

M6 Stage 1 Independent Certifier Deed

Government Information (Public Access) Act 2009 – Explanatory Table

TfNSW has redacted certain provisions of the 'M6 Stage 1 Independent Certifier Deed' between Transport for New South Wales (**TfNSW**), CPB Contractors Pty Limited and Ghella Pty Ltd and UGL Engineering Pty Limited (together, the **Contractor**) and SMEC Australia Pty Ltd (**Independent Certifier**) dated 22 May 2021 (**IC Deed**).

The redactions have been made due to an overriding public interest against disclosure, in that disclosure of the information would prejudice the legitimate business and commercial interests of TfNSW or the Contractor, and/or reveal the commercial-in-confidence provisions of a government contract.

In preparing this Explanatory Table, TfNSW has identified the reason(s) under the *Government Information (Public Access) Act 2009* (**GIPA Act**) for each redaction and weighed each redaction against the major relevant public interest considerations for disclosure.

TfNSW will continue to review this information to ensure that where the prejudicial effect of disclosure will be removed due to a passage of time or change of circumstances, further disclosures will be made.

The timeframe for disclosure of the IC Deed under the GIPA Act depends on when the IC Deed becomes effective. The IC Deed became effective on the date D&C Close occurred under the 'M6 Stage 1 D&C Deed'. This occurred on 11 June 2021.

Capitalised terms in this table have the meaning given to them in the IC Deed unless specified otherwise.

Item	Clause (and general description)	Reason(s) for redaction under the GIPA Act	Explanation of Reasons under the GIPA Act
1	Definition of 'Minimum Aboriginal Participation Spend'	<p>Section 32(1)(d) and Item 4(d) of the Table at Section 14.</p> <p>The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties.</p>	<p>The information not disclosed is the value of the Minimum Aboriginal Participation Spend.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would prejudice TfNSW, the Contractor's and the Independent Certifier's legitimate business, commercial, professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects.</p>
2	Clause 8.1(a)(i) (Limitation of Liability)	<p>Section 32(1)(d) and Item 4(d) of the Table at Section 14.</p> <p>The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties.</p>	<p>The information not disclosed is the amount to which the Independent Certifier's liability is limited under the contract.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would prejudice TfNSW, the Contractor's and the Independent Certifier's legitimate business, commercial, professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects.</p>
3	Clause 8.3 (Insurances)	<p>Section 32(1)(a) and paragraph (b) and (e) of the definition of "commercial-in-confidence provisions".</p> <p>The disclosure of this information would disclose commercial-in-confidence provisions of the contract.</p> <p>Section 32(1)(d) and Item 4(d) of the Table at Section 14.</p> <p>The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties.</p>	<p>The information not disclosed is the value insurance policy cover and maximum amount of deductibles.</p> <p>The disclosure of this information would disclose the Independent Certifier's cost structure and would place the Independent Certifier at a substantial commercial disadvantage in relation to subcontractors and suppliers, and in comparison with other contractors.</p> <p>TfNSW also considers that there is an overriding public interest against disclosure of this information because it would prejudice TfNSW, the Contractor's and the Independent Certifier's legitimate business, commercial,</p>

professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects.

4	Schedule 2, clause 2 (Payment and Notification of Disputed Amounts)	Section 32(1)(d) and Item 4(d) of the Table at Section 14. The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties.	The information not disclosed is the proportion of the Fee payable by the Principal. There is an overriding public interest against disclosure of this information because it would prejudice TfNSW, the Contractor's and the Independent Certifier's legitimate business, commercial, professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects.
5	Schedule 2	Section 32(1)(a) and paragraphs (a), (b) and (e) of the definition of "commercial-in-confidence provisions". The disclosure of this information would disclose commercial-in-confidence provisions of the contract. Section 32(1)(d) and Item 4(d) of the Table at Section 14. The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties. Section 32(1)(d) and Item 3(a) of the Table at Section 14. The disclosure of this information would disclose personal information.	The information not disclosed is the value of the fees, names of the key personnel and their rates, details of changes to rates, disbursement values and value of monthly payments. The disclosure of this information would disclose elements of the Independent Certifier's cost structure and profit margin and would place it at a substantial commercial disadvantage in negotiations as against other contractors or with suppliers and subcontractors. TfNSW also considers that there is an overriding public interest against disclosure of this information because it would prejudice TfNSW's, the Contractor's and the Independent Certifier's legitimate business, commercial, professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects. In addition, in respect of clause 4, TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would involve revealing an individual's personal information.
6	Schedule 3, clause 1 (Minimum Resources Commitment)	Section 32(1)(a) and paragraph (e) of the definition of "commercial-in-confidence provisions". The disclosure of this information would disclose commercial-in-confidence provisions of the contract.	The information not disclosed is the names of the nominated individuals and their minimum commitment days.

Section 32(1)(d) and Item 4(d) of the Table at Section 14.
The disclosure of this information could reasonably be expected to prejudice the legitimate business interests of the parties.

Section 32(1)(d) and Item 3(a) of the Table at Section 14.
The disclosure of this information would disclose personal information.

It is a commercial-in-confidence provision because it would place the parties at a substantial commercial disadvantage in future negotiations with suppliers and subcontractors, or on other similar projects.

TfNSW considers that there is an overriding public interest against disclosure of this information because it would prejudice TfNSW's, the Contractor's and the Independent Certifier's legitimate business, commercial, professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects.

In addition, in respect of clause 4, TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would involve revealing an individual's personal information.

7 Schedule 8
Attachment A
(Initial Certification
and Monitoring
Plan)

Section 32(1)(a) and paragraph (e) of the definition of "commercial-in-confidence provisions".

The disclosure of this information would disclose commercial-in-confidence provisions of the contract.

Section 32(1)(d) and Items 4(c) and 4(d) of the Table at Section 14.

The disclosure of this information could reasonably be expected to diminish the competitive commercial value of the plan and prejudice the legitimate business interests of the parties.

The information not disclosed is the Independent Certifier's Initial Certification and Monitoring Plan.

It is a commercial-in-confidence provision because it would place the parties at a substantial commercial disadvantage in future negotiations with suppliers and subcontractors, or on other similar projects.

TfNSW considers that there is an overriding public interest against disclosure of this information because it would prejudice TfNSW's, the Contractor's and the Independent Certifier's legitimate business, commercial, professional or financial interests as it would place them at a disadvantage in negotiating with other parties in respect of future projects.

The information in the report is the result of investment of resources and utilisation of unique information by the Independent Certifier and is commercially valuable to the Independent Certifier. If that information were known to competitors its commercial value would be diminished.

In addition, in respect of clause 4, TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because it would involve revealing an individual's personal information.