 2020

MINUTE

27/8/19  
T19/024  
TR519D.2113



MINUTES forming ENCLOSURE

File T&F19/0367

Doc No A1239681

To The Treasurer

EXECUTION OF AGREEMENT TO LEASE CONTRACTS FOR GENERATORS

Timing: URGENT

Recommendations/Issues: It is recommended that you:

- [REDACTED]
- Note the attached advice (Attachment 3) from the Chair of the Evaluation Team and lead negotiator for the generator lease transaction recommending that you execute the agreement to lease contracts;
- Agree to execute the agreement to lease contracts with Nexif Energy and Infigen Energy;
- Approve that the provisions nominated by the lessees at Attachment 4 are commercial in confidence for the purposes of clause 13 (2) of Schedule 1 of the *Freedom of Information Act 1991*;
- Note that Nexif Energy and Infigen Energy have both consented to the government publicly disclosing the contract sums for their lease contracts. Agreement from has been received from both parties to release the contract sums as per the following wording: *The total contract sum for the Infigen Energy lease over the 25-year term is \$125.5 million (ex GST) and the total contract sum for the Nexif Energy lease over the 25 year term is \$93.7 million (ex GST) for a total of \$219.2 million (ex GST). The difference in the contract sums reflects different contractual risk allocations between the parties and the fact that Infigen Energy only bid for four generators.*

clause 10(1)

Noted & Approved / Not Approved

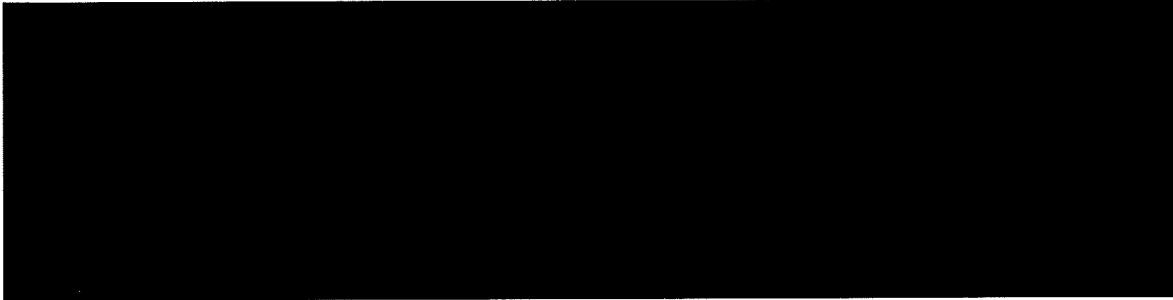
Rob Lucas  
Hon Rob Lucas MLC  
Treasurer

27/8/19



**Key Points:**

- The temporary emergency power plant was constructed during 2017 with units located at Elizabeth and Lonsdale. The State Government took ownership of the assets on 21 December 2018.



clause 1(1)(e)

- At this stage your agreement is sought to sign the Agreement To Lease. The fully negotiated Lease is an attachment to that document. It is intended that you would sign the Infigen Lease in May 2020 and the Nexlf Lease in October 2020. As with any unsigned document, you could renegotiate terms and conditions before execution but the intention is that the Lease has been finalised. Some things such as the name of the State-owned company will need to be added to the Lease documents.



clause 10(1)

- Attachment 3 is a recommendation from the Chair of the Evaluation Team.
- The Agreement to Lease and Lease Documents contain schedules which set out certain confidential information (Attachment 4).



clause 10(1)

- Notwithstanding the confidential provisions it has been agreed with both Infigen and Nexlf that the Government can publically refer to the 25 year quantum of lease payments.
- It is recommended that you agree to execute the Agreement To Lease for both Infigen Energy and Nexlf Energy.

A handwritten signature in black ink, appearing to be 'SH' with a long horizontal flourish.

Stuart Hocking  
DEPUTY CHIEF EXECUTIVE

27 August 2019

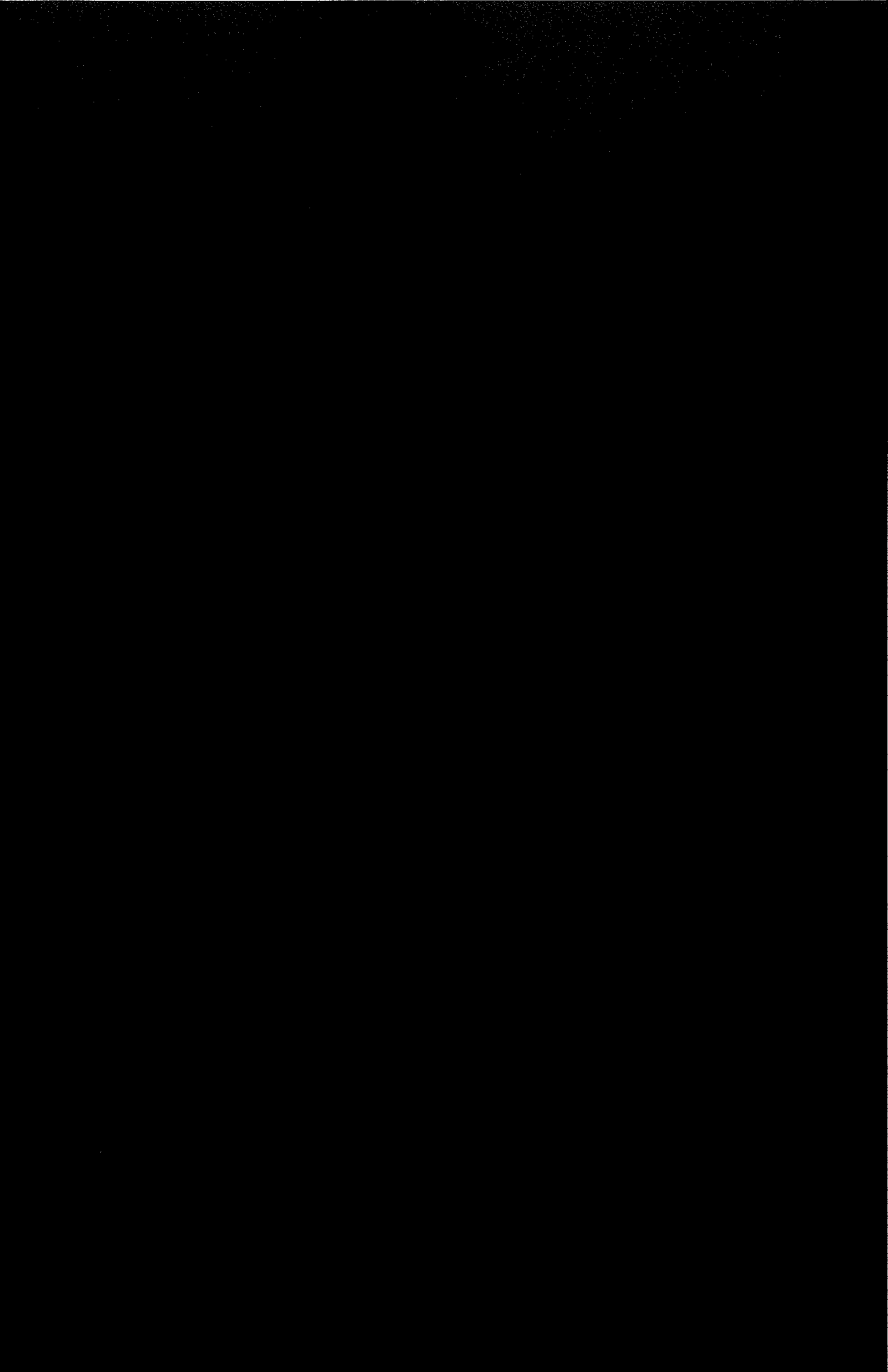
- Attachment 1: Advice from Johnson Winter & Slattery
- Attachment 2: Advice from CSO
- Attachment 3: Advice from Chair of the Evaluation Team
- Attachment 4: Confidential provisions

**Attachment 1**

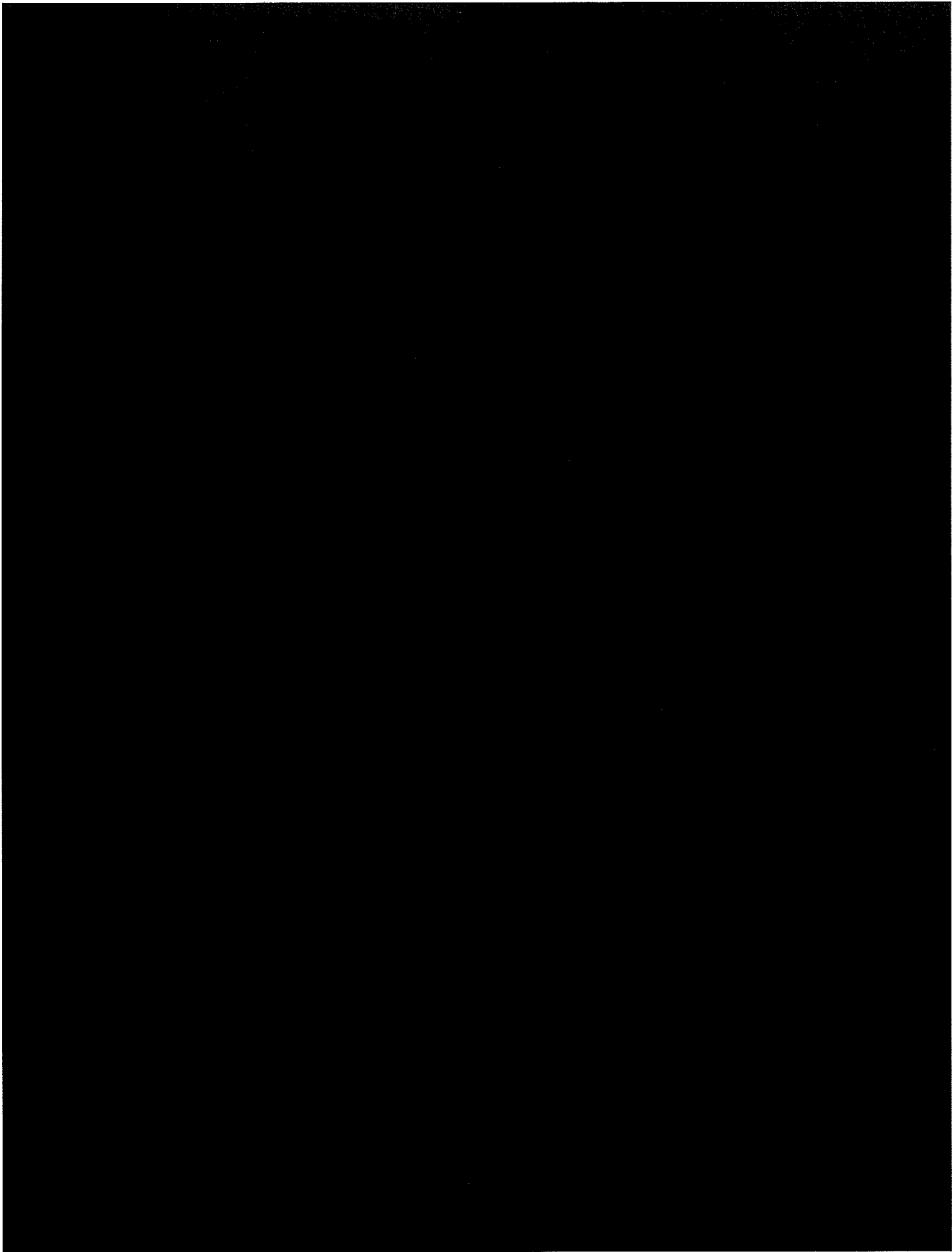








**Attachment 2**



clause 10(1)





**TO:** The Treasurer of the State of South Australia  
**SUBJECT:** Execution of the Agreement to Lease contracts

**PURPOSE**

To provide confirmation that the Chair of the Evaluation Team and lead negotiator for the Lease by Tender – Power Plant and Equipment process is satisfied that the Agreement to Lease contracts negotiated with Infigen Energy and Nexif Energy are ready for execution by the Treasurer.

**BACKGROUND**

[Redacted]

clause 1(1)  
(e)

**KEY POINTS**

[Redacted]

clause 10(1)

- BDO was appointed by DEM as external probity advisor for the tender process. BDO's probity report concluded that the process was open and competitive and conducted with integrity. The report also stated that the process was, "a fair, impartial and unbiased process conducted in the public interest without any known degree of favouritism, appearance of impropriety or unfair advantage".

[Redacted]

clause 7(1)(c)

clause 10(1)

- The Agreement to Lease documents are fully negotiated and are in a form suitable for execution. JWS has compiled and printed two copies of each of the documents for execution by the Treasurer.



**Government of South Australia**  
Department for Energy and Mining

*File reference: DEM044298*

## **RECOMMENDATION**

I recommend that the two copies of each of the Agreement to Lease documents for Infigen Energy and Nexif Energy prepared by JWS be executed by the Treasurer.

A handwritten signature in black ink, appearing to read 'Bryan Scruby'.

Bryan Scruby  
Chair of the Evaluation Team and lead negotiator

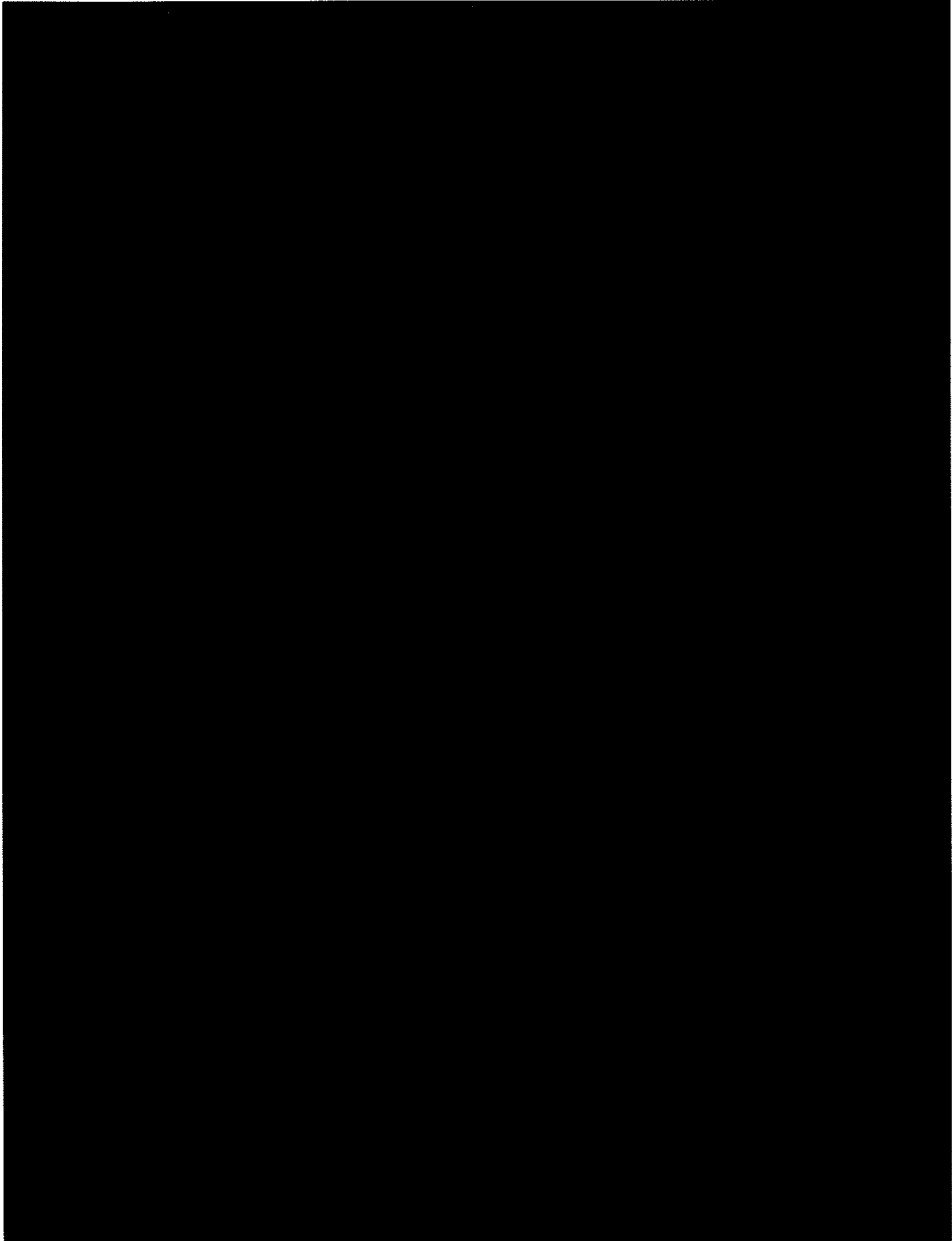
26 August 2019

cc: Stuart Hocking, Deputy Chief Executive, Department of Treasury and Finance  
Nick Smith, Director, Energy Programs & Services, Department for Energy and Mining

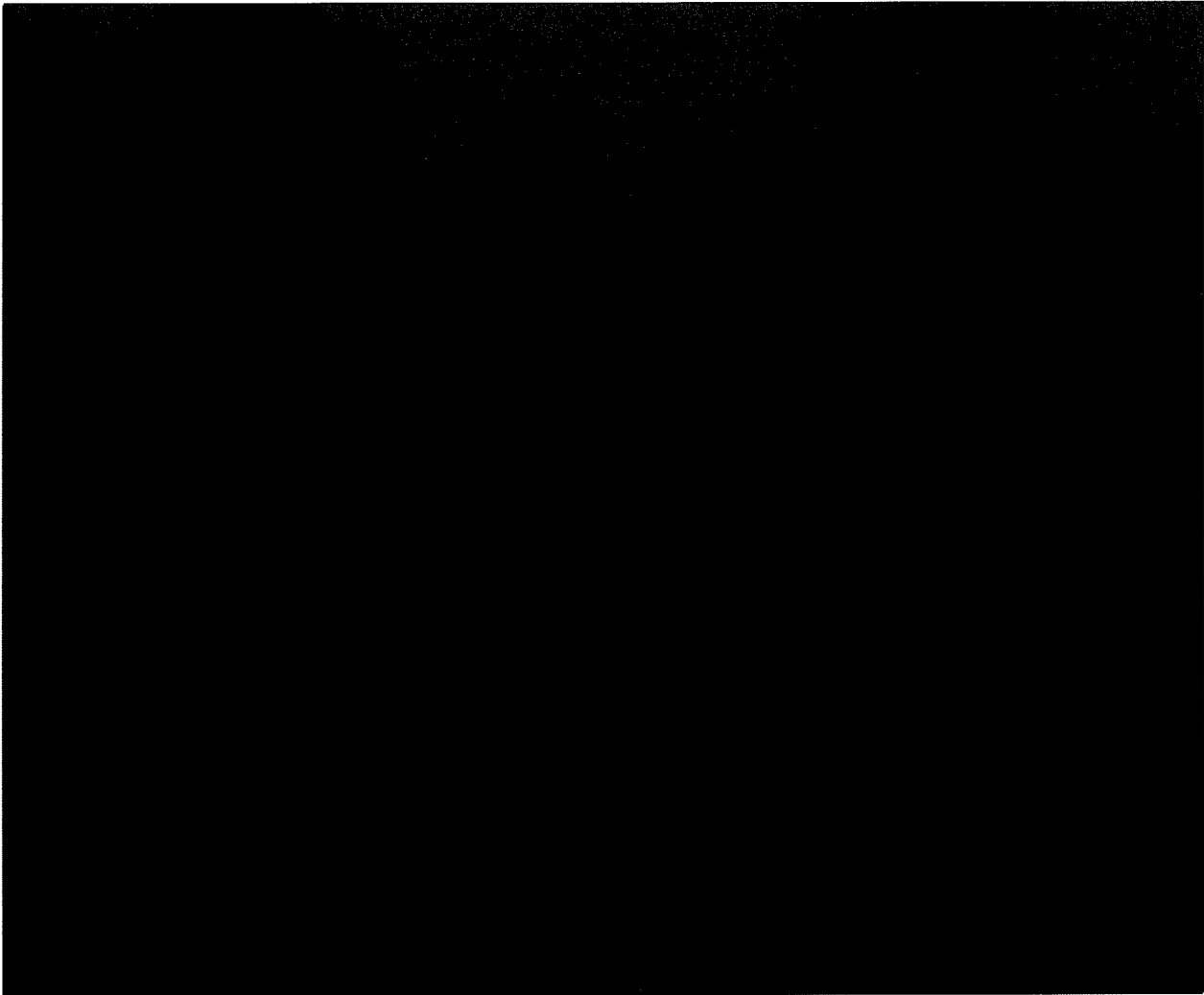


**ATTACHMENT 1: FIRB Correspondence**

***From Nexif Energy:***

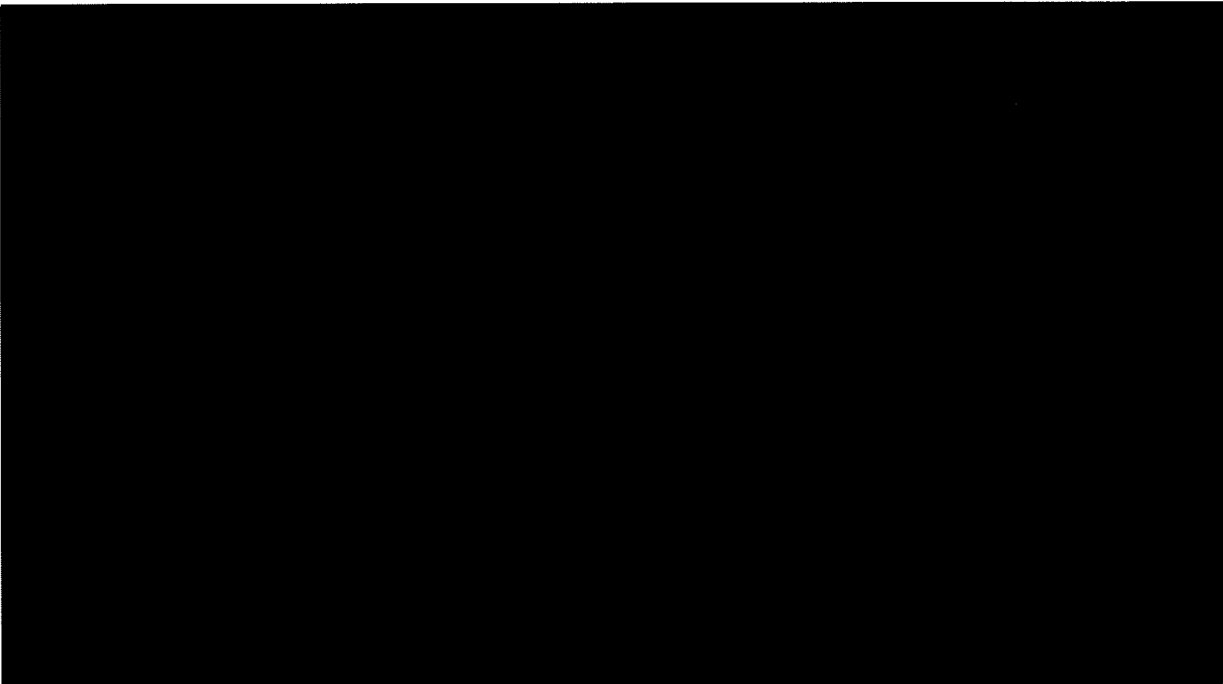




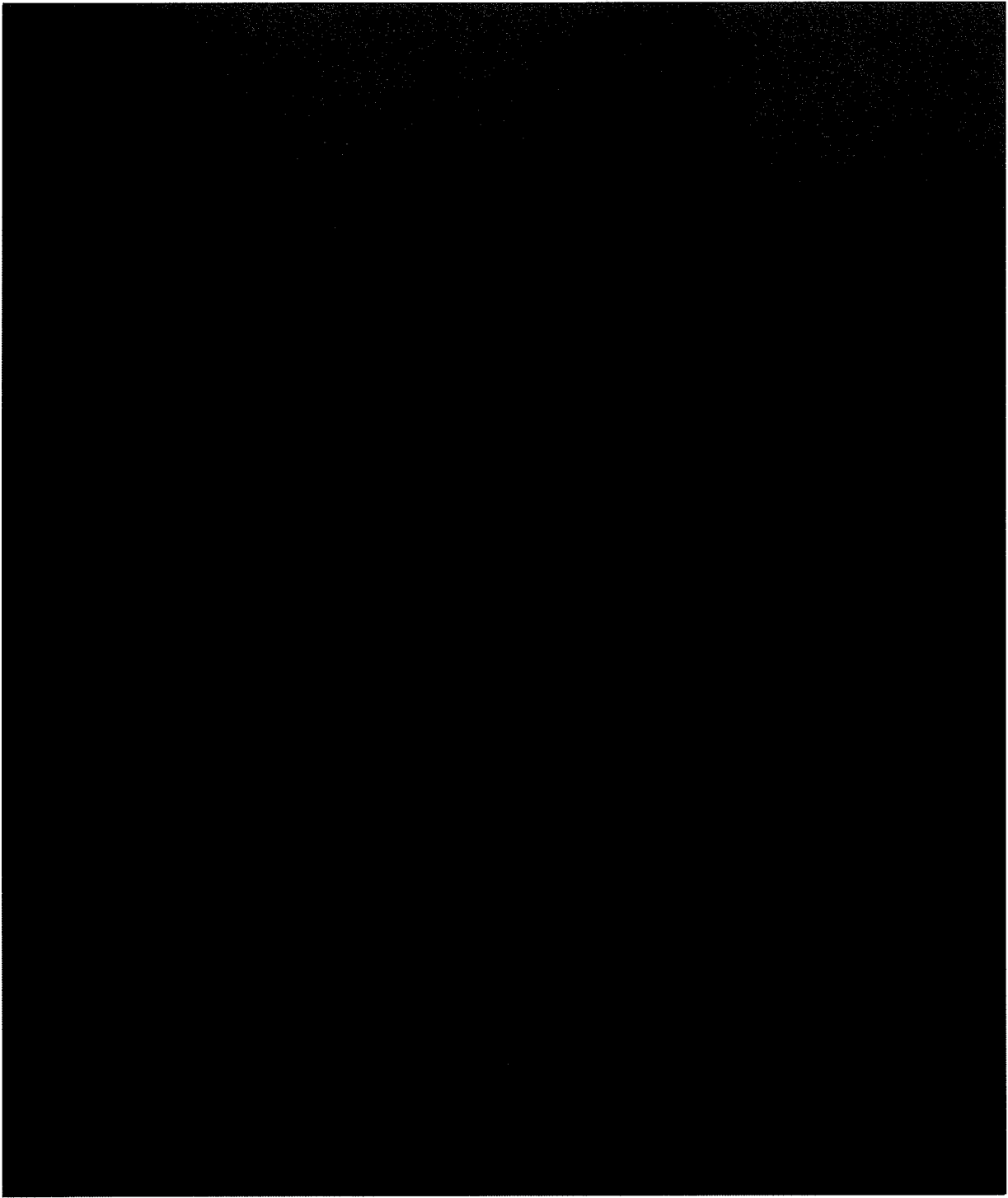


clause 10(1)

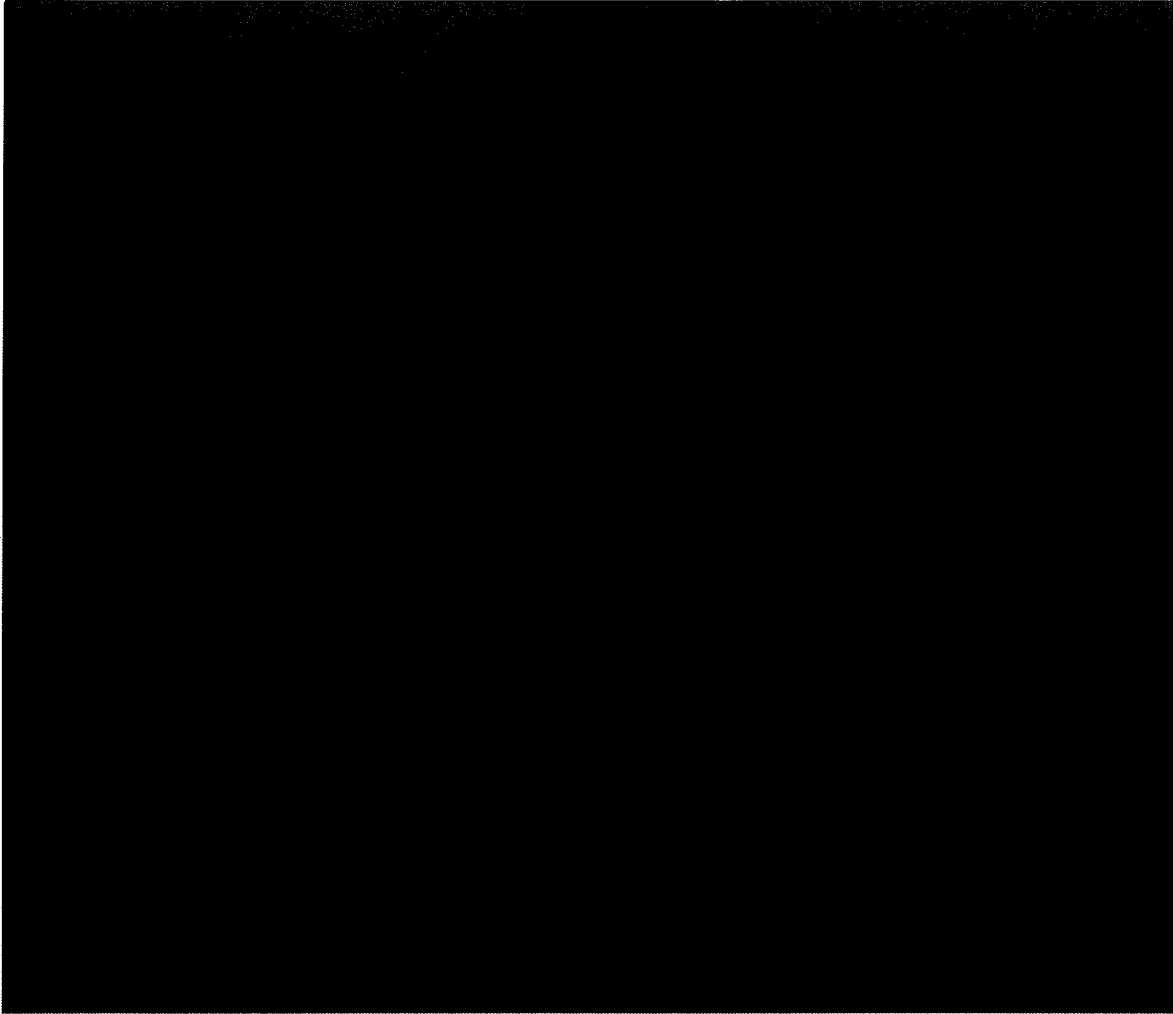
***From Infigen Energy:***



clause 7(1)(c)



**Attachment 4 – Confidential provisions in Agreement to Lease and Lease**



clause 13(2)