



21 June 2019

Dear C Stuart C

by email: fyi-request-10384-f1eb74cc@requests.fyi.org.nz

We refer to your request for information to Auckland Council dated Saturday 25 May 2019. Your request was passed on to Watercare for response as Watercare is the entity undertaking the Central Interceptor Project.

We repeat each of your requests as received and beneath each request is Watercare's response.

- 1** **Your request:** *First and foremost, please advise who the contract for the Central Interceptor was awarded too. As the contract has been awarded to Ghella-Abergeldie when the board paper refers to Ghella-Abergeldie Harker? These were two separate trading entities during the procurement of the project.*

Watercare response: The contract was awarded to Ghella Limited and Abergeldie Complex Infrastructure Limited. They are parties to an unincorporated joint venture and are separate trading entities. Each company is a signatory to the Contract jointly and severally as "Contractor".

On 31 January 2019 Abergeldie Harker Limited changed its name to Abergeldie Complex Infrastructure Limited. A record of this name change is available on the Companies Office website. You will note that this name change occurred after the date of the Report to the Board of Watercare, hence the references to "Abergeldie Harker Limited" and "Abergeldie Harker Joint Venture" in the report.

Accordingly, all references to Abergeldie Complex Infrastructure Limited in Watercare's response to you should be read and understood as "Abergeldie Complex Infrastructure Limited (formerly named Abergeldie Harker Limited)".

- 2** **Your request:** *Please provide the board recommendation report for the awarding of the Central Interceptor project to Ghella-Abergeldie / Ghella-Abergeldie Harker without the contract items and summary BOQ items blacked out. This is a public works / local government contract and Watercare Service Limited should be seen to be transparent in the letting of public contracts to privately held companies.*

Watercare response: Watercare will not be releasing a non-redacted version of the Contractor's summary BOQ items. Watercare considers that release of such information:

- would likely result in unreasonable prejudice to Ghella Limited's and Abergeldie Complex Infrastructure Limited's commercial positions; and
- may be used for improper gain or improper advantage.

You are referred to section 7(2)(b)(ii) and section 7(2)(j) of the Local Government Official Information and Meetings Act 1987 (**LGOIMA**) which are the grounds relied upon by Watercare in refusing your request.

The disclosure of pricing breakdown would be likely to unreasonably prejudice the commercial position of Ghella Limited and Abergeldie Complex Infrastructure Limited in that through analysis of this breakdown their competitors may potentially determine the pricing strategies applied. This would place their competitors in a position where they could use the pricing breakdown for improper advantage in future tenders for similar works and place Ghella Limited and Abergeldie Complex Infrastructure Limited in a position of disadvantage.

Watercare has considered whether the public interest in the information you seek outweighs the potential prejudice to Watercare and Ghella Limited and Abergeldie Complex Infrastructure Limited. Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex Infrastructure Limited's respective commercial positions is outweighed by public interest in the release of the BOQ items blacked out in the Recommendation Report dated 29 January 2019 provided to the Watercare Board of Directors.

The accepted Contract Price of \$750,576,981 excluding GST has been released and that is sufficient for the transparency purposes you reference.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

3 **Your request:** *Please provide copies of the four 'Letters of endorsements from the four independent advisors' Further to this, please provide evidence of their expertise by way of their professional CV's.*

Watercare response: Letters from PwC, Simpson Grierson, Rider Levett Bucknall, McRae Construction Services and also Deloitte are **attached** to this response.

With respect to your request for professional CVs, such information is in the public domain and can be accessed by a Google search of the relevant individual or by a search of the relevant organisation's website.

4 **Your request:** *Please provide details and minutes of the negotiations with GAH as referred to in section 2.1 in the letter to 'Iain S' dated 22nd of March, which includes the board recommendation letter endorsing the selection of Ghella Abergeldie for the Central Interceptor project.*

Watercare response: Watercare will not be releasing details or minutes of negotiations with Ghella Limited and Abergeldie Complex Infrastructure Limited. The information contained in such minutes:

- (a) is confidential to Watercare and to Ghella Limited and Abergeldie Complex Infrastructure Limited;
- (b) may disclose a trade secret;
- (c) is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited;

- (d) contains information the subject of legal professional privilege; and
- (e) may be used for improper gain or improper advantage.

You are referred to sections 7(2)(i), 7(2)(b)(ii), 7(2)(c), 7(2)(g) and 7(2)(j) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

It was the understanding of the parties that negotiations and all records of those negotiations would be strictly confidential to the parties. In recognition of the commercial sensitivity of the content, negotiations were undertaken subject to confidentiality protocols and all parties present submitted to those protocols.

Further, the information you seek records details surrounding the risk approaches of the parties, including discussions surrounding technical construction methodologies and associated pricing. Such risk positions and pricing are necessarily confidential and may reveal critical commercial strategies and methodologies which will be of significant interest to Ghella Limited's and Abergeldie Complex Infrastructure Limited's competitors both in New Zealand and in the overseas markets in which their related companies operate.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex Infrastructure Limited's respective commercial positions is outweighed by other considerations which in the public interest render it desirable to publically release details or minutes of negotiations with Ghella Limited and Abergeldie Complex Infrastructure Limited.

Also, Watercare considers the release of the details and minutes you seek is not in the public interest but potentially detrimental to that interest in that the information could be used for improper gain or improper advantage as well as prejudicing the likelihood that future tenderers will undertake open and frank negotiations with Watercare where records of those negotiations will be released publicly to the commercial detriment of that tenderer.

Further, certain details recorded in respect of negotiations with Ghella Limited and Abergeldie Complex Infrastructure Limited are subject to legal professional privilege. Watercare has considered whether the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available. Watercare does not consider that such public interest considerations (such as there might be) outweigh its interest in maintaining legal professional privilege in respect of current matters.

Again you have the Contract Price accepted by Watercare. You also have the total cost of the Central Interceptor Project at \$1.266.8 billion.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

5 **Your request:** *Please advise the changes to GAH's proposal referred to in the second paragraph of 2.1 in the letter to 'Iain S' dated 22nd of March.*

Watercare response: Watercare will not be releasing details of the changes to GAH's proposal referred to in the second paragraph of 2.1 in the letter to 'Iain S' dated 22 March 2019. Watercare considers that the release of such detail is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited as it will disclose potential financial impacts of negotiations undertaken between the parties and potentially reveal commercial strategies adopted by them.

You are referred to sections 7(2)(b)(ii) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex Infrastructure Limited's respective commercial positions is outweighed by other considerations which in the public interest render it desirable to publically release such information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

6 **Your request: Part A** - *With the analysis undertaken by PWC on behalf of Watercare on Ghella and Abergeldie Harker, please provide the following:*

- i) Margins on large projects*
- ii) cash flow analysis of these projects*
- iii) access to capital*
- iv) pipeline of work and capacity.*

Further to the above request, please advise which entity PWC undertook their analysis on, was it:

- a) Ghella*
- b) Abergeldie Complex Infrastructure*
- c) Abergeldie Harker Limited.*

Watercare response: With respect to the due diligence review undertaken by PwC Watercare will not be releasing details or information received or reviewed by PwC in the course of their due diligence review of the financial capability of Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective parent companies including:

- (a) margins on large projects;
- (b) cash flow analysis of these projects;
- (c) access to capital; or
- (d) pipeline of work and capacity.

The information you seek:

- (a) is confidential to Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective related companies;

- (b) is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective related companies; and
- (c) may be used for improper gain or improper advantage.

You are referred to sections 7(2)(b)(ii), 7(2)(c) and 7(2)(j) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

The information furnished for the due diligence review was provided by Ghella Limited and Abergeldie Complex Infrastructure Limited on the basis that it would be treated and kept by Watercare and PwC as strictly confidential to the parties. The information you seek disclosure of is of extreme confidential sensitivity to the parties who have furnished that information.

Ghella Limited and Abergeldie Complex Infrastructure Limited (as well as their parent and related subsidiaries) are privately held companies and such information is not otherwise publically available. Therefore, disclosure of the information you seek will be of significant interest to Ghella Limited's and Abergeldie Complex Infrastructure Limited's competitors and the competitors of their respective parent companies who operate and compete in international markets. Analysis of this information may place these parties in a position of disadvantage whilst their competitors receive an improper advantage and potentially improper gain.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex Infrastructure Limited's respective commercial positions (or that of their parent or related companies) is outweighed by public interest considerations (to the extent that there are any) in the public release of such highly sensitive confidential commercial information.

Further, Watercare considers the release of such highly sensitive commercial information pertaining to private companies operating in highly competitive environments may be detrimental to the public interest as this information could be used for improper gain or improper advantage as well as prejudicing the likelihood that future private company tenderers will submit to detailed financial due diligence required by Watercare (or other public sector agencies) where confidential financial information will be released publicly to the commercial and competitive detriment of that tenderer. It is in the public interest that public sector agencies have information available to them to undertake robust due diligence reviews of tenderers.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

You have also sought confirmation as to the "entity PwC undertook their analysis on". Watercare can confirm that PwC undertook a due diligence review of each of:

- (a) Ghella Limited
- (b) Ghella S.p.A
- (c) Abergeldie Complex Infrastructure Limited (as Abergeldie Harker Limited is now called)
- (d) Abergeldie Holdings Pty Ltd
- (e) Abergeldie Consolidated Pty Ltd

6 Your request: Part B -*“Should the audits be only completed on Ghella as mentioned in the letter to ‘Iain S’ dated 22nd of March, please provide the auditors reports on Abergeldie Complex Infrastructure and Abergeldie Harker Limited. Please also advise what projects were audited, the project location and who was the principal for audited project including contact details.”*

Watercare’s response: The financial capacity of both joint venture parties was reviewed as part of the tender evaluation. PwC was engaged to undertake a review of financial capacity and an assessment of tenderer workload. This was in respect of all 4 tenderers. PwC then undertook a further due diligence exercise in respect of the preferred bidder, the Ghella Limited and Abergeldie Complex Infrastructure joint venture.

To clarify references in the Recommendation Report dated 29 January 2019 provided to the Watercare Board of Directors, PwC were not engaged as “auditors”. The reference to “auditors” in the Recommendation Report dated 29 January 2019 provided to the Watercare Board of Directors is to the company auditors of Ghella and Abergeldie Complex Infrastructure and their respective parent companies who provided detailed information and co-operated with PwC in their due diligence review.

The due diligence reports prepared by PwC for Watercare:

- (a) are confidential to Watercare, PwC, Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective related companies, and each of the other four tenderers and their parent companies whose detailed commercial information is included;
- (b) are likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective related companies as well as the commercial positions of each of the other four tenderers and their parent and other related companies referred to in the reports; and
- (c) may be used for improper gain or improper advantage.

You are referred to sections 7(2)(b)(ii), 7(2)(c) and 7(2)(j) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

Watercare will not be disclosing the evaluation report prepared by PwC in respect of financial capacity and workload assessment. This report contains detailed financial assessment of all four tenderers and Watercare and PwC consider the report to be strictly confidential. This report has been strictly held at Watercare and has been shared confidentially on a “need to know basis” and to a very limited number of persons.

The due diligence report prepared in respect of the preferred bidder, the Ghella Limited and Abergeldie Complex Infrastructure Limited joint venture is also considered by Watercare, PwC, Ghella Limited and Abergeldie Complex Infrastructure Limited to be strictly confidential. Given that the report would disclose the same information as is sought above in respect of margins, cash-flow, capital and capacity of these companies, their respective related companies as well as other detailed commercially sensitive information, the same rationale and justification for withholding it applies as is described above at Part A of Request 6.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released.

Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex Infrastructure Limited's respective commercial positions (or that of their parent or related companies) is outweighed by public interest considerations (to the extent that there are any) in the release of such highly sensitive confidential commercial information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

7 **Your request:** *It is referred in the letter to 'Iain S' dated 22nd of March, that the Abergeldie shareholder has previously provided financial support when required. Please provide further information of this shareholder and advise what personal guarantees this shareholder has provided Watercare and Auckland Council.*

Watercare response: In respect of the Central Interceptor Main Works Contract, a parent company guarantee has been provided by Abergeldie Consolidated Pty Ltd to Watercare Services Limited. No guarantee, personal or otherwise, has been provided to Auckland Council in respect of the Central Interceptor Main Works Contract as far as Watercare is aware.

Abergeldie Consolidated Pty Ltd is Abergeldie Complex Infrastructure Limited's ultimate parent company.

8 **Your request:** *Please provide evidence of the parent companies guarantees as referenced in section 3.2 of the Watercare board paper.*

Watercare response: Parent company guarantees have been executed and delivered to Watercare by Ghella S.p.A and Abergeldie Consolidated Pty Ltd and I can assure you this has occurred.

9 **Your request:** *Please provide the tabulated risk allowance showing full values for transparency.*

Watercare response: The information you seek:

- (a) is confidential to Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective related companies;
- (b) is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited and their respective related companies; and
- (c) may be used for improper gain or improper advantage.

You are referred to sections 7(2)(b)(ii), 7(2)(c) and 7(2)(j) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

Risk allowances are highly sensitive confidential commercial information. Their disclosure to competitors would potentially be highly damaging to Ghella Limited and Abergeldie Complex Infrastructure Limited and place these parties in a position of significant disadvantage in future tenders vis a vis their competitors. Watercare does not accept that public "transparency" of such confidential commercially sensitive material

is necessary or desirable and considers the motives for the request may be to secure an improper advantage in respect of these entities.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex Infrastructure Limited's respective commercial positions is outweighed by public interest considerations (to the extent that there are any) in the release of such highly sensitive confidential commercial information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

10 Your request: *Please advise the clause and framework used by GAH for escalations which limits the risk to the GAH JV. Further to this, please advise how and what value the other three tenderers allowed for escalations in their submissions? Furthermore, please advise why Watercare accepted this escalation risk?*

Watercare response: The Contract provides for a risk share approach to cost escalation between the Contractor and Watercare. The Contract includes an escalation formula and escalation sums are calculated in accordance with this formula. The Contractor wears escalation risk for a set period of time and then up to a maximum threshold. The Contractor is not entitled to any cost adjustment until the combined escalation sums exceed that threshold amount and then only to any amount above the threshold. The threshold is set based on a higher than expected rate of building cost inflation.

Watercare accepted a shared risk approach to escalation because it was prudent and fiscally responsible to do so. Without provision of an escalation adjustment, a contractor must make pricing allowances for the risk of cost escalation occurring during the course of the contract period. This may result in a contractor either over pricing this risk (meaning Watercare pays an inflated contract price for risk that may not eventuate and may result in the contractor having an over recovery) or under-pricing this risk which may result in reduced profitability for the contractor, or indeed significant losses. A contractor facing significant losses on a complex project is not desirable and may not deliver on the outcomes Watercare's customers deserve.

Values and escalation allowances offered by the other three tenderers in their submissions will not be disclosed by Watercare. The information you seek:

- (a) is confidential to the three other tenderers;
- (b) is likely to unreasonably prejudice the commercial positions of those tenderers; and
- (c) may be used for improper gain or improper advantage.

You are referred to sections 7(2)(b)(ii), 7(2)(c) and 7(2)(j) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

Commercial approaches surrounding escalation are highly commercially sensitive to tenderers and especially so when cost escalation is a major issue in the current market. Approaches to escalation may be a key differentiator in a competitive process. Given the sensitivity, public disclosure of these tenderers'

approaches to escalation would place them in a position of unreasonable prejudice and potential commercial disadvantage.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to its other three tenderers is outweighed by public interest considerations (to the extent that there are any) in the release of such highly sensitive confidential commercial information.

Further, Watercare considers the release of such highly sensitive commercial information pertaining to companies operating in highly competitive environments may be detrimental to the public interest as this information could be used for improper gain or improper advantage as well as prejudicing the likelihood that future tenderers will disclose critical pricing and risk approaches. It is in the public interest that public sector agencies have information available to them to undertake detailed analysis of tenders received so as to enable them to undertake frank negotiations and discussions with tenderers surrounding key risks. Your request jeopardises this.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

11 Your request: *In section 3 of the Board paper from January to the Watercare board, it references suitability of resources. Could these please be provided?*

Watercare response: Watercare has interpreted your request as a reference to the section of the Board report which refers to "Adequacy of resources" in a table on page 4 of the report and that you seek detail of resourcing to be applied by the Contractor for the project.

Watercare will not be releasing the Contractor's approach to resourcing for the Central Interceptor Project. Watercare considers that release of such information:

- (a) would likely result in unreasonable prejudice to Ghella Limited's and Abergeldie Complex Infrastructure Limited's commercial positions; and
- (b) may be used for improper gain or improper advantage.

You are referred to section 7(2)(b)(ii) and section 7(2)(j) of the LGOIMA which are the grounds relied upon by Watercare in refusing your request.

Resourcing and a tenderer's approach to resourcing is a key differentiator in a competitive process for projects such as Central Interceptor or indeed any complex construction project. To disclose the Contractor's resourcing strategies to the public could unreasonably prejudice Ghella Limited and Abergeldie Complex Infrastructure Limited and place their competitors in a position of improper advantage through use and analysis of this information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

12 Your request: *In the Board paper from January to the Watercare board, it references GAH's carries the risk on tunnel spoil drying. Could GAH's methodology please be provided to the general public for viewing?*

Watercare will not be releasing the Contractor's spoil drying methodology for general public viewing. Watercare considers that release of such information:

- (a) may disclose a trade secret;
- (b) is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited; and
- (c) may be used for improper gain or improper advantage.

You are referred to sections 7(2)(i), 7(2)(b)(ii) and 7(2)(j) of the Local Government Official Information and Meetings Act 1987 which are the grounds relied upon by Watercare in refusing your request.

Spoil drying methodology is a critical part of a tunnelling contractor's methodology and it can be key differentiator in a competitive tendering process. Tunnelling contractors develop their spoil treatment processes overtime and significant "know-how" and years of experience are employed in preparing particular methodologies. The disclosure of the Contractor's spoil drying methodology for the Central Interceptor Project may result in the disclosure of this know-how which is unreasonably prejudicial to the Contractor.

To disclose the Contractor's spoil methodologies to the public could unreasonably prejudice Ghella Limited and Abergeldie Complex Infrastructure Limited and place their competitors in a position of improper advantage in subsequent competitive processes through use and analysis of this information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

13 Your request: *In the Board paper from January to the Watercare board, it states GAH's submission had several items from the sewer connections omitted. Please advise what these were and the value this increased their tender submission?*

Watercare response: Watercare will not be releasing details of the pricing omissions or associated value increases. Watercare considers that the release of such detail is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited as it will disclose detailed pricing information and pricing strategies as well as potential financial impacts of negotiations undertaken between the parties.

You are referred to section 7(2)(b)(ii) of the LGOIMA which is the ground relied upon by Watercare in refusing your request.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to Ghella Limited's and Abergeldie Complex

Infrastructure Limited's respective commercial positions is outweighed by other considerations which in the public interest render it desirable to publically release such detailed pricing information.

14 Your request: *Please advise the final contract sum with Ghella-Abergeldie?*

Watercare response: The contract price accepted by Watercare for the Central Interceptor Project Main Works Contract was \$750,576,981 excluding GST.

15 Your request: *Please advise the final contract sum with Ghella-Abergeldie Harker?*

Watercare response: The answer is the same as for your request numbered 14 above. As advised above at Request 1, Abergeldie Complex Infrastructure Limited and Abergeldie Harker Limited are the same entity – just with a name change.

16 Your request: *Please provide the tender prices from the other three tenderers and please state the make up of these tenderers and their capacity?*

The other tender prices received by Watercare from the other three tenderers were as follows:

- \$798,088,000 (excluding GST)
- \$814,427,979 (excluding GST)
- \$1,056,072,546 (excluding GST)

The other tenderers were (in alphabetical order and with no particular correlation to the pricing listed above):

- CPB Contractors Pty Limited
- Pacific Network a joint venture consisting of McConnell Dowell Constructors Limited, The Fletcher Construction Company Limited and Obayashi Corporation Limited
- VINCI Joint Venture comprising VINCI Construction Grands Projets, Soletanche Bachy International (New Zealand) Limited, Bessac and HEB Construction Limited

17 Your request: *Please advise the price for the Grey Lynn tunnel and the other three tenderers price for these additional works.*

Watercare response: Watercare will not be releasing details of pricing for the Grey Lynn Tunnel either by Ghella Limited and Abergeldie Complex Infrastructure Limited or by any of the other three tenderers. It is confirmed that the accepted Contract Price includes the Grey Lynn Tunnel and all bidders included the Grey Lynn Tunnel in their submitted price.

Detailed pricing information, such as any allowances or inclusions related to the Grey Lynn Tunnel, is of significant commercial sensitivity to each of the bidders including the successful Contractor. Watercare considers that the release of such detail is likely to unreasonably prejudice the commercial positions of each bidder as it will disclose detailed pricing information, analysis of which may have an adverse effect on them in future competitive processes.

You are referred to section 7(2)(b)(ii) of the LGOIMA which is the ground relied upon by Watercare in refusing your request.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to each of the bidders' respective commercial positions is outweighed by other considerations which in the public interest render it desirable to publically release such detailed commercial information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

18 **Your request:** *Please advise how liquidated damages could be applied to this JV and what the dollar value is on daily liquidated damages against the JV?*

The Contract provides for daily liquidated delay damages to be applied for failure to meet the Time for Completion of Sections and the Works.

Watercare will not be disclosing the dollar value of these liquidated damages. The values are commercially sensitive and correctly are not in the public domain. Further, disclosure of such sums may impact on the Contractor's ability to undertake its own negotiations with suppliers and subcontractors and therefore unreasonably prejudice the commercial position of the Contractor.

You are referred to section 7(2)(b)(ii) of the LGOIMA which is the ground relied upon by Watercare in refusing your request.

In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to the Contractor's commercial position is outweighed by other considerations which in the public interest render it desirable to publically release such information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

19 **Your request:** *Please provide the contract construction programme for the central interceptor project between Watercare and the Ghella-Abergeldie JV?*

Watercare response: The Contract construction programme is a highly sensitive and sophisticated proprietary document. Watercare will not be disclosing it.

Watercare considers that release of the programme may:

(b) may disclose a trade secret;

- (c) is likely to unreasonably prejudice the commercial positions of Ghella Limited and Abergeldie Complex Infrastructure Limited; and
- (d) may be used for improper advantage.

You are referred to sections 7(2)(i), 7(2)(b)(ii) and 7(2)(j) of the Local Government Official Information and Meetings Act 1987 which are the grounds relied upon by Watercare in refusing your request.

Construction programming is a highly sophisticated process and includes sensitive proprietary information. Disclosure of which may unreasonably prejudice the commercial position of Ghella Limited and Abergeldie Complex Infrastructure Limited and may result in improper advantage through exploitation of this know-how and information by their competitors.

Attached is a high level programme which shows key dates for the Project.

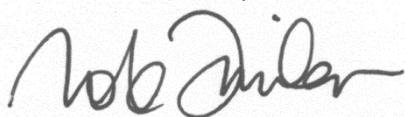
In accordance with section 7(1) of the LGOIMA, Watercare has considered whether there are other considerations which render it in the public interest for the information you seek to be released. Watercare does not accept that the potential detriment to the Contractor's commercial position is outweighed by other considerations which in the public interest render it desirable to publically release such information.

You have the right, under section 27 of the LGOIMA, to make a complaint to the Ombudsman about Watercare's decision to withhold this information.

Further, we note that Watercare has separately responded to the request by 'Iain S' of the 6th of March. That response has been uploaded to the FYI website which we understand you are familiar with.

Finally, as can be seen from the response to Requests 14 and 16, Watercare awarded the Central Interceptor Main Works Contract to the lowest bidder by a significant margin. The Contractor was appointed following a highly interactive process conducted under high levels of probity oversight by Deloitte. Ghella Limited and Abergeldie Complex Infrastructure Limited have demonstrated to Watercare a sound track record and the ability to deliver a project of such scale and complexity. The public know the process undertaken was fair and equitable; how much is being spent; with whom and what the project entails.

Yours sincerely



Rob Fisher

Company Secretary

Attachments:

- Letter PwC dated 24 January 2019 to Shayne Cunis
- Letter Simpson Grierson dated 23 January 2019 to Shayne Cunis
- Letter Rider Levett Bucknall dated 23 January 2019 to Shayne Cunis
- Email McRae Construction Services 22 January 2019 to Shayne Cunis
- Letter Deloitte dated 27 November 2018 to Raveen Jaduram
- High level programme for Central Interceptor Main Works Contract