

## Department of Treasury and Finance

The Treasury Building  
21 Murray Street HOBART TAS 7000  
GPO Box 147 HOBART TAS 7001 Australia  
Telephone (03) 6166 4444 Facsimile (03) 6173 0219  
Email [secretary@treasury.tas.gov.au](mailto:secretary@treasury.tas.gov.au) Web [www.treasury.tas.gov.au](http://www.treasury.tas.gov.au)



Reference: 23/160955

Robert Hogan  
3 McLachlan Crescent  
WEETANGERA ACT 2614

Email: [harveyr35@aol.com](mailto:harveyr35@aol.com)

Dear Mr Hogan,

I am writing in relation to your request, made on 13 April 2023, for an internal review of the original decision made in relation to your application for assessed disclosure dated 22 November 2022.

The information you sought was as follows:

- (1) I request the following records in relation to the period 1 January 2015 to 22 November 2022:
  - (a) all briefs provided to senior officers (Executives) and Ministers in the Treasury and Finance portfolio in relation to the proposed move of UTAS into the Hobart CBD and/or redevelopment of the Sandy Bay campus;
  - (b) all analysis undertaken within the Treasury and Finance portfolio in relation to the proposed move of UTAS into the Hobart CBD and/or redevelopment of the Sandy Bay campus;
  - (c) all analysis undertaken within the Treasury and Finance portfolio of UTAS' annual reports (particularly the financial statements) for the years 2014 (published 2015) to 2021.
- (2) I have read Moody's Investor Service's (Moody's) first-time assessment of an Aa2 rating to UTAS in December 2021 and Moody's first-time provisional rating to UTAS' AUD debt issuance programme in February 2022. In light of these I request:
  - (a) any records held within the Treasury and Finance portfolio of commitments by the Tasmanian and Commonwealth Governments to provide capital funding to UTAS from Financial Year 2022-2023 on.
  - Any records of involvement by the Treasury and Finance portfolio in the process of UTAS securing a Moody's rating (including preparatory meetings with UTAS, attendance at meetings/phone calls with Moody's and provisions of letters, references or other documents relating to UTAS to Moody's).
  - (c) any records within the Treasury and Finance portfolio relating to Moody's assessment that there are "high levels of oversight by the state and Commonwealth governments" of UTAS.
  - (d) any records of any form of guarantee provided to UTAs by the Tasmanian Government.
- (3) Any records held within the Treasury and Finance portfolio of any Tasmanian Government involvement with UTAS' issue of a Green Bond in February 2022.

I have summarised the information in your request for an internal review (Your letter and Attachment C are both attached at the end of this letter) and our telephone discussions on 5 and 19 May 2023 and your email on 19 May 2023 given the length of the correspondence and detail contained within it. In summary, your request for an internal review included the following;

1. Critical documents were missing from the document schedule in the original decision. You highlight that it is beyond credit that relevant Treasury records came to a sudden halt just as UTAS was beginning to move towards issue of its Green Bond and emphasised that your second and third requests were up to the period of the date of your application, being 22 November 2022.
2. Critical UTAS documents are missing from the document schedule in the original decision. You highlight that you deliberately used the phrase “any records held” to cover third party records; that the documents requested of UTAS in correspondence from the Minister dated 23 October 2020 were not included in the document schedule when it was clear they were provided to Treasury.
3. Other documents were missing from the document schedule that you consider are equally as relevant to your request which are listed in Annexure C to your review request which lists 16 documents; out of the 16, you highlight concerns in relation to redactions made in five of the documents released as part of the original decision.
4. All claims for exemption are contested and in Annexure C you have identified material exempted/redacted in one document but not in another which you say shows the exemptions were applied arbitrarily.
5. Legal advice or references to it that were exempted should be released.
6. No documents were provided in relation to point (1) of your request and so you assumed nothing falling within the scope of that request is available.
7. No dates were provided for exempted records which is contrary to Ombudsman guidance.
8. You disagree with the definition of “Executive” applied in the original decision preferring the definition ‘members of the Tasmanian Senior Government Executive Service’ be applied.

In a telephone conversation with me on 5 May 2023 you stated that no emails were released, and you were also wanting emails, particularly in relation to the issue of the Green Bond.

On 19 May 2023 you confirmed you were contesting all redactions made with appropriate weighting of the public interest tests, stating that there are elements in Schedule 1 of the Act that are heavily in favour of release. You did not elaborate on this statement. You also stated you were seeking records that were not listed in the document schedule, but which fall within the terms of your request, which extends to emails and relevant records from UTAS including the material provided by UTAS to support its request for a \$200 million increase in its borrowing limit.

You have agreed to extensions of time which, given the extensive nature of your request and my workload over the period, I am grateful for.

### **Delegated RTI Officer**

I have been delegated the authority to make this decision by the Principal Officer of the Department of Treasury and Finance pursuant to section 24 of the *Right to Information Act 2009*.

### **Process undertaken**

The review has been undertaken in accordance with the scope of the application for assessed disclosure dated 22 November 2022.

For the purposes of determining whether a record fell within the scope of your application the following definitions were used:

**Brief** - any information that is for the purpose of briefing a Treasury Executive and/or Minister, including briefs, emails and file notes.

**Senior Officer (Executive)** - any employee holding a position within the Executive Committee of the Department of Treasury and Finance, specifically the Secretary and Deputy Secretaries as well as Branch Directors (who are not on the Executive Committee).

**Treasury** means the Department of Treasury and Finance.

**Tascorp** means the Tasmanian Public Finance Corporation.

**University** means the University of Tasmania.

I have undertaken searches for the records you highlighted in Annexure C and further searches, including for emails, to identify any other records that I consider to be potentially relevant to the scope of your requests that were not listed in the record schedule to the original decision.

Records I determined to be potentially relevant were then considered to determine whether they fell within the scope of your requests.

**Dates** have been included in the Appendix. The Appendix has been arranged in chronological order.

### **Third party consultation**

As advised to you by email on 19 June 2023 and 7 July 2023, I have undertaken third party consultation regarding your requests.

### **Additional in scope records**

I consider adequate searches were undertaken for the purposes of the initial decision and I have undertaken searches to identify information highlighted by you. I have applied a broad interpretation to the scope of your request taking your comments in your request for review into account, have reviewed records not considered to fall within the scope of your

request in the original decision and have listed additional records that I consider fall within the scope of your requests in the Appendix.

Where I have determined the information falls within scope of your requests the information is listed in the Appendix and is not shaded.

*Review Request - Annexure C records*

I have located records listed in your Annexure C and these have been included in the Appendix.

I was unable to locate a briefing for a meeting in Launceston referred to under the heading **3 March 2021**.

I have been unable to locate information dated (on or around) **31 March 2021** from the Treasurer to Tascorp.

***Reassessed records partially released in original decision***

I have reassessed the records partially released in the original decision, and these are highlighted in blue in the Appendix.

***Reassessed records exempt in full in original decision***

I have reassessed the records exempted in full in the original decision and these are highlighted in green in the Appendix.

The records in the original decision under record 15 which were determined to be 'out of scope' have been reassessed and are listed in the Appendix, unless otherwise released in full as part of the original decision.

***Records released in full in the original decision***

I have not reassessed the records released in full as part of the original decision.

**Key to table below**

Additional in scope records
Reassessed records partially released in original decision
Reassessed records exempt in full in original decision

**Exemptions relied on that are not subject to public interest test**

***S31 - Legal Professional Privilege***

I have redacted information from records under section 31 of the Act that is or relates to Legal Advice sought or received by the Office of the Solicitor-General on the basis that it is of such a nature that the information would be privileged from production in legal proceedings on the ground of legal professional privilege.

There is no wish nor intent to waive privilege.

### **S27 - Internal briefing information of a Minister**

Section 27(1) relevantly provides:

- (1) Information is exempt information if it consists of:
  - (a) an opinion, advice or a recommendation prepared by an officer of a public authority or a Minister; or
  - (b) a record of consultations or deliberates between officers of public authorities and Ministers

in the course of, or for the purpose of providing a Minister with a briefing in connection with the official business of the public authority, a Minister or the Government and in connection with the Minister's parliamentary duty.

Subsection (2) of s27 does not apply to any of the records listed as none are over 10 years old.

Subsection (3) provides, in summary, that subsection (1) does not include information that was brought into existence for another purpose (i.e.: other than being submitted or being proposed to be submitted to a Minister for the purposes of a briefing) and sub-section (4) excludes purely factual information from sub-section (1).

For the purposes of section 27 and 35:

- Treasury officers have prepared opinions, advice and recommendations in the course of or for the purposes of providing a Minister with a briefing in connection with the official business of Treasury and/or the Minister, namely obtaining the Minister's approval for borrowings under s7(2) of the *University of Tasmania Act 1992 (UTAS Act)*.
- The University also has prepared advice, opinions and recommendations in the course of the Minister's approval being sought under s7(2) of the UTAS Act.
- Tascorp officers have prepared opinions, advice and recommendations in the course of or for the purposes of providing a Minister with a briefing in connection with the official business of Tascorp (for example, s11(1) and (2) of the *Tasmanian Public Finance Corporation Act 1985 (Tascorp Act)* and/or the Minister.
- The Minister's parliamentary duty relates to approvals for borrowing under s7(2) of the *University of Tasmania Act* and any subsidiary matters as relevantly set out in the Tascorp Act (see sections under Part 3).

I have generally taken the approach of redacting information under s27 (as relevant) where the same or similar information may not be redacted in, for example, a decision of the Minister because at that point it is generally neither deliberative nor an opinion, advice or recommendation or a record of consultations or deliberations. This may assist to explain any perceived inconsistencies in my decision.

#### ***Purely factual information*** (also applicable to s35)

The decision of *Re Waterford and the Treasurer of the Commonwealth of Australia* (1984) AATA 518 at 14, the Administrative Appeals Tribunal observed that the word 'purely' has the sense of 'simply' or 'merely'.

The Ombudsman, in *Simonetis and Department for Education, Children and Young People* O1912-004 R2202-133 (**Simonetis**) at [25] outlines that “Therefore, the material must be ‘factual’ in fairly unambiguous terms, and not be inextricably bound up with a decision-maker’s deliberative process. In other words, for ‘purely factual information’ to be exempt, it must be capable of standing alone. Even where a document’s contents are partially factual, this does not necessarily mean that the document falls outside the ministerial briefing exemption.”

In the same decision, the Ombudsman outlined that the relevant document title and headings should not have been redacted [at 29]. I take this to mean that in relation to the documents in question, the headings were considered purely factual and not inextricably bound up with the decision-makers deliberative process.

### **Exemptions relied on that are subject to the Public Interest Test (section 33)**

In *Humphries*, the Ombudsman noted [at 51] the decision of Justice Brett in *Gun Control Australia Inc v Hodgman and Archer* [2019] TASSC 3, that in considering the public interest test a decision maker is obliged to give active consideration to relevant factors in Schedule 1, and went on to state [at 52] “An internal review is a fresh decision and a decision maker is required to consider all factors in Schedule 1, discussing those which are relevant”. At 53, it was stated “Applying the public interest test involves balancing the factors that favour release against those that do not.

In considering exemptions subject to the public interest test, I have considered the matters outlined in Schedule 1 of the Act. I have not taken into account the matters outlined in Schedule 2 of the Act. Additional matters have also been considered and are outlined under the relevant sections below.

### **General public interest factors taken into account**

1. The pro-disclosure object of the Act and generally, Schedule 1(a), are relevant and weigh in favour of disclosure of information.
2. Another factor in favour of disclosure is the high level of interest and debate in the University’s decision to relocate its longstanding campus in Sandy Bay to central Hobart in 2019 (see *Robert Hogan and the University of Tasmania* R2208--020 at 1 and *Alexandra Humphries and University of Tasmania* )1905-104 R2202-032 at 1).<sup>1</sup>
3. In *Humphries* [at 53], the Ombudsman pointed out “It is also important to note that whether or not information should be released is to be decided in the context of what is in the public interest as opposed to what might be interesting to the public.”.

Information must only be exempt if it is contrary to the public interest for the information to be disclosed. As per the Ombudsman’s Manual (at p.41) this does not create a presumption in favour of disclosure.

The Ombudsman’s manual outlines that the expression ‘public interest’ refers to what is in the interests of the public, not what may be of interest to them and is a concept which relates to the wellbeing of the community or a significant part of it, from a governmental perspective (p.40).

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<sup>1</sup> The decision also noted that “Mr Robert Hogan is strongly opposed to the University’s decision, is a member of the Save UTAS Campus group and has launched a website regarding the campus move.” (At 1).

4. The University contributes to the economic value of the State and its 2019-2024 Strategic Vision is aimed at promoting the State, part of which is creating the southern campus in the Hobart CBD and the decision making of the University provides context for this move (Schedule 1(d)) which is generally a factor which favours release.
5. On the other hand, the University's contribution to the Tasmanian economy is not insubstantial and it competes in a national market of higher education and research providers which means disclosure of certain information may cause competitive disadvantage to the University and/or entities it does business with, which in turn may have an adverse impact on the economic development of the State (Schedule 1(s), (k)).
6. Generally, in relation to "competitive disadvantage" to the University, I consider that disclosure of some information about the University's commercial arrangements would expose the University to competitive disadvantage when dealing in the Tasmanian property market and some specific and competitive international student markets and/or also in relation to investor markets. Disclosure would be likely to give others an advantage that would not be available to the University in terms of disclosure of commercial arrangements.

### **S35 - Internal Deliberative**

Where information has been exempted under s35(1)(a), (1)(b) and (1)(c) I am satisfied that it consists of:

- (a) an opinion, advice or recommendation prepared by an officer of a public authority, or
- (b) a record of consultations or deliberations between officers of a public authorities, or
- (c) is a record of consultations or deliberations between officers of public authorities and Ministers.

Where this was found to be the case, I have determined whether the information was prepared in the course of, or for the purpose of, the deliberative processes related to the official business of the Department, a Minister or the Government. (See s27 re: official business).

In reading s35, I have taken into account that the expression 'deliberative processes' refers to pre-decisional thinking processes within the authority as it moves towards the making of a decision or towards embarking upon a course of action - see *Re Waterford and Department of Treasury (No. 2) (1985) 5 ALD 588*. This may include analysis, drafts and/or notes of discussions.

Information is not exempt if it is purely factual information, more than 10 years old (not applicable) or a final decision, order or ruling given in the exercise of an adjudicative function; or a reason which explains such a decision, order or ruling (not applicable). In some cases, I have determined that factual information is inextricably linked to the deliberative information.

### **Public Interest Test**

Where I have determined that the information is prima facie exempt under s35, I have then determined whether it would be contrary to the public interest to release the information, having regard to, at least, the matters contained in Schedule I of the Act.

Factors considered in favour of disclosure in Schedule I in relation to s35 exemptions are generally (a), (b), (c), (d) and (f).

Factors considered against release of the information in Schedule I in relation to s35 exemptions are generally (s), (w) and (x) of Schedule I.

I have also taken into account the following additional factor in determinations relating to section 35:

- in my view, protection of free and frank (and thorough) discussion and deliberation within and between officers of a public authority or public authorities enhances the quality of decision making and disclosure may inhibit this process, to the detriment of the public.
- This has been recognised by the Ombudsman in *Simonetis* at 59, 65 and 44 respectively:
  - *there is a real risk that officers of public authorities will feel inhibited from providing free and fearless advice and recommendations in the future if these types of internal deliberations were to be disclosed. It is essential that comprehensive advice is provided and debated robustly in order to ensure sound, evidence-based decision-making. The threat of disclosure of information risks pressuring officers to soften advice, avoid controversy, or not expose risk; this would undermine good government;*
  - s35 exists to address circumstances in which it is not appropriate to disclose information which shows the internal ‘thinking process’ of a public authority, as this can inhibit preliminary discussions or the exploration of alternative options prior to a final decision being made;
  - where relevant, *assessment of a final document may be more beneficial to the public than a draft/working documents.*

Where I have redacted information under s35, the following statement from the Ombudsman applies to my thought processes:

*“There are a number of factors which weigh in favour of release and of disclosure. It is, accordingly, a difficult balance to strike in assessing whether the disclosure of this information would be contrary to the public interest. Of particular importance is the necessity for staff to be allowed space for the thinking process in carrying out their work without derogating from the principles of good governance, transparency and accountability to the public. I am satisfied that the Department has discharged its onus under s47(4) of the Act to show that s35 is applicable and certain information should not be disclosed [Simonetis at 72-73]”.*

Where redactions have taken place, on balance, I consider that the factors against release outweigh those in favour of release and that it is not in the public interest to release the information. Please also see the Annexure.



### **S36 - Personal Information**

I note that while you have requested a review of all redactions, you have not specifically highlighted the redaction of officers' names as a cause for any concern in your review request.

Having considered the matters in Schedule 1 of the Act, it is my view that matters (a) and (c) tend to favour release of officers' personal details. However, I do not consider release of officers' personal details would contribute to debate or would enhance scrutiny of government decisions ((b) and (d)) in the circumstances in which they apply here.

I have also taken into account that the Tasmanian Government Directory no longer provides public servants' names and contact details to the general public. I am not aware of the exact reasons for this but consider there are many good reasons for ensuring individual's personal details are not freely available to the public. I also consider that an employer, as opposed to a third party, is better placed to make a decision in relation to which of its employees' personal details are released publicly as there may be factors at play that a third party would and should not be aware of in making such a decision.

I am aware of the Ombudsman's view that where operating in the ordinary course of their duties, a public servant's details should be released. However, taking into account your lack of a specific request in relation to officers' details, in my view, any potential for harm to an individual outweighs the other factors in favour of release.

As a result, the personal details of officers of Treasury or relevant third parties have been redacted, other than the Secretary and Deputy Secretaries details, the Chair of Tascorp and the Vice Chancellor of the University or other officers whose details I have been able to locate publicly such as the University's Chief Operating Officer.

### **S37 - business affairs of third party**

Information is exempt if its disclosure would disclose information related to business affairs acquired by a public authority or Minister from a person or organisation other than the person making an application under s13 (the third party) and the information either relates to trade secrets or the disclosure of the information would be likely to expose the third party to competitive disadvantage.

The following records contain information that relates to other parties' business affairs:  
Records 19 and 41.

I have considered the obligations in relation to third party consultation required under s37(2) and discussed this with the Ombudsman's Office. On one hand, the University is a public authority, and it acquired the information from its third parties that relates to those third parties' business affairs. On the other hand, Treasury (a public authority) acquired the information from another public authority (the University) and some of the information relates to the business affairs of its third parties, which from Treasury's perspective, makes them "fourth" or "other" parties.

A plain reading of the Act does not, in my view, require Treasury to reach out to every and any identified “other party” even in circumstances where the information provided by the third party, here the University, references business information of others. For example, the Act could have been drafted so as to extend consultation with any other named or identified party, there is no guidance in the Act for interacting with other parties and how any direct submissions from them is to be considered at this point in the process, there is no relationship between Treasury and these other parties and there may be relationship factors between the University and its third parties, such as confidentiality considerations, that cannot be discussed in detail with Treasury but which would inform the position in relation to disclosure.

Ultimately, I consulted with the University in relation to these records and outlined that, in my view, there was nothing to prevent it from engaging with their relevant third parties in relation to the information.

I note that these records have all been exempt in full and if my interpretation of the application of s37 in relation to consultation is in any way considered to be erroneous, this can be raised if an external review is undertaken.

In forming my view in relation to information redacted under s37, I have read the decision of the Ombudsman in *Woolnorth Wind Farm Holding Pty Ltd and the Department of Natural Resources and Environment O1910-141 R2202-136* which concluded:

In relation to whether the information relates to the “business affairs” of a third party:

- Woolnorth’s submission, that the section will be satisfied if the information touches upon, concerns or is related to the commercial activities of the third party is sound [at 38]
- documents cannot be severed from the rest of the record of which they are part and viewed as if they were separate documents which exist for their own sake when determining if they relate to the business affairs of a third party [at 40]

In relation to “competitive disadvantage”:

- referring to the decision in *Environment Tasmania and the Environment Protection Agency* where it was accepted that certain “...information had the potential to be reported wrongly, inaccurately or out of context, making it a real possibility and not a remote chance that such information may damage the third party’s reputation, hence being to [the third party’s] disadvantage and its competitive disadvantage.” [at 45]
- that in principle, there was agreement with Woolnorth’s proposition that reputational damage is a form of potential competitive disadvantage for the purposes of s37(1)(b) [at 46]
- that the correct test to apply was whether the disclosure of the information...would be likely to expose the third party to competitive disadvantage (not the text found in s37(2)) [at 48]

I have also taken into account the statement in *Prismall*, [on page 13] which relates to the competitive disadvantage caused by the release of information, that “It must be recognised that in this context that release under the FOI Act is regarded as release to the world at large.” Further detail in relation to the application of this section is outlined in the Annexure.

I accept that the third parties who the University deals with operate in competitive markets (including the consultancy market and finance market) and am satisfied that if the information exempted was widely known, this would be likely to give their competitors a competitive advantage over them.

### **Public Interest Test**

Where I determined that the information is prima facie exempt under s37, I have then determined whether it would be contrary to the public interest to release the information, having regard to, at least, the matters contained in Schedule I of the Act.

Having considered the matters in Schedule I of the Act, my view is that generally matters (a), (b), (d) and (f) favour release.

In favour of non-disclosure, I consider that variously, matters (h), (k), (n), (s), (v), (w), (x) and (y) are relevant.

Any other factors considered relevant are outlined in the Appendix.

On balance, I consider that the factors against release outweigh those in favour of release and that it is not in the public interest to release the information where it has been exempted. Please also see the Annexure.

### **S38 - business affairs of public authority**

Information is exempt information –

(a) if it is –

(ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature that would, if disclosed under this Act, be likely to expose the public authority to competitive disadvantage; or

(b) if it consists of the result of ... technical research undertaken by or on behalf of a public authority, and –

(i) [not relevant]

(ii) the disclosure of the results in an incomplete state would be likely to expose a business, commercial or financial undertaking unreasonably to disadvantage; or

(iii) the disclosure of the results before the completion of the research would be likely to expose the public authority or the person carrying out the research unreasonably to disadvantage; or

(c) [not relevant]

### **Is the University engaged in trade and commerce?**

The Ombudsman has been satisfied that the University is a public authority which can engage in trade and commerce (see *Humphries* at 24-26 and *Hogan* at 36) referring to sections 6 and 7 of the *University of Tasmania Act 1992 (UTAS Act)*.

***Is the information responsive to your requests of a business, commercial or financial nature that would, if released, expose the University to competitive disadvantage?***

The Supreme Court of Tasmania in *Forestry Tasmania v Ombudsman* [2010] TASSC 39, held that: 52. *For the information to be exempt its disclosure needs to be likely to expose the undertaking or agency not to any disadvantage, but a disadvantage which relates to or is characterised by competition. The requirements in ss31 and 32 of the Act that the disadvantage relate to competition may have the preservation of the competitive process as a broad ultimate goal, but primarily the provisions are concerned with the potential impact on the undertaking or agency acting as a competitor in the market ... 59. ...The application of the correct approach involves an assessment of the facts, and findings as to likely exposure to the relevant disadvantage...* [Woolnorth at 59]

At paragraph 41 the Court interpreted the meaning of 'likely' to be 'a real or not remote chance or possibility, rather than more probable than not'.

The Ombudsman in *Woolnorth* stated [at 61] "*I thus accept that the threshold for effect under this provision is not particularly high, given the Court's views on the meaning of 'likely'. The test the Court said did not apply, being more probable than not, connotes a 50/50 probability, whereas I can conceive that even if there is, say, a 10% chance of this occurring then this would be a 'real chance' and sufficient to satisfy this test.*"

I am satisfied that all information redacted under s38 in the Appendix that relates to the University is of a business, commercial or financial nature that is likely to lead to a competitive disadvantage.

Some information relates to the financial strategy of the University which, if released, would disclose sensitive commercial information to competitors in the Higher Education (and other) market/s it competes in which would be likely to disadvantage the University and/or provide an advantage to its competitors.

Other information relates to commercial arrangements of the University which would, if disclosed, disadvantage the University in terms of future negotiations. Disclosure of information relating to finance or other contracts, property or investments would, in my view, confer a competitive advantage on other higher education providers and competitors in the property market.

Some information could give a competitive advantage to private investors who are not subject to the information disclosure requirements of the RTI Act.

Release of some information may also make Tasmania less competitive in comparison to other jurisdictions.

Release of some information would, in my view, be likely to have a negative impact on the University's ability to obtain finance and/or engage with service providers in the financial sector.

In *Hogan* [at 95], the Ombudsman drew a distinction between threshold amounts approved and costs actually incurred and noted that while time may undermine arguments against disclosure, that it was in relation to funding amounts dating back to 2014 and 2015 that this would apply to. The Ombudsman did not agree that threshold approval amounts lose the sensitivity very quickly given they relate to an overall financial strategy [at 96].

### **Public interest test**

Where I determined that the information is prima facie exempt under s38, I have then determined whether it would be contrary to the public interest to release the information, having regard to, at least, the matters contained in Schedule I of the Act.

Having considered the matters in Schedule I of the Act, my view is that generally matters (a), (b), (d), (f) favour release.

I have also taken into account the statement in *Prismall*, [on page 13] which relates to the competitive disadvantage caused by the release of information, that “*It must be recognised that in this context that release under the FOI Act is regarded as release to the world at large.*”

I have also considered whether information is outdated and therefore no longer likely to cause any potential competitive detriment to the University.

I consider the factors that do not favour release in Schedule I are generally (k), (n) and (s) and have heavily weighted (s) in favour of non-disclosure where information has been exempt.

Where information has been exempt, I have determined that on balance, it is not in the public interest to release the information. Please also see the Annexure.

### **Is Tascorp engaged in trade and commerce?**

In my view Tascorp is engaged in trade and commerce and this is evident from section 11 of the *Tasmanian Public Sector Finance Act 1985* (Tas).

### **Is the information responsive to your requests of a business, commercial or financial nature that would, if released, expose the Tascorp to competitive disadvantage?**

I consider it doubtful that it would be likely that release of relevant information would be likely to lead to a competitive disadvantage to Tascorp.

### **S39 - confidential information**

For information to be exempt under s39, I must be satisfied that it is information that has been communicated in confidence to a public authority and that -

- (a) the information would be exempt information if it were generated by a public authority or Minister; or
- (b) the disclosure of the information would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.

Subsection 39(2) provides that:

- (2) Subsection (1) does not include information that –

- (a) was acquired by a public authority or a Minister from a business, commercial or financial undertaking; **and**
- (b) relates to trade secrets or other matters of a business, commercial or financial nature; **and**
- (c) was provided to a public authority or Minister pursuant to a requirement of any law.

I have had regard to *Prismall v Department of Economic Development and Tourism* (093258), referred to in the Ombudsman's Manual, for assistance in interpreting what a "trade secret" is. In that case (on page 11-12), it refers to "any formula, pattern or device or compilation of information which gives an advantage over competitors who do not know or use it." "The ordinary meaning requires that the information be both secret and used or useable in trade or business.

Beyond that, factors which assist in determining whether a trade secret exists are -

- the extent to which the information is known outside the relevant business;
- the measures which have been taken to guard the secrecy of the information;
- the potential advantage to competitors of obtaining the information;
- whether the information is of a technical character, a factor which is not a requirement but which will make it more likely that a trade secret exists; and
- the ease or difficulty with which the information could be properly acquired or duplicated by others.

### ***Has the information been communicated in confidence?***

Whether information is communicated in confidence involves a factual finding based on the surrounding circumstances of the communication (*Manuel Sessink and Department of Justice* R2202-131 at 60).

I have relied on statements made by the University or information contained in records themselves, to conclude that the relevant records were communicated in confidence. There is further information in the Annexure.

To determine if it would be exempt information if it were generated by the Department rather than a third party, the information must be capable of falling with a provision such as s35 or s38. See above for considerations relevant to these provisions. I have highlighted where I consider s39(1)(a) can be raised in the Annexure. I otherwise have determined that the information is exempt under s39(1)(b) with details provided in the Annexure.

### ***Sub-section 39(2)***

While it is considered that sub-paragraphs (a) and (b) are arguably met in relation to sub-section 39(2), I have determined that sub-paragraph (c) is not met. This is because the provision of certain information to the Minister was not a requirement of a law, it was as a result of a request from the Minister, to assist with making a determination under s7(2) of the UTAS Act.

### ***Public interest test***

Where I determined that the information is prima facie exempt under s39, I have then determined whether it would be contrary to the public interest to release the information, having regard to, at least, the matters contained in Schedule 1 of the Act.

Having considered the matters in Schedule I of the Act, my view is that generally matters (a), (b), (c), (d), (f) favour release.

I consider the factors that do not favour release in Schedule I are generally (k), (n), (s), (w) and (x).

If the Department was obliged to release certain information obtained from third parties without consideration of those parties being, as a consequence, in breach of their contractual arrangements would, in my view, be reasonably likely to impair the Department's ability to discharge its obligations.

Where information has been exempt, I have determined that on balance, it is not in the public interest to release the information. Please also see the Annexure.

#### **S40 - procedures and criteria used in certain negotiations of public authority**

Information is exempt information if it consists of instructions for the guidance of officers of a public authority on the processes to be followed or the criteria to be applied –

- (a) in negotiations, including financial, commercial and labour negotiations; or
- (b) in the execution of contracts; or
- (c) in the defence, prosecution and settlement of cases; or
- (d) in similar activities –

relating to the financial, property or personnel management and assessment interests of the Crown or of a public authority.

Section 40 has been raised as a basis for exemption of information in Records 14, 37, 38, 39 and 48 on the basis that the information relates to criteria to be applied in negotiations relating to its commercial and financial interests of the University.

I consider this section is also applicable to Records 55, 56, 57, 58, 59 and 60. The analysis by Treasury in these records was based on a model (plus other information) supplied by the University to Treasury in order for it to undertake its own modelling. The modelling and other information relates to the financial interests of the University, and I consider falls under subsection (a) and/or (d) in that the information was provided in order for the Minister to assess borrowing by the University and as such is related to the University's financial negotiations.

#### **Public interest**

Where I determined that the information is prima facie exempt under s40, I have then determined whether it would be contrary to the public interest to release the information, having regard to, at least, the matters contained in Schedule I of the Act.

Having considered the matters in Schedule I of the Act, my view is that generally matters (a) and (f) favour release.

I consider the factors that do not favour release in Schedule 1 are generally (n), (o) (s), (w) and (x).

Where information has been exempt, I have determined that on balance, it is not in the public interest to release the information. Please also see the Annexure.

### **External Review**

Should you wish to lodge an application with the Ombudsman for an external review of my decision, you may do so under section 44(1)(b)(i) within 20 working days from the date of notification of this decision.

An application for external review form can be located on the [Ombudsman Tasmania](#) website and can either be emailed to [RTI@ombudsman.tas.gov.au](mailto:RTI@ombudsman.tas.gov.au) or posted to:

Ombudsman Tasmania  
GPO Box 960  
HOBART TAS 7001

Yours sincerely,

*Liz Sharp*

Delegated RTI Officer  
11 August 2023



## Appendix - Schedule of Records

Rec	Date	Title	Determination
1	25/06/2019	Request for short-term borrowing increase from UTAS	<b>Release in full</b> noting information on borrowing limits is available in Tascorp Annual Reports which can be found on the Tascorp website at <a href="https://www.tascorp.com.au/publications">https://www.tascorp.com.au/publications</a>
2	25/06/2019	Minute to Treasurer re: request for short-term borrowing increase from UTAS	<b>Partial release - s27</b> Page 1 - s27 recommendations to Minister for purpose of briefing re: parliamentary duty of Minister Page 2 - "Overview of overnight borrowing facility" - some information is outside the scope of requests and the remainder redacted under s27 as advice to a Minister for the purposes of a briefing re: parliamentary duty of Minister. Page 3 - "Other matters" - first paragraph is outside the scope of request and the remainder is redacted under s27, other than the personal details of the Treasury officer which are also redacted.  Noting information on the purchase price of the K&D building is publicly available: see <a href="https://www.realestate.com.au/news/sale-price-revealed-for-universitys-purchase-of-kds-cbd-site/">https://www.realestate.com.au/news/sale-price-revealed-for-universitys-purchase-of-kds-cbd-site/</a>
3	25/06/2019	Letter from Treasurer to UTAS - approval for short-term borrowing increase	<b>Partial release</b> <b>Release in full other than</b> final paragraph which is outside the scope of the requests.
4	25/06/2019	Letter from Treasurer to Tascorp re: short-term borrowing increase	<b>Partial release</b> <b>Release in full other than</b> the final sentence which is outside the scope of the requests.
5	18/07/2019	Draft excel spreadsheet with internal workings relating to an estimated	<b>Exempt</b> under s35(1)(b) This is an estimate, prepared by Treasury officers, of a potential Moody's rating for the University.

Rec	Date	Title	Determination
	(Original Decision Record 18)	Moody's assessment for the University	<p>While there is some factual information in this record relating to UTAS which may be publicly available, I consider it is inextricably linked to the deliberations.</p> <p>Public interest factors in favour of disclosure are the object of the Act, Schedule 1(a).</p> <p>Public interest factors against disclosure are Schedule 1(s) (in relation to harm to the University and or their third party contractors), (w) (business affairs of UTAS which would cause harm to competitive position viz a viz other investors), (x) (this information is not generally available to UTAS' competitors). In addition, while the information may be of some interest to an individual or a group of individuals, I don't consider it to be in the broader public interest to release the information.</p> <p>On balance, I consider it is not in the public interest to release this information.</p>
6	08/2019	Draft Minute to Treasurer - UTAS future borrowings framework	<p><b>Exempt</b> - s27(1)(a) and (b), alternatively s35(1)(c).</p> <p>This is a draft Minute to the Treasurer which contains advice, recommendations and opinions prepared by an officer of Treasury and also deliberations between officers of a public authority in the course of or for the purpose of providing the Minister with a briefing in connection with the official business of Treasury, the Minister and in connection with the Minister's parliamentary duty.</p> <p>This draft was superseded when the University's letter of 12 Sept 2019 arrived (Record 9) and ultimately are Records 10 and 23 referred to below.</p> <p>Public interest factors in favour of release are the object of the Act, Schedule 1(a), (f)</p> <p>I consider the factors in Schedule 1(b), (c) and (d) to be neutral in relation to this record given the final record has been assessed as part of this decision.</p>

Rec	Date	Title	Determination
			<p>Factors considered against disclosure are (s), (u), (w) and the general matters outlined under s35 above.</p> <p>On balance, I consider it is not in the public interest to release this information.</p>
7	08/2019	DRAFT letter re: borrowing approval process, attached to DRAFT minute	<p><b>Exempt - s27, alternatively s35(1)(c).</b></p> <p>See comments in relation to Record 6. See Record 26 for final version.</p>
8	12/09/2019	Email enclosing Letter from UTAS to Treasurer advising discussion with Tascorp on medium term funding solution and that approval will be obtained under s7(2) in due course.	<p><b>Partial Release - s36</b></p> <p>Release email in full other than officers' details in the email.</p>
9	12/09/2019	Letter, enclosed in Record 8, from UTAS to Treasurer advising discussion with Tascorp on medium term funding solution and that approval will be sought under s7(2) in due course	<p><b>Release in full</b></p>
10	04/10/2019 (Original Decision Record 5)	Minute to Treasurer re: medium term borrowing & proposed approval framework for future requests.	<p><b>Partial Release - s27, s36</b></p> <p>Page 1 - s27 recommendations to Minister for purpose of briefing re: parliamentary duty of Minister</p> <p>Page 2/3 - under "Background" &amp; "Medium Term Borrowing Requirement" - s27 opinion/advice and/or recommendations to Minister for purpose of briefing re: parliamentary duty of Minister</p>

Rec	Date	Title	Determination
			Page 4 - contact details of officer redacted.
11	23/10/2019	Letter from Treasurer to UTAS - Medium Term Funding Solution	<p><b>Partial release - s36</b></p> <p>I consider the information “Future Approval Process” is prima facie exempt under s35(1)(c) however, I determined the public interest factors in favour of release outweighed those against it.</p> <p>Released in full other than the officer’s details.</p>
12	28/10/2019	Email from Director to Treasury officers forwarding email from UTAS enclosing records below.	<p><b>Partial release - s36</b></p> <p>Released in full other than the officers’ details.</p>
13	28/10/2019	Attachment 1: Business case in support of increased borrowing	<p><b>Partial release - s36</b></p> <p>Released in full other than the officer’s details which have been redacted.</p>
14	28/10/2019	Attachment 2: Tascorp Funding Update	<p><b>Exempt in full - s35(1)(a) and (b), s38, s40</b></p> <p>This is a funding update prepared by UTAS officers and relates to its business affairs. It was provided to Tascorp for the purposes of its functions/powers under the Tascorp Act. The information was passed on to the Department to address the Minister’s requests in the letter of 23/10/2019 (Record 11).</p> <p>The University submits that the information relates to the business affairs of the University, is deliberative in nature and pre-decisional (see <i>Webb v Department of Primary Industries, Parks Water and the Environment</i>) and contains analysis containing forecasts and strategy and budget benchmarking and also contains sensitive financial</p>

Rec	Date	Title	Determination
			<p>and commercial information relating to UTAS' long term financial strategy including projections, budget and debt and funding arrangements.</p> <p>Having reviewed the record, I accept these statements.</p> <p>In terms of competitive disadvantage, I have determined that release of the information may lead to disadvantage to UTAS in the Higher Education market, in the Property market and also in financial markets (in relation to obtaining finance).</p> <p>I have determined that the record is prima facie exempt from release. I consider any factual information to be inextricably linked to the remainder of information in this record.</p> <p>Factors in favour of release are the object of the Act, Schedule 1(a), (c), (d) and the other factors in favour of release outlined in the general public interest section above.</p> <p>Factors in favour of non-disclosure are (s), (x) and those noted in the general public interest section above and s35 and s38 above.</p> <p>On balance, I consider it is not in the public interest to release this information, weighted particularly on (s) and (x).</p>
15	28/10/2019	Attachment 3 - Council approved 5-year strategic plan	<p><b>Publicly available</b></p> <p><a href="https://www.utas.edu.au/__data/assets/pdf_file/0004/1255234/UTAS-Strategy-Document-2019.pdf">https://www.utas.edu.au/__data/assets/pdf_file/0004/1255234/UTAS-Strategy-Document-2019.pdf</a></p>
16	28/10/2019	Attachment 4 - Long term financial forecasts	<p><b>Exempt in full - s35(1)(a) and (b), s38</b></p> <p>For reasons see Record 14 above.</p>

Rec	Date	Title	Determination
17	28/10/2019	Attachment 5 - Sensitivity Analysis	<p><b>Exempt in full - s35(1)(a) and (b), s38</b></p> <p>For reasons see Record 14 above.</p>
18	28/10/2019	Attachment 6 - Existing borrowing arrangements - UTAS Annual Report 2018	<p><b>Publicly available</b></p> <p><a href="https://www.utas.edu.au/_data/assets/pdf_file/0006/1256415/Annual-Report-2018.pdf">https://www.utas.edu.au/_data/assets/pdf_file/0006/1256415/Annual-Report-2018.pdf</a></p>
19	28/10/2019	Attachment 7 - Other arrangements	<p><b>Exempt in full - s35(1)(b), s37, s38 and s39.</b></p> <p>The information was prepared by the University in response to particular questions from Tascorp which relate to Tascorp's functions/powers. The information was passed on to the Department to address the Minister's requests in the letter of 23/10/2019 (Record 11).</p> <p>It relates to consultations between officers of public authorities in the course of, or for the purposes of deliberative processes related to the official business of Treasury, Tascorp and the Minister. (s35(1)(b))</p> <p>This information contains commercial in confidence information relating to the business affairs of both the University and third parties. The University is responding to queries about specific commercial terms of the University's arrangements under specific financial contracts relating to borrowing arrangements. I consider the statement by the Ombudsman in <i>Humphries</i> that there is a risk of competitive disadvantage in future contractual negotiations if the details of such arrangements are made public applies in relation to this information (s37 and 38).</p> <p>S39 - I am informed by the University that this information was obtained by the University under contract, in confidence, and that release would put the University in breach. There is information in this record that relates to contractual obligations</p>

Rec	Date	Title	Determination
			<p>with third parties of the University which I consider are commercially sensitive. I consider the record is alternatively, prima facie exempt under s39(1)(a) and/or (b) (see s38(a)(ii)) and also s35 above).</p> <p>Factors in favour of release are outlined in the general sections above, the object of the Act, Schedule I(a), (c), (d), (f)</p> <p>Factors in favour of non-disclosure are outlined in the general sections above, Schedule I(m), (s), (w), (x). I also consider that while this may be of interest to a person or some people, it is not of greater public interest.</p> <p>On balance, I consider it is not in the public interest to release this information.</p>
20	30/10/2019	Letter from UTAS seeking approval for medium term borrowing limit as outlined in 12 Sept 2019 letter	<p><b>Partial release - s35, s38, s36</b></p> <p>Page 1 - personal details of officers' redacted.  S38 - information relating to the business affairs of the University which is considered would lead to a competitive disadvantage to the University in the markets it operates in. I consider the factors outlined under s38 in favour of release are outweighed by those against and that it is contrary to the public interest that the information be released.  See general sections above for public interest factors considered in determining it is not in the public interest to release this information.</p> <p>Page 1 and 2 - redactions were also considered under s35(1)(a) &amp; (b) &amp; (c) on the basis that it is opinion or advice from officer of public authority or consultation between officers of public authorities and Minister prepared in the course of or for purpose of deliberative process related to official business of UTAS, Treasury and the Minister in providing borrowing approval under s7 of UTAS Act and prima facie exempt. However, I consider the factors in favour of release outweigh the factors against it.</p>

Rec	Date	Title	Determination
21	31/10/2019	Letter from Tascorp to Minister re: University Medium term Borrowing	<b>Release in full</b>
22	11/11/2019	Ministerial Briefing re: Meeting with UTAS - Framework for Borrowings (final of DRAFT Record 24)	<p><b>Partial release - s27, s36, s38</b></p> <p>Page 1 - Dollar amounts have been redacted on the basis of s38 given they relate to estimates of costs for development projects being undertaken by the University (see <i>Hogan</i> at 44) and on the basis that there is a chance release of this information could lead to competitive disadvantage for the University in the commercial property and potentially the finance market in which it engages/seeks services or advantages to other competitors in that market.</p> <p>See general section 38 for factors taken into account in determining that it is not in the public interest to release this information.</p> <p>The information under Northern Transformation Project does not fall within the scope of the requests.</p> <p>The information redacted under “University borrowings” is exempt under s27 as opinion/advice prepared by an officer of a public authority to a Minister in the course of providing a briefing to the Minister in connection with the official business of the Minister.</p> <p>Page 2 - All information redacted is exempt under s27 on the same basis as above, other than the final paragraph which does not fall within the scope of the requests.</p> <p>Page 3 &amp; 4 - All information redacted is exempt under s27 on the same basis as above other than the information in the last paragraph which is outside the scope of the requests.</p> <p>Page 5 - Officers’ details have been redacted.</p>
23	12/11/2019	Minute to Treasurer re: UTAS medium Term Borrowing Approval	<p><b>Partial release - s27, s36</b></p> <p>Page 1 - s27 recommendations to Minister in the course of providing a briefing in connection with official business of Minister.</p>



Rec	Date	Title	Determination
			<p>Page 2 &amp; 3 - s27 - advice to Minister in the course of providing a briefing in connection with official business of Minister</p> <p>The final paragraph on page 3 has been redacted on the basis that it is outside the scope of the requests.</p> <p>Officer details have been redacted.</p>
24	13/11/2019  (Original Decision Record 19)	Incomplete draft briefing note prepared by Treasury officers for the Treasurer in preparation for a meeting with the University regarding a “framework for borrowing”	<p><b>Exempt s35(1)(a) and (c)</b></p> <p>Factors in favour of release are the object of the Act, Schedule 1(a), (f)</p> <p>I consider the factors in Schedule 1(b), (c) and (d) to be neutral in relation to this record given the final record has been assessed as part of this decision.</p> <p>Factors in favour of non-disclosure are outlined in the general section and under s35 above and Schedule 1(u).</p> <p>On balance I consider that this record should be exempt in full, noting the final record has been assessed (Record 22).</p>
25	18/12/2019	Letter from UTAS to Treasurer noting approval of medium-term borrowing	<p><b>Release in full</b></p> <p>I consider some information was prima facie exempt under s27 and s35(1)(c). However, I consider the public interest factors in favour of disclosure outweigh those against it. The University did not object to release of this information in full.</p>
26	19/11/2019	Letter to UTAS from Treasurer re: increase to funding limit	<p><b>Partial release - s36</b></p> <p>Release in full other than the officer’s details which have been redacted.</p>

<b>Rec</b>	<b>Date</b>	<b>Title</b>	<b>Determination</b>
27	19/11/2019	Letter from Treasurer to Tascorp re: increase to funding limit	<b>Release in full</b>
28	24/01/2020	Minute to Treasurer re: UTAS long term borrowing	<b>Partial release - s27, s36</b>  Page 1 - s27(1)(b) - record of deliberations between officers of public authority and Minister in the course of providing a briefing in connection with official business of Treasury and the Minister Page 2 - s27 - opinion / advice to Minister in course of providing a briefing in connection with official business of Minister Officer's details redacted.
29	06/02/2020	Letter from Premier/Treasurer to UTAS re: UTAS long term borrowings	<b>Release in full</b>
30	25/03/2020	Letter from Treasurer to Tascorp - Covid-19 - Lending to participating authorities	<b>Partial release - some information not within scope</b>  Release in full other than one sentence which is not relevant to the scope of the requests
31	15/06/2020	Letter from Premier/ Treasurer to Tascorp for authorities borrowing through Tascorp	<b>Partial release - some information not within scope</b>  Release in full other than information redacted in the letter and in the attached table which is not relevant to the scope of the requests.
32	03/08/2020  (Original Decision Record 6)	Letter to UTAS - Covid-19 Borrowing Arrangements	<b>Partial release - s36</b>  Release in full other than officer's details which have been redacted.

Rec	Date	Title	Determination
33	14/09/2020  (Original Decision Record 21)	Brief to the Treasury Secretary for a meeting with the University - Government Guarantee and Borrowing Limits	<p><b>Partial Release s27, s35(1)(b), s38, s36</b></p> <p>This is a briefing note to the Secretary for a meeting on 14 September 2020 with the University. It does not appear to me to be a draft.</p> <p>Page 2 - the redaction has been made under s38 as it is information of a business, commercial and financial nature and that would, if disclosed, be likely, in my view, to expose the University to competitive disadvantage in the property and Higher Education markets in which it operates.</p> <p>Page 3 there is some information redacted under s27(1)(a) as an opinion prepared by an officer of a public authority for the purpose of providing a Minister with a briefing in connection with the official business of Treasury and the Minister in connection with his parliamentary duty.</p> <p>Page 3 - the first dot point is out of scope of the requests. The second and fourth are redacted under s38 (see above for reasoning).</p> <p>The third is redacted under s35(1)(b) as a record of consultations between officers of public authorities for the purpose of the deliberative processes related to the official business of Treasury, the University and the Minister.</p> <p>Officers' names have been redacted.</p> <p>The public interest factors in favour of disclosure are outlined in the general section above, the object of the Act and Schedule 1(a), (b), (d) and (f)</p> <p>The public interest factors in favour of non-disclosure are outlined in the general sections above, Schedule 1(s), (w).</p>

Rec	Date	Title	Determination
			On balance I have determined that releasing the redacting information is contrary to the public interest.
34	6/10/2020	Letter from UTAS to Treasurer flagging it will be requesting a \$200M increase in borrowing facility/guarantee	<p><b>Release in full</b></p> <p>The University has not objected to releasing this record in full. I have determined to release this record in full.</p>
35	05/11/2020	Letter from UTAS to Premier re: providing information requested to Tascorp and Treasury	<p><b>Partial release - s36</b></p> <p>Release in full other than one officer's name.</p>
36	16/12/2020	Email from UTAS forwarding documents requested by Treasurer in letter of 23 October 2020:	<p><b>Partial release - s35 and 36</b></p> <p>Officers' details redacted.</p> <p>Other redactions undertaken under s35(1)(b) relate to consultations between UTAS and Treasury for the purposes of Treasury's official business and includes sensitive commercial information of the University which has been provided for deliberative purposes and which is discussed in more detail in relation to Record 37, 38 and 41.</p> <p><b>Note: Attachments to email (records 37, 38 and 41)</b></p> <p>The email chain has a confidentiality notice at the end of it and the "Analysis" undertaken by Treasury in Records 55-58 that was based on the information in Records 37, 38 and 41 below, have a confidentiality notice attached to the front page of the workbooks. Record 37 has the same confidentiality notice as the workbooks. Record 38 is a more detailed In my view it is clear that these attachments were communicated in confidence to Treasury by the University. The University has not consented to the disclosure of this information.</p>

Rec	Date	Title	Determination
37	16/12/2020	Item 1: Financial Model for Tascorp (21/48)	<p><b>Exempt in full - s35, s38, s39, s40</b></p> <p>Information provided by the University in relation to this record is as follows:</p> <ul style="list-style-type: none"> <li>• the information was part of a deliberative process that was pre-decisional (<i>Webb v Department of Primary Industries, Parks Water and the Environment</i>) and contains a scenario analysis of long-term financial forecasts including long term strategy and benchmarking of budgets. The information also includes recommendations, advice and opinions for consideration by those who have authority to make a decision (<i>Billings v Department of Health and Human Services</i>) and is thereby exempt information;</li> <li>• the information contains detailed information regarding processes to be followed or criteria to be applied for existing and future debt borrowings and details of the University overdraft facility provided for the purpose of briefing the Treasurer;</li> <li>• the financial information relates to the business affairs of the University and is sensitive financial and commercial data relating to the University's business, commercial or financial undertakings.</li> <li>• Information relating to the University's long term financial strategy is exempt information as are details of budgets and debt or funding arrangements. Release of this information to the market would expose the University to competitive disadvantage in an environment where it competes with 40 other Universities to attract the same or similar pool of students.</li> </ul> <p>I accept that this model is a record prepared for the purpose of deliberations between officers of public authorities, namely, the University and Tascorp and the University and Treasury (s35(1)(b)) in the course of or for the purposes of the deliberative processes related to the official business of these public authorities respectively.</p> <p>I agree with the University that it contains information relating to its commercial affairs which if disclosed would expose the University to competitive disadvantage as outlined by the University (s38).</p>

Rec	Date	Title	Determination
			<p>As noted above, there is a specific confidentiality notice on the front tab of this record and I have determined it was imparted on a confidential basis. I also consider that s39(1)(a) applies on the basis that the information would be prima facie exempt under s35, s38 alternatively s40.</p> <p>In relation to s40, the information is a model which was created to enable modelling to be undertaken by the recipients of the model and contains specific criteria for this purpose. It was provided to Treasury for it to undertake the process of obtaining the Minister's approval and in my view, does relate to negotiations of a financial nature which relate to the financial interests of the University (and potentially the Crown).</p> <p>I consider that the information is prima facie exempt under s38, alternatively s35 and/or s40. I consider factual information to be inextricably linked to the rest of the information.</p> <p>Factors in favour of release include the object of the Act, Schedule I (a), (b), (c), (d), (f).</p> <p>Factors in favour of non-disclosure include those outlined in the general provision section above, Schedule I(s) and (x) with (s) heavily weighted against disclosure.</p> <p>On balance I consider it is contrary to the public interest to release the information.</p>
38	16/12/2020	Item 2: High Level city Transformation Budget 2020_11 - In Model (Record 37)	<p><b>Exempt in full - s35, s38, 39 and 40</b></p> <p>Information provided by the University in relation to this record is as follows:</p> <ul style="list-style-type: none"> <li>the information was part of a deliberative process that was pre-decisional (<i>Webb v Department of Primary Industries, Parks Water and the Environment</i>) and contains a scenario analysis of long-term financial forecasts including long term strategy and benchmarking of budgets. The information also includes recommendations, advice and opinions for consideration by those who have authority to make a decision (<i>Billings v Department of Health and Human Services</i>).</li> </ul>

Rec	Date	Title	Determination
			<ul style="list-style-type: none"> <li>• the information contains detailed information regarding processes to be followed or criteria to be applied for existing and future debt borrowings and details of the University overdraft facility provided for the purpose of briefing the Treasurer;</li> <li>• the financial information relates to the business affairs of the University and is sensitive financial and commercial data relating to the University's business, commercial or financial undertakings. Information relating to the University's long term financial strategy is exempt information as are details of budgets and debt or funding arrangements. Release of this information to the market would expose the University to competitive disadvantage in an environment where it competes with 40 other Universities to attract the same or similar pool of students.</li> </ul> <p>The information was forwarded to Treasury to use as part of its deliberative processes in advising the Minister in relation to official business. I consider the requirements of s35(1)(b) are met.</p> <p>The information in this record was a more detailed breakdown of the capital costs in Record 37.</p> <p>The information relates to past and future forecasts and project budgets for past and future years. They are forecasts not actual expenditure and I don't consider that the information relating to past years loses its sensitivity in the overall context and its recency. I consider that the information does relate to the University's business affairs and is also sensitive commercial data. I accept that releasing this information would expose the University to competitive disadvantage as outlined by the University (s38).</p> <p>I also consider that the information was imparted in confidence and that s39(1)(a) applies as if this information was generated by another public authority it would be exempt under s35(1)(a) and/or (b), s38, alternatively s40.</p>

Rec	Date	Title	Determination
			<p>In relation to s40, my understanding is that there is information that is criteria used to determine the forecasts and budgets which was undertaken in order to negotiate its borrowing arrangements with the Minister. This does relate to the financial interests of the University and also potentially the Crown. Accordingly, I also consider the criteria of s40 to be made out and the information prima facie exempt under this provision.</p> <p>I consider the information to be prima facie exempt under s35, s38, s39 and s40.</p> <p>While there is factual information in the record, I consider it to be inextricably linked to the other information.</p> <p>Factors in favour of release include the object of the Act, Schedule I (a), (b), (c), (d), (f).</p> <p>Factors in favour of non-disclosure include those outlined in the general provision section above, Schedule I (s) and (x) with (s) heavily weighted against disclosure.</p> <p>On balance I consider it is contrary to the public interest to release the information.</p>
39	16/12/2020	Item 3: Inveresk Forecast Summary 2016-2021 at 30 Sept 2020 (21/52)	<p><b>Partial release - s35</b></p> <p>Information provided by the University in relation to this record is as follows:</p> <ul style="list-style-type: none"> <li>• the information relates to forecasting on sensitive commercial information that relates to the business affairs of the University and was included for deliberative purposes and provided for negotiating a commercial position for the University;</li> <li>• the information is not a final decision, but rather a position at a point in time intended for deliberation.</li> </ul>



Rec	Date	Title	Determination
			<p>Having reviewed the University's comments in light of the record, I accept that the information is forecast information and information that relates to the University's business affairs. It has not been made clear by the University whether the information could disadvantage it in terms of commercial negotiations, however, that may be the case.</p> <p>The information was forwarded to Treasury to use as part of its deliberative processes in advising the Minister in relation to official business. I consider the requirements of s35(1)(b) are met.</p> <p>In my view, any factual information is inextricably linked to the information redacted.</p> <p>Public interest factors in favour of release are the object of the Act, Schedule 1(a), (d) and general factors outlined in the general section above.</p> <p>Factors in favour of non-disclosure are outlined in the general section under s35, as well as Schedule 1(s). In addition, the redacted information does not appear to me, to squarely fit with matters the requests the applicant has made.</p> <p>On balance, given the nature of the information redacted, I consider it contrary to the public interest to disclose the redacted information.</p> <p>The University was of the view that s40 also applied to this information, however I have been unable to make a determination under this section.</p>
40	16/12/2020	Item 4: West Park Forecast 2015-2024 at 30 Sept 2020 (21/66)	<p><b>Release in full</b></p> <p>The University has not objected to releasing this record in full. I have determined to release this record in full.</p>
41	16/12/2020	Item 5: Investment Portfolio Performance and Return (21/67)	<p><b>Exempt in full - s35, 37, s38 and s39(1)</b></p> <p>Information provided by the University in relation to this record is as follows:</p> <ul style="list-style-type: none"> <li>• this report was provided under contract to the University on a confidential basis under the terms of the agreement with its third party</li> </ul>

Rec	Date	Title	Determination
			<ul style="list-style-type: none"> <li>• the terms of the agreement provide that all information procured under the agreement is confidential and cannot be released to any person</li> <li>• to do so would put the University in breach of its contract with the third party</li> <li>• the information is sensitive in nature and relates to the business affairs of the University and would likely put the University at a competitive disadvantage if it was released.</li> </ul> <p>I have not been provided with the excerpt of the contract the University refers to, however note that it is not unusual for there to be prohibitions against disclosure of information to which a contract relates. Ordinarily there would be a provision that allows disclosure of information with the other party's consent, however the bases on which that consent may be denied do vary. Either way, I do not consider the confidentiality of the information is lost because the third party or the University do not consent, if that is a requirement of the contract, to the disclosure of information publicly. There may be circumstances where consent is obtained and circumstances where it is not.</p> <p>The record itself provides that the presentation, or any part of it, must not be distributed, copied, used or relied on by any person, without the owner's prior written consent and contains disclaimers in relation to the information contained in the record and exclusions of liability in relation to any reliance on the information in it. It also contains a prohibition against use of trademarks in the presentation.</p> <p>Given the sensitive nature of this information, it is completely reasonable to me that consent would not be sought or provided. See s35 and s38 below re: s39(1)(a). I consider the information is prima facie exempt under s39(1)(a).</p> <p>The record outlines that it has been prepared for informational and discussion purposes only and so the information was prepared for the University's deliberative processes. It contains information about its investment performance, projections and assumptions in relation to the University's strategic asset allocation for the</p>

Rec	Date	Title	Determination
			<p>University to consider (see s35 and s39(1)(a)). It has been forwarded to Treasury to use as part of its deliberative processes in advising the Minister in relation to official business. I consider the requirements of s35(1)(b) are met and the information is prima facie exempt on these bases.</p> <p>The presentation contains sensitive commercial information which relates to the University's business affairs and which would, if disclosed, lead to competitive disadvantage in the markets in which it competes (Higher Education or in its other activities, including property development and other investments) I consider the information is prima facie exempt under s38.</p> <p>The information has been acquired by the University from a third party consultant, whose services it has paid for, and in my view, may contain trade secrets (a kind of confidential information including processes) and would be likely to expose the third party to competitive disadvantage in terms of the consulting market it operates in if disclosure was to occur.</p> <p>Public Interest factors in favour of disclosure include the object of the Act, those referred to in the general public interest section above, Schedule 1(a), (d) and (f).</p> <p>Factors against disclosure include those mentioned in the general sections above, Schedule 1(h), (n), (s), (w), (x), (y).</p> <p>On balance I have determined it is contrary to the public interest to release this information.</p>
42	16/12/2020	Item 6: Other Expenditure Budget 2021 (21/70)	<p><b>Release in full</b> The University has not objected to releasing this record in full. I have determined to release this record in full.</p>
43	16/12/2020	Item 7: Breakdown of Expenses (21/71)	<p><b>Release in full</b></p>

Rec	Date	Title	Determination
			The University has not objected to releasing this record in full. I have determined to release this record in full.
44	16/12/2020	Item 8: Copy of Payrun Report UTAS 2020-21 (21/73)	<b>Release in full</b>  The University has not objected to releasing this record in full. I have determined to release this record in full.
45	16/12/2020	Item 9: UTAS Properties - Membership Rules - Final 25.5 (004) (21/76)	<b>Release in full</b>  The University has not objected to releasing this record in full. I have determined to release this record in full.
46	18/12/2020  (Original Decision Record 25)	Email chain between UTAS and Treasury regarding UTAS' request for approval to increase its borrowing facility	<b>Partial Release - s35, s38, s39, s40 and s36</b> I consider the information in the email chain to be prima facie exempt under s35(1)(b). However, I consider the public interest factors in favour of release of some information outweigh those against release - see general public interest factors and other provision factors above.  Some information in relation to Record 37, 38 and 41 has been redacted. See those records for reasons.  Officer's details redacted.
47	18/12/2020	Item 10: 2019 UTAS financial statements signed 20022020	<b>Publicly available</b>  <a href="https://www.utas.edu.au/__data/assets/pdf_file/0008/1363166/UTAS-2019-Annual-Report.pdf">https://www.utas.edu.au/__data/assets/pdf_file/0008/1363166/UTAS-2019-Annual-Report.pdf</a>
48	18/12/2020	Item 11: Council 4 December 2020 Item 4.3 Sthn Campus Funding	<b>Release in part - s35, s38 and 40</b> Information provided by the University in relation to this record is as follows:

Rec	Date	Title	Determination
			<ul style="list-style-type: none"> <li>• the redactions relate to financial forecasts on debt included for deliberative purposes and included for negotiating a commercial position for the University.</li> <li>• the information is not a final decision, but rather a position at a point in time intended for deliberation.</li> </ul> <p>I take these comments as relevant to the content of the Agenda Item and also the attachments to it. I consider the information to be prima facie exempt under s35(1)(a) and s35(1)(b) as it was passed on to Treasury for it to consider for the purpose of deliberative processes related to its official business and that of the Minister.</p> <p>I also consider the redacted information and attached policy is commercially sensitive information that relates to the University's business affairs that would, if disclosed provide an advantage to competitors of the University in the Higher Education market and investment markets and is prima facie exempt under s38.</p> <p>I consider any factual information is inextricably linked to the other information.</p> <p>In relation to section 40 it appears to me that the information redacted in the body of the record and annexures does consist of instructions and the criteria to be applied in financial negotiations relating to the financial interests of the University and the information is alternatively prima facie exempt under s40.</p> <p>Public interest factors in favour of release are the object of the Act, general factors outlined above, Schedule 1(a), (b), (d)</p> <p>Factors in favour of non-disclosure are outlined in the general section above, the provision sections above, as well as Schedule 1(s).</p>

Rec	Date	Title	Determination
			On balance, given the nature of the information redacted, I consider it contrary to the public interest to disclose the redacted information.
49	18/12/2020	Item 12: Presentation to UTAS Council 30 October 2020 (21/2356)	<p><b>Release in full</b></p> <p>The University has not objected to releasing this record in full. I have determined to release this record in full.</p>
50	18/12/2020	UTAS power-point - Draft Urban Design Framework Dated 14 Oct 2020 - Progress Review (marked "DRAFT ONLY - Confidential")	<p><b>Release in full</b></p> <p>While this was marked as confidential, I have made enquiries with the University in relation to it, as on a high level review, it appeared to me to have relatively non-substantive changes to the final version which has been released publicly at <a href="https://online.flippingbook.com/view/401588173/14/">https://online.flippingbook.com/view/401588173/14/</a> and appears to contain factual information.</p> <p>The record can be released to the applicant; however it would be appreciated if the applicant could confirm whether he is content to view the final version released publicly at the above link. This record is very large in electronic format.</p>
51	23/12/2020	Letter from Chair of Tascorp to Treasurer - UTAS borrowing request	<p><b>Partial release - s38</b></p> <p>Some information has been redacted under s38 on the basis that it is sensitive financial information that relates to the business affairs of the University which if it were released would be likely to lead to a competitive disadvantage to the University in relation to the markets it operates in.</p> <p>Factors in favour of release are the object of the Act, Schedule 1(a), (b), (c), (d) and (f).</p>

Rec	Date	Title	Determination
			<p>Factors in favour of non-disclosure are Schedule 1(h), (s) and (x) and the general factors outlined above and in relation to s38.</p> <p>On balance I have determined it is not in the public interest to release the redacted information, with Schedule 1(s) weighted heavily in favour of non-disclosure.</p> <p>I consider other information in this record to be prima facie exempt under s27 and/or s35(1)(c) but have determined that the public interest factors in favour of disclosure outweigh those against it.</p>
52	01/02/2021	Request for Advice from Solicitor General	<b>Exempt in full under s31</b>
53	04/01/2021 (though this is date created; last modified 22/01/2021)  (Original Decision Record 22)	DRAFT Minute and Analysis to Treasurer re: approval of increase in borrowing limit - DRAFT which was finalised as Records 59 & 60	<p><b>Exempt in full under s27, s31, s35, s38</b></p> <p>There is information that falls within s27 and s35(1)(a), (c) - it is a draft record that has not been reviewed and which was brought into existence for submission to the Minister for the purposes of a briefing (and relating to the Minister's parliamentary duty).</p> <p>There is also sensitive commercial information relating to the business affairs of the University which I consider, if disclosed would be likely to lead to competitive disadvantage to the University in the markets it operates in.</p> <p>Public interest factors in favour of release are the object of the Act, Schedule 1(a), (f)</p> <p>I consider the factors in Schedule 1(b), (c) and (d) to be neutral in relation to this record given the final record has been assessed as part of this decision.</p> <p>Factors considered against disclosure are (s), (u), (w) and the general matters outlined above and under s35 above.</p>

Rec	Date	Title	Determination
			I consider it is contrary to the public interest to release this draft record. Noting also that records 59 and 60 (below) have been assessed and are the final records, and while there is some factual information in this record, information considered factual has not been redacted in the final records.
54	22/01/2021	Treasury Analysis - Sector Finances 2019	<p><b>Publicly available</b></p> <p>Treasury Analysis re - Southern Infrastructure Project (SIP) Assessment” for purposes of Records 59 and 60.</p> <p>Publicly available information from the Commonwealth Department of Education website: <a href="https://www.education.gov.au/download/12753/finance-publication-2019/12739/document/xlsx">https://www.education.gov.au/download/12753/finance-publication-2019/12739/document/xlsx</a></p>
55	22/01/2021	Treasury Analysis - JRG Impacts - Domestic Revenue Growth	<p><b>Exempt in full - s35, s38, s39, s40</b></p> <p>Treasury Analysis re - Southern Infrastructure Project (SIP) Assessment” for purposes of Records 59 and 60.</p> <p>This analysis was developed from Record 37 (Item 1: Financial Model for Tascorp), Record 38 (Item 2: High Level city Transformation Budget 2020_11 - In Model) and Record 41 (Item 5: Investment Portfolio Performance and Return)) and is a record of deliberations between officers of a public authority in the course of the deliberative processes relating to the official business of Treasury and the Minister (s35(1)(b)).</p> <p>It contains information relating to the business affairs of the University which if disclosed would be likely to expose the University to competitive disadvantage (s38(a)(ii)) and was imparted in confidence (see below s39).</p> <p>The front tab of the record provides as follows:</p>



Rec	Date	Title	Determination
			<p>This model (Model) has been provided to the Recipient by the University of Tasmania on the express understanding that:</p> <ol style="list-style-type: none"> <li>1. The Model is provided on the basis that it is strictly private and confidential. The Recipients agree not to disclose that information to any person or entity except with the prior consent of the University.</li> <li>2. In addition, data, outcomes, estimates and forecasts contained in or derived from the Model must not be disclosed to any other person (other than the Recipient's directors, officers and employees to whom disclosure is necessary) or referred to in any public document without the University's prior written consent</li> <li>3. The Recipients acknowledge that all results contained in this Model, whether express or implied, are University Management estimates only and contain elements that have not been endorsed by the University of Tasmania Council. The Model is provided in good faith based on information, data and assumptions provided by University Management</li> <li>4. The University retains all intellectual property with respect to this Model.</li> </ol> <p>See Records 37, 38 and 41 for balancing of public interest factors and for further information on applicability of sections, including s40.</p>
56	22/01/2021	Treasury Analysis - Low Domestic Scenario	<p><b>Exempt in full - s35, s38, s39, s40</b></p> <p>Treasury Analysis re - Southern Infrastructure Project (SIP) Assessment" for purposes of Records 59 and 60.</p> <p>This analysis was developed from Record 37 (Item 1: Financial Model for Tascorp) and Record 38 (Item 2: High Level city Transformation Budget 2020_11 - In Model) and Record 41 (Item 5: Investment Portfolio Performance and Return)) and is a record of deliberations between officers of a public authority in the course of the deliberative processes relating to the official business of Treasury and the Minister (s35(1)(b)).</p>

Rec	Date	Title	Determination
			<p>It contains information relating to the business affairs of the University which if disclosed would be likely to expose the University to competitive disadvantage (s38(a)(ii)) and was imparted in confidence (see below s39).</p> <p>The front tab of the record provides as follows:  This model (Model) has been provided to [Treasury] by the University of Tasmania on the express understanding that:</p> <ol style="list-style-type: none"> <li>1. The Model is provided on the basis that it is strictly private and confidential. The Recipients agree not to disclose that information to any person or entity except with the prior consent of the University.</li> <li>2. In addition, data, outcomes, estimates and forecasts contained in or derived from the Model must not be disclosed to any other person (other than the Recipient's directors, officers and employees to whom disclosure i.e., necessary) or referred to in any public document without the University's prior written consent</li> <li>3. The Recipients acknowledge that all results contained in this Model, whether express or implied, are University Management estimates only and contain elements that have not been endorsed by the University of Tasmania Council. The Model is provided in good faith based on information, data and assumptions provided by University Management</li> <li>4. The University retains all intellectual property with respect to this Model.</li> </ol> <p>See Records 37, 38 and 41 for balancing of public interest factors and for further information on applicability of sections, including s40.</p>
57	22/01/2021	Treasury Analysis - Low International	<p><b>Exempt in full - s35, s38, s39, s40</b></p> <p>Treasury Analysis re - Southern Infrastructure Project (SIP) Assessment" for purposes of Records 59 and 60.</p>

Rec	Date	Title	Determination
			<p>This analysis was developed from Record 37 (Item 1: Financial Model for Tascorp) and Record 38 (Item 2: High Level city Transformation Budget 2020_11 - In Model) and Record 41 (Item 5: Investment Portfolio Performance and Return)) and is a record of deliberations between officers of a public authority in the course of the deliberative processes relating to the official business of Treasury and the Minister (s35(1)(b)).</p> <p>It contains information relating to the business affairs of the University which if disclosed would be likely to expose the University to competitive disadvantage (s38(a)(ii)) and was imparted in confidence (see below s39).</p> <p>The front tab of the record provides as follows:  This model (Model) has been provided to [Treasury] by the University of Tasmania on the express understanding that:</p> <ol style="list-style-type: none"> <li>1. The Model is provided on the basis that it is strictly private and confidential. The Recipients agree not to disclose that information to any person or entity except with the prior consent of the University.</li> <li>2. In addition, data, outcomes, estimates and forecasts contained in or derived from the Model must not be disclosed to any other person (other than the Recipient's directors, officers and employees to whom disclosure i.e. necessary) or referred to in any public document without the University's prior written consent</li> <li>3. The Recipients acknowledge that all results contained in this Model, whether express or implied, are University Management estimates only and contain elements that have not been endorsed by the University of Tasmania Council. The Model is provided in good faith based on information, data and assumptions provided by University Management</li> <li>4. The University retains all intellectual property with respect to this Model.</li> </ol> <p>See Records 37, 38 and 41 for balancing of public interest factors and for further information on applicability of sections, including s40.</p>

Rec	Date	Title	Determination
58	22/01/2021	Treasury Analysis - UTAS Data and Charts	<p><b>Exempt in full - s35, s38, s39, s40</b></p> <p>Treasury Analysis re - Southern Infrastructure Project (SIP) Assessment” for purposes of Records 59 and 60.</p> <p>This analysis was primarily developed from data in Record 37, with some from 38 and 41 (Item 1: Financial Model for Tascorp) and Record 38 (Item 2: High Level city Transformation Budget 2020_11 - In Model) and Record 41 (Item 5: Investment Portfolio Performance and Return)) and is a record of deliberations between officers of a public authority in the course of the deliberative processes relating to the official business of Treasury and the Minister (s35(1)(b)).</p> <p>It contains information relating to the business affairs of the University which if disclosed would be likely to expose the University to competitive disadvantage (s38(a)(ii)) and was imparted in confidence (see above re: s39).</p> <p>See Records 37, 38 and 41 for balancing of public interest factors and for further information on applicability of sections, including s40.</p>
59	25/01/2021 (registered date)  (Original Decision Record 20)	Advice and analysis relating to the University’s SIP Borrowing prepared by Treasury officers for the Treasurer	<p><b>Partial release - s27, s31, s35, s38, s39, s40</b></p> <p>I have determined, after internal consultation, that this was the “analysis” referred to in the Minute to the Treasurer (Record 60) and it is a final version of the analysis.</p> <p>The majority of redactions have been undertaken pursuant to s27(1)(a) and/or (b) with some pursuant to s31.</p> <p>Section 35(1)(a) applies to make some of the information prima facie exempt as it is an opinion, advice or recommendation prepared by a Treasury officer, or alternatively 35(1)(c) as a record of consultations between officers of Treasury and</p>

Rec	Date	Title	Determination
			<p>the Minister, for the purposes of the deliberative processes related to the official business of Treasury and the Minister.</p> <p>Some information is of a business, commercial or financial nature that would, if disclosed be likely to expose UTAS to competitive disadvantage (s38). Some information, as outlined above, was also provided in confidence to Treasury (s39).</p> <p>See Records 37, 38 and 41 for balancing of public interest factors and reasons.</p>
60	02/02/2021  (Original Decision Record 8)	Minute to Treasurer - UTAS SIP Borrowing Request	<p><b>Partial release - s27, s31, s35, s38, s39, s40 and 36</b></p> <p>The majority of redactions have been undertaken pursuant to s27(1)(a) and/or (b) with some pursuant to s31.</p> <p>Section 35(1)(a) applies to make some of the information prima facie exempt as it is an opinion, advice or recommendation prepared by a Treasury officer, or alternatively 35(1)(c) as a record of consultations between officers of Treasury and the Minister, for the purposes of the deliberative processes related to the official business of Treasury and the Minister.</p> <p>Some information is of a business, commercial or financial nature that would, if disclosed be likely to expose UTAS to competitive disadvantage (s38). Some information, as outlined above, was also provided in confidence to Treasury (s39).</p> <p>See Records 37, 38 and 41 for balancing of public interest factors and reasons.</p> <p>Officer's details have been redacted.</p>
61	23/02/2021	Email attaching Legal Advice	<b>Exempt s31</b>

Rec	Date	Title	Determination
	(Original Decision Record 23)		
62	23/02/2021  (Original Decision Record 24)	Legal Advice	<b>Exempt s31</b>
63	03/03/2021  (Original Decision Record 10)	Letter from Treasurer to UTAS - SIP Borrowing Request	<b>Partial release - s36</b>  Released in full other than officer's details.
64	03/03/2021  (Original Decision Record 14)	Letter from Treasurer to Tascorp - SIP Borrowing Outcome	<b>Release in full</b>
65	11/3/2021  (Original Decision Record 15)	Credit rating correspondence timeline	The record itself has not been re-considered however, the records referenced have all been assessed and are included in this Annexure (noting one was released in full in the original decision).
66	24/03/2021  (Original Decision Record 11)	Minute to Treasurer - UTAS SIP Borrowing Request	<b>Partial release- s31, s36</b>  Redactions have been made under s31. Officer's details have been redacted.
67	12/05/2021	Briefing note for Secretary for meeting with Moody's on 12 May 2021 which has a	<b>Partial release - s38, s36 and not within scope of requests</b>  Pages 1-6 - not within scope of requests

Rec	Date	Title	Determination
	(Original Decision Record 13)	small amount of information relating to the University of Tasmania.	Page 6 under “University of Tasmania” the first 2 dot points are redacted under s38 as the information relates to the University’s business affairs which is sensitive information and if disclosed would be likely to lead to competitive disadvantage, otherwise the information redacted on page 6 is not within the scope of the requests. Pages 7-10 information redacted is not within the scope of the requests.
68	09/06/2021  (Original Decision Record 7)	UTAS Southern Infrastructure Borrowings - Briefing for Premier	<p><b>Partial release - s27, s31, s36, s38</b></p> <p>Page 1 - s27 advice/opinion Page 2 and 3 - s27, s31 and s38: some information is sensitive commercial information and relates to the University’s business affairs which if disclosed, would be likely to lead to competitive disadvantage and is prima facie exempt.</p> <p>Factors in favour of release are the object of the Act and Schedule 1(a), (b), (c), (d) and (f). Factors in favour of non-disclosure are Schedule 1(s) and (x).</p> <p>I have determined that it is contrary to the public interest to release the information that relates to the business affairs of the University, which if disclosed could lead to competitive disadvantage in the markets it operates in.</p> <p>Officer’s details have been redacted.</p>
69	01/07/2021  (Original Decision Record 16)	Premier - Treasurer - Tony Ferrall - University of Tasmania Borrowing Request	<p><b>Partial release - s38</b></p> <p>Information redacted under s38 has been determined to be sensitive financial information that relates to the business affairs of the University which if it were released would be likely to lead to a competitive disadvantage in the markets it operates in.</p>

Rec	Date	Title	Determination
			<p>The general public interest factors and those outlined under s38 above have been considered and on balance I have determined it is not in the public interest to release the information.</p> <p>I consider other information in this record to be prima facie exempt under s27 and/or s35(1)(c) but have determined that the public interest factors in favour of disclosure outweigh those against it.</p>
70	15/07/2021	Briefing for Treasurer re: Tascorp UTAS Guarantee (letter from Premier to Tascorp 22 July 2021 21/162243 (Record 4 original decision)	<p><b>Partial release - s36</b></p> <p>Officer's details have been redacted.</p> <p>I have not redacted other information that I consider to be prima facie exempt in line with the decision in relation to Record 69.</p>
71	21/07/2021	Letter from Treasurer to Tascorp - UTAS Guarantee	<p><b>Partial release - s38</b></p> <p>See Record 69 for reasons.</p>
72	06/09/2021  (Original Decision Record 12)	SPM ratings presentation	<p><b>Partial release - s38, outside scope of requests</b></p> <p>Information redacted on pages 1-5 is outside the scope of the requests. First dot point under "Major Projects progressing" is out of scope of the requests.</p> <p>See record 67 in relation to Page 6 redactions and s38.</p>
73	27/10/2021  (Original Decision Record 9)	Ministerial briefing - UTAS's Borrowing with Tascorp	<p><b>Partial release - s27</b></p> <p>Page 1 - dot point two is exempt under s27(1); dot points three and four are exempt under s27(1) and also contain information which relates to the University's business affairs which is sensitive information and if disclosed would be likely to lead</p>



Rec	Date	Title	Determination
			<p>to competitive disadvantage in the markets it operates in; dot point five is exempt under s27(1).</p> <p>Page 2 - exempt under s27(1).</p>
74	24/01/2022  (Original Decision Record 17)	Letter from Tascorp - consent to borrow from market	<p><b>Release in full</b></p> <p>While there is information in this record that I consider could be redacted under s35(1)(c), I have determined to release this record in full.</p>
75	10/10/2022	File note of meeting between Treasury officers and UTAS in relation to a borrowing increase request from the University.	<p><b>Exempt - s27(1), alternatively, s35(1)(b)</b></p> <p>Exempt under s27(1) as advice prepared by officer of a public authority (UTAS) for the purpose of (Treasury) providing the Minister with a briefing in connection with the official business of UTAS, Treasury and the Minister and in connection with the Minister's parliamentary duty - namely approving borrowing requests under s7 of the UTAS Act.</p> <p>Alternatively, s35(1)(b) as a record of consultations between officers of public authorities, in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority or Minister.</p> <p>There is also sensitive financial information included in this file-note which relates to the University's business affairs and which if disclosed, would be likely to put it at a competitive disadvantage in the markets it operates in.</p> <p>Public interest factors considered in favour of release are the object of the Act, Schedule (1)(a), (b), (d)</p>

Rec	Date	Title	Determination
			<p>Public interest factors in favour of exemption are outlined in the general section above and under s35 above and Schedule 1(s), (x).</p> <p>On balance I have determined that that it is contrary to the public interest to release the information.</p>

# Request for Review

Mr Tony Ferrall  
Secretary  
Department of Treasury and Finance  
By email: [secretary@treasury.tas.gov.au](mailto:secretary@treasury.tas.gov.au)

Dear Mr Ferrall

## Request for Internal Review of Decision relating to a Right to Information Application

I am writing to you in your capacity as Principal Officer of the Department of Finance and Treasury (Treasury), under the *Right to Information Act 2009* (the Act), to seek an internal review of the decision made regarding a Right to Information (RTI) application that I lodged on 22 November 2022. In short, my application made three detailed requests for information involving the Treasury portfolio and the University of Tasmania (UTAS). A copy of my application is at [Attachment A](#).

### Background

On 22 November 2022, I lodged an RTI application with Treasury.

I received a number of requests for extension by Treasury, to which I agreed.

On 15 March 2023, I received a decision letter from Ms Jane Cameron by email ([Attachment B](#)).

- I note that the decision letter is dated 10 March 2023.

With her decision letter, Ms Cameron provided a schedule listing 25 records that she had identified as relevant to my RTI application (the record schedule). In a separate attachment, Ms Cameron provided me with copies of 17 records with various levels of redaction (exemption). Ms Cameron fully exempted 8 records.

### Issues

#### Critical records appear to be totally missing

All of the records provided and/or identified as relevant in the record schedule relate to my requests for information numbered (2) and (3) in my RTI application. Request (2) focuses, among other things, on Treasury's involvement in UTAS securing Moody's ratings and provision of State guarantees to UTAS. Request (3) is for *"Any records held within the Treasury and Finance portfolio of any Tasmanian Government involvement with UTAS' issue of a Green Bond in February 2022."*

The records provided by Ms Cameron 'tail off' prior to issue of the Green Bond (announced by UTAS in February 2022 and actually issued in March 2022), with the two last documents being a Treasury brief to the Premier/Treasurer (Mr Gutwein) dated 27 October 2021 and a letter from yourself, as Chair of Tascorp, to Mr Gutwein, in his capacity as Treasurer, dated 24 January 2022. This was before the UTAS Council made its final decision to access the market and refinance its Tascorp borrowing.

I also note that, on the basis of the records provided to me, UTAS did not have a valid approval by March 2023 under Section 7(2) of the *University of Tasmania Act 1992* to enable it to borrow \$350 million through the Green Bond programme (and a further amount through a short-term facility).

- Records provided by Ms Cameron include a letter of 3 March 2021, in which Mr Gutwein issued a conditional approval to UTAS to borrow an additional \$200 million, lifting its total borrowing approval to \$400 million.
- However, quite apart from major wording issues presented by Mr Gutwein's letter, UTAS could/should not have relied on this letter to borrow through the Green Bond, as it had not met the third of three conditions that Mr Gutwein set on the additional borrowing, namely:

*"the [additional] \$200 million borrowing facility limit will reduce over time consistent with the maturity profile detailed in the University's request."* (This maturity profile was predicated on a totally different arrangement from UTAS' Green Bond borrowing).

- Further detail on why UTAS could/should not have relied on Mr Gutwein's conditional borrowing approval to support its Green Bond borrowing is provided in my blog post at: <https://theutaspapers.com/green-bombshell-rti-documents-reveal-utas-broke-own-law/>

It is beyond credit that relevant Treasury records came to a sudden halt just as UTAS was beginning to move towards issue of its Green Bond, particularly given that, on the records provided, UTAS did not have a valid borrowing approval in place for the Green Bond.

One possible reason I can think of for this halt is that Ms Cameron misinterpreted my request for information (3) as setting a terminal date of February 2022 for creation of the records that I was seeking, whereas I used the words "in February 2022" merely to date UTAS' issue of the Green Bond.

If Ms Cameron believed there was a lack of clarity in the wording of my request (3) (or, indeed, of my request (2)), I believe she should have contacted me to discuss the matter as stated on page 22 of the *RIGHT TO INFORMATION ACT 2009 TASMANIA OMBUDSMAN'S MANUAL (Ombudsman's Manual)*.

I emphasise that my requests (2) and (3) were for the period up to the date of my application, **22 November 2022**, and I request provision of all relevant records up to that date.

#### Critical UTAS documents are missing

I deliberately used the phrase "any records held" in my requests (2) and (3) to cover third party records held by Treasury and I note that Ms Cameron indicated that she consulted with UTAS as a third party and that she did include two letters from Professor Black to Mr Gutwein with the records that she provided to me.

However, in his letter to Professor Black of 23 October 2020, Mr Gutwein requested that UTAS provide the following in support of its request for an increase in its borrowing limit of \$200 million:

- "a business case in support of the borrowing limit;
- financial performance for the 2020 financial year to date;
- 2021 operating budget;
- updated long term financial forecasts reflecting revised funding strategy;
- sensitivity/scenario analysis covering key risks; and

- full details of existing borrowings and other debt obligations.”

Other records provided by Ms Cameron show that UTAS provided these documents to Treasury.

While I consider these documents of central relevance to my request, I am almost certain that they have not been listed as relevant documents in the record schedule.

- They do not appear to be among the records listed as fully exempt by Ms Cameron.

This is a serious matter as the administration of the RTI Act relies on the identification of all information relevant to the terms of RTI applications. As I indicated previously, if there is uncertainty, the decision maker should consult the applicant as stated in the *Ombudsman’s Manual*.

#### Other missing records

In reading the records provided by Ms Cameron I have found references to a number of other records that appear equally relevant to my information requests as the records provided, but which were not identified in the record schedule. These are identified in Attachment C.

#### Exemptions – general

Ms Cameron’s argument on the public interest on the second and third page of her letter is weak, especially as it seems to take no account of relevant Ombudsman and Supreme Court determinations. In particular it fails to apply a balancing test for and against the public interest, in so doing excluding a number of elements in Schedule 1 of the Act that are heavily in favour of the public interest. Indeed, Ms Cameron fails to provide any evidence of detailed consideration of the reasons for favouring release in the public interest.

Accordingly, I contest all claims for exemption in Ms Cameron’s decision and request that the review decision maker apply the public interest test to the standard required and present evidence that shows that the onus favouring release has been rebutted.

Attachment C sets out instances where I have identified material that has been exempted in one record but provided in another, indicating that exemptions have been applied arbitrarily or excessively.

#### Exemption of legal advice

Records 24 and 25 have been exempted on the ground of “legal professional privilege”.

The record schedule indicates that these records include legal advice from the State Solicitor General (SG) regarding “UTAS Borrowing”. The records appear to date to October 2020.

Given the likely centrality of any legal advice to my requests, and my general points on exemption above, I request that copies of the legal advice be released in full.

#### My RTI application request for information (1)

My RTI application request for information (1) sought Treasury briefs on UTAS’ proposed relocation to the Hobart CBD and Treasury analysis of the proposed relocation and UTAS’ annual reports.

Ms Cameron did not identify any relevant documents in the record schedule.

Accordingly, based on the precise wording of request (1), I conclude that between 1 January 2015 and the lodgment of my RTI application on 22 November 2022:

- no briefs were provided to senior officers (Executives) and Ministers in the Treasury and Finance portfolio in relation to the proposed move of UTAS into the Hobart CBD and/or redevelopment of the Sandy Bay campus;
- (b) no analysis was undertaken within the Treasury and Finance portfolio in relation to the proposed move of UTAS into the Hobart CBD and/or redevelopment of the Sandy Bay campus;
- no analysis was undertaken within the Treasury and Finance portfolio of UTAS' annual reports (particularly the financial statements) for the years 2014 (published 2015) to 2021.

#### General issues

The record schedule does not provide explicit dates for exempted records (although they can be deduced, approximately, in several instances). This is contrary to guidance provided on page 61 of the *Ombudsman's Manual* (section 8.5).

I note that on the second page of her decision letter, Ms Cameron defined Executive to mean the Secretary or a Deputy Secretary within Treasury. I believe my term "senior officers (Executives)" should have been taken to have its normal meaning, being members of the Tasmanian Government's Senior Executive Service, and that any proposed variation from this should have been discussed with me.

#### **Conclusion**

I look forward to your response. In this regard I particularly stress:

- that my requests for information (2) and (3) in my RTI application were for all relevant information up to the date of my RTI application, 22 November 2022;
- that Treasury holds records relevant to my requests that were not among the records listed in the record schedule; and
- that on the basis of the arguments for exemption presented by Ms Cameron, I am contesting all claims to exemption.

I note in conclusion that I acknowledge the difficulties associated with the role of RTI officers, in particular in ensuring that line-areas provide all potentially relevant information for consideration.

Thank you for attending to the internal review of Ms Cameron's decision on my RTI application.

Yours sincerely



Robert Hogan  
13 April 2023  
Email: harveyr35@aol.com

**Missing documents, inconsistent exemption of material and other issues**

Using records provided with Ms Cameron's decision letter on 15 March 2022, and other documents available in the public domain, I have constructed a timeline relating to requests (2) and (3) of my RTI application. This has enabled identification of some documents held by Treasury that are relevant to my RTI application, but which were not listed in the document schedule provided at Attachment A to Ms Cameron's decision letter.

It has also enabled identification of material that has been exempted in one place but provided in another, indicating that exemptions have been applied arbitrarily or excessively.

In the timeline that follows, I highlight by underlining, all instances where referenced documents were not listed in the document schedule or where exemption was applied inconsistently. I also highlight other matters of significance for review of Ms Cameron's decision.

**June 2019** – Treasurer Gutwein provided a short-term borrowing approval to UTAS under section 7(2) of the UTAS Act.

This document was not listed in the document schedule (and therefore was neither provided nor listed as exempt), but is referenced in Record 5 of 4 October 2019.

**12 September 2019** – UTAS wrote to Treasurer Gutwein providing an update on discussions with Tascorp regarding its borrowing requirements and seeking approval for a medium-term borrowing request.

This document was not listed in the document schedule (and therefore was neither provided nor listed as exempt), but is referenced in Record 5 of 4 October 2019.

**4 October 2019** – Treasury (Secretary Tony Ferrall) provided a brief to Treasurer Gutwein entitled *University of Tasmania – medium term borrowing (Record 5)*. This provided a suggested response to UTAS' letter seeking information from UTAS to enable its medium-term borrowing request to be considered.

**15 June 2020** – In light of COVID-19, Treasurer Gutwein provided Tascorp with a Letter of Guarantee for authorities borrowing through Tascorp including UTAS. The maximum borrowing limit set for UTAS was \$200 million.

This document was not listed in the document schedule (and therefore was neither provided nor listed as exempt), but is referenced in Record 6 of 3 August 2020.

This document is specifically captured by my RTI application request (2)(d) for "*any records of any form of guarantee provided to UTAS by the Tasmanian Government*".

**3 August 2020** – Mr Ferrall, in his capacity as Secretary of Treasury, wrote to Vice-Chancellor (VC) Black in a letter entitled *COVID-19 Borrowing Arrangements (Record 6)*. Apart from referencing the provision of the guarantee to UTAS and the borrowing limit of \$200 million, Mr Ferrall advised that for transparency and consistency there would need to be disclosure of the Government’s explicit support (the guarantee) in UTAS financial statements.

I have not been able to identify the required disclosure in UTAS’ Annual Report for 2020 or in the financial statements it provided to the Australian Charities and Not-for-profits Commission.

I seek any further Treasury records dealing with this matter as relevant to my RTI application request (2)(d) for “any records of any form of guarantee provided to UTAS by the Tasmanian Government”.

**6 October 2020** – VC Black wrote to Mr Gutwein seeking approval for a \$200m increase in UTAS’ borrowing facility limit and raising guarantee matters.

This document was not listed directly in the document schedule (and therefore was neither provided nor listed as exempt), but is referenced in Record 1 of 23 October 2020.

The document is listed in Record 15, where it is referred to as “*Letter from Rufus Black Vice-Chancellor – State government guarantee increase for southern campus*” and was separately determined to be outside of scope by Ms Cameron on the 7<sup>th</sup> page of her letter.

Given that both Record 1 and Record 15 indicate that this document raised guarantee matters it is clearly captured by my RTI application request (2)(d) for “any records of any form of guarantee provided to UTAS by the Tasmanian Government”. I also believe that any documents relating to UTAS borrowing requests at this time are relevant to my RTI application request (3) for “Any records held within the Treasury and Finance portfolio of any Tasmanian Government involvement with UTAS’ issue of a Green Bond in February 2022.” This is because it is clear that once UTAS sought to increase its borrowings this set in train a sequence of events that led to the issue of the Green Bond.

**28 October 2020** – Mr Gutwein, on Premier letterhead, wrote to VC Black, in a letter entitled *University of Tasmania borrowing limit increase (Record 1)*, requesting:

- “a business case in support of the borrowing limit;
- financial performance for the 2020 financial year to date;
- 2021 operating budget;
- updated long term financial forecasts reflecting revised funding strategy;
- sensitivity/scenario analysis covering key risks; and
- full details of existing borrowings and other debt obligations.”

Record 8 of 21 February 2021 states that these documents were provided by UTAS, but they were not listed in the document schedule (and therefore were neither provided nor listed as exempt).

I have specifically raised these documents in the body of my letter to Mr Ferrall.



**2 February 2021** – in light of the documents requested by Mr Gutwein on 23 October 2020 being received from UTAS, Treasury (Mr Ferrall) provided a brief to Treasurer Gutwein entitled *University of Tasmania Southern Infrastructure Project Borrowing Increase (Record 8)*. While heavily redacted, the brief indicates that UTAS:

*“also raised the potential for an increase to the Government’s guarantee under the COVID-19 borrowing arrangements.”*

The brief recommended:

*“you consider the University’s request to borrow an additional \$200 million and make a determination in accordance with section 7(2) of the [UTAS Act]”*

The rest of the recommendation is redacted but presumably included declining UTAS’ request for an increase in the Government guarantee, - a matter which is not subject to redaction in Record 10 of 3 March 2021.

I note that this brief included consideration of the documents provided in response to Mr Gutwein’s letter to VC Black of 28 October 2020. However, much of the relevant material appears to have been redacted. Great public interest attaches to Treasury’s assessment of these documents.

There appear to be no other references to Treasury assessing these documents in the document schedule. It would be surprising if Treasury did not undertake detailed assessment (much more detailed than that provided in a brief to the Treasurer), and I request that all relevant Treasury records on this be identified and considered for release.

**3 March 2021** – pursuant to Treasury’s brief of 2 February 2021, Treasurer Gutwein wrote to VC Black in a letter entitled *Southern Infrastructure Project Borrowing Limit Increase (Record 10)*, among other things stating:

On the basis of the supporting information provided to Treasury by the University, I approve the request to increase the University’s borrowing facility limit, as required under section 7(2) of the *University of Tasmania Act 1992*. This approval is subject to the following conditions:

- the University obtains and maintains a stand-alone, investment grade credit rating from an approved rating agency;
- the increase of \$200 million to the existing borrowing facility limit is approved solely for the purposes of the construction of the Southern Infrastructure Project; and
- the \$200 million borrowing facility limit will reduce over time consistent with the maturity profile detailed in the University’s request.

I am of the view that the University should obtain borrowings on a stand-alone basis. Therefore, the current Government guarantee provided to the Tasmanian Public Finance Corporation to support COVID-19 related funding will not be increased to cover any additional borrowings by the University.

- A letter was also sent to the Chair of Tascorp (Mr Ferrall) in part advising him of this development (**Record 14**).

**18 March 2021** – VC Black responded to Premier (sic) Gutwein in an untitled letter (**Record 3**), among other things noting the approval of the increase in borrowing limit, the credit rating condition, and flagging the need to work with Tascorp. He concluded by stating:

*"I look forward to briefing you on the plans for our Southern Infrastructure when we meet on 31 March in Launceston."*

- I assume Treasury would have prepared briefing for this meeting but it is not listed in the document schedule (and therefore is neither provided nor listed as exempt)

**31 March 2021** – Tascorp considered/approved a \$200 million increase in UTAS' borrowing limit, subject to conditions precedent.

This document was not listed in the document schedule (and therefore was neither provided nor listed as exempt) but some (anticipatory) details are included in VC Black's letter above (Record 10), Record 2 of 8 June 2021 and Record 7 of 9 June 2021.

- In record 17 of 24 January 2022, Mr Ferrall wrote that Tascorp had approved the new \$200 million facility (presumably subject to conditions precedent), providing a different approval date, for reasons that are unclear.

**12 May 2021** – Treasury briefing to Mr Ferrall, in his capacity as Secretary of Treasury, entitled *Treasury meeting with Moody's* (**Record 13**). This is heavily redacted.

**8 June 2021** – VC Black wrote to Premier (sic) Gutwein in an untitled letter (**Record 2**), noting that, following "conditional approval of \$200 million increase in our borrowing limit", UTAS had continued working with Tascorp "to address [Tascorp's] conditions precedent". However, VC Black noted a "significant issue" with regard to Tascorp's requirement for a General Security Deed over all UTAS' assets,

*"which will breach already existing contractual arrangements and will require comprehensive due diligence over all University contractual arrangements, and ongoing monitoring."*

VC Black went on to say:

In order to progress the southern campus and deliver its positive social and economic impact for Hobart and Tasmania, I would appreciate a discussion on Tascorp's security requirements or the alternative option of pursuing corporate facilities, including repayment of existing Tascorp debt, within the approved \$400 million borrowing facility limit with the State.

- From the documents provided by Treasury, this appears to be the first time UTAS mentioned to the Government the alternative of borrowing from the market, including repayment of its existing Tascorp debt, although it had been canvassed in UTAS Council meetings. (See: [https://www.utas.edu.au/\\_\\_data/assets/pdf\\_file/0006/1634244/University-Council-Minutes-2019-2022-Redacted.pdf](https://www.utas.edu.au/__data/assets/pdf_file/0006/1634244/University-Council-Minutes-2019-2022-Redacted.pdf))

- Tellingly VC Black refers to doing this “*within the approved \$400 million borrowing facility limit with the State*”, totally ignoring the conditions on that approval. This statement should not have been allowed to pass unquestioned and it would be surprising if it was.

**9 June 2021** – a brief from Treasury to Mr Gutwein as Premier and Treasurer, called *University of Tasmania Infrastructure Borrowings (Record 7)*. This brief contained detailed chronological background on UTAS’ borrowings.

With regard to the redactions, it appears from other documents that Tascorp’s conditions precedent included a requirement for a baseline credit assessment of investment grade, an additional/revised Master Loan Facility Agreement, a General Security Deed, covenant and security charges and an interest rate mitigation strategy. Redaction of material on these conditions cannot therefore be justified.

**1 July 2021** – Mr Ferrall, in his capacity as Chair of Tascorp, wrote to Mr Gutwein, in his capacity as Treasurer, in a letter entitled *University of Tasmania Borrowing Request (Record 16)*. The first paragraph outlines Tascorp’s then current arrangements with UTAS. While the remainder of the letter is redacted, Record 4 of 22 July 2021 indicates that Mr Ferrall sought assurance from the Treasurer that the existing Letter of Guarantee (for \$200 million) would continue to apply if Tascorp agreed:

*“to the University’s Southern Infrastructure Project borrowing request of an additional \$200 million and the extensions of the maturity of the existing \$125 million borrowing from 2023 to 2046.”*

Redaction of material in Record 16 relating to this cannot therefore be justified.

**22 July 2021** – Treasurer Gutwein wrote to Mr Ferrall in a letter entitled, *University of Tasmania Guarantee (Record 4)*, providing that assurance and continuing:

I can confirm that the Government will continue to unconditionally and irrevocably guarantee the obligations of the University up to a maximum limit of \$200 million.

It is also understood that Tascorp is taking action to mitigate risks to the State where possible and I note that UTAS is proposing to provide Tascorp with additional security in real property mortgages plus cash investments.

Yours sincerely,



Peter Gutwein MP  
Premier  
Treasurer

**27 October 2021** – Treasury briefing to Treasurer Gutwein entitled *University of Tasmania Southern Infrastructure Borrowings (Record 9)*. This brief is redacted in key sections and it is not clear what its

purpose was. However, it does list the conditions the Treasurer placed on his borrowing approval to UTAS on 3 March 2021. It also clearly contemplates UTAS borrowing from the market:

*“The COVID-19 Government guarantee was issued to Tascorp, and will not apply to any borrowings the University takes out with the market, including any potential refinancing of its existing borrowings.”*

**24 January 2022** – Mr Ferrall in his capacity as Chair of Tascorp wrote to Premier Gutwein in his capacity as Treasurer, in a letter entitled *University of Tasmania – TASCORP Consent Provided for UTAS to Borrow from the Market (Record 17)*, to provide an update on arrangements relating to UTAS’ request for funding to commence the Southern Infrastructure Project. The letter refers to Tascorp approving a new \$200 million facility to facilitate the Southern Infrastructure Project on 28 July 2021 (seeming to contradict the date in Record 7), however from the title of the letter, it is clear Tascorp had given approval for UTAS to borrow direct from the market.

This is chronologically the last document provided with Ms Cameron’s decision. It is not credible that Treasury holds no records relevant to my RTI application after this date given subsequent developments. I have addressed this in the body of my letter to Mr Ferrall.

Some of the key events in February and March 2022, for example, include:

#### **23 February 2022 UTAS Council Meeting -**

*“Council discussed the University’s pursuit of alternative commercial financing arrangements in accordance with the out of the tender process conducted in December 2021, including a corporate debt facility for working capital purposes of [redacted, but likely to be \$50m] with [redacted, but likely one of CBA, NAB or ANZ] and bond issuance for [redacted, but likely to be \$350m] facilitated by Joint Lead Managers [redacted] and [redacted- other documentation shows the Managers were CBA and NAB].”*

From the minutes it is clear the UTAS Council continued to discuss the matter in some depth, including arrangements for delegation of ultimate decision making debt arrangements to VC Black.

Source: UTAS Council Minutes:

[https://www.utas.edu.au/\\_\\_data/assets/pdf\\_file/0006/1634244/University-Council-Minutes-2019-2022-Redacted.pdf](https://www.utas.edu.au/__data/assets/pdf_file/0006/1634244/University-Council-Minutes-2019-2022-Redacted.pdf)

#### **23 February 2022** – UTAS media release announcing the launch of the Green Bond.

Source: [https://www.utas.edu.au/\\_\\_data/assets/pdf\\_file/0010/1573759/23.02.22-UTAS-Green-bonds.pdf](https://www.utas.edu.au/__data/assets/pdf_file/0010/1573759/23.02.22-UTAS-Green-bonds.pdf)

**24 February 2022** – Moody’s assigned a “first-time provisional rating to University of Tasmania’s AUD debt issuance programme.”

Source: <https://finance.yahoo.com/news/university-tasmania-moodys-assigns-first-040106018.html>

**2 March 2022** – Investor Presentations

Source: Minutes for the UTAS Council Meeting of 23 February 2022

**8 March 2022** – Launch of Programme with the Commonwealth Bank and National Australia Bank as joint lead managers

Source: Minutes for the UTAS Council Meeting of 23 February 2022

**18 March** – Article in The Australian, covering the Green Bond issue.

Source: <https://theutaspapers.com/wp-content/uploads/2022/12/Australian-350m-green-bond-boost.pdf>

VC Black surely wrote to Mr Gutwein at some stage before or during this process advising him of UTAS' approach to the market. Treasury should have considered the need for a new unconditional loan approval if it had not already done so.