

Government Information (Public Access) Act 2009

Explanatory Table

M12RT HB Independent Certifier Deed

Under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**), there is a general public interest in favour of the disclosure of government information. However, such information will not be disclosed where there is an overriding public interest against disclosure or the information is 'commercial-in-confidence'.

In accordance with its obligations under the GIPA Act, the table below provides an explanation of the information that Transport for NSW (**the Principal**) has determined should not be disclosed in connection with the Deed of Appointment of Independent Certifier (the **contract**) entered into by the Principal, Seymour Whyte Constructions Pty Ltd (the **Contractor**) and Aurecon Australasia Pty Ltd and AECOM Australia Pty Ltd (together, the **Independent Certifier**) for the M12RT HB project.

The Principal has redacted the contractual provisions referred to in the table below due to an overriding public interest against disclosure, in that disclosure of the information would prejudice the legitimate business and commercial interests of the Principal, the Contractor or the Independent Certifier and/or reveal commercial-in-confidence information.

In determining whether or not certain information in the contract should be disclosed, the Principal has considered the exemptions to disclosure set out in clause 32(1)(a) of the GIPA Act against the following public interest considerations:

- promoting open discussion of public affairs, enhancing government accountability or contributing to positive and informed debate on issues of public importance;
- informing the public about operations of agencies and, in particular, their policies and practices for dealing with members of the public; and
- ensuring effective oversight of the expenditure of public funds provided.

The Principal will continue to review and consider information not disclosed against these considerations. Where the prejudicial effect of disclosure is removed due to the passage of time or change of circumstances, further disclosures will be made.

Capitalised terms in this table have the meaning given to them in the contract unless the context indicates otherwise.

Contract

Item	Clause (and general description)	Information redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
1	Clause 1.1 – the definition immediately following the definition of 'Additional Services'	The definition not disclosed relates to a clause that has been redacted in its entirety in the main body and which relates to a commercial regime. The efficacy of the redaction to the main body is dependent on references to the defined terms used in that clause also being redacted.	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p> <p>The disclosure of this information would reveal information concerning the Contractor's cost structures and would place the Contractor at a substantial commercial disadvantage in relation to potential competitors.</p>	<p>The Principal weighed the competing public interest considerations and determined that there is an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) disclosure of the information would provide insight into the cost structures of the Contractor; b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial, professional or financial interests; and c) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.
2	Clause 1.1 – the definition immediately following the definition of 'Fee'	The definition not disclosed relates to a commercial regime that has been redacted in its entirety in the main body. The efficacy of the redaction to the main	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there is an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) disclosure of the information would provide insight into the cost structures

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		body is dependent on references to the defined terms used in the relevant clauses also being redacted.	<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 the legitimate business and commercial interests of the parties.</p> <p>The disclosure of this information would reveal information concerning the Independent Certifier's cost structures and profit margins and would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors.</p>	<p>and profit margins of the Independent Certifier;</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial, professional or financial interests; and</p> <p>c) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.</p>
3	Clause 3.2(b) – Independent Certifier's further acknowledgements and warranties	The information not disclosed relates to the Independent Certifier's requisite standard of care.	<p><i>Section 32(1)(a), items 4(c) and 4(d) of the table at section 14 and paragraph (e) of definition of "commercial-in-confidence provision" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p>	<p>The Principal weighed the competing public interest considerations and determined that there is an overriding public interest against disclosure of this information because:</p> <p>a) disclosure of the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the</p>

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				<p>parties' legitimate business, commercial, professional or financial interests; and</p> <p>b) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.</p>
4	Clause 3.3(c)(i) – (iii) – Independent Certifier's Organisation and Personnel	The information not disclosed are the names of the individuals required to perform the functions of the Independent Certifier under the contract.	<p><i>Section 32(1)(d) and item 3(a) of the table at section 14.</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would reveal an individual's personal information.
5	Clause 4.1(c) – Independent Certifier to be independent	The information not disclosed relates to the Independent Certifier's requisite standard of care.	<p><i>Section 32(1)(a), items 4(c) and 4(d) of the table at section 14 and paragraph (e) of definition of "commercial-in-confidence provision" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p>	<p>The Principal weighed the competing public interest considerations and determined that there is an overriding public interest against disclosure of this information because:</p> <p>a) disclosure of the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial, professional or financial interests; and</p>

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				<p>b) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.</p>
6	Clause 6.1A – Not disclosed	The information not disclosed relates to an undisclosed part of a commercial regime.	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p> <p>The disclosure of this information would reveal information concerning the Contractor's cost structures and would place the Contractor at a substantial commercial disadvantage in relation to potential competitors.</p>	<p>The Principal weighed the competing public interest considerations and determined that there is an overriding public interest against disclosure of this information because:</p> <p>a) disclosure of the information would provide insight into the cost structures of the Contractor;</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial, professional or financial interests; and</p> <p>c) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.</p>
7	Clause 6.2(a) – part not disclosed	The information not disclosed relates to an	<i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraphs (b) and (e) of the definition of</i>	The Principal weighed the competing public interest considerations and determined that

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		undisclosed part of a commercial regime.	<p><i>"commercial-in-confidence provisions" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p> <p>The disclosure of this information would reveal information concerning the Contractor's cost structures and would place the Contractor at a substantial commercial disadvantage in relation to potential competitors.</p>	<p>there is an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) disclosure of the information would provide insight into the cost structures of the Contractor; b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial, professional or financial interests; and c) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.
8	Clause 9.2 – Notices	The information not disclosed is the names, addresses and titles of the recipients of notices.	<p><i>Section 32(1)(d) and item 3(a) of the table at section 14.</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the information would disclose personal information of individuals.

Attachment 2 – Independent Certifier Services

Item	Clause (and general description)	Information redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
9	Attachment 2 – Independent Certifier Services	<p>The information not disclosed relates to a bespoke arrangement in relation to the allocation of responsibility for contamination between the Principal and the Contractor.</p> <p>The information not disclosed relates to documents which have not been disclosed.</p>	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraph (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p> <p><i>Section 32(1)(d), item 1(f) of the table at 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>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) disclosure of the information would provide insight into the allocation of responsibility for contamination between the Principal and the Contractor; b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contracts. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects; c) revealing the information is expected to place the Principal at a commercial disadvantage when negotiating intergovernmental agreements of a similar nature, thereby prejudicing the business and commercial interests of the Principal; and

				d) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.
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Attachment 3 – Payment Schedule

Item	Clause (and general description)	Information redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
10	Clause 4(a)(i), 4(a)(ii), 4(b)(iv), 4(b)(v), 4(b)(vi), 5, 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 6(a)(ii), (6)(c)(iii) and 7	<p>The information redacted is the value and nature of fees and disbursements (including rates)</p> <p>The information not disclosed consists of the titles, names and rates of the nominated personnel to perform the Design Verification Services and Construction Verification Services.</p>	<p><i>Section 32(1)(a), item 4(b) of the table at section 14, 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 would reveal commercial-in-confidence information concerning the Independent Certifier's cost structures and profit margins and would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors.</p> <p><i>Section 32(1)(d) and item 4(d) of the table at section 14.</i></p> <p>The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties.</p> <p><i>Section 32(1)(d) and item 3(a) of the table at section 14.</i></p> <p>The disclosure of this information would reveal an individual's personal information.</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) disclosure of the information would reveal elements of the Independent Certifier's cost structures and profit margins; b) disclosure of the information would prejudice the parties legitimate business, commercial, professional or financial interests as it would place them at a substantial commercial disadvantage in negotiating with other parties in respect of future projects; c) disclosure of the information would reveal an individual's personal information; and d) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.

Attachment 4 – Information from Tenderer's Returnable Schedules

Item	Clause (and general description)	Information redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
11	Not disclosed	The part of the information not disclosed relates to the details of an undisclosed part of the contract.	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</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 the legitimate business and commercial interests of the parties.</p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors.</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) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial, professional or financial interests; and b) the Principal considers that any public interest in favour of the disclosure of the information is not significantly advanced by the disclosure of the information and is outweighed by the public interests against disclosure identified above.

Attachment 7 – Insurance Schedule

Item	Clause (and general description)	Information Redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
12	Item 1 and Item 2	The information not disclosed includes details of insurance policies including the minimum limit of cover required under insurance policies to be effected under the contract.	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraph (b) and (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</i></p> <p>The disclosure of this information would disclose commercial-in-confidence provisions of the contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</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 information sets out details of the scope and coverage of the insurance policies that the Principal and Independent Certifier is required to effect and maintain; b) disclosure of the information would reveal the apportionment of insurance risk between the parties; c) the scope of the insurance that the Independent Certifier is required to effect may be taken as an indication of the risk levels involved with the Independent Certifier's obligations under the contract. This may have signalling effects to the market; d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate

				<p>business, commercial or financial interests; and</p> <p>e) the Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of the information, and is outweighed by the public interests against the disclosure as identified above.</p>
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Attachment 8 – Insurance Policy Wording

Item	Clause (and general description)	Information Redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
13	Early works insurance effected as at the date of this deed.	The information not disclosed includes details of insurance policies including the minimum limit of cover required under insurance policies to be effected under the contract.	<p><i>Section 32(1)(a), items 4(b), 4(c) and 4(d) of the table at section 14 and paragraph (b) and (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</i></p> <p>The disclosure of this information would disclose commercial-in-confidence provisions of the contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</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 information sets out details of the scope and coverage of the insurance policies that the Principal and Independent Certifier is required to effect and maintain;</p> <p>b) disclosure of the information would reveal the apportionment of insurance risk between the parties;</p> <p>c) the scope of the insurance that the Independent Certifier is required to effect may be taken as an indication of the risk levels involved with the Independent Certifier's obligations under the contract. This may have signalling effects to the market;</p> <p>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors.</p>

				<p>Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>e) the Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of the information, and is outweighed by the public interests against the disclosure as identified above.</p>
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Attachment 9 – Independent Certifier's Personnel

Item	Clause (and general description)	Information Redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
14	Clauses 1.1, 1.2, 1.3 and 1.4	The information not disclosed consists of the names and titles of key personnel to perform the Design Verification Services and their minimum commitment during this period.	<p><i>Section 32(1)(d) and item 3(a) of the table at section 14.</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p><i>Section 32(1)(a), item 4(b) of the table at section 14, paragraph (e) of the definition of "commercial-in-confidence provisions" (clause 1 of schedule 4).</i></p> <p>The disclosure of this information would disclose commercial-in-confidence provisions of the contract.</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 information would reveal an individual's personal information;</p> <p>b) disclosure of the information would reveal elements of the commercial-in-confidence provisions of the contract and would place the Independent Certifier at a substantial commercial disadvantage in negotiations as against other contractors or with suppliers and subcontractors; and</p> <p>c) the Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of the information, and is</p>

				outweighed by the public interests against the disclosure as identified above.
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Signature Blocks

Item	Clause (and general description)	Information Redacted	Reason under GIPA Act	Explanation of the Reasons under GIPA Act
15	Signatures of representatives from TfNSW, the Contractor and Independent Certifier	The information not disclosed is the names and signatures of signatories to the contract.	<i>Section 32(1)(d) and item 3(a) of the table at section 14.</i> The disclosure of this information would reveal an individual's personal information.	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would reveal an individual's personal information.