

Government Information (Public Access) Act 2009

Explanatory Table

Sydney Metro City & Southwest – Independent Certification of the TSE Works Independent Certifier Deed

Contract Number: 00013/11201

Capitalised terms in this table have the meaning given to them in the Sydney Metro City & Southwest – Independent Certification of the TSE Works Independent Certifier Deed (**Deed**) unless the context indicates otherwise.

In preparing this explanatory table (**Explanatory Table**), the Principal has:

- (a) identified the reason(s) under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) for each redaction; and
- (b) weighed each redaction against the following key public interest considerations for disclosure:
 - (i) promoting open discussion of public affairs, enhancing Government accountability or contributing to positive and informed debate on issues of public importance;
 - (ii) creating public awareness and understanding on issues of public importance;
 - (iii) enhancing government transparency and accountability;
 - (iv) informing the public about the operations of the agency;
 - (v) ensuring effective oversight of the expenditure of public funds and the best use of public resources; and
 - (vi) ensuring fair commercial competition within the economy.

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations	Internal Note
1.	Clause 1.1 – Definition of Criminal Conduct	The information redacted is the entire definition	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability; b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests. <p>Review: This information would</p>	

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				be reviewed for disclosure as events and circumstances change.	
2.	Clause 1.1 – Definition of Fraud	The information redacted is the entire definition	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability; b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, 	

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				<p>commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
3.	Clause 1.1 – Definition of Gross Negligence	The information redacted is the entire definition	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability; b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, 	

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				<p>and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
4.	Clause 8.1 – Limitation of Liability	The information redacted is the entire clause	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability; b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and c) revealing the redacted information would place the 	The entire clause has been redacted for consistency with the publically issued TSC IC Deed.

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				<p>parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
5.	Clause 8.2 – Exclusions	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability; b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; 	

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				<p>and</p> <p>c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
6.	Clause 8.3 – Consequential Loss	The information redacted is the entire clause and the definition of Consequential Loss	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability;</p> <p>b) exposing the redacted information could reveal the apportionment and level of risks the Independent</p>	

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				<p>Certifier was prepared to price and accept in relation to its total aggregate liability; and</p> <p>c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
7.	Clause 8.4(a) – Project-specific professional indemnity insurance	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability;</p> <p>b) exposing the redacted</p>	The entire clause has been redacted for consistency with the publically issued TSC IC Deed.

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			<p>interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and</p> <p>c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
8.	Clause 8.4(c) – public liability insurance	The information redacted is the dollar amounts.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out commercially sensitive information regarding the</p>	

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			<p>information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Independent Certifier's total aggregate liability;</p> <p>b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and</p> <p>c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
9.	Schedule 1 – Services, paragraphs 5, 6, 8, 9, 10 and 11	The information redacted is the entire paragraphs.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency</p>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because	

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			<p>of the agency's functions.</p> <p>There is an overriding public interest against disclosure.</p>	<p>exposing the redacted information is expected to place the agency at a commercial disadvantage when negotiating intergovernmental agreements of a similar nature, thereby prejudicing the business and commercial interests of the relevant agency.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
10.	Schedule 1 – Services, paragraph 7	The information redacted is the entire paragraph.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because exposing the redacted information is expected to place the agency at a commercial disadvantage when negotiating agreements of a similar nature, thereby prejudicing the business and commercial interests of the relevant agency.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances</p>	

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				change.	
11.	Schedule 2 – Payment Schedule	The information redacted is the entirety of the schedule with the exception of the title.	<p><i>Section 32(1)(a), paragraphs (b), (d) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information discloses the contractor's cost structure or profit margins, discloses the Independent Certifier's intellectual property in which the Independent Certifier has an interest and would place the contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the contractor's profit margins.</p> <p><i>Section 32(1)(d), items 1(f), 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions, could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out the amount payable to the Independent Certifier for the performance of the Services, together with personal information regarding the names of Independent Certifier Personnel; b) revealing the redacted information would provide insight into the Fee to be received by the Independent Certifier and would also reveal the breakdown of the Fee and adjustments that may be made to the Fee. Revealing this information is expected to provide insight into the Independent Certifier's profit margins; c) the Independent Certifier has developed its team so as to 	The entire schedule has been redacted for consistency with the publically issued TSC IC Deed.

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			<p>prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>discharge its obligations under the contract effectively and disclosure of this information would result in the disclosure of the Independent Certifier's intellectual property;</p> <p>d) exposing the redacted information is expected to place the agency at a commercial disadvantage when negotiating payment schedules for future contracts of a similar nature, thereby prejudicing the business and commercial interests of relevant third parties and the State. This is reasonably expected to have flow on effects to future Independent Certifiers that may be expected to share the costs of independent certification works; and</p> <p>e) TfNSW considers that any public interest in favour of the disclosure of this information is not significantly advanced by the disclosure of this information and is outweighed by the public interests against</p>	

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				disclosure identified above. Review: This information would be reviewed for disclosure as events and circumstances change.	
12.	Schedule 3 – Minimum resources and surveillance levels	The information redacted is the names of personnel of the Independent Certifier and their minimum commitment times.	<p><i>Section 32(1)(a), paragraphs (d) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information discloses the contractor's intellectual property in which the Independent Certifier has an interest and would place the Independent Certifier at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the contractor's profit margins.</p> <p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the Independent Certifier has developed its team for the project so as to discharge its obligations under the contract effectively and disclosure of this information would result in the disclosure of the Independent Certifier's intellectual property; and</p> <p>b) the Principal considers that any public interest in favour of the disclosure of this information is not significantly advanced by the disclosure of this information and is outweighed by the public interests against disclosure identified above.</p> <p>Review: This information would</p>	

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				be reviewed for disclosure as events and circumstances change.	
13.	Schedule 7 – Performance Incentive Payment Schedule	The information redacted is the schedule in its entirety.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information discloses the Independent Certifier's cost structure or profit margins and would place the Independent Certifier at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the Independent Certifier's profit margins.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out the payments for the Independent Certifier's achievement of specified performance standards; b) exposing the redacted information could provide insight into the Independent Certifier's cost structure; and c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and in doing so is also expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests. <p>Review: This information would</p>	

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			interests. There is an overriding public interest against disclosure.	be reviewed for disclosure as events and circumstances change.	
14.	Schedule 8 – Barangaroo/Metro Interface Agreement	The information redacted is the schedule in its entirety.	<i>Section 32(1)(d), item 1(f) of the table in section 14</i> The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions. There is an overriding public interest against disclosure.	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because exposing the redacted information is expected to place the agency at a commercial disadvantage when negotiating intergovernmental agreements of a similar nature, thereby prejudicing the business and commercial interests of the relevant agency. Review: This information would be reviewed for disclosure as events and circumstances change.	
15.	Schedule 9, Clause 6 – Limit of Liability - Independent Certifier Deed Poll – Cross City Tunnel Interface	The information redacted is the entire clause.	<i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i> The disclosure of this information could reveal commercial-in-confidence provisions of a government	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because: a) the redacted information sets	

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	Deed		<p>contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>out commercially sensitive information regarding the Independent Certifier's total aggregate liability;</p> <p>b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and</p> <p>c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	
16.	Schedule 10 – Clause 6 – Limit of Liability - Independent	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this</p>	The Principal weighed the competing public interest considerations and determined that there was an overriding	

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	Certifier Deed Poll – Barangaroo/Metro Interface Agreement		<p>information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out commercially sensitive information regarding the Independent Certifier's total aggregate liability; b) exposing the redacted information could reveal the apportionment and level of risks the Independent Certifier was prepared to price and accept in relation to its total aggregate liability; and c) revealing the redacted information would place the parties at a substantial commercial disadvantage in projects of a similar nature, and is expected to prejudice the Independent Certifier's legitimate business, commercial or financial interests. <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	

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17.	Exhibit 1 – Initial Certification and Monitoring Plan	The information redacted is the entirety of the Initial Certification and Monitoring Plan.	<p><i>Section 32(1)(a), paragraphs (d) of definition the of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information discloses the Independent Certifier's intellectual property in which the Independent Certifier has an interest.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information sets out in detail the Independent Certifier's Initial Certification and Monitoring Plan. That document was prepared by the Independent Certifier and submitted to the Principal as part of the Independent Certifier's successful bid; b) the redacted information contains information aimed at ensuring the effective certification and monitoring of the Sydney Metro City & Southwest Project. Significant investment by the Independent Certifier was made in the development and refinement of the arrangement set out in the redacted document. The mechanism developed therefore contains the Independent Certifier 's intellectual property and 	

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				<p>provides visibility on the Independent Certifier's bidding strategy. The Independent Certifier may benefit from using their intellectual property in future bids to obtain a commercial advantage;</p> <p>c) as a result, exposing the redacted information is reasonably expected to prevent the Independent Certifier from using its competitive advantage, diminish the competitive commercial value of information to the Independent Certifier and prejudice the Independent Certifier's legitimate business, commercial or financial interests; and</p> <p>d) while there is a public interest in revealing the certification and monitoring plan, this consideration is outweighed by the concerns above.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>	

