

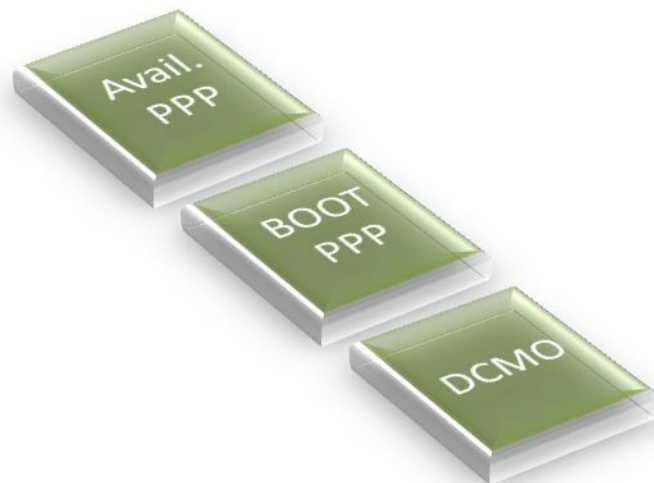


ACT
Government

The **Partnerships** Framework

Guidelines for Public Private Partnerships

Second Edition: May 2016



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Foreword from the Treasurer

The ACT Government is committed to improving the facilitation of infrastructure delivery within the ACT. As an extension of *The Capital Framework*¹, this document, *The Partnerships Framework – Guidelines for Public Private Partnerships*, provides further guidance on the procurement of public infrastructure using complex delivery models that involve the private sector to a greater degree, including Public Private Partnerships (“PPP”).

As PPP projects cannot be managed by way of a traditional procurement process, it is essential to have a dedicated policy framework that is fit-for-purpose in facilitating an effective and efficient process for private sector participants and the ACT Government.

The Partnerships Framework – Guidelines for Public Private Partnerships provides a transparent and guiding framework for the ACT Government to develop and deliver PPP projects in the ACT that adhere to the *National Public Private Partnerships Guidelines* and link to existing ACT policy on capital procurement and funding.

The document’s main objective is to provide consistency and clarity to parties involved in a PPP project, both private and public sectors alike. In particular, how a PPP project will be identified, assessed, tendered and managed in order to meet the ACT Government’s requirement of ensuring public interest, delivering value for money, and achieving appropriate service delivery outcomes.

The Partnerships Framework will ensure that accountability and fairness is maintained throughout the procurement and delivery process, while maximising value for money to the ACT and staying within the ACT Government’s affordability envelope.

Andrew Barr, MLA
Chief Minister and Treasurer

¹ ACT Government (2016), *The Capital Framework*, <http://www.procurement.act.gov.au/about/capital-framework>

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Executive Summary

1 Introduction

The ACT Government seeks to maintain an appropriate level of investment in order to develop a strong and resilient local economy. This holds true for infrastructure supporting economic development and growth, and infrastructure to enhance and sustain social outcomes for the general public.

In order to support this objective, *The Capital Framework* has been implemented to provide a platform for more progressive and sophisticated approaches towards capital project delivery in the ACT. *The Capital Framework* was developed to support investments of any type, complexity or cost through rigorous internal government processes for assessing the case for new investment projects in the ACT.

As an extension to *The Capital Framework*, *The Partnerships Framework* has been developed for major capital projects where the ACT Government engages with the private sector to a greater degree through arrangements such as Public Private Partnerships (“PPP”) and unsolicited proposals. *The Partnerships Framework* aims to encourage private sector investment in social and economic infrastructure, and related services where value for money for the ACT Government can be clearly demonstrated by way of efficient and innovative delivery approaches.

This policy document outlines and supports a rigorous project evaluation and governance approach, including the competition for and awarding of contracts, by clearly articulating accountability outcomes for both the ACT Government and private sector entities involved in the process.

This Second Edition of *The Partnerships Framework, Guidelines for Public Private Partnerships* replaces the previous First Edition (December 2013) and is intended to be reviewed approximately every two years to ensure its continued relevance and effectiveness.

2 Understanding PPPs

A PPP is a long-term contract (generally between 20 and 50 years) between the public and private sectors to deliver public infrastructure projects and related services. Its defining characteristic is that it is an arrangement where public infrastructure assets are delivered using private sector finance. PPPs can be effective for projects where opportunities for significant risk assignments between the public and private sector exist and when they can be clearly defined and measured. Typically, PPPs lend themselves well to:

- Social infrastructure and related services, for example, hospitals, prisons, schools etc.; and
- Economic infrastructure and related services, for example, roads/bridges/tunnels, ports, utilities, rail etc.

The Partnerships Framework applies to the following complex models that have been identified in *The Capital Framework* when more sophisticated delivery approaches are desirable:

- **Build, Own, Operate, Transfer PPP (“BOOT PPP”)** – A BOOT PPP is typically used for economic infrastructure projects that are privately financed and where demand risk can be transferred to the private sector;
- **Availability Payment PPP (“Availability PPP”)** – Availability PPP is generally used for social infrastructure projects that are fully or partially privately financed and where Government pays the private sector payments for service availability; and
- **Design, Construct, Maintain, Operate (“DCMO”)** – DCMO² is used on infrastructure projects where the private sector is contractually obliged to provide construction and comprehensive service delivery but where private finance is not required and the Government wants to retain direct control over the entire life of the project.

3 Guiding Principles

The Partnerships Framework with respect to PPP delivery in the ACT is underpinned by five guiding principles. These principles are aligned with the ACT’s broader infrastructure and economic development objectives as reflected in *The Capital Framework*.

The Partnerships Framework will:

- Manage the complex delivery models outlined in *The Capital Framework* to achieve commercially-driven project outcomes that benefit the ACT;
- Help ensure that projects are delivered in a cost-effective manner to the ACT Government;
- Better manage project delivery risks by providing clarity and certainty to public and private sector stakeholders involved in terms of guidance and communication in a timely manner;
- Facilitate timely procurement processes and, where possible, reduce unnecessary transaction costs for both the public and private sectors; and
- Recognise and adopt a ‘partnership-led’ approach by working in a collaborative and cohesive manner with public and private sector participants to support PPP project delivery.

4 Using these Guidelines

The Capital Framework is the ACT Government’s primary and overarching process framework for the assessment of capital works solicited by the ACT Government, including major infrastructure projects.

For projects where the use of more sophisticated procurement methods are considered desirable and greater private sector involvement is required, *The Capital Framework* will be complemented by *The Partnerships Framework* via two specific policy guidelines:

- For projects **solicited by the ACT Government**, that are being considered under a PPP model, this policy document should be applied in conjunction with the *National PPP Guidelines*; and
- For major infrastructure projects **proposed by the private sector**, the *Guidelines for Unsolicited Proposals* should be followed accordingly. Additionally, this policy document should be applied if the unsolicited proposal is being considered under a PPP arrangement.

² There are elements of *The Partnerships Framework* that are not relevant to DCMO projects. For instance, matters that relate to financing.

Infrastructure Australia's *National PPP Guidelines* is the official PPP framework for the ACT Government. This document, *The Partnerships Framework*, assists practitioners in navigating the *National PPP Guidelines* and the jurisdictional departures that outline the ACT Government's key policy and commercial positions for PPPs in the ACT.

5 Determining PPP Delivery

As a general guideline, any public infrastructure project that has been identified as a Tier 1 project under *The Capital Framework* will require consideration for a PPP as a procurement method³.

In order to determine whether a PPP is an appropriate delivery model for a major infrastructure project, it is important for the ACT Government to understand the project's key drivers and constraints including consideration of budget, timeframes, stakeholder commitments and market capacity.

This process involves a rigorous investigation of alternative procurement delivery models available under *The Capital Framework*, as well as involving key stakeholders and advisors as early as possible in the planning and development of projects.

A PPP model tends to be suitable for infrastructure projects that are long-term, large and complex. Typically, there will be opportunities for innovation and the transfer of risk to parties best able to manage them. However, they also need to have clearly articulated and measurable project objectives and scope to be able to hold parties involved accountable.

As PPP projects involve long concession terms and can be costly to operate and maintain, it is important to determine if there is sufficient market appetite and competitive tension to ensure that the ACT Government achieves value for money.

A key component of the value for money assessment is the Public Sector Comparator ("PSC"). The PSC provides an approximate measure of a range of outcomes that government would likely face in delivering a project under traditional public sector procurement methods.

That is, the PSC provides a hypothetical risk-adjusted whole-of-life cost estimate to Government using the most efficient and non-PPP form of delivery available to the public sector under *The Capital Framework*. The PSC will account realistically for the whole of life costs of an asset including the achievement of a satisfactory standard at the end of the proposed contract term.

The PSC is not only used for evaluating the viability and attractiveness of a PPP project, it is also used as a tool when assessing private sector bids during the procurement phase.

6 Procuring a PPP Project

The procurement of a PPP project requires substantial commitment from both the public and private sectors. The ACT Government will endeavour to commit the appropriate capabilities and resources to ensure that the tender process is completed in a timely manner.

³ A Tier 1 Project is a project with a total estimated investment of greater than \$50 million or greater than \$10 million and assessed as high risk.

The procurement phase of a project is divided into three stages. The stages are:

- **Expression of Interest (“EOI”)** – The first phase of a formal tendering process used to shortlist bidders to proceed to submit more detailed proposals;
- **Request for Proposal (“RFP”)** – The tender phase involving the release of more detailed tender and contract material to shortlisted bidders for detailed, fully costed responses, followed by evaluation and selection of the preferred bidder; and
- **Negotiation and Transaction Phase** – The final phase of a tender process where the preferred bidder and Government negotiate and execute a commercially binding agreement.

The EOI and RFP stages represent key interface points in the tendering process for the ACT Government for the identification, evaluation and selection of a private sector bidder who best delivers on the project’s objectives with an intent to enter into a commercially binding agreement under a PPP arrangement.

The EOI stage represents a preliminary view of the private sector’s likely ability to deliver on the project’s objectives and it also serves to validate market interest and the degree of competitive tension to support a value for money outcome for the ACT.

The RFP stage represents a substantially more detailed process requiring further commitment in terms of time and resources from both the ACT Government and shortlisted private sector bidders. It is in this process where a preferred bidder is selected and final negotiations begin before the contract is awarded and executed.

It is essential to ensure that a transparent and consistent process is followed. The ACT Government will be supported by a probity advisor so that an appropriate and robust process is adopted to ensure that all parties involved are treated fairly.

7 Delivering and Managing a PPP Project

After a PPP project has reached contractual close, where a commercially binding agreement has been executed, and transaction close, where conditions precedent have been fulfilled, the project moves into the following two stages:

- **Project Implementation**– This stage commences when design and construction phase starts through to the commercial acceptance of a project where the services required by the output specifications begin; and
- **Project Operation**– This stage covers the provision and use of the contracted services during the remaining life of the contract, including the period leading up to and after contract expiry or termination.

Significant ACT Government effort and resources will be focused on managing the PPP contract during project’s implementation and ensuring it is fit-for-purpose at commissioning. Following this, contract management will involve ensuring that service payments by the Government to the private sector operator are matched by specific service delivery standards over time. This will be subject to performance-based abatement.

To ensure that the ACT Government retains a sensible amount of control when managing a contract, effective monitoring and reporting performance metrics and incentive frameworks will be required. As PPP projects are inherently long-term in nature, maintaining a strong sense of relationship between the ACT Government and the contracted private parties can minimise delays or issues that arise during the life of the project.

Furthermore, a project will require dedicated and appropriately qualified and experienced resources, preferably those who were closely involved in establishing and negotiating the PPP contract. This will ensure appropriate knowledge transfer during the maintenance and enforcement of the contract throughout the project lifecycle.

Finally, contract management will be need to be cognisant of appropriate consent processes, particularly when major decision making milestones occur, to ensure that they are resolved in a timely manner.

8 Governance

The Chief Minister Treasury and Economic Development Directorate (“CMTEDD”) will be the overall responsible directorate for a project during the procurement and transaction phase, once it has been approved by Cabinet to be a PPP. The Infrastructure Finance and Advisory Division (“IFAD”) in CMTEDD will coordinate with other central and sponsoring directorates accordingly over the investment lifecycle of a PPP project. In particular, during the transaction phase of a PPP project, IFAD will lead the day-to-day responsibilities of assembling a dedicated project team to be overseen by a steering committee and prepare and manage the transaction phase. The Director, Major Projects will be responsible for leadership of the procurement phase.

As the PPP project shifts towards implementation, Procurement and Capital Works (“PCW”) will lead the day-to-day responsibilities during construction and work with the Sponsoring Directorate in commissioning of the asset. The sponsoring Directorate(s), PCW and IFAD will maintain their involvement in Executive Steering Committees and Project Control Groups and any other Governance structures. When the PPP project commences operations, the Sponsoring Directorate (typically the directorate whose portfolio governs the completed PPP project) will inherit day-to-day responsibilities over the life of the project. IFAD will continue to be involved providing advice, support and major life of project decision making as required. IFAD ‘Life of Project’ responsibilities include those set out at **Appendix D**.

The dedicated project team represents the nexus in enabling the transition of responsibilities between ACT directorates over a PPP project’s investment lifecycle. It will comprise both external and internal resources providing the project team with flexibility in terms of being able to ‘scale up or down’ to remain cost-effective in accordance to the project workload at any given period of time in a project’s lifecycle.

This will also facilitate and support knowledge transfer and retention within the project team, as well as draw in appropriate competencies and capabilities, as required, to ensure that Government has the capacity and ability to carry out its obligations in a PPP arrangement. In supporting transparency and fairness, PPP projects will be subject to disclosure requirements, including tender release through Tenders ACT, and the development and publication of contract summaries of PPP projects to Cabinet and the general public providing a summary of key project features and contract elements.

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1. Introduction

1.1 Background

An appropriate level of investment needs to be maintained in order to develop a strong and resilient economy in the Australian Capital Territory (“ACT”). This holds true for economic infrastructure such as transport links to allow the movement of resources, communications to support the spread of information, and utility networks to provide basic services for businesses and households.

Investment is also essential for social infrastructure such as hospitals, education, recreation and cultural facilities that need to be supported to provide health services, enhanced learning opportunities, and build sustainable communities for the general public.

Until recently, the ACT Government has relied on traditional procurement methods to deliver its capital requirements. While traditional approaches work well for less complex and low risk infrastructure procurements, they do not always provide the necessary incentives to innovate, and improve service delivery or whole of life value for money outcomes for the ACT.

The ACT Government has implemented a progressive and sophisticated approach for capital works delivery through *The Capital Framework*⁴.

An extension of this framework is *The Partnerships Framework* which represents a delivery framework for capital projects that engages the private sector to a greater degree through arrangements such as Public Private Partnerships (“PPP”) and unsolicited proposals. *The Partnerships Framework* consists of two separate guidance documents:

- The Partnerships Framework – Guidelines for Public Private Partnerships; and
- The Partnerships Framework – Guidelines for Unsolicited Proposals.

1.2 Objectives

The objectives of *The Partnerships Framework – Guidelines for Public Private Partnerships* are to:

- Encourage private sector investment in social and economic infrastructure, and related services where value for money for the ACT Government can be clearly demonstrated;
- Encourage efficiency and innovation, where appropriate, in the provision of social and economic infrastructure, and related services;
- Support rigorous evaluation and provide strong governance over the selection of projects for PPPs, including the competition for and awarding of contracts; and
- Clearly articulate accountability outcomes for both the ACT Government and private sector entities.

1.3 Purpose of the Document

The ACT Government has defined key strategic and operational priorities for advancing the economic and social needs of the ACT.

⁴ ACT Government (2016), *The Capital Framework*, <http://www.procurement.act.gov.au/about/capital-framework>

There may be opportunities for partnerships between the ACT Government and the private sector that can be best addressed through the use of PPP arrangements. As a result, the ACT Government may identify potential projects that could be best delivered by way of a PPP model.

This document sets out the requirements for the ACT Government and private sector participants when determining, delivering and ensuring appropriate governance of a PPP project during its investment lifecycle. That is, it supports and describes the jurisdictional departures from Infrastructure Australia's *National PPP Guidelines*.

It should be noted that this document only applies to projects that have been approved as PPPs or DCMOs by the ACT Government.

Where appropriate, the processes within *The Capital Framework* ("TCF") and *Guidelines of Unsolicited Proposals* will apply to promote standardisation and consistency with respect to infrastructure planning, assessment and delivery in the ACT.

The ACT Government would like to acknowledge that this document draws on existing guidelines in New South Wales, Victoria and the Commonwealth Government (Infrastructure Australia), in addition to other sources.

It is planned that these guidelines will undergo a review two years after implementation by the Chief Minister Treasury and Economic Development Directorate ("CMTEDD") to assess its effectiveness in managing PPPs in the ACT. Following the initial review, CMTEDD will be responsible for maintaining and updating these guidelines as required.

1.4 Structure of the Guidelines

The remainder of this document is structured as follows:

- **Understanding PPPs** – This section provides an overview of what is a PPP, how they impact on Government and the current experience in Australia;
- **Guiding Principles** – This section provides the overarching rationale and principles to drive the use of a PPP for a project;
- **Using these Guidelines** – This section provides a description of how these guidelines fit within the wider policy framework in the ACT Government;
- **Determining a PPP Delivery** – This section provides guidance on how PPP delivery should be determined within *The Capital Framework* and *Guidelines for Unsolicited Proposals*;
- **Procuring a PPP Project** – This section provides guidance on the appropriate stages of procurement of a PPP project and to the standard that is required;
- **Managing a PPP Project** – This section provides guidance for the delivery and operations of a PPP project in terms of contract management; and
- **Governance** – This section provides guidance on the governance structure throughout the lifetime of a PPP project which needs to be followed by all the parties involved.

Appendix A provides a glossary of the terms used in this document, **Appendix B** contains the references, and **Appendices C to G** contain additional guidance material to support in the procurement of PPPs.

2. Understanding PPPs

2.1 Overview

This section briefly defines and discusses Public Private Partnerships (“PPP”) in terms of their strengths and weaknesses, and the Australian experience, for the purposes of providing additional context to this policy framework.

2.2 What is a Public Private Partnership (“PPP”)?

A PPP is a long-term contract, generally between 20 and 50 years, between the public and private sectors to deliver public infrastructure projects and/or related privately operated public services. Its defining characteristic is that the contract delivers public infrastructure assets or services using private sector finance. Through a PPP, governments engage the private sector to deliver infrastructure and related services to support it in its broader remit to the public community. Types of infrastructure can include:

- Social infrastructure and related services – e.g. hospitals, prisons, schools etc.; and/or
- Economic infrastructure and related services – e.g. roads, bridges, tunnels, ports, utilities, rail etc.

It should be noted that PPPs are not a method for Government to forego capital-related expenditure. Rather, it is an approach which usually involves the deferral of upfront payments for the project over the life of the project and/or the length of the contract (which might be a franchise or concession term).

PPPs can be effective for projects where opportunities for significant risk assignments between the public and private sector exist and when they can be clearly defined and measured. PPPs characteristically include:

- Private sector taking on design, construct and operation risks to drive innovation and productivity improvements;
- Government providing land, risk sharing and other mechanisms; and
- Private sector receiving payment from Government or taking on demand risk for service provision.

Unlike traditional procurement⁵, it is usually the private sector in the PPP contract that finances and builds the infrastructure and is ultimately responsible for its condition and performance over the life of the project or concession term.

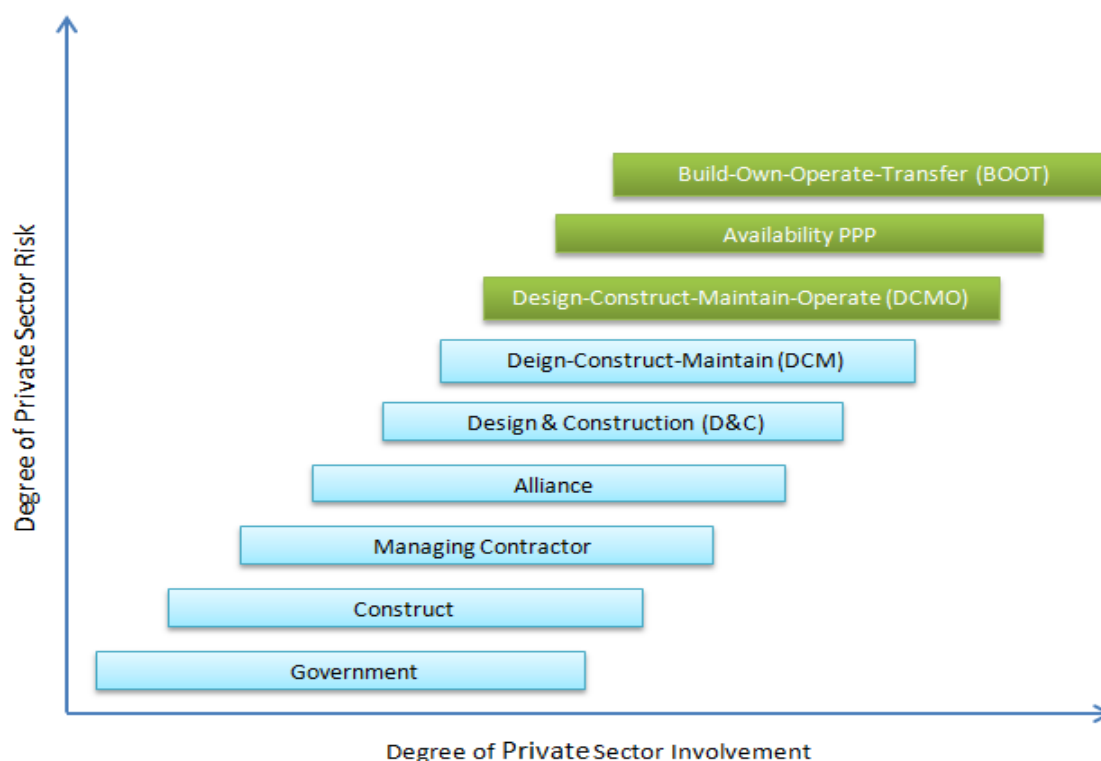
Historically for PPP arrangements, Government has generally retained the responsibility for the provision of core services (i.e. where they have particular responsibilities to the general public using the service), while non-core services have been included in the scope of the private sector provision arising from the infrastructure developed (i.e. maintenance, cleaning and security). However, increasingly, governments have expanded the scope of private sector provision to include core services.

⁵ Where Government retains ownership such as in construct only and design and construct delivery models.

This is largely dependent on the complexity and nature of the project and the project's ability to be decoupled from government operations. It also depends on the economic and political climate and government appetite for risk transfer at a particular point in time.

Figure 1 illustrates the delivery models that have been identified in *The Capital Framework* ("TCF"). The delivery models have been plotted in terms of the degree of private sector involvement against the corresponding level of risk transfer.

Figure 1 – Procurement Spectrum⁶



As highlighted in **Figure 1** above and for the purpose of this document, and unless otherwise stated, the term 'PPP' shall refer to the three delivery models covered below:

- **Build, Own, Operate, Transfer PPP ("BOOT PPP")** – This typically involves the design and construction of a project and also typically includes maintenance and operations for a period of between 20 and 50 years. This arrangement tends to be fully financed by and includes a transfer of revenue risk to the private sector.
 - Economic infrastructure, such as toll roads, utilities and telecommunications, have been delivered under this arrangement in Australia
- **Availability Payment PPP ("Availability PPP")** – This arrangement generally involves the design and construction of a project integrated with maintenance and operation of the asset for a period of between 20 and 50 years. It incorporates a fully financed service contract between the public and private sectors where Government pays the private sector bidder (typically a consortium) to deliver infrastructure and related services over the long term. The

⁶ It should be noted that variations and/or hybrids of the listed models using different names often exist.

private provider will build the facility and operate or maintain it to specific standards over a period of time.

- Social infrastructure, such as hospitals, public transport, prisons and schools, have been delivered under this arrangement in Australia.
- **Design, Construct, Maintain, Operate (“DCMO”)** – A design and construction (“D&C”) project combined with an integrated Operate & Maintain (“O&M”) contract. DCMOs typically run for a period of between 10 to 30 years. The contractor has ongoing maintenance and operation obligations in addition to design and construction of the project. This can drive a benefit in reducing lifecycle costs where the contractor takes into account the ongoing obligations over the life of contract when designing and constructing the facility.
 - This delivery model can be used for projects where Government prefers to finance or fund the project itself.
- **Other** – Other projects such as design construct and maintain projects where directed by Cabinet.

2.3 How can they impact on Government?

PPPs can provide a range of benefits to government over traditional procurement methods but they can also introduce issues not commonly associated with traditional procurement methods. The following sub-sections describe a number of advantages and disadvantages of PPPs at a strategic level.

Table 1 provides a summary of advantages and disadvantages discussed. This list should not be considered as exhaustive.

Table 1 – Advantages and disadvantages of PPPs from the public sector’s perspective

Advantages	Disadvantages
Stronger incentives for private sector efficiencies	Reduced control in terms of flexibility and adaptability (post financial close)
Incentives for whole-of-life cost savings for maintenance and operations	Addressing unexpected financial outcomes
Outcome-focused service delivery	Potential cost burdens and complexities arising from changing needs over time
Optimum risk assignment to the private sector	More complex contract management over the life of the project

2.3.1 Advantages of PPPs

The following section outlines the four key benefits of PPPs.

(a) Government can take advantage of private sector efficiencies that can be created during construction

One of the most significant benefits derived from the delivery of infrastructure under a PPP approach is the substantially increased pre-contract certainty achieved for time, cost and quality. The focus on clearly articulating the required outcomes in the contract, instead of actual designs, allows the private sector to maximise efficiency throughout all stages of development and ensure that value opportunities are captured. Coupled with the incentives to ensure that contracted payments commence on time after completion of the asset, this transfer of design responsibility and leveraging of private sector delivery experience has led to PPPs having a solid track record of on-time and on-budget construction completion.

In addition to cost and time certainty, PPP contractors are required to deliver designs that meet or exceed the government's specified requirements for the intended function of an asset. Placing consortia made up of designers, builders and operators in a competitive tender against each other and the PSC can result in optimised design outcomes. Such arrangements maximise the prospect that the solution will be innovative, efficient, buildable and deliver whole-of-life cost benefits.

(b) Whole-of-life cost savings for maintenance and operations

Significant cost savings over the life of the project can be derived as a result of lifecycle works and the maintenance of infrastructure being planned upfront by the private sector. Well-designed PPP contracts can allow for the maintenance requirements for a facility to be transferred effectively to the private sector contractor, especially for major replacement works which tend to be more costly than ongoing planned and reactive maintenance.

The shifting of long-term operation and maintenance responsibilities to the private sector creates an incentive to ensure that construction quality is high due to the private sector bearing the risk of these cost elements over the contract period. In turn, this leads to savings in maintenance costs over the life of the asset.

In contrast, traditional procurement usually separates the consideration of expenditure for D&C and O&M components of a project. In addition, due to the appropriation mechanisms in the public sector, funding constraints for necessary infrastructure improvements, as well as the greater focus on holistic asset utilisation, can increase the chances of service delivery being disrupted due to maintenance.

PPPs provide a contractual mechanism to balance asset utilisation and service delivery to a party that is able to do so in a sustainable and commercial manner over the life of the contract.

(c) Outcome-focused service delivery

Benefits in the service delivery of the infrastructure by the private sector are also realised by providing incentives for the private sector contractor and allowing the public sector to primarily focus on the outcomes of core service objectives.

As private sector infrastructure providers rely on user fees from customers for revenue (as in BOOT PPPs) or service availability payments from Government (as in Availability PPPs), they have a strong incentive to provide superior customer service, thereby creating additional public value.

A properly structured PPP focuses Government on outputs rather than inputs, allowing leadership attention to be on the outcome-based public value they are trying to create. While traditional procurement can also be outcome-focused, PPP arrangements embed whole-of-life requirements and associated resource commitments to meeting the specified outputs.

(d) Effective risk transfer to the private sector

As PPPs are long-term contracts, the parties involved are mutually incentivised to allocate risk in a way that optimises the returns for all the parties contracted. For example, when project risks are transferred to the party best able to manage it, whether public or private, benefits can be derived from the transaction.

PPPs provide construction, service and finance industries with opportunities to generate efficiencies and cost-effectiveness in the delivery of infrastructure and non-core services through innovation and specialist expertise, as well as to develop their businesses by doing so.

Project scoping and risk assessment by Government in a PPP arrangement can provide greater benefits to the public sector in the long run, due to the required additional focus on due diligence when monitoring the project.

This is supplemented by the rigour of private sector debt financiers providing their own due diligence assessment and monitoring of the project, potentially contributing to fewer contract variations and greater contractual certainty.

Since PPP arrangements are more complex than conventional procurement models, management weaknesses could occur if the Government does not appropriately address the additional complexity. This risk is offset through additional effort in the planning and procurement phase and supplementing public sector resources with specialist expertise where required.

2.3.2 Risks of PPPs to be managed

In understanding the appropriate circumstances for using PPP delivery and the risk to be mitigated, it is necessary to address the potential disadvantages of PPPs. The following section outlines the four key disadvantages of PPPs that practitioners need to be aware of:

(a) Reduced control

Due to the inherently long contract terms of PPPs, the contracting parties often require a high degree of certainty in terms of what is expected (e.g. Governments need to be clear on what they are buying). As a result, contract structures are often comprehensive and complex and are hence often inflexible and unable to adapt to changing environments and/or user requirements.

For projects where user requirements are unclear (e.g. a poorly scoped project) and/or where user requirements change over time (e.g. due to rapid technological changes), PPPs can be costly and

complicated to renegotiate due to the difficulty with dealing with variations that can have a ‘knock-on’ effect on both the contract and the parties involved.

(b) Addressing unexpected financial outcomes

PPPs may not realise the intended financial outcomes of the project due to a range of factors including incorrect forecasting or unexpected events. Consequently, they may not realise value for money for either Government or private sector participants.

PPPs can address value for money considerations by allocating risk appropriately and lowering the project costs where possible. This is also addressed implicitly by private sector efficiency generating scale economies that outweigh higher costs of private sector borrowing.

(c) Complexities arising from changing needs and adaptability⁷

PPPs may result with user groups or Government having to absorb additional costs if the project does not meet demand expectations. For example, increased fees for user groups could lead to reputational risk for Government.

This can be limited by contract to pre-determined rates and by using other mechanisms such as availability fees, shadow tolling, subsidies, and linking the Government’s ability to pay to ensure that end users do not have all the costs passed on.

The public sector may also be forced to absorb the additional cost of providing the service if the private provider is unable to continue the contract. However, this is countered by the Government being provided with an infrastructure asset at below cost.

The unsuccessful transfer of demand risk can either result in increased premiums transferred from private sector bidders to the public sector or reduce industry appetite to participate. This can result in reduced competitive tension when tendering for PPP projects, thereby impacting on value for money outcomes.

(d) Complex project management over the life of the project

Government may need to be mindful of differences between the public and private sectors in the delivery of projects when evaluating options. Private sector projects can have a higher cost of capital (usually due to the public sector being able to borrow at lower interest rates).

This can result in higher transaction costs (e.g. procurement and advisor costs) and financing costs. However, the premium involved in private sector financing is often acceptable to Government if significant project risks are transferred and efficiencies achieved. Accordingly any comparison between the public and private sector cost of capital needs to be risk-adjusted in order to be an appropriate comparison.

⁷ This applies to BOOT PPPs.

2.4 The Australian PPP Experience

PPP procurement in Australia is conducted in accordance to Infrastructure Australia's *National Public Private Partnership Guidelines* (2008) (hereafter the "*National PPP Guidelines*"). The *National PPP Guidelines* were largely based on precedents in NSW and Victoria, which in turn were based on the United Kingdom guidelines for Private Finance Initiatives ("PFI")⁸.

For a range of reasons, Australian states and territories have produced jurisdictional departures on certain policy and procedural matters, reasons include legislative differences and from Auditor's-General recommendations.

A number of state and territory Governments have sought to streamline their policies where possible. As noted by Infrastructure Australia in the *National Public Private Partnership Guidelines Volume 6: Jurisdictional Requirements*, Western Australia, South Australia, Tasmania and Northern Territory do not significantly depart from the *National PPP Guidelines*.

Only in NSW, Queensland and Victoria have PPP policies prescriptively departed from the national approach. This has largely been due to their more mature PPP markets, having applied PPP models to a greater extent prior to the *National PPP Guidelines*.

As noted in the *National PPP Guidelines*, the PPP approach has demonstrated the ability to deliver value for money, as measured by the projects quantified costs and benefits. A report by Infrastructure Partnerships Australia estimated a cost savings of up to 11.4% on average, under a PPP, compared to traditional procurement methods⁹.

Furthermore, an independent study into PPPs in Australia found that, in comparison to traditional projects, PPPs have resulted in lower average cost over-runs and lower average construction phase delay. PPPs experienced an average construction cost over-run of 4.3%, compared to 18%; and a construction phase delay of 1.4%, compared with 25.9% for traditionally procured projects¹⁰. PPPs represent less than 10% of total public sector expenditure on infrastructure procurement in Australia, with the greatest use of PPPs being in NSW and Victoria¹¹.

The most significant barrier to increased participation in the Australian PPP market has been the higher transaction costs generally associated with Australia PPP projects. However the 'stop-start' nature of the pipeline for future PPP projects, which has resulted in a higher degree of uncertainty in the market, may have led to a lower level of interest by private sector participants¹².

⁸ http://webarchive.nationalarchives.gov.uk/20130410173120/http://hm-treasury.gov.uk/infrastructure_public_private_partnerships.htm

⁹ Infrastructure Partnerships Australia (2009) *Performance of PPPs and Traditional Procurement in Australia*

¹⁰ University of Melbourne Study, 2008

¹¹ Clayton Utz (2013) *Improving the Outcomes of Public Private Partnerships*

¹² *Ibid.*

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3. Guiding Principles

3.1 Overview

This section outlines five key principles under *The Partnerships Framework* (“TPF”). These principles reflect the objectives outlined earlier in this document and are aligned with the ACT’s broader infrastructure and economic development goals as reflected in TCF.

The Partnerships Framework will:

1. Expedite the highly integrated delivery models outlined in *The Capital Framework* to achieve commercially-driven project outcomes that benefit the ACT;
2. Help ensure that projects are delivered in a cost-effective manner to the ACT Government;
3. Better manage project delivery risks by providing clarity and certainty to public and private sector stakeholders involved in terms of guidance and communication in a timely manner;
4. Facilitate timely procurement processes and, where possible, reduce unnecessary transaction costs for both the public and private sectors; and
5. Recognise and adopt a ‘partnership-led’ approach by giving due consideration to input from public and private sector participants.

3.2 Guiding Principles

The guiding principles should be consistently applied in the determination and delivery of PPP projects. Policy positions set out in this document have been designed to support these principles. The following sub-sections provide further context of the guiding principles at a strategic level.

3.2.1 Expedite Complex Procurement

*The Capital Framework*¹³ defines nine delivery models for capital works. Three of these models are complex public-private relationship arrangements. The policy guidelines under *The Partnerships Framework* relate to:

- BOOT PPP;
- Availability PPP; and
- DCMO

TCF delivery models systematically assign risk to parties best able to manage them, including the provision of incentives to achieve project outcomes through the use of private financing.

For these models to be delivered successfully, consideration needs to be given to service certainty, demand, functional requirements and Government’s ability to carry its responsibility in concert with the private sector’s obligation. Traditional delivery models are often constrained when dealing with these issues.

Responsibility for successful PPP project delivery will sit with the Chief Minister Treasury and Economic Development Directorate (“CMTEDD”) to ensure that accountability and financial

¹³ ACT Government (2016), *The Capital Framework*, <http://www.procurement.act.gov.au/about/capital-framework>

consideration are aligned with the decision making capability of a central agency. The responsible Minister for PPPs in the ACT is the Treasurer.

3.2.2 Achieving Value for Money

Demonstrating value for money is a fundamental criterion for all procurement involving the public sector. Value for money for PPPs is supported by:

- Risks being systematically allocated to the party best able to manage it;
- Competitive market tension being achieved;
- Innovation and productivity improvements and synergies being realised; and
- Evidence-based net benefits being clearly demonstrated to the ACT.

Furthermore, the ACT Government will require a realistic measure of the value for money that the Government can expect from accepting a private sector bid to deliver on a public infrastructure project and associated service delivery relative to the public sector's ability to do so.

To support the achievement of value for money, practitioners of PPPs in the ACT will be subject to a standardised and rigorous development, evaluation and procurement process for PPP projects, in accordance with TCF, *Guidelines for Public Private Partnerships* and the *National PPP Guidelines*.

3.2.3 Reduce PPP Procurement Process Risks

PPPs are inherently large, complex and costly projects that typically involve a large private sector consortium to be able to deliver along a project's investment lifecycle (i.e. from design, build, and construction to operations).

As such, greater variability, risk or uncertainty perceived by the market will be reflected in its appetite to participate. This can erode the value Government can receive under a PPP arrangement.

Clarity and transparency in terms of timing, decision making and the application of commercial principles in a manner that is both practical and functional will be critical to creating confidence and certainty in the market's willingness to participate in PPP project delivery in the ACT.

3.2.4 Facilitate a Timely Procurement Process

In order to run a timely and effective procurement process, the ACT Government will endeavour to reduce bid development time and associated costs, for both public and private stakeholders where feasible.

The ACT Government is conscious that it is competing against other jurisdictions, both domestically and internationally, for a limited pool of private sector resources. Appropriately qualified and experienced consortia tendering for PPPs in Australia are finite and typically commit to projects in sectors and areas where not only the return and certainty are high but also where time and effort can be spent cost-effectively.

By carrying out procurement in a timely manner in the ACT, the ACT Government can minimise the opportunity cost faced by private sector bidders when committing to a particular project, thereby increasing the attractiveness of bidding for PPP projects in the ACT.

3.2.5 Adopt a Partnership Approach

The ACT Government will work in a collaborative and coordinated manner with the market to support the successful delivery of PPP projects. By adopting a partnership approach, the ACT Government aims to align objectives for all parties in the PPP and generate more collaborative working and cohesive outcomes from the PPP process.

The ACT Government also recognises that by increasing the scope of working together with the private sector, increased opportunities for innovation and value for money can be achieved. Where commercially appropriate, under rare circumstances, the ACT Government will consider supporting and encouraging private sector participation and commitment to PPP projects in the ACT by way of direct and indirect contributions.

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4. Using the ACT PPP Guidelines

4.1 Overview

This section outlines how TPF aligns with broader ACT Government policy and how it should be applied and referenced in the development, procurement and delivery of PPP projects.

In particular, this section provides the policy context of TPF in relation to:

- **The Capital Framework (“TCF”)** – The overarching process for the assessment of capital works funding proposals in the ACT;
- **Guidelines for Unsolicited Proposals** – A dedicated process that is part of TPF to manage unsolicited bid proposals put forward in the ACT via the ‘Six Ways’ Framework; and
- **National PPP Guidelines** – A set of guidelines and volumes developed and maintained by Infrastructure Australia that were adopted nationally in 2008 based on existing jurisdictional policies and procedures.

The above documents are referenced in **Appendix B**.

4.2 Framework Alignment

TCF is the ACT Government’s primary and overarching process framework for the assessment of capital works solicited by the ACT Government, including major infrastructure projects.

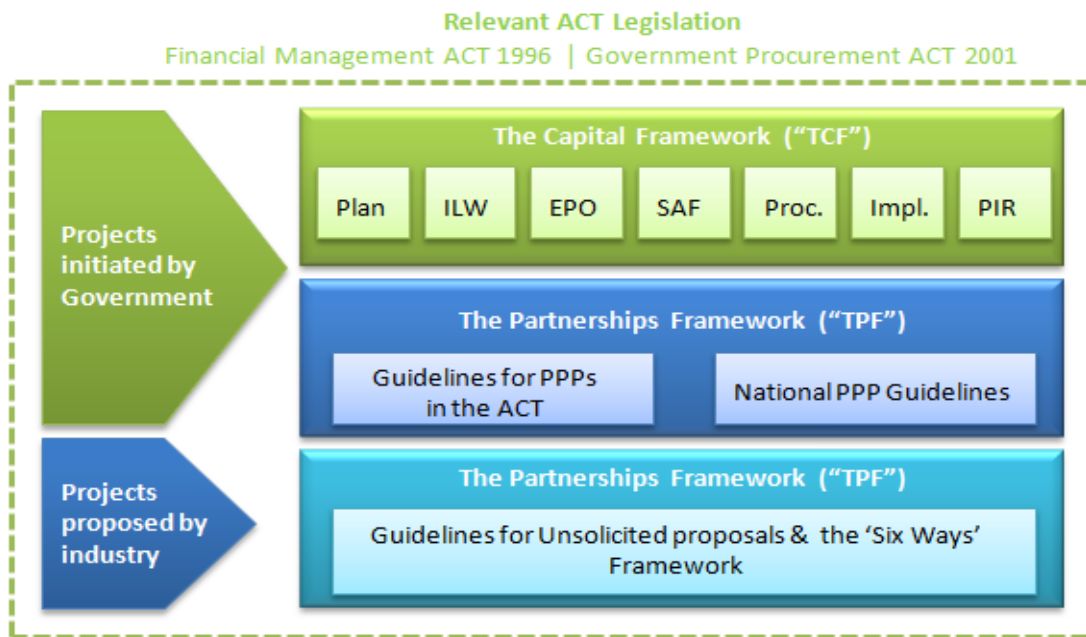
For projects that involve a greater degree of private sector participation using more sophisticated procurement methods, TCF will be supported by TPF which has two specific policy guidelines:

- For projects **solicited by the ACT Government** that are being considered under a PPP model, this policy document should be applied in conjunction with the *National PPP Guidelines*; and
- For projects **proposed by the private sector**, the *Guidelines for Unsolicited Proposals* should be followed accordingly. Additionally, this policy document should be applied if the unsolicited proposal is being considered under a PPP arrangement.

The application of TPF is required to adhere to ACT legislation with respect to public sector procurement, *Government Procurement Act 2001*, and the use of public sector funds, *Financial Management Act 1996*.

Figure 2 shows how TPF is aligned with the ACT Government’s existing policy and procedures with respect to infrastructure procurement.

Figure 2 – TPF Policy Alignment



Source: ACT Government (2016)

The following sub-sections provide a brief overview of key policy frameworks that are associated with this document.

4.2.1 The Capital Framework

In 2013, *The Capital Framework* ("TCF") was developed to support investments of any type, complexity or cost, with a primary focus on capital projects in the ACT. It aims to provide practical assistance to the directorates in ACT Government for proposed investment projects.

TCF has three overarching objectives:

1. Allocate scarce resources where best justified;
2. Achieve optimal risk allocation and value for money; and
3. Provide policy guidance on investment decision and approval process which is fit-for-purpose for projects of different sizes and complexity.

It prescribes nine delivery models that the ACT Government can utilise, offering it flexibility in terms of managing project risk profiles. Three of these models relate to PPPs which are also discussed in **Section 2**:

- **Build, Own, Operate, Transfer PPP ("BOOT PPP")** – Typically used for economic infrastructure projects that are fully financed and where demand risk can be transferred to the private sector;
- **Availability Payment PPP ("Availability PPP")** – Generally used for social infrastructure projects that are fully financed and where Government pays the private sector payments for service availability; and

- **Design, Construct, Maintain, Operate (“DCMO”)** – Typically used on infrastructure projects where the private sector is contractually obliged to provide construction and service delivery but where private finance is not required and the Government wants to retain ownership.

TCF comprises seven stages which cover the investment lifecycle of planning, proposing and delivering of investment projects. The seven stages aim to help ensure that government:

- Addresses the right problems and pursues the right benefits;
- Chooses the best value for money investments;
- Delivers investments as planned; and
- Realises the benefits it set out to achieve.

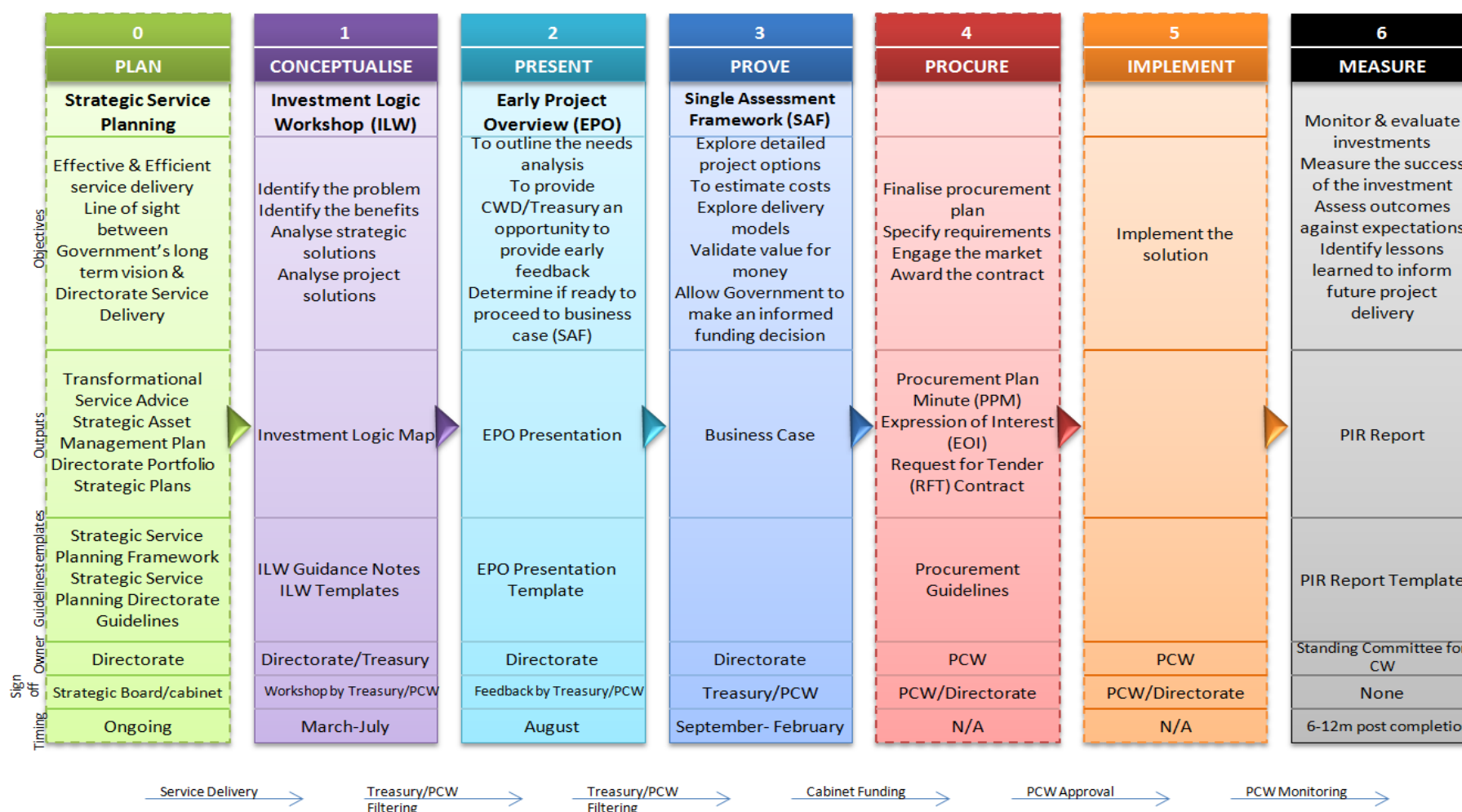
Figure 3 illustrates the TCF stages. In particular TCF provides detailed guidance on four of these stages. They are:

- **Stage 1: Investment Logic Workshop (“ILW”)** – The ILW consists of a highly focused workshop with relevant public sector stakeholders to identify a problem, potential benefits as a result of investing to resolve the problem, as well as an analysis of strategic and project solutions.
- **Stage 2: Early Project Overview (“EPO”)** – The EPO combines a needs analysis and strategic feasibility assessment, in the form of a presentation to sponsoring directorates – CMTEED and PCW – building on the outcomes from the ILW.
- **Stage 3: Single Assessment Framework (“SAF”)** – The SAF is in essence a pre-funding business case that is fit-for-purpose for the ACT’s needs. The depth of analysis required for the SAF broadly depends on the investment size of the project, ranging from less than \$10 million to greater than \$50 million, i.e.:
 - Tier 1¹⁴ – Greater than \$50 million or greater than \$10 million and assessed as high risk,
 - Tier 2 – Between \$10 million and \$50 million; and
 - Tier 3 – Less than \$10 million.
- **Stage 6: Post Implementation Review (“PIR”)** – The purpose of the PIR is to evaluate project outcomes against the expectations set out in the SAF. It aims to measure the success of a project using a consistent measurement framework.

TCF refers to existing planning and procurement guidance material with respect to the planning, procurement and implementation of capital works. If a PPP model is being considered under TCF, then practitioners should refer to this document for initial guidance and requirements.

¹⁴ Note: The order of the Tiers was inverted in the 2016 review of the Capital Framework.

Figure 3 – TCF Process¹⁵



Source: ACT Government (2016), The Capital Framework – Framework Overview

¹⁵ It should be noted that Stage 1 is preceded by a planning stage (Stage 0) to round out the seven stages.

4.2.2 Guidelines for Unsolicited Proposals

TPF also incorporates a process for handling unsolicited proposals in the ACT. The ACT Government defines an unsolicited proposal as an approach to Government by a proponent with a proposal not requested by the Government that entails the:

1. Construction and/or financing of infrastructure;
2. Transfer of assets; and/or
3. Provision of goods and/or services to the Government.

The ACT Government has adopted seven principles to guide its consideration of unsolicited proposals in the ACT¹⁶. These are:

1. Encourage unique and innovative opportunities and ideas from industry that deliver value for money for the ACT;
2. Acknowledge that value for money needs to balance whole of life value and economic opportunity against risk and the impacts to industry, society and the environment;
3. Ensure that the unsolicited proposals process is subject to a due process and not as an avenue to circumvent existing ACT Government procedures;
4. Balance the rewarding of genuinely unique and innovative proposals against contestable value derived from a competitive process;
5. Focus primarily on ideas that align with current ACT Government strategic priorities, but recognise that there may be opportunities that add value beyond the current focus of Government;
6. Recognise that the opportunity to take advantage of unsolicited proposals will often require a timely response; however this cannot be at the expense of transparency and due diligence; and
7. Be cognisant of and sensitive about the communication of decisions to the market, particularly where market sensitive information is involved.

In upholding these principles, the ACT Government requires that unsolicited proposals be processed through three phases that increasingly require more commitment and resources from both the Government and the proponent:

1. **Concept Submission** – The first phase requires proponents to submit concepts of their unsolicited proposals. The Government undertakes an initial assessment of Concept Submissions, with successful submissions being invited to present to senior executives in the ACT Government for a strategic review;
2. **Detailed Submission** – Following successful Concept Submissions, proponents are required to develop more detailed submissions in the form of a business case which is then evaluated by the ACT Government; and
3. **Tender Approach** – Should the business case be approved and funded, the proponents and the ACT Government agree on a tender mechanism outlined in the ACT's 'Six Ways' Framework.

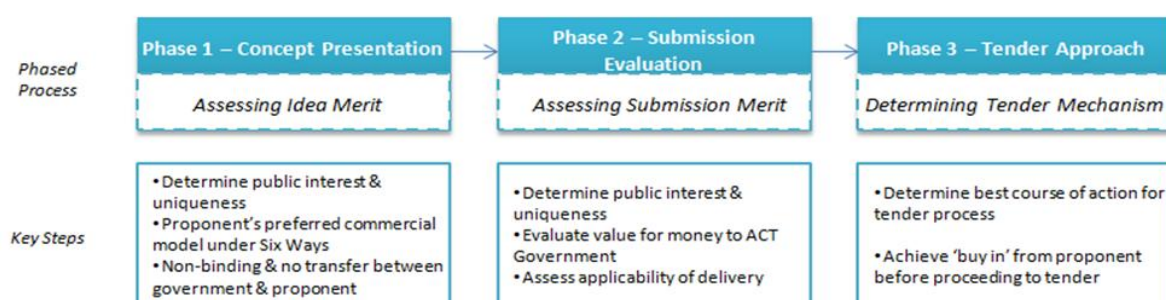
¹⁶ ACT Government (2016), *The Partnerships Framework – Guidelines for Unsolicited Proposals*

The *Guidelines for Unsolicited Proposals* includes the ACT's 'Six Ways' Framework which provides the ACT Government and proponents with a range of procurement mechanisms to deliver effective outcomes fit-for-purpose to each proposal and the ACT.

These mechanisms range from a traditional open tender, where significant competitive tension exists, to negotiation exclusivity, where an unsolicited proposal is considered unique and a market alternative does not exist.

Figure 4 provides an outline of the unsolicited proposals process.

Figure 4 – Unsolicited Proposals Phased Process



If the unsolicited proposal proposes a PPP arrangement, then practitioners should refer to this document for additional guidance and requirements with respect to evaluating the proposal, conducting a tender and negotiations.

4.2.3 National PPP Guidelines

The *National PPP Guidelines* contains the official PPP framework adopted by Australian jurisdictions. It was introduced in 2008 and has subsequently been updated in 2011. It consists of seven detailed volumes that provide practitioners with detailed guidance on how to identify, assess, procure and contract for PPPs.

The *National PPP Guidelines* aim to establish a consistent framework that will facilitate improved public service delivery through private sector provision of public infrastructure and related services. Its objectives are to¹⁷:

- Encourage private sector investment in public infrastructure and related services where value for money for Government can be demonstrated;
- Encourage innovation in the provision of infrastructure and related service delivery;
- Ensure rigorous governance over the selection of projects for PPPs and the competition for and awarding of contracts;
- Provide a framework and streamlined procedures for applying PPPs across Australia; and
- Clearly articulate accountability for outcomes.

The *National PPP Guidelines* is comprehensive and comprises two overview documents and seven detailed volumes:

¹⁷ Infrastructure Australia (2008), *National Public Private Partnership Policy Framework*

- **National PPP Policy Framework** – An overview document setting out policy objectives and principles with respect to PPPs in Australia;
- **National Guidelines Overview** – An overview document providing a high level guidance of the detailed volumes in the procurement of PPPs nationally;
- **Volume 1: Procurement Options Analysis** – Provides a method to determine whether a PPP model is the appropriate procurement method to achieve the project’s objectives;
- **Volume 2: Practitioners’ Guide** – Provides detailed guidance in terms of how a PPP should be implemented;
- **Volume 3: Commercial Principles for Social Infrastructure** – Discusses a range of principles in detail so as to achieve a consistent and efficient risk allocation framework for the delivery of social infrastructure PPPs;
- **Volume 4: Public Sector Comparator Guidance** – Provides detailed guidance on the development of a Public Sector Comparator (“PSC”), a critical tool for assessing PPP viability and negotiations with private sector bidders;
- **Volume 5: Discount Rate Methodology Guidance** – Details a methodology for estimating appropriate discount rates to be used for the purposes of discounted cash flow analysis when evaluating the PSC and private sector bids;
- **Volume 6: Jurisdictional Requirements** – Details jurisdictional departures for each Australian state and territory from the National PPP Guidelines; and
- **Volume 7: Commercial Principles for Economic Infrastructure** – Discusses a range of principles in detail so as to achieve a consistent and efficient risk allocation framework for the delivery of economic infrastructure PPPs.

These volumes provide detailed guidance across the stages of the investment lifecycle from assessing the viability of a PPP as part of a business case (Volumes 1, 4 and 5) to step-by-step guidance on implementing a PPP during procurement (Volume 2).

In addition, commercial principles to support practitioners in the formulation of appropriate contracts and practices are provided to ensure that PPP projects meet their desired outcomes (Volumes 3 and 7).

4.3 Using these Guidelines

The *National PPP Guidelines* is the official PPP framework for the ACT Government. This document, the *Guidelines for PPPs*, should be read in conjunction with the *National PPP Guidelines*.

The *Guidelines for PPPs* outlines the ACT Government’s jurisdictional departures on key policy and commercial positions for PPPs in the ACT.

The remainder of this document provides guidance on the assessment of a project under a PPP delivery model and the process involved with implementing and managing a PPP project.

- **Section 5 (Determining PPP Delivery)** – Provides additional guidance for the consideration of a PPP model under TCF and how National PPP Guidance should be applied accordingly.
- **Section 6 (Procuring a PPP Project)** – Provides guidance for a project has been approved as a PPP in terms of the necessary procurement and negotiation steps involved, including linkages to the *National PPP Guidelines* for more detailed information.

- **Section 7 (Managing a PPP Project)** – Provides guidance for a project once it has reached transaction close. Guidance is provided in terms of key policy positions on issues and/or events that occur during the delivery and operations of a PPP project.
- **Section 8 (Governance)** – Provides guidance on governance arrangements with respect to the roles and responsibilities of ACT Government directorates, probity and disclosure requirements.

ACT PPP Policy Principles are presented in breakout boxes and represent either a jurisdictional departure from the *National PPP Guidelines* or exist to provide further guidance to practitioners in the ACT.

Table 2 provides an overview of the ACT’s PPP principles and when they need to be planned for and applied during the TCF investment lifecycle.

Appendix C provides a roadmap highlighting key linkages between TCF and TPF documentation with the *National PPP Guidelines*, broadly aligned with the TCF investment lifecycle.

Table 2 – ACT PPP Policy Principles

Box No	PPP Principle	Section	Page
Determining PPP Delivery			
1	Role and Calculation of the PSC	5.3.2	38
2	Budget and Accounting Treatments	5.3.4	41
Procuring a PPP Project			
3	Probity Focus	6.2	44
4	Submission Requirements	6.3.1	46
5	Shortlisting	6.3.1	47
6	Degree of Scope Completeness	6.3.2	49
7	Reimbursement of Bid Costs	6.3.2	49
8	Interactive Bidding Requirements	6.3.2	50
9	Payment Mechanism	6.3.3	51
10	Definition of Abatement Regimes	6.3.3	53
11	Government Project Support	6.3.3	55
Managing a PPP Project			
12	Appointment of Independent Certifiers	7.2.1	59
13	Treatment of Refinancing Gain Share	7.2.2	61
14	Capital Contributions	7.2.2	61
15	Managing Interest Rate Risk	7.2.2	62
16	General Consent Process	7.2.2	63
17	Consent Process for Refinancing	7.2.2	63
18	Consent Process for Regearing	7.2.2	64
19	Consent Process for Assignment	7.2.2	64
20	Consent Process for Change of Control (incl. Disposals)	7.2.2	64
21	Consent Process for Good Faith Negotiations for Enhancements	7.2.2	65
22	Responsible Party for PPPs in the ACT	8.2	70

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5. Determining PPP Delivery

5.1 Overview

This section provides further detail regarding the approach adopted by the ACT Government to assess whether a PPP delivery model is an appropriate procurement method for a major capital project.

As discussed in **Section 4**, if a PPP model is being considered as a potential delivery model, TPF guidelines will need to be applied as part of the delivery model assessment process.

This section supports the following volumes in the *National PPP Guidelines*:

- *Volume 1 – Procurement Options Analysis;*
- *Volume 4 – Public Sector Comparator Guidance; and*
- *Volume 5 – Discount Rate Methodology Guidance.*

5.2 When to consider a PPP

As a general guideline, any public infrastructure project that has been identified as a Tier 1 project under TCF, that is, with capital works estimated to be **over \$50 million**, will require consideration for PPP as a procurement method. This capital threshold can also be triggered by way of project bundling.

Opportunities do exist for PPP contracts that can be tailored to suit the procurement process for smaller projects (i.e. less than \$50 million) where key commercial principles and performance incentives can be applied. A PPP can be explored as a procurement option for such projects where sufficient value for money drivers can be demonstrated, while also acknowledging transaction and contract management costs.

Table 3 provides an outline of the characteristics that may make a project suitable for a PPP arrangement. It should be noted that this list is not exhaustive.

Table 3 – Project characteristics creating possible conditions for PPPs

Characteristic	Description
Opportunity for risk transfer	A defining characteristic of a PPP arrangement is the ability to allocate project responsibility and risk to the party best positioned to manage it. Achieving value for money on a PPP project requires a well-managed scope to allocate appropriate risks to the private sector with the aim of optimising risk allocation in the partnership.
Whole-of-life cost certainty	Improved efficiencies can be realised where a project can allow for the full integration of planning, design, construction and ongoing service delivery (including operational, lifecycle maintenance and refurbishment) to be the responsibility of a single party.
Long term	PPP arrangements tend to be more suitable for projects where Government is willing to contract to the private sector for the long term (generally between 20 and 50 years). This enables the benefits of efficient risk transfer and a whole life of cost approach to be delivered.
Increased scope for core services	Traditionally, PPP models often include a requirement for a range of non-core and support activities to be delivered that were otherwise utilising public sector capabilities and resources. Increasingly, Governments have also begun incorporating core service requirements in PPP contracts. This has been well received and responded to by the market.
Clear and measurable outputs	Projects where the output requirements are clearly understood by the Government and can be readily measured are likely to be viable under a PPP model as these measurable outputs can be translated into performance contracts. This also allows for payment mechanisms to be structured on the basis of these outputs and the alignment of financial incentives to key performance indicators.
Innovation	Larger projects tend to be sufficiently complex and often require more innovative approaches to achieve value for money (in terms of asset and service design, technology and/or delivery).
Market appetite	The project needs to create certainty and a genuine commercial opportunity to attract an appropriate number of private sector parties and allow for effective and competitive tender process.
Additional commercial opportunities	The private sector may favour additional commercial opportunities (e.g. retail) as a result of the project that could allow them to realise revenue streams earlier in the project. However, additional commercial development, which may be non-core, can add to the complexity of the PPP arrangement.
Bundling of contracts	A PPP arrangement can be an effective delivery model where the Government is required to provide a service or capability that depends on a number of separate contracts. PPPs can combine related services and an asset into a single long-term contract. This can add to complexity, particularly as an increased number of client stakeholders may be involved.

5.2.1 Key Considerations when Determining PPP Delivery

The following sub-section outlines some of the key challenges the ACT Government will consider when determining the project scope and its viability under a PPP arrangement.

(a) Value for money

The characteristics which create suitable conditions for PPPs, as listed in **Table 3** above, compose the key drivers of whether private sector involvement is likely to deliver value for money. This includes whether the project is of sufficient scale and is long-term in nature.

It extends to considering whether the project's risk profile is complex and could leverage material opportunities to transfer risk from a whole-of-life perspective to allow the private sector to innovate and utilise assets in a more efficient manner.

The project would also offer integration opportunities in terms of design, construction and operational requirements through a single contract that can attract an appropriate number of prospective bidders to ensure competitive tension.

The focus should not be directed away from these drivers. All the feasible procurement options should be assessed for the project and the decision should be based on the option that is more likely to deliver the best overall outcome, irrespective of what the public or private sector prefer.

(b) Core versus non-core

Traditional PPP arrangements involve the bundling of non-core ongoing service delivery requirements to the private sector involving (i.e. asset-related and/or ancillary services) the design and construction of infrastructure asset over the life of the contract.

Some recent PPP arrangements have seen service delivery requirements extend in scope in terms of including core services as part of the private sector's contractual obligations. That is, services where the Government has historically chosen to retain responsibility for, and which involve activities that the public sector is directly accountable for, have been bundled into PPP contracts.

While this can potentially result in project benefits as a result of private sector innovation, efficiency and productivity improvements, it is highly contingent on the ability to decouple specific core services from remaining Government operations.

(c) Market capability and appetite

The ACT Government will require reliable information on which to base a decision on whether to go to the market with a PPP offering or whether to deliver the project via more traditional procurement methods. In part, this decision also requires a practical examination of whether the private sector has the means to deliver the project, and whether they have the appetite and/or incentive to do so.

Generally, as part of procurement options analysis, a market sounding exercise will be conducted to gauge market interest and the likely response of a project under a number of delivery models. Whether a certain method may be preferred either by the public or private sector, the preferred procurement approach will be selected based on sound upfront analysis and planning, in consideration of market sentiment, to ensure that a project is successfully delivered.

(d) Business case

The decision to undertake a PPP project is established by way of a business case under TCF. This business case is submitted for the consideration and approval of Budget Committee of Cabinet ('BCC'). Once the business case has been endorsed by BCC, the Treasurer remains the responsible Minister until financial close.

(e) Hybrid funding models

The standard PPP delivery model has evolved in recent years to incorporate a spectrum of scope and funding arrangements where the roles of the public and private sector can vary.

As previously mentioned, recent PPP projects have increased the extent to which core services can be bundled together with design and construction, and non-core service delivery components. This 'hybridisation' can also occur for funding arrangements and payment mechanisms. That is, the extent and proportion to which the project is privately and/or publicly financed, or switches between availability and demand-driven models can vary over the life of a project.

While the standard PPP model calls for private financing based on Government-backed payments over the life of the contract or the transfer of demand risk to the private sector, public sector financing can be applied to address potentially higher private sector financing costs associated with project delivery and/or management. Government financing may also be considered to help address any short term concerns over the commercial viability of a project.

5.3 Determining PPP Delivery

The project assessment stage, where the viability of a PPP delivery model is evaluated as part of the process, generally takes six to eight months to complete. The following sub-sections provide an overview of the evaluation tools required when assessing a project for a PPP arrangement.

(a) Alignment of TPF with TCF

This policy document is triggered when a PPP delivery model is being considered for a Tier 1 project¹⁸ under TCF – more specifically, where a PPP has been selected as part of an indicative Delivery Model Assessment during the EPO stage. These guidelines will then need to be applied as part of a more detailed Delivery Model Assessment in the SAF stage when developing a business case.

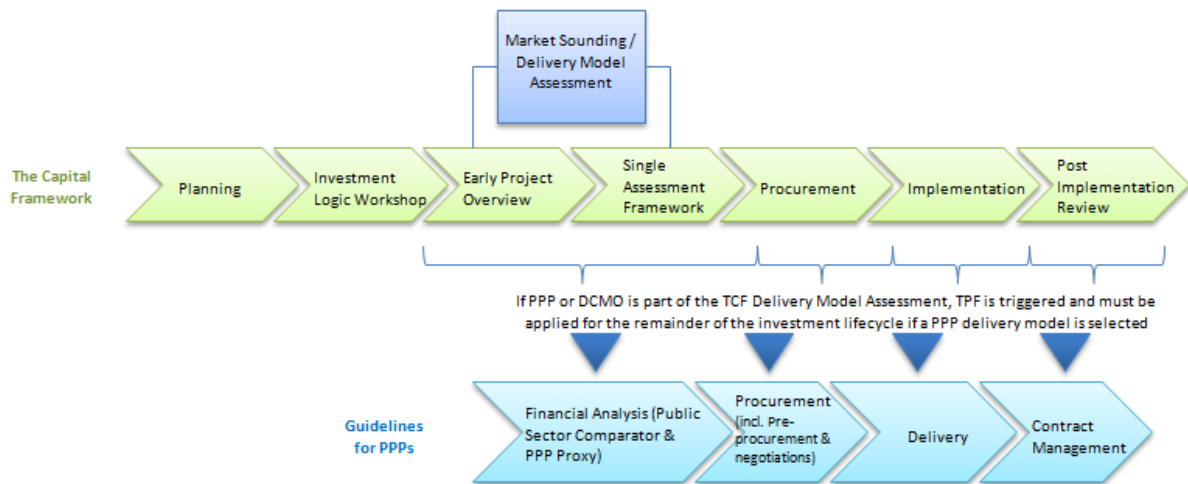
The application of these guidelines should also be considered where the market sounding of a project with industry validates the applicability and attractiveness of a PPP delivery model.

To ensure an appropriately robust assessment of the viability of a PPP arrangement for a project, the business case developed within the ACT Government will clearly articulate the objectives and benefits of the project and the scope of capital investment and services. This is critical to ensuring both effective and efficient analysis and assessment of PPP delivery, as well as successful delivery and management of a PPP contract.

Figure 5 provides an illustration of where TPF sits in the TCF framework when a PPP model is being considered.

¹⁸ A Tier 1 project can be defined as either being greater than \$50 million or greater than \$10 million and assessed as high risk.

Figure 5 – Alignment of TPF with TCF

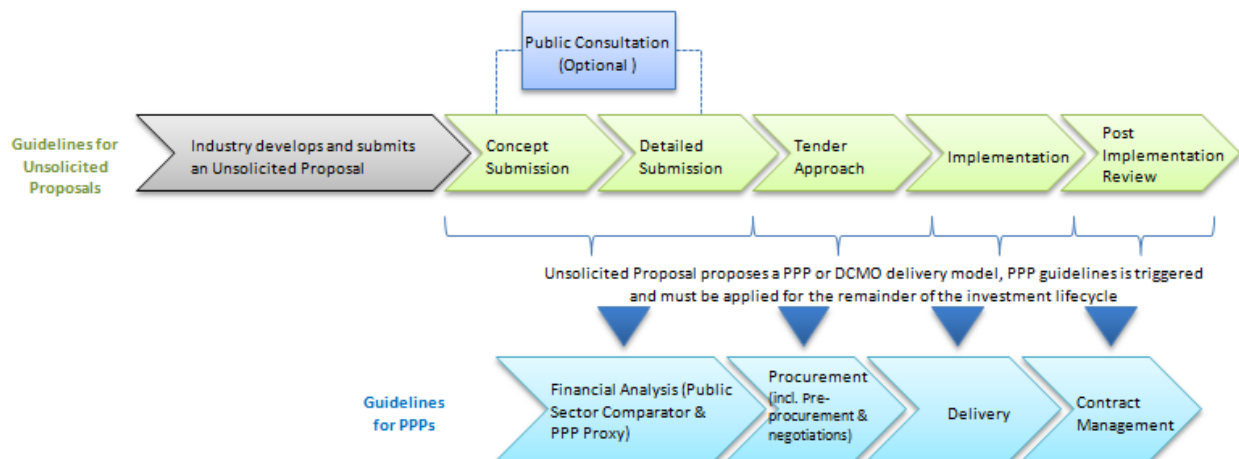


(b) Alignment with Unsolicited Proposals in TPF

For projects initiated by the private sector and unsolicited by the ACT Government, consideration for PPP applicability will generally be undertaken in Phase 2 (Detailed Submission) of the ACT's unsolicited proposals process.

Figure 6 shows where TPF will be considered for an unsolicited proposal when a PPP model is being considered for a project.

Figure 6 – Alignment of Unsolicited Proposals within TPF



5.3.1 Delivery Model Assessment

A Delivery Model Assessment is required as part of the SAF stage in TCF when developing a business case.

The ACT Government will reference *Volume 1: Procurement Options Analysis* from the *National PPP Guidelines* if additional guidance is required for developing a more robust and rigorous process in determining PPP viability.

Table 4 provides a template that ACT Government entities may use to help assess PPP suitability for a project from a qualitative perspective. In addition to supporting the decision making for PPP viability relative to the other delivery models in TCF, this information can also assist with developing a project scope where a PPP model may be more attractive.

Table 4 – Shortlisting of TCF Delivery Models

Characteristic	Criteria	TCF Options	
		PPP	Traditional
Scale	Project identified as Tier with an investment value over \$50 million? <i>Note: Total estimated investment should include estimated capital expenditure and whole-of-life operational expenditure</i>		
	If not, can the services be efficiently bundled to exceed this threshold? <i>Note: Bundling by way of multiple projects into a single contract or scope extension (e.g. bundling capital works and operations and maintenance)</i>		
Scope and Outputs	Can the scope and outputs be defined clearly?		
	Is the scope likely to change significantly prior to project completion and can the potential change be satisfactorily provided for in the specification?		
Whole-of-life opportunities	Can services be bundled together to create a long-term operational/maintenance opportunity?		
Risk	Can a significant proportion of the material risks can be defined, allocated and potentially transferred to a private party where appropriate?		
	Are there unquantifiable risks that could have a material impact on the project cost and objectives?		
	Is Government best-placed to manage material risks, where the cost of transferring this risk is prohibitive?		

Note: Table has been adapted from the National PPP Guidelines Volume 1: Procurement Options Analysis

- ✓ ✓ ✓ Procurement option is extremely effective in satisfying the requirements of the criterion
- ✓ ✓ Procurement option is effective in satisfying the requirements of the criterion
- ✓ Procurement just satisfies the criterion
- ✗ Procurement option is ineffective in satisfying the requirements of the criterion
- ✗ ✗ Procurement option is extremely ineffective in satisfying the requirements of the criterion

(a) Market sounding

As part of the process of identifying and evaluating potential delivery models for a project, the ACT Government will generally test a number of shortlisted options with the market as an effective method to both validate and gauge market response, and provide project pipeline visibility to private sector participants.

The Government will engage in preliminary dialogue with the private sector to learn more about the current market conditions, trends and potential impacts of its intended procurement approach; as well as afford the private sector additional time to prepare to respond to Government's requirements for a potential PPP project.

However, market sounding with the private sector is normally subject to probity considerations. The Government will generally determine a range of issues that may be discussed during the assessment phase of a project before commencing a market sounding process. Some examples include:

- Scope of the project;
- Project timelines;
- Project-specific issues and requirements; and
- Market interest and capability.

5.3.2 Public Sector Comparator

The ACT Government will generally develop a Public Sector Comparator ("PSC") as part of the SAF stage in TCF when developing a business case for a Tier 1 project where it is considering a PPP delivery model.

The ACT Government will reference *Volume 4: Public Sector Comparator Guidance* from the *National PPP Guidelines* when developing a PSC as part of the financial analysis for the business case.

The PSC represents an estimate of the hypothetical, risk-adjusted whole-of-life cost (and revenues where applicable) of a public infrastructure project that would be delivered by the Government. The PSC will generally include risk-adjusted net present costs for capital, lifecycle maintenance, ancillary services and (where applicable) residual values to determine the likely funding requirements.

The PSC will generally be developed in accordance with the required output specification, proposed risk allocation and will be procured using the most efficient and likely form of delivery available to the public sector under TCF. This structure may also be referred to as the Reference Project. The PSC Reference Project will be defined and costed to provide the same level and quality of service expected of the private sector under the PPP alternative procurement approach.

The main purpose of the PSC is to provide the Government with a quantitative and robust measure of the value for money it can potentially realise from awarding a contract to a private sector bidder to deliver on the output specification of a project relative to a public sector form of delivery.

The PSC should provide the Government with an approximate measure of a range of outcomes that the Government would likely face in delivering a project under traditional public sector procurement methods. Therefore, to ensure the usefulness of the PSC during the evaluation and procurement of a PPP project, the PSC will, at a minimum, generally include:

- Qualitative considerations in determining the potential value for money of a PPP arrangement (also known as a PPP proxy);
- Sensitivity testing and scenario analysis to determine the robustness of underlying assumptions and their subsequent impacts on results; and
- Flexibility to allow for new information to be incorporated during the procurement phase to enhance the PSC's value as a negotiation tool for Government during tender assessments.

It should be noted that the ACT Government will use the PSC for assessing the viability and attractiveness of a PPP project and as a tool when assessing private sector bids during procurement. However, by the time the project proceeds to tender, the PSC will typically include the full and refined scope of the project.

Data gathered and cash flows estimated during the development of the preliminary PSC will also assist the Government in the evaluation of whether the project is likely to be commercially viable for the private sector.

The business case will identify all material risks associated with a project, especially the specification of external and project development risks for the Government, that is, the risks to be transferred to a private sector contractor and risks to be retained by the Government. At a minimum, the business case will include a preliminary view on the cost to the Government of the risks which should be included in the PSC.

Box 1 outlines the ACT Government's PPP principle for the PSC.

Box 1 – Role and Calculation of PSC

ACT PPP Policy Principle

The role and calculation of the Public Sector Comparator ("PSC") will be consistent with the approach adopted in the National PPP Guidelines.

As a general rule, the PSC and PPP proxy will be used as an estimating tool for the business case. Following that, it may also be used to assist in the evaluation of private sector bids.

The PSC will not be the sole metric used to determine whether a bid provides value for money..

In general, the PSC will be disclosed to bidders following EOI shortlisting.

Part Two of *Volume 4 – Public Sector Comparator Guidance* in the *National PPP Guidelines* provides a detailed worked example to support practitioners in developing a PSC model.

5.3.3 Discount Rates

A discount rate is used to calculate the present value of future cash flows for a project. It is based on the time value of money and a risk premium imposed by investors. The risk premium reflects systematic risks, also known as market-wide risks, which affect all asset classes and cannot be reduced by way of diversification.

The discount rate is required for Discounted Cash Flow (“DCF”) analysis to allow for a consistent comparison of different cash flow streams between the PSC and private sector bids to determine whether the Government can obtain value for money from an alternative procurement mechanism.

The ACT Government will reference *Volume 5: Discount Rate Methodology Guidance*¹⁹ from the *National PPP Guidelines* when estimating discount rates for PPP projects.

Infrastructure Australia’s methodology described in the *National PPP Guidelines* is based on the following core principles:

- Systematic risk²⁰ is intrinsic within the majority of projects;
- This risk will be allocated between the public sector and private sector;
- The discount rate for a project is based on its systematic risk and excludes project specific risk; and
- The discount rate used for the PSC and the PPP outcomes is based on the systematic risk allocated to the public and private sectors respectively.

The methodology utilises the Capital Asset Pricing Model (“CAPM”) as a basis for determining discount rates, which gives rise to four types of discount rates being referred to in the *National PPP Guidelines*:

- **The risk free rate** – A theoretical rate of return of an investment with no risk, using a long-term public sector bond rate as proxy;
- **The project discount rate** – Which includes all systematic risk in the project (including public and private sector risks)
- **The PPP discount rate** – The discount rate applied to private sector bids (includes risks transferred to the private sector only); and
- **The PSC discount rate** – The discount rate applied to the PSC (includes risks transferred to the public sector only).

The relationships underpinning the various discount rates under the *National PPP Guidelines* methodology are as follows:

- Where a party has not assumed any systematic risk, their discount rate should be equal to the risk free rate; and
- Where a party has assumed all the systematic risk, then their discount rate should equal the rate determined based on the CAPM approach (this is the project discount rate).

The allocation of systematic risk premiums between the parties requires the evaluation and judgement based on analysis of the proposed contractual risk allocation.

The *National PPP Guidelines* assume that the PSC is costed on the basis of Government retaining all systematic risk and, as such, it can be assumed that the PSC discount rate will generally be the risk free rate.

¹⁹ It should be noted that the main body of the document provides the means to estimate discount rates for social infrastructure projects. Appendix D of Volume 5 sets out the approach for economic infrastructure projects.

²⁰ Systematic risks are market-wide risks that cannot be reduced through diversification.

As more systematic risk is transferred to the private sector under a PPP contractual arrangement, the higher the rate of return should be applicable. Where a greater proportion of systematic risk is transferred to the private sector, it is generally expected that the PPP discount rate will exceed the PSC discount rate.

In conjunction with this, where risk allocation differs between bidders, the Government will generally consider the use of differential discount rates for bidders reflecting the actual levels of systematic risk transferred.

(a) Application of the National PPP Guidelines

The systematic risk premium allocated to a discount rate should be based on the level of systematic risk transfer. This is then added to the risk free rate²¹ to generate the overall PPP project discount rate.

With the typical level of risk transfer seen in Australian projects to date, the ACT Government generally expects the discount rate for the PPP option to be higher than the rate used in the PSC option.

The methodology set out in the *National PPP Guidelines* can be described as a five-step process below. The *National PPP Guidelines* also include necessary calculation tables to support practitioners in approximating discount rates.

1. What are the systematic risks in the project and who bears them?
 - As part of the Delivery Model Assessment, risks would have been allocated between involved parties.
2. Are the systematic risks in the project predominantly borne by the public sector?
 - If this is the case, then the risk free rate will apply to all options and the remaining steps need to not be undertaken.
3. Identify the project discount rate using the CAPM approach;
 - Determining the asset beta of the project;
 - Applying the asset beta to the market risk premium to determine a project risk premium; and
 - Adding the project risk premium to the risk free rate to determine the project discount rate.
4. Are the systematic risks in the project predominantly borne by the private sector?
 - Where all of the systematic risks are predominantly borne by the private sector, then the discount rate will be equal to the project discount rate (risk free rate plus the systematic risk premium) and no further analysis is required; and
 - If the systematic risk is shared then Step 5 is applied.
5. Evaluate the proportion of systematic risk transferred by Government;
 - Assess the relative importance of each risk; and
 - Assess how the systematic risk is allocated between the parties involved.

²¹ Taken to be the long-term public sector bond rate with average life comparable to term of project.

(b) Application to each procurement option

The ACT Government generally expects that the aforementioned discount rate approach will be applied to each of the procurement options and packages identified. In some projects, a PPP model with a 'blend' of procurement methods may apply, for example:

- PPP availability payment for a portion of the infrastructure;
- Sale of development rights to private sector for other infrastructure elements; and
- Traditional design and construct contract procured by Government for other infrastructure elements.

Depending on the blend of procurement methods, there may be significant similarities between the benchmark and optimised cases in terms of systematic risk.

It should be recognised that the calculation of an appropriate discount rate for PPP projects is not an exact science. In addition, the relatively high levels of operating costs (compared to upfront capital costs) may result in the discount rate having a higher level of importance than in other projects.

To assist in understanding the relative importance of the discount rate on the value for money assessment, and the impact of changes in the assumptions, the ACT Government will generally conduct sensitivity analysis across a range of discount rates.

5.3.4 Budget and Accounting Treatment

The budgeting and accounting treatment associated with PPP projects is complex and does not easily fall within the current accounting standards currently adopted by the Australian Accounting Standards Board ("AASB"). Pending the issuing of an Australian Accounting Standard, relevant ACT projects will be budgeted and accounted for based on the UK standard FRS 5.

Box 2 outlines the ACT Government's PPP principle on the budget and accounting treatments for a PPP project.

Box 2 – Budget and Accounting Treatments

ACT PPP Policy Principle

The ACT Government will endeavour to budget for a PPP project as soon as it has been approved by Cabinet to provide a clear signal of commitment to the market.

The ACT Government will budget for the project as if it were being delivered under a traditional procurement model. Following financial close, this preliminary budget treatment will be reversed and the budget will be adjusted for the obligations associated with the ongoing availability payment.

Further information can be found in the *National PPP Guidelines*, particularly *Section 9 – Tax and Accounting Issues* and *Appendix G – Accounting Issues* in *Volume 2 – Practitioners' Guide*.

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6. Procuring a PPP Project

6.1 Overview

This section provides an overview of the procurement stage of a PPP project including planning, tendering and negotiation with private sector bidders.

This section should be read in conjunction with the following *National PPP Guidelines*’ volumes:

- *Volume 2 – Practitioners’ Guide;*
- *Volume 3 – Commercial Principles for Social Infrastructure; and*
- *Volume 7 – Commercial Principles for Economic Infrastructure.*

6.2 Planning

Once the ACT Government has determined that a project will be procured via a PPP model, the project proceeds to planning for the procurement and implementation phase. Planning for a procurement phase generally takes a number of months to complete.

The ACT Government will endeavour to commit the necessary capabilities and resources in a timely manner to begin the development of the project structure and commercial principles, needed for seeking and responding to market interest during the tender process. Key components at this stage include:

- **A dedicated project team** – The complexity and scale of PPP projects will require a dedicated team-based management approach to ensure that the necessary skills and experiences are brought in when required to obtain knowledge in a cost effective manner. Specialist expertise (e.g. commercial, legal, technical) will be required during the course of the project. The project team will need to be able to supplement its capabilities by secondments and the engagement of advisors. It is critical to identify appropriate time commitments required for specialised roles in the PPP process.
IFAD will engage with the sponsor Directorate to bring together a whole of government team encompassing representatives from the sponsor directorate, the Treasury function of Government and PCW. Where available, this team will be led by the Director, Major Projects from IFAD.

Section 8 provides further detail in terms of project governance.

- **Project plan and timetable** – The project team will prepare a clear project plan that not only gives consideration to the tender timetable, but also accounts for the required internal approval and review processes (e.g. Project Steering Committee and/or Cabinet approvals), environmental and planning approval process, and any public consultation processes.
- **Probity plan** – A probity advisor will be appointed in the early stages of project development to support the development of a probity plan. The probity advisor will also assist in ensuring that the probity plan is followed.

- **Interface with the market** – The project team may consider further consultation with industry in terms of keeping the pipeline visible and allowing them to prepare or to seek feedback on matters relating to scope, timelines, market interest and capability.
- **Procurement Budget** – Each project will be provided with separate budget including contingency and the Project Director has full discretion to utilise that budget in delivering the procurement process.

The following sub-section describes the ACT Government’s position on the probity focus for a PPP project.

(a) **Probity**

It is essential to ensure that a transparent and consistent process is followed throughout the procurement process. The ACT Government will be supported by a probity advisor (either externally appointed or ACT Government Solicitor) to ensure that an appropriate and robust outcome-focused process is followed at all times. The ACT Government’s probity principles for PPP projects are given in **Section 8.4**.

The probity advisor will maintain an objective yet commercially-minded perspective throughout the tender process, and provide appropriate advice to the dedicated project team and the project steering committee. To ensure that probity concerns are addressed as early as possible, a probity plan will be prepared by either the project team or the probity advisors and approved by the project steering committee.

Box 3 outlines the ACT Government’s PPP principle on probity for a PPP project.

Box 3 – Probity Focus

ACT PPP Policy Principle

A probity advisor will generally be appointed before the Expression of Interest (“EOI”) stage.

Probity advice should remain flexible and practical, as well as appropriate, fair and equitable. The appointed probity advisor should provide advice consistent with established commercial practice with a focus on achieving an outcome that is innovative and beneficial to the ACT, while being commercially viable for the preferred bidder, and fair for all bidders.

The ACT Government will seek to appoint a probity advisor with established experience in PPP processes.

Table 5 summarises the sections in the *National PPP Guidelines* relevant to the procurement planning phase.

Table 5 – Relevant Sections from the *National PPP Guidelines* – Planning

Volume	Section
Volume 2 – Practitioners’ Guide	Section 3 – Project Development Phase; Section 14 – Probity and Integrity; Section 16 – Communication; Appendix C – Conflict of Interest; and Appendix D – Related-party Probity Principles.

6.3 Procurement

The procurement phase of a project is divided into three stages and generally lasts for 12 to 18 months from commencement to transaction close. The stages are:

- **Expression of Interest (“EOI”)** – The first phase of a formal tendering process used to shortlist bidders to allow them to submit more detailed proposals at a later stage.
- **Request for Proposal (“RFP”)** – The tender phase involving the release of the detailed tender and contract material to shortlisted bidders for detailed, fully costed responses, followed by an evaluation of the tenders and selection of the preferred bidder.
- **Negotiation and Transaction Close** – The final phase of the tender process where the preferred bidder and Government negotiate and execute a commercially binding agreement.

6.3.1 Expressions of Interest

The EOI phase is the first step in a formal tendering process. The main objectives for this phase are to:

- Confirm the Government’s commitment to the project;
- Formally notify the market, through tender notices, of the project and the service delivery requirements the ACT Government is seeking to procure;
- Communicate to the market the proposed timeframes, evaluation criteria and any challenges that need to be met for the project to proceed along the tender process;
- Validate the level of market interest in the project by providing a channel to allow prospective private sector bidders to provide any feedback and/or concerns on the proposed project structure; and
- Solicit formal EOI responses from prospective private sector bidders for the Government to evaluate and shortlist to the next stage in the tender process. Shortlisted candidates will be evaluated against the project objectives over the life of the project and their capabilities in delivery.

The dedicated project team within the ACT Government will need to develop the necessary EOI documentation consistent with the *National PPP Guidelines* by including important information about the project at a level of detail that would allow market participants to respond appropriately in light of the evaluation criteria.

The following sub-sections describe the ACT Government’s position on the submission requirement and shortlisting for a PPP project.

(a) Submission Requirements

Submission requirements, as determined by the dedicated project team, will generally be consistent with the evaluation criteria developed to assess bids as part of the EOI and RFP stages. This will ensure that public sector resources are effectively spent assessing bid materials that are relevant to meeting the project's requirements.

Box 4 outlines the ACT Government's PPP principle on submission requirements during a procurement of a PPP project.

Box 4 – Submission Requirements

ACT PPP Policy Principle

The ACT Government will seek to avoid imposing an exhaustive list of submission requirements on bidders. That is, Government will not request documentation that will not be evaluated as part of the tender assessment.

(b) Shortlisting

The main purpose of the EOI is to identify and shortlist EOI responses that best satisfy the evaluation criteria and indicate to the Government the most likely candidates capable of delivering the project objectives over the life of the project. Shortlisting is a balance between choosing the highest quality bids while maintaining a sufficiently large field to drive competition.

Under certain instances where competitive tension needs to be increased, shortlisting additional participants may be warranted. It is understood that this may lead to some shortlisted bidders losing interest as the chance of success may not warrant the significant investment of time and resources in preparing a detailed and responsive bid submission.

Furthermore, Government will be cognisant of situations where there are only a limited number of private sector parties capable of submitting high quality bids. Increasing the shortlist may dilute the standard of bids under consideration.

Box 5 outlines the ACT Government's PPP principle on shortlisting during a procurement of a PPP project.

Box 5 – Shortlisting

ACT PPP Policy Principle

The ACT Government has a standing preference to shortlist to two bidders unless there is a compelling reason to take an alternative position.

Bid bonds (or equivalent) may be used when deemed beneficial by the ACT Government to achieve the best procurement outcome.

Table 6 summarises the relevant sections of the *National PPP Guidelines* that should be followed during EOI phase.

Table 6 – Relevant Sections from the National PPP Guidelines – EOI

Volume	Section
Volume 2 – Practitioners’ Guide	Section 4 – Expressions of Interest Phase; Section 13 – Bid Evaluation; Section 14 – Probity and Integrity; Section 16 – Communication; Appendix C – Conflict of Interest; and Appendix D – Related-party Probity Principles.

6.3.2 Request for Proposal

The RFP phase represents a substantially more detailed tender request which involves a binding offer to Government. The evaluation of shortlisted private sector bidders will lead to the selection of a preferred bidder, to whom the contract will be awarded.

Broadly the RFP process involves:

- The development of RFP-related material, such as general information that needs to be conveyed to shortlisted bidders about the project; the tender process; project priorities; detailed requirements and output specifications; payment mechanism; form of Agreement; evaluation criteria and the required format for responses. This includes:
 - This includes producing a document that defines the scope of work and services;
 - Producing technical documentation detailing the output specification that the ACT Government requires;
 - Producing commercial and financial-related documentation, including the payment mechanism and performance requirements, a summary of the commercial framework outlining the proposed risk allocation and key commercial principles;
 - Producing contractual documentation, setting out the terms and conditions under which the ACT Government proposes to undertake the PPP arrangement, including a contract management risk strategy; and
 - Updating and finalising the PSC, following the conclusion of the EOI process to support Government in assessing RFP responses and negotiations with the preferred bidder.

- The use of an Interactive Tender Process (“ITP”) to enable shortlisted bidders to discuss the development of their concepts and designs, project commercial principles and financial requirements, and also, to seek clarification and feedback on Government’s output requirements prior to the lodgement of final RFP responses;
- The evaluation of RFP responses against evaluation criteria developed during the development of RFP documentation. A key aspect will involve determining the comparative value for money of the proposals with consideration of quantitative and qualitative aspects; and
- The selection of a preferred bidder after the evaluation process, followed by negotiations between the ACT Government and the preferred bidder with the intent to execute a commercially binding contractual arrangement.

Depending on the outcome of the evaluation process, it might be necessary to undertake a further shortlisting process to determine whether a preferred bidder or structured negotiation process would resolve any outstanding issues that are material and whether there would be significant benefit to the ACT Government in terms of retaining competitive tension.

The following sub-sections describe the ACT Government’s position on the output specification, scope completeness, bid cost reimbursement and interactive tender process for a PPP project.

(a) Output Specification

The output specification during the RFP stage will be agreed with relevant project stakeholders, clearly set out and communicated to prospective bidders by Government so as to ensure optimal responses are received.

Specifying outputs generally involves setting the requirements in terms of design, functional and technical requirements during the construction and service delivery that would allow the ACT Government to meet the project’s objectives.

A descriptive, or output-driven scope, is preferred, rather than prescriptive, or input-driven scope. The latter may otherwise impede value-add in terms of innovation and value for money or impact intended risk allocation from the private sector.

The output specification will reflect the scope that underpins the PSC. Common errors in the use of PSCs often include a lack of consistency in quality requirements, such as the need to maintain availability, maintaining asset quality and achieving handover requirements, which require considerable lifecycle and maintenance expenditure.

Box 6 outlines the ACT Government’s PPP principle on output specifications for a PPP project.

Box 6 – Degree of Scope Completeness

ACT PPP Policy Principle

The ACT Government will endeavour to be output-focused when developing the scope for a PPP project to maximise the opportunity for private sector innovation.

Under the circumstances where the project has specific needs that are well understood by Government, then a more prescriptive or input-focused approach may be applied.

(b) Reimbursement of Bid Costs

In general, the ACT Government views shortlisting to two as a sustainable bid model for industry and will not reimburse bid costs. However in limited circumstances, where the Government is of the view that, to attract appropriate and sufficient interest, the unsuccessful bidder may be reimbursed for their effort and commitment to submitting a high quality bid that offers a value for money outcome for the ACT Government, such costs may be met by the Government.

Generally, what will be reimbursed will be determined and disclosed to the market before the RFP process begins. The ACT Government will consider whether it is the cost of developing the bid or the price of the intellectual property providing a significant solution offering that is being reimbursed. This will also vary by the type and size of the project, and the number of bidders involved.

Box 7 outlines the ACT Government’s PPP principle on the reimbursement of bid costs during a procurement process.

Box 7 – Reimbursement of Bid Costs

ACT PPP Policy Principle

The ACT Government will generally not reimburse bid costs. Decision as to whether a bid cost reimbursement is warranted, and in what form (i.e. partial or full), will be determined, on a case-by-case basis, by the Director-General of the sponsor directorate in consultation with the Under Treasurer.

A reimbursement will be considered if it is deemed to improve the procurement outcome or enhance competitive tension or if there is a significant change during the tender process.

(c) Interactive Tender Process

The ACT Government is highly likely to adopt an Interactive Tender Process (“ITP”) during the RFP phase of a PPP project. It provides an opportunity for the ACT Government’s dedicated project team, their advisors, and shortlisted bidders to have direct communications in a structured engagement process and program prior to final RFP bid submission. This engagement must be informed by probity considerations to ensure that the process remains fair and unbiased.

The ACT Government will elaborate its expectations in response to feedback and clarification being sought by shortlisted bidders.

The key objective of an ITP is to improve the quality of RFP bid submissions and ultimately deliver a better value for money outcome for Government.

Box 8 outlines the ACT Government’s PPP principle on ITP as part of the RFP of a PPP project.

Box 8 – Interactive Tender Process

ACT PPP Policy Principle

An Interactive Tender Process (“ITP”) is strongly favoured. If used for a particular project, the ITP will generally commence during the RFP phase.

All ITP sessions between the ACT Government and bidders in the EOI and RFP phases will be conducted in the presence of the probity advisor.

Table 7 summarises the relevant sections in the *National PPP Guidelines* that should be followed during the RFP phase.

Table 7 – Relevant Sections from the National PPP Guidelines – RFP

Volume	Section
Volume 2 – Practitioners’ Guide	Section 5 – Request for Proposals Phase Section 11 – Risk Allocation Section 12 – Payment Mechanisms Section 13 – Bid Evaluation Section 14 – Probity and Integrity Section 15 – Interactive Tender Process Guidelines Section 16 – Communication Appendix B – Example Risk Tables Appendix C – Conflict of Interest Appendix D – Related-party Probity Principles Appendix E – The Interactive Tender Process

6.3.3 Negotiation and Transaction Close

Once a preferred bidder has been identified, plans will be made to move the contract negotiations forward in a timely manner. Key aspects in this phase include:

- **Setting the negotiation framework** – The negotiation team, led by the project director, agrees the framework for contract negotiations;
- **Contractual close: Executing the contract** – Once the approval process is complete, the contract is awarded to the successful tenderer; and

- **Transaction close (financial close for PPP): Reaching transaction close** – At contract execution, there may be a number of conditions precedent that financiers need to resolve before committing funding to the project. Following transaction close, there is also likely to be a range of review and disclosure requirements²².

The following sub-sections describe the ACT Government's position on the payment mechanism, abatement regime and project financial support for a PPP project.

(a) Payment Mechanism

The payment mechanism forms the core of a PPP contract. Its primary purpose is to remunerate the private sector contractor sufficiently for it to be willing to enter into a commercially binding contract and provide the service. The payment mechanism also represents the principal means for allocating risks and providing incentives in the PPP contract, where Government makes a payment to the private sector contractor for providing a service at an agreed standard of quality.

Box 9 outlines the ACT Government's PPP principle on payment mechanisms.

Box 9 – Payment Mechanism

ACT PPP Policy Principle

As a default position, the ACT Government will make payments to the private sector contractor in arrears, at a contracted price over time, for the services as defined in the PPP contract.

Service payments will be subject to performance-based abatements to ensure that the private sector contractor meets specific service delivery standards over time.

(b) Abatement Regimes

Abatement regimes (also referred to as performance-based incentive frameworks) in the contract assist in driving the required behaviour and performance from a private sector partner to ensure that specific standards required by the Government are sustained throughout the term of the PPP contract. These can be drawn from a combination of enforcement and incentive mechanisms, both financial and non-financial.

Table 8 provides a number of incentive mechanisms which can be considered by the ACT Government when designing an abatement regime.

²² For a PPP project (as opposed to a DCMO project), this will involve a rate lock process.

Table 8 – Incentive Types

Incentive	Advantages	Disadvantages
Performance based contract renewal	<ul style="list-style-type: none"> Leverages the operators commercial imperative of maximising tenure and maintaining reputation 	<ul style="list-style-type: none"> The incentive is neutralised if an operator fails or easily exceeds the benchmark(s) early in the contract term
Risk sharing	<ul style="list-style-type: none"> Can be aligned with Government objectives and calibrated to reflect an optimal risk allocation 	<ul style="list-style-type: none"> Needs to be carefully matched with the extent to which an operator can influence the outcome
KPI-based penalties/ bonus	<ul style="list-style-type: none"> Can target specific behaviours or outcomes desired from the operator provided that measurement is robust and independent 	<ul style="list-style-type: none"> The level of incentive can be hard to set and unlikely to drive investment (more about managing the use of existing resources) Cost of compliance can be a factor in terms of avoiding specific penalties or achieving specific bonuses Messages can be taken out of context (e.g. bonuses for just delivering the service required)
Abatement	<ul style="list-style-type: none"> Recovery of avoidable costs for services not delivered. A multiplier can be added as a deterrent (linked with penalties) 	<ul style="list-style-type: none"> Avoidable costs by route may differ from average costs which could create a perverse incentive.
Cure regime	<ul style="list-style-type: none"> Graduated approach with a focus on prevention and resolving performance issues 	<ul style="list-style-type: none"> Compliance cost of cure plans can escalate if targets are too low or outside operator control
Service improvement retention	<ul style="list-style-type: none"> Focus on remediation and reinvestment of fines. Gives procuring party control over where funds are spent 	<ul style="list-style-type: none"> Cost of capital tied up in the escrow account. Factors need to be under the operator control otherwise may result in a risk premium

Source: Deloitte (2013)

Box 10 outlines the ACT Government's PPP principle on the definition and use of abatement regimes.

Box 10 – Definition of Abatement Regimes

ACT PPP Policy Principle

Abatement regimes (i.e. performance-based frameworks) need to be simple, measurable and manageable. The ACT Government reserves the right to specify KPIs that reflect critical and core outcomes sought by a project.

Key performance areas to be considered include:

- Availability of service;
- Quality of service;
- Customer experience; and
- Performance incentives.

As a default position, the ACT Government will endeavour to be more prescriptive in the development and disclosure of an abatement regime for core performance metrics at the start of the RFP process.

Bidders will be provided an opportunity to challenge and competitively bid on the core performance metrics regime during the ITP.

Also, bidders will be provided an opportunity to develop non-core performance metrics based on demonstrated experience and best practice to support the best possible outcome for the project.

(c) Project Financial Support from Government

The PPP delivery model has developed in recent years to apply to a range of scope and funding arrangements where the roles of the public and private sector can vary.

As previously mentioned, PPP projects are increasing the extent to which core services are bundled together with the design and construction, and non-core service delivery components. This 'hybridisation' also occurs for funding arrangements, that is, the extent and proportion to which the project is privately financed and/or publicly funded.

While the standard PPP model calls for private financing based on Government-backed payments over the life of the contract, and/or a transfer of project revenue to the private sector, public sector contributions to the capital cost of a project may also be used.

The ACT Government will consider a number of funding models that could be applied to PPP projects where public sector support is deemed necessary, whether during procurement or over the course of the contract term. Such approaches may include:

- **Concessional Loans** – Providing terms that are more favourable than those that can be obtained in the market. The concession may come in the form of lower interest rates, longer loan tenures or grace periods before interest or principal are repaid.

- **Debt Guarantees** – Where the Government agrees to pay a third party in the event that the private sector operator is unable to service its debt obligations. Applying this option can be attractive to investors, as it enhances a project’s credit-worthiness and reduces project financing costs. Debt guarantees can be structured to be linked to patronage levels, for example, a condition for the debt guarantee is that actual patronage falls short of a set level.
- **Phased Grants/Availability Payments** – These are similar to traditional grants in that they are provided to a project without requiring repayment. Phased grants can be used to allow funding to be injected over a longer period (for example, over a 30-year concession period). This approach provides assurance and certainty on revenue streams for the private sector in delivering the project.
- **Infrastructure Bonds and Project Bonds** – Infrastructure bonds are debt instruments issued by the Government and project bonds are issued by the private sector to fund infrastructure projects. The bond owner is entitled to coupon (i.e. interest) payments and repayment of the principal at maturity.
- **Demand-contingent Loans** – These are loans which the proponent must repay only when demand exceeds a certain level. It is envisaged that these loans would function similarly to the Higher Education Loan Program, whereby the repayment would begin at a relatively low level, with graduated increases from that point.
- **Equity** – This is the purchase by the Government of an ownership stake in the Special Purpose Vehicle (“SPV”). This could be an attractive option for the construction and ramp-up phases of greenfield infrastructure projects where the private sector may not have an appetite for the risk caused by uncertainty about costs or use. The ACT Government could then sell its stake once construction is completed and patronage becomes known.
- **Capital Contributions** – The main intent of a capital contribution is to reduce the level of private sector project debt. They have been used by Governments to a greater degree in the context of challenging market conditions as a result of the Global Financial Crisis.

It should be noted that not all infrastructure projects will be suitable for financial support using the aforementioned models. Government support would be conditional on projects passing an overall cost-benefit assessment and demonstrating both strong public benefits and capability of generating sufficient revenue streams.

Box 11 outlines the ACT Government’s PPP principle when determining the extent of Government project support for a PPP project.

Box 11 – Government Project Support

ACT PPP Policy Principle

The ACT Government will in most circumstances not provide financial support in the form of a ‘Government Project Guarantee’ in the event of a project not being commercially viable during procurement and/or failing to meet its financial and/or operational obligations.

Only under exceptional circumstances and where moral hazard is demonstrably absent, will a ‘Government Project Guarantee’ be considered. ‘Government Project Guarantees’ will require the approval of the Under Treasurer.

(d) Contract Summary

As part of public disclosure requirements, particularly as PPP projects tend to receive increased public scrutiny, a contract summary will need to be produced by the Sponsoring Directorate within 180 days of transaction close. Effort should be made to ensure consistency with existing contract summaries in terms of the scope and format of commercial disclosures.

Further information on contract summary requirements can be found in **Section 8**. The summary will have the following information disclosed:

- **A summary of key project features** – this is intended to provide a snapshot of the rationale for the project, its value and the parties involved; and
- **A summary of contract elements** – this is intended to highlight key commercial principles applied in the project to ensure sustainability and specified outcomes over the life of the project.

Table 9 summarises the relevant sections in the *National PPP Guidelines* that should be followed during the negotiations and transaction close phase.

Table 9 – Relevant Sections from the National PPP Guidelines – Negotiations

Volume	Section
Volume 2 – Practitioners’ Guide	Section 6 – Negotiation and Completion Phase Section 11 – Risk Allocation Section 12 – Payment Mechanisms Section 14 – Probity and Integrity Section 16 – Communication Section 17 – Post-tender Debriefing Principles Appendix B – Example Risk Tables Appendix C – Conflict of Interest Appendix D – Related-party Probity Principles

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7. Managing a PPP Project

7.1 Overview

This section provides an overview of project delivery and contract management. In particular, the section covers the key principles that the ACT Government has adopted with respect to achieving consistent and efficient risk allocation for the delivery of PPP projects in the ACT.

These principles have been adopted based on findings gathered during a comprehensive literature review and stakeholder consultation process involving both public sector agencies and private sector participants in Australia.

This section should be read in conjunction with the following *National PPP Guidelines*’ volumes:

- *Volume 2 – Practitioners’ Guide;*
- *Volume 3 – Commercial Principles for Social Infrastructure; and*
- *Volume 7 – Commercial Principles for Economic Infrastructure.*

7.2 Contract Management

Following the transaction close of a PPP project where a commercially binding agreement has been successfully executed, the majority of project-related public sector resources will be spent on governance and management during the construction and operations stages:

- **Project Implementation (also known as Construction Delivery)** – This stage commences when construction starts and continues through to the commissioning and commercial acceptance of a project, where the services required by the output specifications begin; and
- **Project Operation (also known as Service Delivery)** – This stage covers the provision and use of the contracted operational services during the remaining term of the contract, including the period leading up to contract expiry or termination.

In supporting effective contract management, the ACT Government and the successful tenderer will require dedicated and appropriately qualified resources capable of managing and operating the PPP project. Preferably, these resources will include those who were closely involved in establishing and negotiating the contract and risk management strategy during the procurement phase to support knowledge retention and transfer to the construction and operations phases of the contract.

A number of commonly applied contract management practices and processes for PPP arrangements include:

- **Contract administration** – In addition to being familiar with the technical, commercial, financial and legal aspects of the contract, the ACT Government needs to have a close understanding of project objectives and requirements, and the commercial intent of the parties involved; the operational, industrial and community issues associated with the project; and the regulatory context in which the project operates. This includes management and administration of the payment mechanism, including the abatement regime.

- **Performance monitoring and reporting** – The PPP consortium has full delivery responsibility, including self-monitoring and reporting, subject to review, audit and provision of ongoing detailed performance reporting.
- **Knowledge management** – This includes client and stakeholder feedback, performance monitoring and reporting, and ongoing risk management. Having an effective information management strategy customised to the individual project’s needs is essential in ensuring the Government’s ability to successfully manage a PPP contract. Information collected and analysed will help refine planning and management strategies over time as the Government gains a better understanding to enable it to better manage project risks.
- **Maintenance of relationships** – The Government intends to maintain an appropriate and strong relationship and partnership with the contracted private parties, to assist in early identification and management of issues and to ensure that the obligations and benefits are delivered.
- **Change management** – Given the long term nature of PPP projects, arrangements need to allow flexibility to respond to change, supported by appropriate provisions in the contract. The processes for change are initiation, negotiation and agreement, covering the scope, quality and price response to ensure value for money is sustained. This also need to encompass potential changes in resources, requiring the development of robust succession and handover plans, both for the public and private sector partners.
- **Contingency planning** – As a PPP project involves appropriate risk allocation between the public and private sector parties, it may not always be possible for the Government to transfer the full responsibility to the private sector contractor. As a result, the ACT Government will reserve the right to step in and continue the supply of affected services in cases of service delivery failure, acknowledging that lenders will typically and appropriately have preferential advance step-in rights to remedy performance shortfalls prior to default.
- **Governance** – The ACT Government will implement and expect private sector contracts to implement appropriate governance, compliance and probity practices both within Government and in the interactions with the private party contract and other public sector stakeholders.
- **Ongoing review** – The ACT Government will continually monitor and adapt management and review processes throughout the term of a PPP contract to ensure that management is sufficiently informed of current and emerging risks and issues over time and is able to respond early.

7.2.1 Implementation

Depending on the nature of the asset, the construction phase of a project generally lasts for one to five years from transaction close following a procurement process. A two year construction period is more typical for social infrastructure PPPs, with large scale economic infrastructure PPPs having a longer construction period.

Project implementation involves further design development and the construction and commissioning of the project, followed by the commencement of operational services.

Contract management for this stage involves the assurance that the designers and builders of the successful private sector contractor meet agreed upon delivery milestones, scope and quality standards and that the project meets the agreed construction completion requirements.

The following sub-section describes the ACT Government's position on the independent review and certification arrangements for a PPP project.

(a) Independent Review and Certification

The provision of independent assurance services on major infrastructure projects has become a necessity in ensuring that a project is delivered efficiently and effectively in terms of fulfilling its specification and requirements as determined in the PPP contract.

The contract will include a number of schedules including the output specifications and the contractor's proposals, which define the scope, quality and program that formed the basis of the contractor's offer. The output specifications precede the contractor's proposals in the contract documentation hierarchy to ensure that these are achieved in any event.

Typically, the ACT Government will have an active role during the construction phase despite the fact that the full design and construction responsibility rests with the private sector contractor. However, to provide certainty that the contractor's obligations are met, an independent reviewer will be jointly appointed by the Government and the contractor, with a duty of care both to the Government and project lenders in relation to reporting on scope, quality, program and cost progress and performance.

This includes site inspections and regular reporting on progress and certifying completion of the constructed assets and suitability for commencement of operational services.

Box 12 outlines the ACT Government's PPP principle when appointing independent reviewers.

Box 12 – Appointment of Independent Reviewer

ACT PPP Policy Principle

To provide certainty that the contractor's obligations are met, an independent reviewer will be jointly appointed by the Government and the contractor.

(b) Post Implementation Review

As part of the TCF process, a Post Implementation Review ("PIR") may be undertaken. The PIR will provide comprehensive feedback to assess project outcomes, collecting and utilising knowledge gained throughout a project to optimise the delivery and outcomes for future PPP projects.

A PIR of the project's development, pre-procurement, procurement, evaluation and negotiations, contract execution and implementation will generally be initiated twelve calendar months after commercial acceptance and operations have commenced. However, a PIR may be undertaken earlier if required.

The PIR is part of the TCF process and, in the context of a PPP approach, it will generally review completed projects in terms of:

- Formulation, objectives and appropriateness of project scope;
- Accuracy of value for money estimates and the delivery of net benefits;
- Performance, including effectiveness of risk allocation;
- Approval process(es);
- Delivery, including delivery time and budget performance;
- Operations, including service delivery and financing;
- Project management and procedures;
- Functionality and quality of infrastructure; and
- Industry, community and environmental management, including industrial relations.

It should be noted that service delivery performance and contractual compliance will also be reviewed regularly throughout the life of the contract by the Sponsoring Directorate within the ACT Government and, at least, initially by the Project Steering Committee, informed by contract management reports.

7.2.2 Operations

Management of the operations of a PPP contract will be required for the duration of the full contract term.

The process involves ongoing contract management, which includes amongst others things, ensuring that service payments by Government to the private sector operator are matched by specific service delivery standards over time, subject to performance-based abatement. This includes ensuring that necessary asset lifecycle and maintenance obligations are met and, in addition, end of contract term handover requirements are achieved.

The following sub-sections describe the ACT Government's position on the refinancing, contribution of capital, management of interest rate risks and incremental insurance premiums, and consent processes for a PPP project.

(a) Refinancing and Regearing

Refinancing involves the practice of replacing or renegotiating the original capital structure, debt and/or equity arrangement of the PPP project generally under new terms. Refinancing is generally regarded as favourable for a PPP when interest rates are falling and/or when project risks have been mitigated over time.

Refinancing can be undertaken in different forms including:

- A reduction in debt costs;
- An extension of debt tenure;
- An increase in gearing (proportion of debt to equity);
- A reduced reserve account requirement; or
- The release of guarantees provided by shareholders of the PPP project.

Consent to refinancing will generally be on the basis of ‘consent not to be unreasonably withheld’. The ACT Government has a legitimate concern to understand the identity and reputation of any of its counterparties on PPP transactions.

The ACT Government takes a different view of regearing transactions. Regearing can result in significant financial gains for parties involved in a PPP project. Regearing will also generally result in an increase in the Government’s termination liabilities. Where a project is being regearred, it is generally seen as appropriate to share any financial gain between the public and private sector.

Box 13 outlines the ACT Government’s PPP principle on the treatment of refinancing gain share.

Box 13 – Treatment of Refinancing Gain Share

ACT PPP Policy Principle

As a default position, the ACT Government does not generally support refinancing arrangements proposed by the private sector except where a reasonable gain share arrangement is proposed. A 50:50 gain share arrangement will be accepted by the ACT Government as a standard for any proposed refinancing.

The ACT Government may decline to accept any regearing that increases its termination liabilities. Refinancing by way of revenue stream securitisation is also captured under this policy.

(b) Capital Contributions

The main intent of a capital contribution is to reduce the level of funding required by the private sector. This usually occurs when a key project milestone has been reached. Milestones may be during the construction stage, at construction completion, or at a given time period after the project has been operating successfully.

Box 14 outlines the ACT Government’s PPP principle on capital contributions.

Box 14 – Capital Contributions

ACT PPP Policy Principle

The ACT Government may elect to incorporate a capital contribution into its funding profile for any prospective PPP.

The ACT Government will generally not make capital contributions prior to Commercial Acceptance of the project.

Where capital contributions are used, the ACT Government will require a sufficient level of private sector debt and equity to be maintained in the project to support the risk transfer.

(c) Managing Interest Rate Risks

Subject to the specifics of the project structure and financing, the ACT's default position is transferring the risk of variations in long-term interest rates to the private sector entity.

Interest rates, as a result of private sector financing, are typically higher to reflect a premium as a result of any systematic risks in the market. In that regard, this premium represents the additional cost the public sector is willing to pay for the interest rate risk allocation to be managed by the private sector.

The private sector may manage this risk by entering a long term interest rate swap arrangement at financial close, the terms of which are largely determined by the project type, its risk profile and current market conditions.

Box 15 outlines the ACT Government's PPP principle on managing interest rate risks.

Box 15 – Managing Interest Rate Risks

ACT PPP Policy Principle

As a default position, the ACT Government will seek financing solutions which involve the management of risks associated with long-term interest rates.

The Government will consider, on a case-by-case basis, innovative proposals that would mitigate such risks proposed by the private sector.

(d) Consent Processes

As part of the contract management process, key decision making points throughout the project term will require consideration by and approval from the ACT Government before they can proceed. These can include major contract variations, refinancing and change of control of the contractor.

The ACT Government will consider the impact on public sector resources and the ACT when determining whether to provide consent in these situations. Where appropriate, the Government should solicit advice from external advisors to provide the necessary capabilities to make an informed decision.

The following PPP principles outline a number of consent processes for refinancing, change of control and good faith negotiations.

Box 17 to Box 22 exhibit PPP principles which outline the ACT Government's position on consent processes for refinancing, change of control and good faith negotiations.

Box 16 – General Consent Process

ACT PPP Policy Principle

IFAD within CMTEDD will be the overall responsible agency for any PPP transactions until financial close and for major negotiations over the life of the project²³. IFAD role post project transaction close will largely involve life-of-project decision points (e.g. refinancing, change of control, enhancement negotiations). Refer to Appendix D

Authority to provide day-to-day consent by the ACT Government will depend on the decision point type. For example, PCW will be responsible for day-to-day contract management during the design and delivery phase of a project.

Consent processes post-implementation of a PPP project tend to relate to three key events:

- Refinancing;
- Equity and/or debt assignments; and
- Good faith negotiations for enhancements.

Box 17 and **Box 18** distinguish between different forms of refinancing in terms of scale and the degree of risk exposure – where refinancing increases in complexity, the provision of consent will be escalated within the ACT Government.

Box 17 – Consent Process specific to Refinancing

ACT PPP Policy Principle

This applies to the refinancing of project debt in the event of a roll over. The ACT Government reserves consent rights over refinancing processes.

Any form of refinancing based on debt roll over will require sign off by the Executive Director of the Infrastructure Finance and Advisory Division in CMTEDD subject to contractual conditions and based on a consideration of counter-party risk and reputation, consent will not be unreasonably withheld.

²³ CMTEDD will be responsible for PPP policy, PPP structure, and commercial and financial outcomes of the PPP.

Box 18 – Consent Process specific to Regearing

ACT PPP Policy Principle

This applies for regearing that involves major debt and/or equity restructuring that may impact on the termination liabilities of Government or involves securitisation of debt and/or revenue streams. Where it consents; the ACT Government policy is to contractually participate in refinancing gain share.

Any form of regearing or significant financial restructuring will require sign off by the Under Treasurer based on advice and recommendation from the Executive Director of the Infrastructure and Finance Advisory Division in CMTEDD.

Box 19 and **Box 20** distinguish between different degrees of equity and/or debt assignments. Any proposed change that has a significant impact to the project's financial structure will see the provision of consent being escalated within the ACT Government.

Box 19 – Consent Process specific to Assignments

ACT PPP Policy Principle

This guideline refers to any proposed changes in equity and debt assignments between parties that do not significantly alter contractual obligations of the PPP consortium, that is, a debt and/or equity assignment that does not result in change of control.

The approval of equity and debt assignment will be made by the Director, Infrastructure Policy and Analysis, Infrastructure Finance and Advisory Division in CMTEDD. Based on a consideration of counter party risk and reputation, consent will not be unreasonably withheld.

Box 20 – Consent Process specific to Change of Control (incl. Disposals)

ACT PPP Policy Principle

Any proposed change of control of the PPP Company or SPV that requires consent under the relevant contract will require approval by the Executive Director of the Infrastructure Finance and Advisory Division in CMTEDD.

The process will consider reputational impacts, organisation capabilities, and any financial and operational impacts. Subject to these tests being adequately met, consent will not be unreasonably withheld.

Box 21 provides the basis in which negotiations, held in good faith, will be conducted where variations to the project’s contractual arrangements are being proposed. It is essential to ensure that this process is managed through a transparent and consistent process to ensure that appropriate probity is maintained.

Box 21 – Consent Process specific to Good Faith Negotiations for Enhancements

ACT PPP Principle

Following project transaction close, any substantial variations in contract scope may need to be treated as a negotiation in good faith, whether initiated by the ACT Government or the PPP consortium.

Approval of any PPP enhancement transaction will be required by the Under Treasurer for substantial variations in contract and scope. CMTEDD will represent the ACT Government’s interests in the negotiations and be supported by the Sponsoring Directorate.

(f) Contract Termination or Expiry

The ACT Government may decide to terminate a PPP contract should prescribed termination events occur, as defined under the project agreement or for a range of reasons including termination for convenience. This can range from the private sector contractor consistently failing to meet contractual obligations, to failure to abide by cure regimes to improve service delivery, or private sector contractor insolvency or default, or other aspects such as Force Majeure.

In the event of termination, depending on the circumstances, the private sector contractor may be entitled to compensation. Furthermore, the Government may be required to ‘step-in’ and ensure that service delivery is not interrupted.

However, lenders will likely have preferential early ‘step-in’ rights to allow them the opportunity to remedy prior to default, other than prescribed critical incidents or defaults, where the Government has authority.

Table 10 summarises the relevant sections in the *National PPP Guidelines* during the delivery and management of a PPP project.

Table 10 – Relevant Sections from the National PPP Guidelines – Delivery and Management

Volume	Section
Volume 2 – Practitioners’ Guide	Section 7 – Contract Management; Section 12 – Payment Mechanisms; Section 14 – Probity and Integrity; Section 16 – Communication; Appendix C – Conflict of Interest; Appendix D – Related-party Probity Principles; and Appendix H – Contract Management Guidance.

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8. Governance

8.1 Overview

This chapter provides an overview of the governance arrangements over the investment lifecycle of a PPP project. It also provides information with respect to the roles and responsibilities for individual directorates within the ACT Government over the course of the transaction, delivery and operations of a PPP project.

Finally, this section describes the general probity and disclosure requirements from an overall governance perspective.

8.2 Governance Framework

CMTEDD will have overall responsibility and final oversight for a project once it has been approved by Cabinet to be delivered as a PPP²⁴ up until financial close.

CMTEDD, through its Infrastructure Finance and Advisory Division, will coordinate and collaborate with other ACT directorates over the investment lifecycle of a PPP project. In particular, IFAD will support the project team in the day-to-day activities involved in the transaction phase of a PPP project, including preparation to tender, procurement and negotiations.

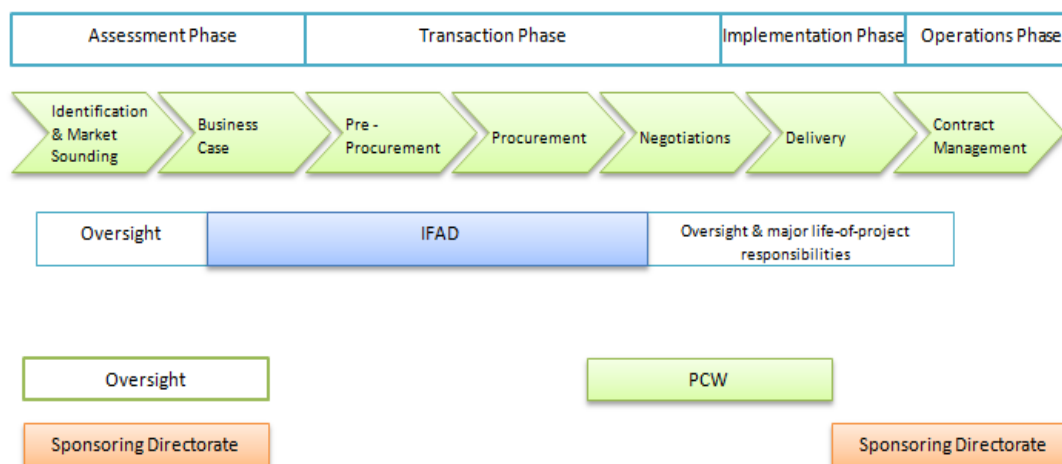
Following transaction close, day-to-day responsibilities such as contract management will transition to the Procurement and Capital Works (“PCW”) for the construction phase up until commercial acceptance of a project.

Once the project becomes operational, day-to-day responsibilities will transfer to the Sponsoring Directorate. It should be noted that IFAD will remain involved throughout the term of the project, primarily advising, supporting and recommending major life-of-project and/or financial decision making. A range of specific matters that are the responsibility of IFAD or require IFAD involvement are set out in Appendix G

Figure 7 illustrates the day-to-day responsibility transfer during the investment lifecycle.

²⁴ CMTEDD will be responsible for PPP policy, PPP structure, and commercial and financial outcomes of the PPP. Note that the creation of the Capital Metro Agency pre-dates the implementation of The Partnerships Framework

Figure 7 – Governance over the Investment Lifecycle



A project team will be established to procure the project to financial close. This team may be modified for the design and delivery phase of the project. The project team may comprise core full-time staff from the Sponsoring Directorate, who will ultimately manage the core services associated with the infrastructure asset once it has been delivered and begins its operations. The core unit will be supplemented accordingly by representatives from IFAD and/or PCW to provide the necessary leadership, skills and experience applicable to specific investment lifecycle phases. Where available, the project team will be led by the Director, Major Projects (IFAD/PCW).

This will facilitate and support knowledge transfer and retention within the project team, as well as draw on appropriate competencies and capabilities as required, to ensure that Government has the capacity and capability to carry out its obligations in a PPP arrangement.

The project team will engage external contractors and/or advisors to provide specialist capabilities as required. Incorporating both external and internal resources provides the project team flexibility in terms of being able to 'scale up or down' to remain cost-effective in accordance to the project workload at any given period throughout the contract term.

In addition, having resources from different directorates ensures representation and commitment from responsible central and sponsoring directorates. This also ensures that a degree of natural tension is maintained within the project team as each directorate will be expected to hold one another accountable to ensure that the ACT Government's obligations to the private sector contractor are met to the best of its abilities and the ACT Government interests are protected.

It should be noted that the dedicated project team will be sufficiently informed and experienced with a clear understanding of value priorities, and afforded the time to manage PPP projects effectively. This is critical as project team members may need to balance existing obligations and responsibilities as part of their substantive roles.

Figure 8 – Project Team Governance Framework

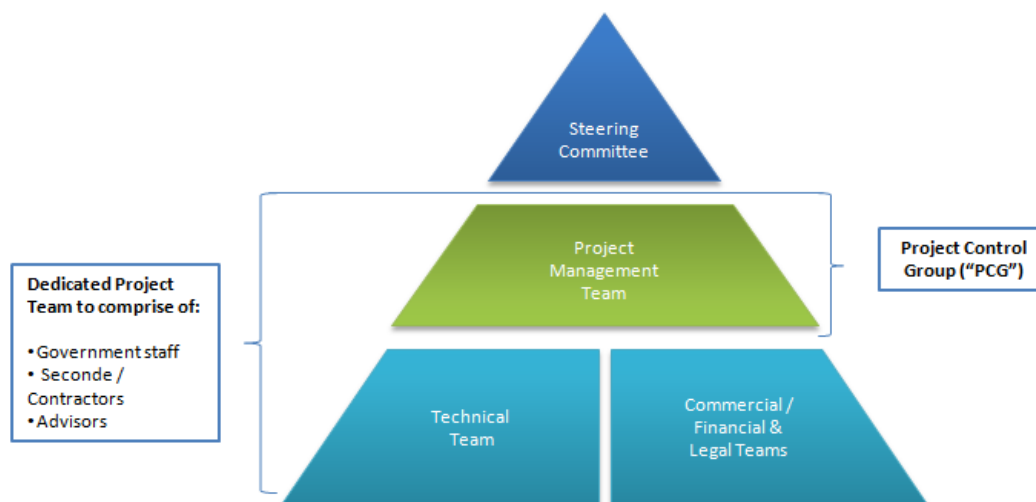


Figure 8 above provides an overview of the governance arrangement within a dedicated project team. It will comprise:

- **Executive Steering Committee** –The Steering Committee will provide project oversight and direction, resolve any conflict resolution, and be responsible for all major decision making. The Steering Committee will consist of senior level representatives from CMTEDD, PCW and the Sponsoring Directorate over the life of the project. Depending on the lifecycle phase, different directorates will be responsible for chairing the Steering Committee.
- **Project Management Team** – The project management team will have the responsibility of ensuring that day-to-day activities are carried out in accordance with the ACT Government’s requirements under a PPP arrangement. Depending on the phase of the project, different directorates will be responsible for project management. If required, the project team may engage external advisors/contractors to support them in this role. It is a strong recommendation that the project team be funded their own appropriation for the procurement and delivery of the project with delegation to rest with the Project Director (Director, Major Projects, where available).
- **Technical Team**–The technical team(s) will ensure that the project’s design, construction and operations are appropriate for the ACT’s needs. The Sponsoring Directorate may engage external contractors and/or advisors to provide additional technical advice to ensure that the project’s requirements and standards are achieved.
- **Commercial/Financial and Legal Teams** – The commercial/financial and legal advisory teams may be led by IFAD, PCW or the ACT Government Solicitors Office (“GSO”) depending on the project phase. These teams will support the ACT Government in ensuring that the Government’s interests are optimised in a PPP arrangement from both a commercial and legal perspective. In general, these teams will be resourced by external contractors and/or advisors to support the transaction.

Box 22 outlines the ACT Government’s PPP principle on the responsible party for a PPP project in the ACT.

Box 22 – Responsible Party for PPPs in the ACT

ACT PPP Policy Principle

A project will only be pursued as a PPP if it has been approved by Cabinet or a Committee of Cabinet. IFAD will be the overall responsible division for a PPP transaction through procurement until financial close.

IFAD will coordinate and manage the PPP project during the transaction period (up until financial close). Following transaction close, IFAD may continue to have a role in the governance structure for the project.

Day-to-day responsibilities will be carried out by a central delivery agency (i.e. PCW) during design and delivery. At commercial acceptance, day-to-day responsibilities will be carried out by the Sponsoring Directorate.

IFAD has direct responsibility for major life-of-project transactions (e.g. refinancing, assignments, regearing etc.). IFAD may also supervise and advise on contract management in the initial period post-commissioning of the PPP project. These include but are not limited to those matters listed at **Appendix D**

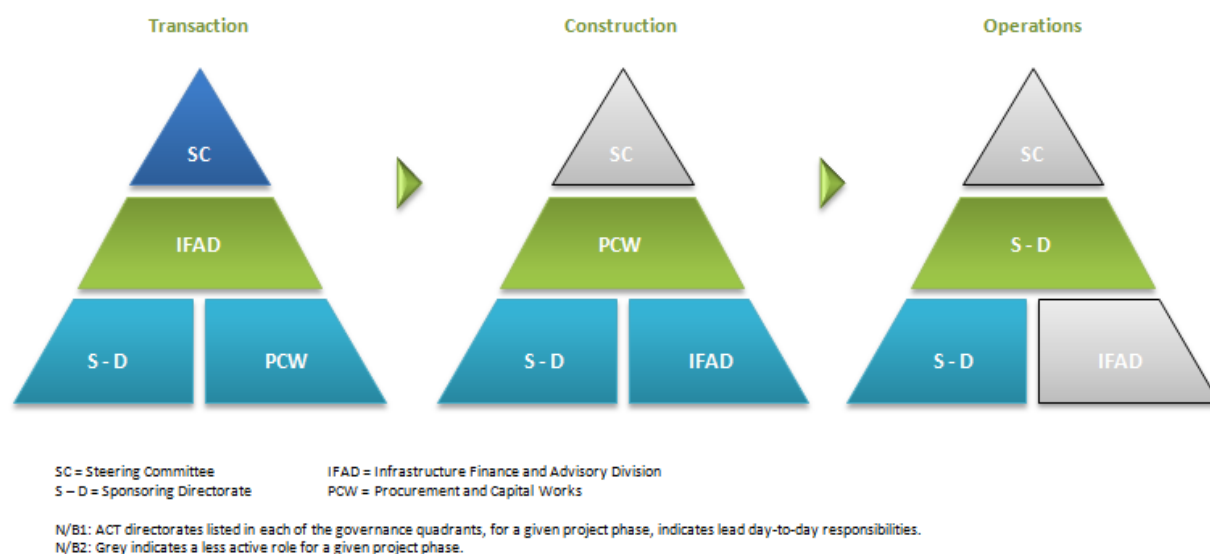
Practitioners should refer to this document and the TCF's *Project Governance Protocol* when structuring and resourcing for a PPP project. *Section 8 – Project Structure and Resources* of *Volume 2 – Practitioners' Guide* in the *National PPP Guidelines* may provide additional guidance if required.

8.3 Roles and Responsibilities

Governance arrangements will differ from project to project as each PPP will have unique and specific concerns that will need to be addressed. While maintaining a degree of adaptability will be essential to ensuring successful project delivery, the ACT Government will seek to achieve a high level of accountability and transparency within Government over the life of the project.

Figure 9 depicts the Project Team Governance Framework as it transitions between the broad investment lifecycle phases of transaction, construction and operations, in terms of the directorates responsible for particular work streams.

Figure 9 – Governance Phases



The following sub-sections provide further detail of ACT directorates involved and their roles and responsibilities for a given phase.

8.3.1 Chief Minister Treasury and Economic Development Directorate

CMTEDD is the first point of contact in the ACT for PPPs. In 2014 a dedicated infrastructure finance and PPP unit, Infrastructure Finance and Advisory Division (IFAD), was established in CMTEDD and is responsible for ensuring that the directorates adhere to the processes set out in these guidelines, the supporting material and the *National PPP Guidelines*.

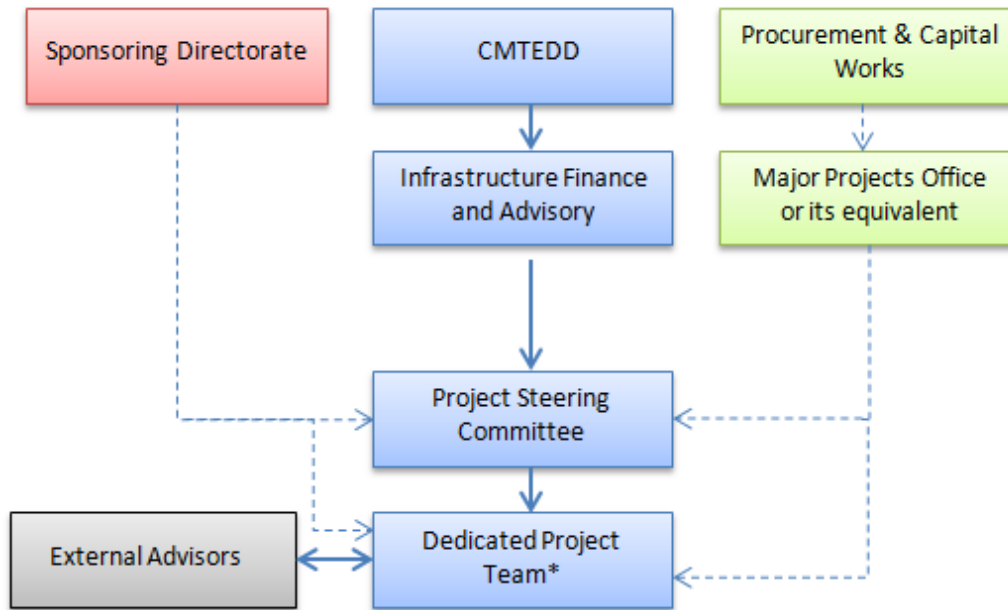
IFAD is responsible for undertaking the financial close process on behalf of the sponsor directorate. The Under Treasurer or the Director General of the sponsor directorate will attend contractual close and execute PPP documents on behalf of the ACT Government.

IFAD will also remain the responsible party for life of project transactions and be required to advise on major life-of-project decisions. A major decision can be defined as a decision that would materially impact on the financial and/or operational arrangement of the PPP project as negotiated in the original contract. For example, IFAD will be required to provide transaction support and consent for any financial process such as refinancing, debt or equity arrangements.

Following the transaction phase, IFAD will also provide commercial and financial advice and provide support on an ad hoc basis to PCW and the Sponsoring Directorate.

Figure 10 illustrates IFAD leading project management, commercial/finance and legal input during the transaction phase of a PPP project. PCW and the Sponsoring Directorate will provide support with respect to procurement, commercial/financial and technical input.

Figure 10 – Governance structure during the transaction phase



*Colour of the Steering Committee and Project Team denotes which ACT directorate has lead responsibility for a given phase.

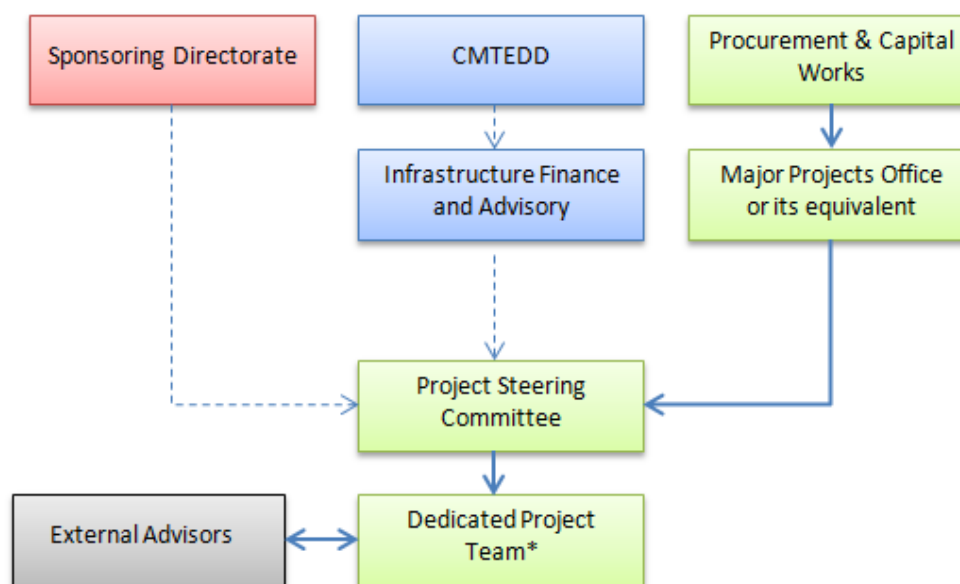
8.3.2 Procurement and Capital Works (“PCW”)

As the ACT’s centralised division for capital works procurement and delivery, PCW will be responsible and accountable for delivering the PPP project and securing the specified outputs and outcomes during the construction phase.

This will primarily involve holding the successful contractor accountable to their contractual obligations and ensure that the delivered infrastructure asset is fit-for-purpose in terms of what has been specified in the contract scope. PCW will also be responsible for managing any out-of-scope and/or scope variations during the delivery of the project.

Figure 11 outlines PCW leading project management and commercial/financial input during the design and delivery phase of a PPP project. IFAD and the Sponsoring Directorate will provide support in terms of commercial/financial and technical input and advice as required during this phase.

Figure 11 – Governance structure during the design and delivery phase



*Colour of the Steering Committee and Project Team denotes which ACT directorate has lead responsibility for a given phase.

8.3.3 Sponsoring Directorate

The Sponsoring Directorate is any ACT directorate that will be responsible for managing the private sector contractor once the asset is built and the service is in operation over the life of the project. That is, the Sponsoring Directorate will typically be the directorate who developed the original business case and whose portfolio governs the completed PPP project. For example, Health Directorate would be responsible for a hospital PPP once it is operational, or Justice and Community Safety Directorate for a prison PPP once the prison is operational.

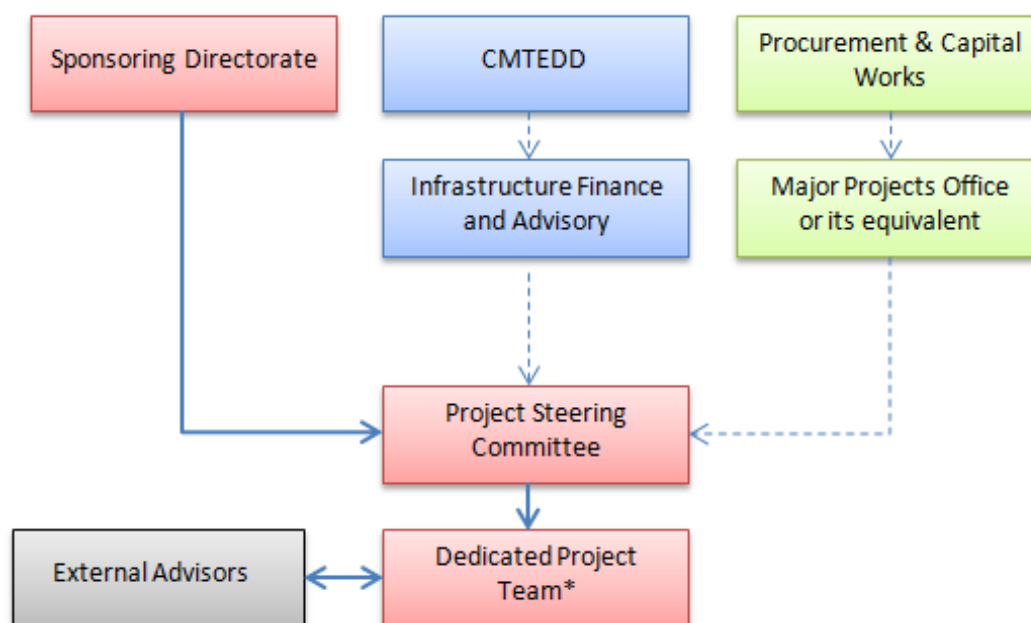
Ensuring the accuracy and the completeness of the output specifications is the sole responsibility of the Sponsoring Directorate. Under typical governance arrangements for PPP projects in the ACT, the Director General of the Sponsoring Directorate will present these for sign off by the Project Steering Committee. The Sponsoring Directorate will also be responsible for developing and conducting a stakeholder consultation process and manage stakeholder groups accordingly during the procurement process.

The Sponsoring Directorate will be responsible and accountable for working with PPP Co. to ensure that the completed PPP project is ready to operate according to the specific scope and functional requirements. It will also manage the infrastructure asset's contractors in carrying out their contractual service delivery obligations and ensure that the asset is maintained to the required standard as specified in the contract during the contract term.

The Sponsoring Directorate will also be responsible for developing and requesting any out-of-scope and/or scope variations during the operational phase of the project. Should these variations necessitate a transaction – this transaction will be managed by IFAD.

Figure 12 illustrates the Sponsoring Directorate leading the project management during the operations phase. IFAD and PCW will provide support and input and advice as required during this phase.

Figure 12 – Governance structure during the operations phase



*Colour of the Steering Committee and Project Team denotes which ACT directorate has lead responsibility for a given phase.

8.3.4 Dedicated Major Project Authorities in the ACT

The ACT Government will, on occasion, set up a dedicated authority to manage the delivery of a major infrastructure project²⁵. This will likely be the case for projects that could be considered to be “high risk, high value”.

The dedicated authority will, in effect, become the Sponsoring Directorate, and at a minimum, adopt the responsibilities set out for Sponsoring Directorates. However, on a **case-by-case basis**, the dedicated authority may assume increasing responsibilities across all three investment lifecycle phases.

This may be the case for a dedicated authority that has sufficient budget to accommodate the necessary resource capabilities and capacity to provide specialist input.

For example, a dedicated authority for a major PPP project may have the flexibility to source its own commercial/financial and/or legal capabilities, whether through internal hiring and secondments, or external contractors and advisors. Therefore, the role of IFAD and PCW may be that of project oversight and guidance to ensure adherence to the ACT’s PPP procurement procedures.

²⁵ An example of this is the Capital Metro Agency (“CMA”) which has been set up to coordinate the delivery of transit corridor projects and corridor redevelopment opportunities.

8.4 Probity

From a whole-of-project perspective, the ACT Government seeks to conduct its dealings with private industry and public sector counterparts with integrity and transparency in all matters that are related to a PPP project.

The identification, evaluation and negotiation of PPP project bids must be fair, open and demonstrate the highest levels of probity, consistent with the public interest.

The following probity principles will be applied throughout the transaction, construction and operation of a PPP project:

- Achieve sound commercial outcomes;
- Professional integrity;
- Maintenance of impartiality;
- Maintenance of accountability and transparency;
- Avoidance of conflicts of interest; and
- Maintenance of confidentiality.

8.5 Disclosure Requirements

8.5.1 Contract Disclosure

All capital works in the ACT including PPP projects will be subject to review and the compliance of disclosure requirements to Cabinet, the Auditor-General, broader ACT Government and the general public.

In general, the ACT directorates are required to make contractual documents publicly available and bidders must be able to lodge their tenders through Tenders ACT. This system is managed by PCW through its website for tenders:

<https://tenders.act.gov.au/ets/index.do>

An appropriately redacted Project Agreement will be released by PCW following financial close.

8.5.3 Contract Summaries

In addition to the aforementioned public disclosure requirements, contract summaries are required to be disclosed to the general public.

The ACT Government will release a summary of project and contract for each PPP within 180 days of transaction close. The summary will disclose the following information:

- **A summary of key project features** – this is intended to provide a snapshot of the rationale for the project, its value and the parties involved;
- **A disclosure of the financial outcome of the project compared to the PSC;** and
- **A summary of contract elements** – this is intended to highlight key commercial principles applied in the project to ensure sustainability and specified outcomes over the life of the project.

IFAD and the Sponsoring Directorate must approve any contract summary before it is released. The Sponsoring Directorate will also be responsible for providing the contract summary to the relevant Minister before making it publicly available.

Any amendment(s) made to a contract that would impact on the information contained in its related contract summary will need to be updated accordingly and undergo the same public disclosure requirements for new contract summaries.

In terms of determining the appropriate content of each contract summary, each PPP project will have its own unique and specific circumstances to take into account. Furthermore, content requirements are likely to evolve over time as new areas of public interest emerge. Due to commercial sensitivities, it is not anticipated that PPP project models will be publicly released.

APPENDICES

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Appendix A: Glossary

Term	Definition
Abatement Regime	Abatement regimes (also referred to as performance-based incentive frameworks) assist in driving the required behaviour and performance from a private sector partner in a PPP to ensure that specific standards required by the Government are sustained throughout the term of the contract.
Assessment Criteria	Standard and bespoke criteria upon which the bid submissions will be assessed.
Asset Beta	A measure of the Systematic Risk of an asset, which reflects the degree to which asset returns are expected to vary with returns of the market as a whole.
Bid Bond	A bid bond is issued as part of a bidding process to provide certainty to the Government to ensure that shortlisted bidders commit to the conclusion of a tender process. The bid bond is subject to forfeiture if either a shortlisted bidder prematurely exits a tender process or the preferred bidder fails to comply with conditions subsequent.
Bid Cost Reimbursement	The reimbursement of the cost of developing a bid or the price of any utilised intellectual property, as determined by the Government, to the unsuccessful shortlisted bidder in the RFP phase.
Bidder	A respondent to an EOI or RFP request. Typically, a bidder will be a consortium of parties, each responsible for a specific element, such as construction, the supply of equipment, or the operation of the asset, and the delivery of the service.
Binding Offer	A formal proposal submitted by the proponent at the conclusion of the process which is capable of acceptance by Government.
Business Case	The document that articulates the rationale for undertaking an investment. In ACT, the business case is also referred to as the Single Assessment Framework ("SAF") and is developed in accordance with <i>The Capital Framework</i> ("TCF") and these policy guidelines.
Cabinet	Cabinet is the peak decision making body of the ACT Government. Cabinet typically meets on a weekly basis to discuss matters that have significant implications for the ACT. It makes critical decisions on topics such as reform, policy initiatives, governmental appointments, project approvals etc.
Capital Asset Pricing Model ("CAPM")	An economic model for valuing stocks by relating systematic risk and expected return. It is based on the idea that investors demand additional expected return (i.e. risk premium) if asked to accept additional risk.
Chief Minister Treasury and Economic Development Directorate ("CMTEDD")	CMTEDD leads the ACT Public Service and provides strategic advice and support to the Chief Minister, the Treasurer and the Cabinet on policy development, financial and economic policy, service delivery and whole of Government issues, facilitates the implementation of Government priorities and provides high level executive support and policy advice.
Commercial Acceptance	The point at which the D&C works for a PPP project (or a defined stage of the project) have been completed in accordance with the contract requirements, have been independently certified as being complete and that, subsequent to certification, the sponsoring directorate has undertaken its own tests and accepted the project or stage as being fit-for-purpose. With an availability PPP, Commercial Acceptance is normally the date from which the availability payments (or partial payments for a stage) commence.

Term	Definition
Condition Precedent	Certain conditions that are required to be satisfied prior to the majority of the project agreement becoming effective, often a precursor to financial close.
Condition Subsequent	Certain conditions that are required to be satisfied after the project agreement has become effective.
Consortium	Private parties in contractual agreement who intend to deliver a project jointly, including PPPs.
Contract Close	The day on which the Project Agreement and all supporting contracts and agreements between the parties to a PPP have been executed.
Contract Summary	The document that sets out key aspects of the project, such as the contract terms, that is submitted to Cabinet and released to the public following the contract becoming effective.
Dedicated Project Team	<p>A group comprising project level representatives which reports to the Project Steering Committee. Over the course of the project's investment lifecycle, the Steering Committee may be led by different directorates.</p> <p>The project team will comprise internal ACT Government secondments (typically staff from directorates involved in the project), and external contractors and advisors to supplement any key capabilities depending on the investment lifecycle phase.</p> <p>The dedicated project team may also participate as members of the Tender Evaluation Team ("TET") and evaluation sub-committees.</p>
Director General ("DG")	The respective service head within the ACT Government directorate.
Discounted Cash Flow ("DCF") Analysis	An analytical technique which discounts a stream of future cash flows in order to calculate a net present value.
Economic Appraisal	<p>A systematic means of analysing all the costs and benefits of different options in which a project objective can be met. It shows:</p> <ul style="list-style-type: none"> • Whether the benefits of a project exceeds its costs • Which among the range of options to achieve an objective has the highest net benefit; and • Which option is the most cost effective, where benefits are equivalent. <p>The preferred approach for Government project for an economic appraisal is Cost Benefit Analysis ("CBA") and whole of life cost estimates.</p>
Economic Infrastructure PPP	Infrastructure where the private operator derives revenue from third parties (e.g. user charges) and therefore takes on the demand risk. Typical examples include networks of roads and telecommunication facilities, airports, ports, water storage and sewerage, railways, electric power generation and distribution facilities.
Expression of Interest ("EOI")	The tender phase used to shortlist bidders to proceed to submit more detailed proposals.
External Advisor(s)	If a capital project is approved as a PPP by Cabinet, the appointed Project Steering Committee may contract external parties to advise on technical, operational, probity, procurement, legal, commercial and financial issues of the PPP project to support the dedicated project team.

Term	Definition
	Where possible, existing panels such as the Panel for Commercial Infrastructure Advisors from the Procurement and Capital Works (“PCW”) should be used to engage advisor(s) and/or contractors.
Financial Appraisal	<p>A method used to evaluate the financial viability of a proposed project. It assesses the extent to which a project will generate revenues sufficient to meet its financial obligations as measured by the Net Present Value (“NPV”) of its cash flows. All revenues resulting from and expenditures incurred under the project and a whole of Government perspective are taken into account.</p> <p>It assesses:</p> <ul style="list-style-type: none"> • Project cash flows in terms of whether the project is net cash flow positive; • Sensitivity of financial projections to key project risks; • Adequacy of estimated investment costs; and • Financial impact of alternative projects.
Financial Close	See Transaction Close below
Force Majeure	Referred to as a ‘chance occurrence’ or ‘unavoidable accident’ that essentially frees both from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, prevents one or both parties from fulfilling their responsibilities under the contract.
Government	The ACT Government
Guidelines for Unsolicited Proposals	<p>The <i>Guidelines for Unsolicited Proposals</i> establishes a policy and process for Government and industry to follow when considering unsolicited proposals in the ACT.</p> <p>The <i>Guidelines for Unsolicited Proposals</i> is part of <i>The Partnerships Framework</i> and affects projects unsolicited by Government that requires participation by the private sector.</p>
Head of Service (“HOS”)	Office held by the Director General of CMTEDD. Leading role of the ACT Government Public Service.
Infrastructure Finance and Advisory Division	A dedicated infrastructure finance and PPP unit in CMTEDD that represents CMTEDD for projects under TPF.
Intellectual Property	Inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks, also trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and through additional contractual obligations such as Confidential Agreements.
Interactive Tender Process (“ITP”)	The process of the project team conducting workshops and consultations with shortlisted bidders during the RFP phase.
Key Performance Indicators (“KPI”)	A KPI is a type of performance measurement. For the purposes of a PPP arrangement, KPIs are used to evaluate a project’s success and/or effectiveness of the private sector contractor to abide by its contractual obligations to Government, e.g. in an abatement regime in a PPP contract.
Multi Criteria Assessment (“MCA”)	<p>A framework that enables decision makers to overcome difficulties in handling large amounts of complex information in a consistent way.</p> <p>It establishes preferences between options by reference to an explicit set of objectives that the decision making body has identified and, for which it has established, measurable criteria to assess the extent to which the objectives have been achieved.</p>

Term	Definition
National PPP Guidelines	The suite of PPP guidance material developed by Infrastructure Australia together with Australian Jurisdictions: https://infrastructure.gov.au/infrastructure/ngpd/index.aspx
Preferred Bidder	A shortlisted bidder selected following the RFP evaluation to proceed to the negotiation and completion phase.
Probity	Transparent, fair and ethical conduct and propriety in dealings between Government and the private sector.
Public Sector Comparator ("PSC")	An estimate of the hypothetical risk-adjusted whole-of-life cost for Government of a public infrastructure project using traditional public sector procurement methods. It is generally used to evaluate project delivery under a PPP model compared to traditional procurement.
Reference Project	The assumed structure under which the PSC will be delivered, reflecting Government delivery of the project by traditional means.
Request for Proposal ("RFP")	The tender phase involving the release of the RFP to shortlisted bidders for detailed, fully costed RFP responses, followed by evaluation and selection of the preferred bidder. Also referred to as Request for Proposal ("RFP").
Retained Risk	The value of those risks or parts thereof that Government bears under a PPP project.
Risk Allocation	The allocation of responsibility to one of the parties to the contract for dealing with the consequences for each risk; or alternatively, agreeing to deal with a particular risk through a specific mechanism which may involve sharing that risk.
Shortlisted Bidder	Bidders selected as part of the EOI Evaluation to be invited to submit a more detailed proposal in response to an RFP issued by Government for a PPP project.
Sponsoring Directorate ("the Sponsor")	The ACT Government agency that has the responsibility for the service area served by the infrastructure asset being delivered as a PPP. The Sponsoring Directorate will also provide technical input and support during the investment lifecycle, and manage day-to-day responsibilities during the project's operations phase.
Social Infrastructure PPP	Infrastructure where Government pays the private party a service fee for the availability of a facility and/or service (i.e. an availability payment). Examples include hospitals, schools, police stations, prisons, and transport project involving availability-style PPP.
Special Purpose Vehicle ("SPV")	The SPV is an entity created to act as the legal manifestation of the PPP project consortium. In an established consortium, the sponsor(s) typically established by the private party in the form of a SPV which contracts with Government.
Systematic Risk	Market-wide risks that affect all asset classes and cannot be reduced by way of diversification.
Project Control Group ("PCG")	The PCG oversees the day-to-day issues and decision making for the project.
Project Steering Committee	A representative body established to guide a PPP project and resolve key issues. A project steering committee is made up of representatives from CMTEDD, PCW and the Sponsoring Directorate.
Tender Evaluation Team ("TET")	A panel of Government representatives established to oversee and assess bid submissions during the tender process.

Term	Definition
Tender Process	The process of inviting the market to submit bids against a particular PPP project which includes the EOI, RFP and negotiation phases.
The Capital Framework (“TCF”)	TCF is the ACT Government’s overarching policy framework for the upfront assessment of capital works funding proposals in the ACT.
The Partnerships Framework (“TPF”)	TPF is an extension of TCF for major infrastructure projects that involve the private sector to a greater degree, including PPPs and unsolicited proposals.
Tier 3 Project	A project with a total estimated investment of less than \$10 million. Refer to TCF.
Tier 2 Project	A project with a total estimated investment of between \$10 million and \$50 million. Refer to TCF.
Tier 1 Project	A project with a total estimated investment of greater than \$50 million or greater than \$10 million and assessed as high risk. Refer to TCF.
Treasurer	The Treasurer of the ACT Government
Traditional Procurement	The delivery of the infrastructure and associated services by Government under a model without integrated services and/or private sector financing.
Transaction Close (or Financial Close)	The date of satisfaction of the last Condition Precedent is known as Transaction Close. A contract only becomes completely effective at Transaction Close.
Unsolicited Proposal	An approach to Government from a proponent with a proposal to build and/or finance infrastructure; and/ or provide goods or services where Government has not requested the proposal.
Under Treasurer (“UT”)	Head of the Treasury function in the ACT Government.
Value for Money	The overall value to Government with consideration paid to whole-of-life cost and revenue, quality, risk borne by the public sector, benefits gained, and whole-of-government impacts
Whole-of-life	The integration of upfront design and construction with ongoing maintenance, refurbishment and operation elements over the entire life of the asset or concession term under the PPP arrangement.

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Appendix B: References

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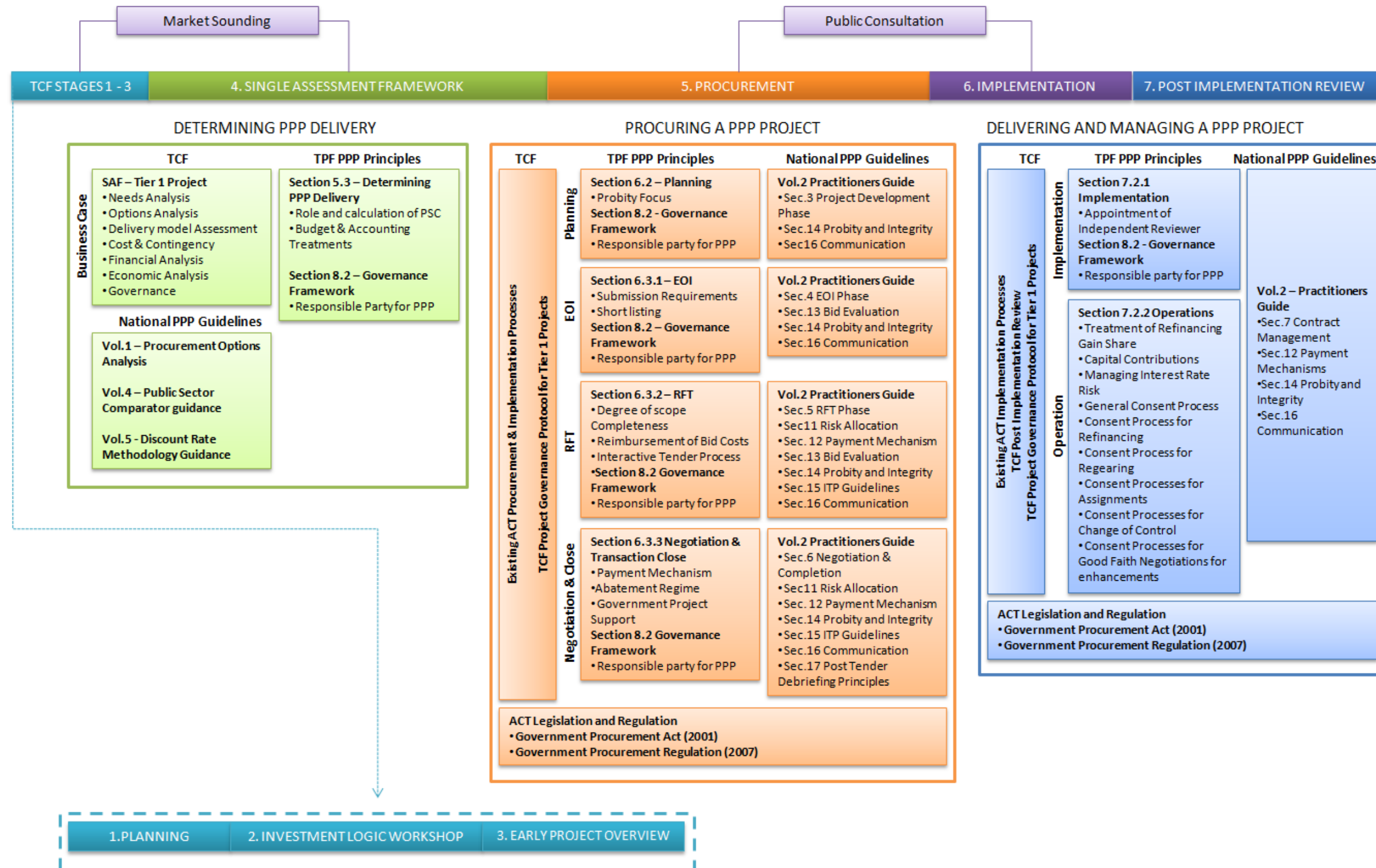
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Appendix C: The Partnerships Framework Roadmap

The roadmap outlines how The Partnerships Framework works with The Capital Framework and the National PPP Guidelines.



Source: Based on the ACT Government's *The Capital Framework* and *The Partnerships Framework* policy frameworks and Infrastructure Australia's *National PPP Guidelines*.

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Appendix D: IFAD Responsibilities

Matters where IFAD must be consulted include, but are not limited to:

Event	Reason for IFAD involvement
IFAD Managed	
Change of ownership, control or financier	Government consent, reputation risk, base case financial model implications, consistent treatment with any other affected PPP contracts
Major Default or Termination	Government reputation, risk to continuity of service delivery, Impact to Territory Finances
Refinance (non-vanilla where contractually specified) or new hedging arrangements	Government consent, base case financial model implications, administration of refinancing gain share mechanisms
Satisfying the conditions of a Territory contributions	Impact to Territory finances, verification of Base Case Financial model
Changes to the payment mechanism or price	Impact to Territory finances, risk allocation and key performance indicators
Step-in	Government reputation, risk to continuity of service delivery, Impact to Territory Finances
Force Majeure	Service continuity, Impact to Territory Finances
End of term arrangements, e.g. handover or extension	Government consent, asset condition to ensure service continuity, Impact on Territory Finances
Delay in construction completion or operation commencement dates	Impact to Territory finances, Government reputation in delivering infrastructure and services
Changes to the Base Case Financial Model	Impact to Territory finances, possible impact on the calculation of termination payments
IFAD Consulted	
Change of major subcontractor	Government consent, reputation risk, base case financial model implications, consistent treatment with any other affected PPP contracts
Default event	Government reputation, risk to continuity of service delivery, Impact to Territory Finances
Benchmarking or market testing process	Market knowledge and reputation, impact to Service Payments and Service Specification, possible flow-on effects to other contractual terms, Impact to Territory Finances
Infrastructure/Service Modifications, variations or augmentations	Project Scope, Project Affordability, Territory finances, timing, risk allocation
Dispute or claim, including defects	Impact to Territory finances
Relief (Extension or Intervening) events	May impact on asset readiness and availability of full service delivery

Event	Reason for IFAD involvement
Compensable (Extension or Intervening) events or material Adverse Effect events	Impact to Territory finances, availability/quality of service delivery
Performance issue (e.g. high/repeated abatements)	Project viability, service continuity/quality, government reputation and avoiding undesirable precedents (in case of abatement relief/waiver)



Guidelines for Public Private Partnerships