

29 October 2020

Maria Slade
Email: maria@nbr.co.nz

Dear Ms Slade,

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request to the Guardians of New Zealand Superannuation (“Guardians”), dated 30 September 2020, made pursuant to the Official Information Act 1982 (“OIA”).

Your Request

You have requested a copy of *“the first draft of a due diligence/health check the Guardians did on the Elevate Fund before it was launched.”*

We have interpreted your request as referring to the first draft of the “conviction review” the Guardians carried out on New Zealand Growth Capital Partners (“NZGCP”) in September 2019, before the passing of the Venture Capital Act 2019 and the establishment of the Elevate Fund. This review, which included an appended transition plan designed to guide and support NZGCP in establishing the Elevate Fund, was provided to NZGCP Management for feedback on 23 September 2019. If this is not the document you mean please contact us via enquiries@nzsuperfund.co.nz to clarify your request.

Context

The Venture Capital Fund Act 2019 gives the Guardians a governance and oversight role in order to help ensure the Elevate Fund is invested according to best practice investment management, in the context of New Zealand’s venture capital markets. The Guardians’ role is focused on the Elevate Fund and does not extend to organisational oversight of NZGCP, which is governed by its own Board. The NZGCP Board is in turn overseen by officials and NZGCP’s shareholding Ministers. Consistent with this structure, it was the NZGCP Board which undertook the employee investigations which we understand are the focus of your interest.

Other than in relation to the appointment of NZGCP, which was prescribed by the Venture Capital Fund Act 2019, the Guardians has applied its usual manager conviction assessment and monitoring processes to NZGCP as manager of the Elevate Fund. Further information about how we evaluate and monitor external managers is available at: <https://www.nzsuperfund.nz/how-we-invest/investment-managers/evaluation/> and in the Externally Managed Investments Policy available at: <https://www.nzsuperfund.nz/publications/policies/>.

In undertaking the September 2019 conviction review, we identified a number of areas for improvement and guidance for NZGCP for the new Elevate Fund mandate, in order to ensure NZGCP’s eventual management of Elevate Fund would meet our expected minimum standards. We note it is not unusual for us to identify areas for improvement in conviction reviews of external managers. These areas were set out in the conviction review and associated transition plan, and to date NZGCP has made good progress in addressing them.

The Guardians is in the process of preparing its next scheduled conviction review which will assess progress against the transition plan, together with all other relevant developments now that the mandate is up and running.

Our Response

Details of the information we have identified as being within the scope of your request, and our response in respect of that request, are set out in **Table 1 below**. The information we are releasing can be found **attached**, at **Appendix 1**.

Table 1

Date	Document Reference	Document Title	Released	Reasons for Withholding
23 Sept 2019	#2702265	DRAFT Conviction Assessment (for NZVIF Management Feedback) New Zealand Venture Investment Fund September 2019	<i>Partially withheld</i>	Section 9(2)(a) Section s9(2)(b)(i) Section 9(2)(b)(ii) Section 9(2)(ba)(i)
23 Sept 2019	#2695744	VCF Mandate Transition Plan – Draft	<i>Withheld in full</i>	Section 9(2)(g)(i) Section 9(2)(i) Section s9(2)(k))

Where we have withheld information, we have good reasons for doing so under sections 6 and 9 of the OIA. We have considered whether the public interest in favour of disclosing the information contained in these documents outweighs our reasons for withholding it, and we have concluded that it does not. To give you a sense of our rationale, the general bases on which it is necessary for us to withhold the information, and the grounds under the OIA that we refer to, are as follows.

Section 9(2)(a) – *Protect the privacy of natural persons.*

Names and biographical details pertaining to individuals other than senior managers have been withheld in order to protect the privacy of natural persons. These details appear in the context of other information in the review and this constitutes personal information in which there is a privacy interest that we consider is necessary to protect. In these instances, we do not see any public interest in, nor public benefit from, the release of this information. The relevant information is not required for the purposes of transparency and accountability of the Guardians' activities. There is no good reason why these individuals in particular should be subjected to potential public scrutiny.

Section s9(2)(b)(i) – *Protect information where the making available of the information would disclose a trade secret and **Section s9(2)(k)** prevent the disclosure or use of official information for improper gain or improper advantage.*

As noted above, the Guardians has applied the same process and framework to the Elevate Fund conviction review and due diligence as it has to its other external managers. Over the past 17 years the Guardians has developed significant intellectual property and expertise in assessing and monitoring third party investment managers, including bespoke due diligence and conviction review processes. As noted above, we have communicated transparently about how we evaluate and select managers, including on our website: <https://www.nzsuperfund.nz/how-we-invest/investment-managers/evaluation/>.

Releasing the Elevate Fund conviction report and transition plan in full, however, would give other asset owners and investors (with which the Guardians competes globally for investment opportunities), access to detailed, non-public organisational 'know-how' and current due diligence

priorities without having to contribute to the cost of developing this intellectual property. There is a distinct risk that third parties would be able to use this information for improper gain or advantage, for example in respect of the Guardians' commercial negotiations with current or prospective investment managers, or by competing asset owners in developing their own manager assessment processes.

Section 9(2)(b)(ii) – *Protect information where the making available of that information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.*

The Guardians allocates investment capital to more than 30 investment and asset managers around the world and, as noted above, applies the same manager conviction review process to the Elevate Fund as it does to its other external managers. The content of the conviction reviews we prepare is highly sensitive; the reviews contain both information supplied to us under an obligation of confidence by the external manager, and the Guardians' views of (for example) manager capability, investment performance and operational policies and processes.

The release of a conviction review containing commercially sensitive, confidential information and other non-public information including materials canvassing the Guardians' views on the manager would be highly prejudicial to these external managers' reputations and future capital raising activities. Furthermore, the release of a draft review, provided to a manager in good faith for their feedback as part of an ongoing dialogue about their business operations and performance, would also jeopardise those relationships. Finally, in order to get full and frank disclosure from our investment managers as part of our monitoring process, we need them to be confident that all of the information they provide us will remain confidential.

In summary, releasing the draft Elevate conviction review would send a highly concerning signal to the Guardians' third party investment managers and have an effect on their willingness to work with us. Doing so would, therefore, prejudice our commercial position as an asset owner. We note that the Guardians is managing approximately \$47 billion of New Zealand taxpayers' money; it is in the public interest that the widest possible pool of external managers is accessible to it and that we can effectively manage and oversee these external managers using our conviction review process with unencumbered flow of information.

Consistent with the above, in our view the release of the conviction review content would specifically prejudice NZGCP, by making available to the market confidential information about its investment processes and approach.

Section 9(2)(ba)(i) – *Protect information which is subject to an obligation of confidence... where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.*

Over the course of our due diligence on NZGCP, NZGCP provided information to the Guardians on a confidential basis. Their willingness to provide honest and fulsome disclosures to us in the future would be prejudiced if they believed that there was a risk that sensitive information could be publicly disclosed. We would not have been able to properly evaluate NZGCP without receiving this confidential information. It is in the public interest that we are able to maintain the highest standards of confidentiality and commercial sensitivity with those we work with, in order to compete on a level playing field with other investors and, in this instance, seek to fulfil our obligations with respect to the Elevate Fund under the Venture Capital Act 2019 and the New Zealand Superannuation Fund under the New Zealand Superannuation and Retirement Income Act 2001.

More generally, the same principles apply to all of our other external managers. Were we to disclose non-public information in our conviction review of NZGCP, as noted above this may have a negative impact on our ability to effectively and efficiently conduct conviction reviews with our wider stable of external managers.

Section 9(2)(g)(i) – *Maintain the effective conduct of public affairs through the free and frank expression of opinions by or between Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.*

While this should not be taken as an implication of what was covered in this conviction assessment, in general terms our conviction review is designed to reflect the Guardians' opinion and assessment on matters that are generally relatively sensitive (for example, viability, trust, people capabilities).

There is a strong likelihood that the risk of public disclosure could have a chilling effect on the free and frank expression of opinion detailed in the conviction review. Furthermore, the first draft of the conviction review in question had preliminary opinions that were iterated, tested and developed into the final product, and the risk that this early iteration of the final review could be disclosed publicly could serve to impede the maturation and development of the views raised. The release of such information is likely to disrupt and hamper the conviction process and inhibit frankness and candour in undertaking reviews of this kind in the future, which is detrimental to good investment decision-making and contrary to the public interest.

Section 9(2)(i) – *Enable a Minister of the Crown or any department or organisation holding this information to carry out, without prejudice or disadvantage, commercial activities.*

The Guardians carries out commercial activities, and a core part of those commercial activities is the appointment and ongoing conviction oversight of our external managers.

To meaningfully complete our conviction review we rely on fulsome disclosure by investment managers, and the material we receive is provided under an understanding that it will not be publicly disclosed. If managers feel there is a risk that their information could be disclosed, then this could impede on our ability to obtain the information we need to carry out a full and proper review of our conviction in a manager, or potentially remove our ability to enter into negotiations with certain managers at all. When we invest, we compete in a global market for access to the best investment opportunities and managers. There is a strong public interest in the Guardians having broad access to managers, and unencumbered information flows from managers so that we can accurately assess their commercial activities.

Section s9(2)(J) - *Prevent prejudice or disadvantage to the government's negotiations.*

As noted in respect of **Section s9(2)(b)(i)** and **Section s9(2)(k)**, releasing the requested information would be prejudicial to the Guardians' negotiations with third party investment managers by enabling them to gain insights into the Guardians' manager assessment processes and current due diligence priorities that are not publicly available. Given the large sums of public money at stake (external investment manager mandates currently range as high as NZ\$3 billion) there is a genuine public interest in the Guardians being able to negotiate these commercial agreements from as strong a position as possible. Similarly, as noted above, we believe releasing the draft Elevate conviction review would have a dampening effect on the willingness of external managers to work with us, dissuading some from entering into negotiations at all. We note that the Guardians is managing approximately \$47 billion of New Zealand taxpayers' money; it is in the public interest that the widest possible pool of external managers is accessible to it.

In this letter we have primarily focused on the Guardians, but we also note that NZGCP as the appointed manager of the Elevate Fund also conducts similar assessments, and competes for investment opportunities, in respect of its investments for the venture capital fund. Many of the factors we have identified above may also trigger similar issues for NZGCP in respect of its activities. We note that the Elevate Fund is a core part of the Government's economic strategy to contribute to a productive economy and there is a strong public interest in avoiding any such consequences.

General

You have the right to seek a review by the Ombudsmen's Office of our response to your request.

Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Fennell', is written over a horizontal line.

Mark Fennell

General Manager, Portfolio Completion
Guardians of New Zealand Superannuation