

Section 82 Notice – Financial Management Act 2006

Legislative Council Question on Notice 1012

Pursuant to section 82 of the *Financial Management Act 2006*, I give notice to both houses that I am unable to provide an answer to Part (a) and (b) of Legislative Council Question on Notice 1012. Notice is also being provided to the Auditor General, as required under section 82 of the *Financial Management Act 2006*. Please see attached Question on Notice 1012 for a description of the information requested.

With respect to the request on 2 November 2022 to table Griffin Coal's most recent Triennial Report (Report), I sought advice from the Department of Jobs, Tourism Science and Innovation (JTSI) who assessed the request and provided the following advice.

- The Report has been provided by Griffin Coal to JTSI as per Clause 11(2) of the *Collie Coal (Griffin) Agreement Act 1979* (State Agreement).
- All State Agreements are publicly available from the Western Australian Legislation website.
- Information contained in the Report is considered private and confidential information of the private company Griffin Coal Mining Company Pty Limited (Griffin Coal), imparted in confidence to JTSI under the State Agreement. But for the State Agreement, the public would not have access to the information contained within the Report (unlike a public company which would be required to make some level of disclosure under the *Corporations Act 2001* (Cth)).
- Accordingly, the Report provides revealing information of a confidential nature obtained in confidence which could reasonably be expected to prejudice the future supply of information of that kind to the Government or to any agency.
- The Report is provided as a private and confidential document to the State in line with Griffin Coal's obligations under the State Agreement. Griffin Coal currently provides full and frank information to JTSI in complying with these obligations and, in the spirit of good faith, considers that it goes "*above and beyond*" in providing information to JTSI. Any disclosure of the confidential information in the Report may prejudice the candour and openness with which Griffin Coal currently supplies information to JTSI.
- Griffin Coal does not see any public interest around which could justify divulging its confidential Report.
- Further, the Report contains information, the disclosure of which, would reveal information (other than trade secrets) that has a commercial value to Griffin Coal and could reasonably be expected to destroy or diminish that commercial value.
- JTSI accepts that Griffin Coal's information is commercially sensitive and that this information should not be ascertainable to its competitors. It should be stated that JTSI is also dealing with many companies that have State Agreements with some that are classed as Griffin Coal's competitors. JTSI also understands that disclosure of Griffin Coal's commercially sensitive information would cause unreasonable detriment to the company.
- The Report contains valuable commercial information about Griffin Coal's intended development plans. Providing a third party with Griffin Coal's future business plans would diminish the commercial value of those plans.

- The Report contains information about the business, professional, commercial, intellectual property and financial affairs of the Company and disclosure could:
 - (a) reasonably be expected to adversely affect those affairs; or
 - (b) prejudice the future supply of information to JTSI.
- For example, the Report contains details of Griffin Coal's coal production as well as the results of numerous private studies which Griffin Coal commissioned at its own cost and which detail aspects of Griffin Coal's business activities, assets and future plans.
- Disclosure of the information contained in the studies commissioned by Griffin Coal could devalue that information, and a third party could potentially decontextualize and misconstrue the information in an attempt to harm or diminish Griffin Coal's reputation and the value of its business and goodwill.
- Griffin Coal has never consented to public disclosure of the Report.

Consideration of a partial release of information was considered. The Report is provided with the expectation of confidentiality. JTSI consulted with Griffin Coal and it has indicated that it would object to the release of the Report either in whole or in part.

In reaching this decision please be aware of the process undertaken by JTSI.

- JTSI is currently developing a new Release of Information Policy. Assessment has been completed using the principles in Tourism Western Australia's internal policy and guidelines for the release of commercial information.
- JTSI has assessed the request against reasonable criteria for determining commercial sensitivity and possible detriment to the State.
- JTSI has sought the views of the Company.

In summary, information in the Report is likely to be commercially sensitive, would reveal commercial affairs of the company and could adversely affect those affairs if tabled. For instance, the Report includes information regarding current and future production, customers and their product supply preferences. Disclosure of this information would prejudice the future supply of information to the JTSI by the Company. Accordingly it is not appropriate to table the Report.

This Government takes its responsibility to grow and diversify the economy very seriously. As such, it safeguards information that may jeopardise the State's reputation and business relationship with investors and developments if made public. The release of this information would significantly compromise the State's ability to negotiate favourable State Agreements.



HON ROGER COOK MLA
 DEPUTY PREMIER
 MINISTER FOR STATE DEVELOPMENT, JOBS & TRADE

Attached

LEGISLATIVE COUNCIL

Question On Notice

Wednesday, 12 October 2022

1012. Hon Dr Brad Pettitt to the Minister for Regional Development representing the Minister for State Development, Jobs and Trade; Tourism; Commerce; Science

I refer to the annual and triennial reports required to be produced by Griffin Coal under Clause 11(2) of the *Collie Coal (Griffin) Agreement*, and, I ask:

- (a) will the Minister please table the most recent triennial report;
- (b) if no to (a), why not;
- (c) could the Minister please advise which section of the Department reviews these reports and the environmental and mining rehabilitation expertise present in the section; and
- (d) could the Minister please advise any dates on which further information has been requested from the company as provided for in Clause 11(3)?

Answer

The Department of Jobs, Tourism, Science and Innovation advises:

- (a) No
- (b) The Triennial Report is submitted by Griffin Coal to the Minister to satisfy Griffin Coal's obligations under Clause 11(2) of the *Collie Coal (Griffin) Agreement Act 1979*. It is submitted with an expectation that the information will be treated as commercially sensitive by the State, as it contains valuable commercial information. Disclosure of this would reveal information about the commercial affairs of the company and could adversely affect those affairs and prejudice the future supply of information to the Department of Jobs, Tourism, Science and Innovation (JTSI) by Griffin Coal. Accordingly it is not appropriate to table the report. I will notify the Auditor General's office and both houses of Parliament that this part of the question will not be answered as per Section 82 of the *Financial Management Act 2006*.
- (c) JTSI is responsible for the administration of State Agreements. JTSI refers these reports to the Collie Coal Mines and Environment Committee which includes subject matter experts from the Department of Water and Environmental Regulation, the Department of Biodiversity, Conservation and Attractions and the Department of Mines, Industry Regulation and Safety to review and provide feedback to the JTSI. The consolidated feedback is provided to Griffin Coal for consideration and incorporation into its next report.
- (d) No further requests for information has been requested by the Minister in accordance with Clause 11(3)

