

**WESTCONNEX – STAGE 2  
KING GEORGES ROAD CONSTRUCTION DEED**

**DETAILS OF INFORMATION THAT HAS BEEN REDACTED IN THE COPY OF THE KING GEORGES ROAD CONSTRUCTION DEED  
PUBLISHED IN THE GOVERNMENT CONTRACTS REGISTER**

The table below sets out the information required by section 32(2) of the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) in relation to the provisions of the King Georges Road Construction Deed (**Construction Deed**) that have been redacted in the copy of the Construction Deed that will be published in the government contracts register.

In preparing this table, WestConnex Delivery Authority (**WDA**) has:

- (a) identified the reason(s) under the 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.

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

Item	Construction Deed clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
1.	Clause 6.5(a)	The information redacted is a dollar figure.	<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>WDA determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information is the amount of the Contractor's liability cap under the Construction Deed. Exposing the redacted information would reveal the apportionment of risks assumed by the Contractor and therefore the level of risk that the Contractor was prepared to price and accept;</li> <li>b) the redacted information may prejudice the Contractor in future negotiations on similar projects and prejudice the contractor's legitimate business and commercial interests; and</li> <li>c) the public interest has been served by revealing the existence of a general liability cap. In light of this disclosure there is an overriding public interest against the disclosure of the maximum liability of the Contractor.</li> </ul>
2.	Clause 17.9(n)	The information redacted is a percentage amount of a dollar figure.	<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>WDA determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information is the amount of the cap on the Contractor's liability to pay Liquidated Damages under the Construction Deed. Exposing the redacted information would reveal the apportionment of risks assumed by the Contractor and therefore the level of risk that the Contractor was prepared to price and accept;</li> <li>b) the redacted information may prejudice the</li> </ul>

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				<p>Contractor in future negotiations on similar projects and prejudice the Contractor's legitimate business and commercial interests; and</p> <p>c) the public interest has been served by revealing the existence of a cap on the Contractor's liability to pay liquidated damages. In light of this disclosure there is an overriding public interest against the disclosure of the maximum liability of the Contractor.</p>
3.	Clause 21.7(a)(v)	<p>The information redacted is a percentage amount of a dollar figure.</p>	<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 Contractor's cost structure or profit margins and would place the Contractor at a substantial commercial disadvantage in relation to other contractors and provide visibility on the Contractor'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 interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>WDA 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 the amount of lost profit that the Contractor will be entitled to if the Construction Deed is terminated in certain circumstances;</p> <p>b) revealing the redacted information would disclose the apportionment of risks between the parties with respect to termination in certain circumstances and therefore provide insight into the Contractor's profit margin and risk appetite;</p> <p>c) revealing the amount of lost profit payable to the Contractor in certain termination scenarios may place the Contractor at a substantial commercial disadvantage in projects of a similar nature and in negotiations with third parties and subcontractors, particularly in relation to termination. This would prejudice the Contractor's business, commercial and financial</p>

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				<p>interests; and</p> <p>d) the public interest has been served by revealing the categories of the Contractor's entitlements with respect to the relevant types of termination. Given the extent of that disclosure there is an overriding public interest against the disclosure of the redacted information.</p>
4.	Schedule 1, Item 26	The information redacted is dollar figures.	<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 Contractor's cost structure or profit margins and would place the Contractor at a substantial commercial disadvantage in relation to other contractors and provide visibility on the Contractor'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 interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>WDA 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 various caps on the delay costs payable by the Principal for an extension of time which qualifies for payment of agreed costs. Exposing the redacted information would reveal the apportionment of risks assumed by the Contractor and therefore the level of risk that the Contractor was prepared to price and accept;</p> <p>b) the redacted information may prejudice the Contractor in future negotiations on similar projects. Revealing that information is therefore expected to prejudice the Contractor's legitimate business and commercial interests; and</p> <p>c) the public interest has been served by revealing the existence of a capped delay costs regime. In light of this disclosure there is an overriding public interest against the disclosure of the precise amount of the caps of the delay costs</p>

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				payable by the Principal.
5.	Schedule 1, Item 27	The information redacted is a dollar figure.	<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>WDA 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"> <li>a) the redacted information sets out the daily rate of liquidated damages payable by the Contractor to the Principal if Completion is not achieved in the time required by the Construction Deed. Exposing the redacted information would reveal the apportionment of risks assumed by the Contractor and therefore the level of risk that the Contractor was prepared to price and accept;</li> <li>b) the redacted information may prejudice the Contractor in future negotiations on similar projects and prejudice the Contractor's legitimate business and commercial interests; and</li> <li>c) the public interest has been served by revealing the existence of a liquidated damages regime. In light of this disclosure there is an overriding public interest against the disclosure of the daily rate of liquidated damages.</li> </ul>
6.	Schedule 1, Item 36	The information redacted is a percentage amount.	<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 Contractor's cost structure or profit margins and would place the Contractor at a substantial commercial disadvantage in relation to other</p>	<p>WDA 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"> <li>a) the redacted information sets out the Contractor's margin to cover on-site overheads, site supervision, establishment costs and</li> </ul>

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			<p>contractors and provide visibility on the Contractor'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 interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>attendance. Exposing the redacted information would therefore disclose an important aspect of the successful tenderer's competitive pricing structure;</p> <p>b) the redacted information may prejudice the Contractor in future negotiations on similar projects. Revealing that information is therefore expected to prejudice the Contractor's legitimate business and commercial interests; and</p> <p>c) the public interest has been served by revealing the existence of a margin on direct costs. In light of the disclosure of this information there is an overriding public interest against the disclosure of the precise figure.</p>
7.	Schedule 3	The redacted information is dollar figures and percentage amounts that are set out in the Project Payment Schedule.	<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 Contractor's cost structure or profit margins and would place the Contractor at a substantial commercial disadvantage in relation to other contractors and provide visibility on the Contractor'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</p>	<p>WDA 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 the amount payable to the Contractor for the performance of the Contractor's obligations, together with information about how these amounts are broken down into sub-items; and</p> <p>b) revealing the redacted information would provide insight into the breakdown of the Project Contract Sum, and the amount for which the Contractor is willing to do such work. Disclosing the redacted information may prejudice the Contractor in future negotiations on similar projects. Revealing that information is therefore</p>

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			<p>and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>expected to reduce the competitive commercial value of that information to the Contractor and prejudice the Contractor's legitimate business and commercial interests.</p>
8.	Schedule 56, clause 5	The information redacted is a set of dollar figures.	<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><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, by revealing information which undermines the ability of the agency to negotiate similar arrangements in the future.</p> <p>There is an overriding public interest against disclosure.</p>	<p>WDA determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the amounts of the Lane Occupancy Fees payable in connection with traffic adjustments on the M5 East Motorway which are required as a result of works to be carried out under the Construction Deed;</li> <li>b) exposing the redacted information would reveal the apportionment of risks assumed by the Contractor and therefore the level of risk that the Contractor was prepared to price and accept;</li> <li>c) disclosure of the redacted information may prejudice the State's negotiations in future road projects which impact upon the M4 East Motorway, as the State may require alternative lane occupancy fees for such future projects; and</li> <li>d) the public interest has been served by revealing the existence of a Lane Occupancy Fee regime. In light of this disclosure there is an overriding public interest against the disclosure of the various amounts of the liability to the concessionaire under this regime.</li> </ul>
9.	Schedule 57,	The information	<i>Section 32(1)(d), item 4 (b), (c) and (d) of the</i>	WDA determined that there was an overriding public

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	clause 2 (Table)	redacted is the contents of a table.	<p><i>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><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, by revealing information which undermines the ability of the agency to negotiate similar arrangements in the future.</p> <p>There is an overriding public interest against disclosure.</p>	<p>interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the allocation of responsibilities between the Principal and the Contractor to comply with the requirements of an interface agreement between the State and Interlink (the concessionaire of the M5 South West Motorway);</li> <li>b) exposing the redacted information would reveal the apportionment of risks as between Principal and Contractor that the State was able to negotiate for the purpose of this project and the level of risk that the Contractor was willing to price and accept;</li> <li>c) disclosure of the redacted information may prejudice the agency's future negotiations with potential contractors in terms of how to apportion the responsibility of complying with any necessary interface agreements. This may hinder future negotiations where an agency seeks an alternative risk allocation; and</li> <li>d) the public interest has been served by revealing the existence of an allocation of responsibilities to fulfil the obligations of the relevant interface agreement. In light of this disclosure there is an overriding public interest against the disclosure of how the responsibility to comply with the requirements of the interface agreement were apportioned.</li> </ul>



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10.	Exhibit F – M5 Southwest Motorway Interface Agreement	The information redacted is the terms of the M5 Southwest Motorway Interface Agreement.	<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, by revealing information which undermines the ability of the agency to negotiate similar arrangements in the future.</p>	<p>WDA determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the terms of the relationship between the State and Interlink (the concessionaire of the M5 South West Motorway which will be impacted by the works to be carried out under the Construction Deed);</li> <li>b) disclosure of the redacted information may prejudice the effective exercise of the State's functions such that it may hinder the State's ability to negotiate and agree interface agreements with other motorway concessionaires; and</li> <li>c) the public interest has been served by revealing the existence of interface arrangements between the State and Interlink, without revealing the particulars of the arrangement between the parties. In light of this disclosure there is an overriding public interest against the disclosure of the terms of the interface agreement.</li> </ul>