

Public Private Partnership (PPP) Guidelines

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Strengthening local government



Access to services

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Part A – Overview



1. How to use these Guidelines

The Public Private Partnership (PPP) Guidelines are issued pursuant to section 400C of the *Local Government Act 1993* (the Act). They form part of a suite of Office of Local Government (OLG) guideline documents available for use by council staff involved in the management of council projects. These guidelines set out the procedures to be followed by councils when PPPs are being considered or used for the delivery of infrastructure and services and outline what councils must do to comply with the requirements of the Act in relation to PPPs.

The Guideline is divided into the following sections to aid the user in quickly finding the information required:

Part A provides a general overview and background information on PPPs.

Part B outlines the review process for PPPs including the documents required to be submitted by council.

Part C covers specific complex scenarios that might be encountered by council during the PPP review process.

Part D provides templates and flowcharts detailing the process.

These guidelines are distinct from the NSW Public Private Partnership Guidelines 2017 issued by NSW Treasury. Whilst Councils may find the NSW PPP Guidelines a useful resource, Councils are required pursuant to section 400C of the Act to comply with these guidelines.

1.1 Introduction: Purpose of Guidelines

The Act prohibits a council from entering a PPP or carrying out any project under a PPP without complying with Part 6 of Chapter 12 to the Act and without complying with these Guidelines which form part of the mandatory assessment criteria to be followed by a council. The Act does not confer on the person exercising the functions of the Departmental Chief Executive nor the OLG the role of an approval authority for the project, rather, the OLG examines whether the procedures and processes that are followed by councils are appropriate for the delivery of the particular project.

Throughout the process of delivering the project, responsibility for the project and the prudent management of community assets and finances remains with councils. The intent of the Guidelines is therefore to assist council to put in place the necessary procedures and processes that are to be followed by the council to ensure the successful delivery of the project. Responsibility for delivering the project always remains with the council.

These guidelines recognise that councils have responsibilities under the Act that go beyond the responsibilities of a private sector partner or project proponent. It is anticipated that any prudent, well-advised, well-managed and well-governed council would undertake the procedures required in the guidelines in any case in order to satisfy the guiding principles and the principles of sound financial management expressed in Chapter 3 of the Act, in particular section 8A, and to demonstrate compliance with other governance and prudential obligations that apply to councils.

Councils should always be alert to the need to protect current and future ratepayers from unnecessary financial risk. Transferring council assets into a special purpose corporate vehicle to facilitate the delivery of the project is no protection if the transferred asset is itself placed at risk of divestment.



OLG does not approve or not approve projects – responsibility for project integrity remains with council.

2. Where to send correspondence and applications

All correspondence to and communications with the Chief Executive of the OLG and the Project Review Committee in relation to a proposed PPP project, should be made through the OLG's Head Office in Nowra. Preferably, they should be in writing. No direct contact should be made with other Committee members.

The address of that Office is:

PPP Co-ordinator
Level 2
5 O'Keefe Ave
NOWRA NSW 2540

The postal address of the Office is:

Locked Bag 3015
NOWRA NSW 2540

The telephone number is:

(02) 4428 4100

Email:

olg@olg.nsw.gov.au

3. Glossary

3.1 Acronyms

The following acronyms are used throughout the document:

Act	The Local Government Act
BOO	Build, Own, Operate
BOOT	Build, Own, Operate, Transfer
BOT	Build, Operate, Transfer
CE	Chief Executive
DBFO	Design, Build, Finance, Operate
GM	General Manager
IPR	Integrated Planning and Reporting
OLG	Office of Local Government
PFP	Privately Financed Projects
PPP	Public Private Partnership
PRC	Project Review Committee
SRV	Special Rates Variation
TCorp	Treasury Corporation



3.2 Definitions

The following definitions may assist in understanding the Guidelines:

Act

An **Act** is legislation passed by the Parliament. Acts, (not including Schedules to Acts) which can only be amended by another Act of Parliament. Acts set out the broad legal/policy principles.

Regulation

Regulations are commonly known as “subsidiary legislation” and require publishing in the Government Gazette to become legal. These are the guidelines that dictate how the provisions of the Act are applied. They may also contain pro forma official forms that are required under the Act. Regulations and schedules to Acts can only be amended by a notice published in the Government Gazette.

The definitions in the Dictionary section of the Act are also applicable.

3.3 Framework for Local Government PPPs

The formation of Local Government PPPs is regulated by two main sources of legislation, the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2005* (the Regulation). In addition, guidelines, circulars and publications issued by the OLG should be given consideration.

Local Government Act 1993 (the Act)

The Act contains requirements for all councils in NSW, including county councils, to comply with when entering into a Public Private Partnership (PPP) to deliver a project (part 6, chapter 12).

The Act also provides that the Departmental Chief Executive (CE) of the OLG may from time to time issue guidelines requiring specified procedures and processes to be followed by councils when PPPs are being used or considered for the delivery of infrastructure and services (s. 400C). These Guidelines are issued for that purpose.

The Act contains other relevant provisions that provide overarching principles which it is expected Councils will refer to when dealing with any project, regardless of the delivery mechanism, including:

- Section 8A, **Guiding principles for councils**, which sets out principles to follow in the exercise of functions generally, in decision making and in community consultation.
- Section 8B, **Principles of sound financial management**, which provides guidance for investment in responsible and sustainable infrastructure, sound policies and processes as well as funding decisions and risk management practices.



A public-private partnership is an arrangement between a council and a private person to provide public infrastructure or facilities that are provided in part or in whole through private sector financing, ownership or control

- Section 8C, **Integrated planning and reporting principles** that apply to councils.
- Section 55, **Tendering requirements**.
- Section 358, Restrictions on the formation of **corporations and other entities**.
- Part 12, **Loans**, which regulates council borrowing.

Local Government (General) Regulation 2005, Part 13, Division 7, Clause 408

The Regulations outline what type of arrangements are excluded from the provisions in the Act relating to PPPs. See item 4.2 “What does not constitute a PPP” of this Guideline.

Guidelines and publications issues by the Office of Local Government

The Office of Local Government publishes a range of guidelines, codes, practice notes and other guidance for local government. Of particular relevance to PPP’s are:

- Ministerial Investment Order (Section 625)
- Capital Expenditure Guidelines
- Formation of Corporations and Entities (Section 358) Guidelines
- Tendering Guidelines
- Integrated Planning and Reporting Guidelines

Council should refer to OLG Publications for other relevant guidelines, circulars and publications www.olg.nsw.gov.au/publications.

Sections 6 – 9 of these Guidelines provide more detail about the relationship between the guidelines.

4. What is a Local Government PPP?

Public-private partnerships (PPP) are defined in s. 400B of the Act (see item 4.1). Generally, PPPs are arrangements whereby a council joins with a private person or entity to provide public infrastructure, a facility and/or a service where the council retains an interest, liability or responsibility.

The Act and these Guidelines seek to ensure that complex and/or risky projects are understood and well managed so that project delivery occurs in line with expectations and risks are minimised through a rigorous process adopted by council. Councils should not seek to avoid the legislation by attempting to circumvent the PPP definition.

In general terms, partnership arrangements will need to comply with the PPP provisions of the Act (part 6 of chapter 12) where the council retains an equity, an ongoing obligation, or interest in the provision of the public infrastructure, facilities or the services provided during the carrying out of the project under a PPP.

If a council is unsure about whether a project is a PPP, independent legal advice should be sought in the first instance. If council remains unsure, advice may be sought from the OLG, however, the OLG is unable to provide advice on how a council can undertake a project nor is it the role of the OLG to provide a definitive interpretation of the legislation on behalf of councils.



Even an understanding between the parties without a written contract may constitute a PPP.

4.1 Types of PPPs

The definition of a PPP is provided in the Act:

Section 400B

1. For the purposes of this Act, a public-private partnership means an arrangement:
 - a. between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and
 - b. in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control, but does not include any such arrangement if it is of a class that has been excluded from the operation of this Part by the regulations.
- 1A. For the purposes of subsection (1), the provision of public infrastructure or facilities includes the delivery of services during the carrying out of any project under the public-private partnership.

The definition of a PPP as an ‘arrangement’ is very broad. It captures any agreement between the parties that sets out their respective roles and contributions to the venture. In the Act ‘arrangement’ is defined as including “a contract or understanding” meaning that arrangements even less than a formal contractual arrangement may be captured by the definition of a PPP. If council commits itself to a course of action to deliver what is a PPP project, then it may put itself at risk of having entered into an arrangement.

The PPP definition is intended to capture a broad range of possible configurations including, but not limited to, models described as Operations and Maintenance, Design Build, Turnkey Operation, Wrap Around Addition, Lease Purchase, Temporary Privatisation, Lease-Develop-Operate, Buy-Develop-Operate, Build-Own,-Operate-Transfer (BOOT); Build-Operate-Transfer (BOT); Build-Own-Operate (BOO); Design-Build-Finance-Operate (DBFO); Privately Financed Projects (PFPs). While a single contract, such as a lease, may not amount to a PPP, where the lease is one of a number of proposed transactions then, taken as a whole, the transactions may amount to an arrangement and therefore be captured as a PPP. It is necessary to view or consider all the contemplated transactions as a whole to determine the PPP status of the arrangements.



Council must not enter into a PPP or carry out works under a PPP without notification that it has satisfied OLG / PRC that the project complies with the guidelines.

4.2 What does not constitute a PPP?

Arrangements that are excluded from the definition above are set out in the *Local Government (General) Regulation 2005* (the Regulation).

408 Arrangements excluded from provisions relating to public-private partnerships

1. For the purposes of section 400B (1) of the Act, the following arrangements are excluded from the operation of Part 6 of Chapter 12 of the Act:
 - a. any contract between a council and a private person that would, but for a resolution by the council to enter into a public-private partnership, be subject to the tendering requirements under section 55 of the Act,
 - b. any arrangement arising out of the operation of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979*,
 - c. any arrangement arising out of the imposition by a council of a requirement under section 306 of the *Water Management Act 2000* (as applying to the council by virtue of section 64 of the Act).
2. In this clause, private person has the same meaning as in section 400B (2) of the Act.

As a general guide, this means that the following examples are excluded from the PPP provisions:

- the contracting of services by council from the private sector by tender under s.55 of the Act;
- council business units or staff working for a private party, under a contract or a tender, on a full cost recovery (or for profit) basis;
- where council receives a bequest or donation of land, facility or building from a private party to act as a trustee. Trusteeship may confer on-going responsibilities on council such as care or maintenance and operational expenses. There would usually be no disbursement of any income generated to the private party that has made the bequest or donation;
- leasing or licensing of Crown or Community land to a private person where the requirements of the Act are followed;
 - council sales of property (including operational land);
 - any arrangement arising out of the operation of Division 7.1 of Part 7 of the *Environmental Planning & Assessment Act 1979*, which relates to planning agreements, local infrastructure contributions, special infrastructure contributions, affordable housing contributions and the like;
 - the imposition by a council of a requirement under section 306 of the *Water Management Act 2000* (as applying to Council by virtue of s64 of the Act), which relates to developer contributions to the construction of water management works.

5. Relationship with Ministerial Investment Orders

Section 625 of the Act refers to how a council may invest. It states that a council may invest money that is not, for the time being, required for any other purpose and that it may only be invested in a form that is provided for in the Ministerial Investment Order as published in the NSW Government Gazette. The Order applies to all investments from the date of signing by the Minister.

Councils should ensure that in carrying out a project under a PPP Council is complying with the Ministerial Investment Orders as well as having considered council's own Investment Policies and Investment Policy Guidelines issued by the office of Local Government.

6. Relationship with Tendering Requirements

Section 55 of the Act deals with requirements for tendering and provides that a council must invite tenders before entering into certain types of contracts. However, these requirements do not apply to a contract entered by a council for the purposes of carrying out a project under a PPP. PPP and tendering requirements are intended to operate as alternatives so as to enable councils to apply the most appropriate method of testing the market for a project. Provided council has undertaken the appropriate expression of interest process in selecting a partner for a PPP project, and the project assessment and contract process has been approved, council may not need to re-tender for any works or activities under the PPP.

Care needs to be taken in determining which 'path' to follow. Section 55(1) sets out the contracts to which the tendering requirements apply, but s. 55(3)(l) operates to exclude from this requirement a contract to enter into a PPP (following assessment under the Guidelines). Further, once the PPP Guidelines have been satisfied, and the 'entity' is created, s55A(1) then operates to re-engage the tendering provisions where there is a proposal for the entity that the council has formed to contract with third parties. Finally, should council elect to proceed via the tendering provisions then it should be noted that if council declines to accept any of the tenders pursuant to cl 178(3)(e) of the Regulations then a contract which results from subsequent negotiations may not be a contract to which the tendering requirements have applied. Unless that proposed contract is itself subject to the tendering requirements or the PPP Guidelines are followed the council may not be able to enter into a PPP arrangement or contract because of the prohibition in s. 400E of the Act.

Council should also note that any works or activities outside of the approved PPP project are still required to be put out for tender. Similar additional works that are initially outside of the PPP project contract cannot be undertaken as part of the PPP unless re-tendered and councils should not use a PPP as a convenient mechanism for other non-related projects or needs.

Council should refer to OLG Publications for other relevant guidelines, circulars and publications www.olg.nsw.gov.au/publications.



Tendering and PPP requirements are intended to operate as alternatives.

7. Relationship with Capital Expenditure Requirements

PPP projects are exempt from the requirement of complying with the OLG Capital Expenditure Guidelines (CAPEX). However, as councils are responsible for the prudent management of community resources, it is expected that in accordance with best practice councils will apply the principles of the CAPEX Guidelines to all capital projects. If a project does not proceed as a PPP but is continued via other delivery channels, the CAPEX Guideline may then apply.

OLG's CAPEX Guidelines apply to capital projects for infrastructure facilities, including renovations and extensions, that are expected to cost in excess of 10% of council's annual ordinary rate revenue or \$1 million, whichever is the greater (GST exclusive).

In addition to the minimum requirements for a CAPEX Review, a council is also required to complete additional requirements in cases where a project's cost is forecast to exceed \$10 million (GST exclusive). The OLG CAPEX Guidelines are available on the [OLG website](#).

8. Relationship with Section 358 Requirements

Section 358 of the Act imposes restrictions on the formation of corporations and other entities by councils.

If council intends to form a new entity to deliver the PPP project, approval is required from the Minister for Local Government under s. 358 of the Act. This is a separate process to the PPP assessment process. Council will need to formally seek approval to form a new entity by making the necessary application to the Minister for Local Government.

In that regard Council should be aware that compliance with these PPP Guidelines will not guarantee the Minister's approval for the creation of an entity under s. 358. Council carries the onus under the Act to 'demonstrate, to the Minister's satisfaction' that the approval 'is in the public interest' (section 358(3)). Councils are encouraged to adopt structures that are consistent with the Council's role to act as a steward for the community and justification for departing from more usual approaches to the holding of property will need to consider more than just the utilitarian reasons that may apply such as accommodating the needs of the private sector partner. The s. 358 Guidelines issued by the Department should be followed.



Gaining approval to form a new entity is a separate process to the PPP process.

9. Relationship with Integrated Planning and Reporting (IPR)

The Act provides that Integrated Planning and Reporting must be at the centre of all council plans, activities, resourcing decisions and improvement strategies. Any project considered by council as a PPP project must have undergone a clear planning process that links it to council's Local Strategic Planning Statement made under s. 3.9 of the *Environmental Planning and Assessment Act 1979*, Community Strategic Plan, the Delivery Program, and the Operational Plan powered by the *Resourcing Strategy (Integrated Planning and Reporting Guidelines for Local Government in NSW, 2018)*.

Where PPP opportunities arise out of unforeseen circumstances or unsolicited proposals by the private sector, councils must carefully weigh up the risks associated with taking advantage of any such ad-hoc opportunity, especially where participation in the project will involve expenditure or commitments that impact adversely upon the council's ability to deliver on existing and adopted long-term plans.



Integrated planning and reporting must be at the centre of all council plans and activities.

Part B – Procedures and requirements for local government PPP proposals

B

10. Overview of project reviews by OLG and PRC

Under these PPP Guidelines, projects are initially reviewed by OLG. Where the Chief Executive of OLG considers a project to be significant and/or high risk (see PART B item 9.1 and 9.2 for definitions), the project will be referred to PRC.

A review by OLG and PRC involves an examination of whether the procedures and processes that a council has followed for the project are appropriate for the delivery of that particular project. It is not the function of OLG or PRC to approve or reject actions taken in relation to a project, but to ensure that the council is following appropriate procedures. A PPP project cannot proceed unless the OLG and/or PRC form a positive assessment as to council's compliance with the procedures and process matters set out in these guidelines

If a project is referred for review by the PRC, this will be undertaken at two stages:

1. Before the Expressions of Interest (EOI)/Market Testing Stage where councils have developed a project brief and are seeking private sector participants in the project. This review is necessary for the EOI phase to proceed; and
2. At the pre-contract signing stage where council has selected a preferred partner from the EOI/market testing phase and has negotiated a draft contract for the carriage of the project. Council may not sign the contract until such time as the PRC has endorsed the process council has undertaken as complying with these guidelines.

10.1 What is a 'significant Project'?

As the council is the promoter of the project council is best placed at the outset to determine whether the project is significant.

A significant project is defined in the Act as:

- a. any project with an estimated total cost¹ of more than \$50 million or such other amount as may be prescribed by the regulations, or
- b. any project where the relevant council's financial contribution, or its equity position, amounts to 25% or more of the council's annual revenue² that is lawfully available for spending on facilities or services of the kind to which the project relates.

¹ For estimating **total costs**, financial contributions or equity position, all elements of the project are to be taken into account, including land values, provision of non-monetary goods and/or services and any costs associated with the council's potential contracted liability.

² **Annual revenue** is broadly defined as that income from all sources that is available under the council's lawful discretion to use for the nature of the project involved.



Council must not proceed with a PPP without written OLG/PRC approval.

10.2 What is a ‘high risk Project’?

A project is generally considered to be high risk if an individual risk, or a combination of several risk aspects of the project are so significant that the OLG Chief Executive considers that it warrants the project being examined further.

A high risk project is:

- a. any project that the OLG considers is likely to result in the council either losing money or asset value; or
- b. any project where there is considered to be a transfer of financial risk from the private sector to the council; or
- c. a project that appears to be inconsistent with council’s community responsibilities.

The risks may relate to the council, its ratepayers, the wider community, the integrity and due protection of the value of the public assets held and administered by the council, or the public interest generally.

Such risks may be a potential loss in value of the Council’s assets, loss in actual or prospective revenue, increase in council’s actual or prospective expenditures, the inability of the council to achieve its charter obligations to provide adequate, equitable and appropriate services and facilities for the community.

Subsequent to assessment by the OLG, councils will be informed as to whether their particular project proposal is a high-risk project, and therefore required to be assessed by the PRC.

10.3 Non-significant and Low Risk projects

If the Chief Executive advises the council that the project is not required to be referred to the PRC, council is able to proceed to carry out the project that is the subject of the assessment. This does not remove the obligation on councils to adopt the procedures and processes required of them in these guidelines, nor does it remove the obligation of councils to seek approval under section 358 if they intend to create an entity for the purpose of the PPP.

10.4 Local Government Project Review Committee

The Local Government Project Review Committee (PRC) is established by section 400J(1) of the Act to review council processes for significant and/or high risk projects before the council can enter into the PPP. The PRC is chaired by the Chief Executive of the OLG (or his or her delegate) and consists of representative members from:

- Office of Local Government (Chair)
- NSW Treasury
- Department of Premier and Cabinet
- DPIE (Planning)

The Chief Executive of the OLG may appoint other people to be added to the PRC to provide specialist advice as required.



The PRC checks risk exposure to ratepayers – it is not an approving body.

The Act imposes on councils the responsibility of demonstrating to the PRC that the requirements of these PPP guidelines have been complied with in relation to the project (s. 400I(2)). The PRC is not concerned with the project's vision, but rather with the risks that the project exposes the ratepayers to and how those risks will be managed.

All matters considered by the PRC will be dealt with on a strictly confidential basis and commercial confidentiality at all stages of the project.

10.5 Review Timeframe

The time it takes OLG and PRC to assess a project submission will depend on the nature of the project and the timeliness and clarity of the material provided by council. The PRC will endeavour to have quick turn-around times. It is not intended that the process required by the Act or Guidelines will add undue delay or cost to the development of PPPs.

10.6 Fees

Whilst there is no fee charged by the PRC for the review of projects, the committee may request council to provide additional independent specialist consultant reports on contentious issues, such as project financial management, technical design, risk management or similar. Any fees for such specialist advice are to be borne by council.

10.7 PRC Advice to Council

Once the PRC has assessed the documentation provided by council, advice will be issued on whether the council can proceed with the project or whether there are outstanding matters to be addressed.

10.8 Withdrawing a Project from the PPP Process

Council may withdraw a project from the PPP process at any time. This must be done in writing to OLG. If council withdraws from the PPP process and does not intend to proceed with the project then it should advise OLG of that fact and that will be the end of the matter. If council intends to proceed with the project outside of the PPP process then it will need to assess the project against the requirements of all published guidelines under the Act.

Withdrawing a project from the PPP Process does not preclude Council from re-submitting the project for assessment at a future point in time.

10.9 Minister's call in powers

The Minister for Local Government has the power to call in any PPP project for review by the PRC where a council has not complied with these Guidelines in relation to entering into the PPP or the carrying out of the project.

10.10 No Appeals against PRC's decision

The PRC's decision as to whether the council has complied with the requirements of these guidelines in relation to a project is final and cannot be reviewed by any court or tribunal (s. 400I(4)). Council will be advised of the outcome of the PRC assessment and council may choose to modify the project and resubmit. If this occurs, a new resolution to proceed with the modified project will be required along with the resubmission of material in support of the modified project. There is no limit to the number of times a project can be re-submitted to the PRC.

11. Requirements for Local Government PPP Proposals

A council must not enter into an arrangement to provide public infrastructure or facilities unless it has complied with these guidelines. Council must submit all PPP proposals to OLG for initial assessment before entering any arrangement (written or verbal) with a private party.

11.1 Requirements for initial assessment by the OLG

Before proceeding to call for detailed expressions of interest, councils are to submit to OLG the self-assessment form (see Part D, Form 1 and item 10.2.1) along with the full list of documents required for the “initial assessment” (see Part D, Form 2). A detailed outline of what is expected in relation to each of these required documents can be found at item 10.2.

In the early stages of a project’s development, it may be difficult to give precise information, particularly about financial matters. It is expected that more precise detail will be available when a preferred partner has been identified and contract negotiations have progressed. Before formally lodging the required documents with the OLG, council is expected to have developed the project to a stage where it has been formally approved in principle, by a resolution of the council, and the broad concepts and principles have been formed, approved and settled. Consequently, at this initial assessment stage the dimensions of the project and its outcomes should be costed based on expectations about responsibilities, risk management and anticipated or preferred sources of funding.

11.2 Requirements for full assessment by PRC

A checklist of documents required for submission to OLG and/or the PRC for a full assessment before entering into any contract or agreement with a private party can be found in Part D, Form 2.

The following provides more detailed information on each of the required items.

11.2.1 PPP Council Self-Assessment Questionnaire

A copy of the questionnaire can be found in Part D, Form 1. The questionnaire aims to draw attention to certain project characteristics that may require the project to be referred to the PRC or that may require further attention by council.

The answers to the self-assessment questionnaire are expected to correlate with information that is provided by council. Conflicts between the self-assessment form and information provided may cause delays in the assessment of the project.



A self-assessment questionnaire and accompanying documents must be submitted to OLG before calling for eoi’s and before entering into any arrangement with a private party.

11.2.2 Certification and Council Resolutions

GM Certification

The General Manager(s) of the council(s) involved must certify that all documents put forward by Council are prepared in accordance with the Guidelines. This will need to be attached to each submission made to the OLG.

Council Resolution on outcomes and deliverables of the project

It is vital at this early stage that council determines what the project will deliver so that it can make a clear and unambiguous resolution to that effect. It is expected that at this step council will have before it the material it is intending to submit to OLG for assessment under these guidelines.

Council is to provide a copy of the minutes showing that council resolved to agree with the specific outcomes and deliverables for the project and a copy of the relevant council reports is required.

Council Resolution to proceed with the project as a PPP and submit to OLG for assessment

A copy of the minutes showing that council resolved to proceed with the project as a PPP and authorising the GM to submit the proposal to OLG for assessment is required.

11.2.3 Strategic Phase Documents:

Clear statement of project relationship to IPR documents

The project proposal must have an overall positive effect regarding public and community interest. Council can demonstrate this by providing evidence as to how the project meets the requirements of the integrated planning and reporting framework. Please check the [OLG website](#) for the most up to date version of the *Integrated Planning and Reporting for Local Government* guidelines which will include requirements for councils to prepare a community strategic plan, a resourcing strategy, delivery program and operational plan. Council must comply with all appropriate and relevant steps and provisions in those guidelines and show how the proposed project fits with the above adopted plans.

Council is advised to provide relevant excerpts from the plans to show the project's relationship with each of them. Where the project is not contemplated in the IPR documents council should identify what impact participation in the project will have on the ability of Council to deliver projects identified in the adopted IPR documents.

Clear statement of outcomes and deliverables

Council must provide a clear statement of proposed outcomes of the project as well as agreed deliverables with easily measured key performance indicators. The outcomes and deliverables must be agreed by Council resolution.

In agreeing to project outcomes and deliverables, council must consider the Guiding Principles in Chapter 3 of the Act and be able to demonstrate that undertaking delivery of the proposed project is appropriate having regard to council's functions and obligations under the Act.

Clear outline of the proposed management and governance structure for the PPP entity

Each project will present different challenges and require tailored management and governance structures. While the project management structure will ultimately be the subject of negotiation in the contract development stage, it is appropriate that councils decide, at an early stage of project formulation, a preferred management structure for the development of the proposal and its eventual delivery.

Figure 1 in Part D shows an example of a project management governance structure. The actual structure used by a council needs to address the specific requirements of the PPP. The appropriate structures and processes will depend on the type and complexity of the project and the stakeholders involved. It is expected that most project management and governance structures would as a minimum address the following:

Steering Committee	Committee accountable to council, may also set up a number of advisory committees to deal with specialised project issues.
Probity Adviser	Ensures that all tenders or EOIs are given an equal opportunity, that the bid assessment procedures are fair and unbiased, that confidential material is duly protected, and address and advise on conflicts of interest.
Project manager	Appointment of a project manager with appropriate expertise and skills to manage the project development phase and to interact with the private sector on operational aspects of any PPP proposal - need not be a council officer.
Project control group	Responsible for the timely development and quality performance of the project. The group manages aspects of project development including project specifications, financial/economic appraisals and establishing relevant benchmarks.
Evaluation Panel	Manages the EOI phase through to selection of a preferred private sector partner. Panel has the responsibility of assessing EOIs and making recommendations to the Steering Committee on potential partners in the project. Members of this panel must not have any conflict of interest in the project.
Management Board	The board is a project vehicle which should comprise representation from the partners involved in the project in proportion to their relative (financial) contribution. Where council's financial inputs are less than that of its private sector partner(s), care should be taken to appropriately protect council's minority interest.
Reporting	Clear reporting mechanisms to be put into place and implemented to report all aspects of the PPP. Prospective private sector participants need to be made aware of such procedures, and of the obligations and responsibilities of the council in respect of the project.
Resolutions/Delegations	Governance structure must specify which major decisions must be made via council resolution. Any delegation of project decisions or functions to positions other than the full council or General Manager that may be set up for the project must be clearly documented and agreed by council

11.2.4 Business Case Phase Documents: Justification of PPP as delivery model

A statement that evidences that all possible delivery and financing options were considered is to be provided. The statement must address the pros and cons of each option and the reasons why a PPP is the preferred delivery model.

It must be demonstrated that the provision of the proposed service or facility through the agency of the PPP provides better value for money, as compared with other options, and how the PPP model will guarantee the outcome sought.

Justification of need to form a new entity

Whilst it may not be necessary to create an entity, in the event that council proposes to form a separate entity under section 358 of the Act to govern the PPP Project it is recommended that Council separately resolve to apply to the Minister for consent to form the entity and supply to OLG the material it relies upon in support of the application. It should be noted that compliance with these Guidelines will not bind the Minister to approving the creation of an entity.

Estimated total project costs and sources of funding

A detailed estimate of total project costs over the lifetime of the project must be provided at the initial assessment stage. This cost breakdown should be prepared as an overview of costs and must clearly identify all sources of proposed funding. In case of proposed loans or grant funding, it must be identified whether those funds have already been approved or whether applications are still to be made.

Value of contributions

A detailed breakdown of contributions by each party must be provided. This must include the value of all cash, labour, staff time, materials, assets and land.

Council annual revenue available for the type of PPP proposed

To assess whether the proposed project falls within the significant project categorisation, it must be determined whether the total project cost is higher than \$50 million or whether council's financial contribution, or its equity position, amounts to 25% or more of the council's annual revenue that is lawfully available for spending on facilities or services of the kind to which the project relates. Council must provide a calculation of the percentage of council's financial contribution in relation to the annual revenue that is available for the type of PPP proposed.

The annual revenue available for the type of PPP proposed is broadly defined as the income from all sources (excluding restricted funds under the Act) that is available under the council's lawful discretion to use for the nature of the project involved.

11.2.5 Full Business Case and Economic Appraisal

The business case should clearly state the case for the council's adoption of a PPP for the provision of the service or facility. The business case should contain the key elements or deliverables of the project and outline the full costs and revenues associated with them, as understood by the council at the time. This detailed business case will need to be provided to OLG if it has been determined that the project is either significant and/or high risk.

Some of the information will already have been provided to OLG in the earlier stages of assessment, however a more detailed analysis should be done through the agency of an independent economic analyst, drawing on expertise appropriate to the proposal. Any independent consultants must not have any conflicts of interest. Contracting and paying for such an analysis is the responsibility of the council.

In developing a full business case, council will need to consider the range of costs and revenues that may be entailed in the project including:

- direct and indirect costs, separately identified;
- capital costs, and ongoing running costs and expenses once the project is being delivered and operational.

Project costs should be considered from a “whole of life” perspective and include, but not necessarily be limited to:

- design costs;
- the costs of land acquisitions;
- the cost of land disposals;
- land and property development costs;
- raw materials costs;
- maintenance and other ongoing operational costs;
- depreciation and/or provisions for replacement costs;
- labour costs;
- overhead costs, such as the time of council employees and others in managing the project to implementation and adoption;
- payments and fees, including expenses and allowances, to external providers and council consultants and advisers;
- loan or other financing establishment costs;
- plant and equipment costs; and so on.

The business case should also identify and provide:

- revenue estimates and sources of revenue and/or borrowings (See Appendix 8 for guidance on financing and borrowing approvals required.)
- the skills that will be needed to deliver the project, and specify where those skills are going to be sourced; and
- the facilities and services contemplated by the project.

Each identifiable component of a PPP proposal should be appraised. This may require, for the purposes of analysis, that the proposal is broken up into market segments, for example a commercial and retail space that also houses council facilities, and specialist expertise contracted to conduct a market analysis for each segment.

The two critical elements of any economic/market appraisal performed should be:

- cost benefit analysis (where major benefits can be quantified); and
- cost effectiveness (where outputs are not readily measured in monetary terms).

Both elements should show a net positive in the analysis for the proposal to be viable. A sensitivity analysis on the underlying parameters and assumptions/basis of the project should also be carried out and presented to the PRC as part of the documentation. A relatively significant change in net outcome for a small change in a project parameter is indicative of possible problems with project viability. A cash flow for council’s contribution should be undertaken as part of the economic appraisal detailing the council’s ability to carry loans if loans are required for the project.

Outcomes from the sensitivity analysis should be linked to and incorporated into a risk management plan. If the project is sensitive to change in one or more market parameters, adequate strategies to meet and manage any risk to the whole project must be presented. If these management strategies represent a significant change in the project (ie. a significant departure from the business plan submitted) and if the proponents still wish to go ahead with the proposal in revised form, the business plan should be amended appropriately.

More detailed guidance on the preparation of economic and financial appraisals is available from the NSW Treasury website (www.treasury.nsw.gov.au).

Public consultation reports

The community must be informed of key elements and decisions made in relation to the project. The social, economic, employment, financial and environmental impacts of the proposal should be identified and assessed for each identifiable stakeholder group affected. Council should indicate in its application the consultation processes it has or intends to have in place that will allow participation by affected groups and provide for consideration of their views.

11.2.6 Project Planning Phase Documents:

Project management plan

A formal project management plan is not needed to be prepared simply for submission to the PRC but should have already been signed off by council as part of the general project planning phase. At a minimum, a project management plan should include:

- Executive summary – describing, at a high level, the key elements of the project that are detailed throughout the project plan.
- Alignment with Council’s IPR documents – it must be clearly stated how the project supports council’s strategic planning direction.
- Project scope definition – The purpose and objectives of the project should be clearly defined as well as what is out of scope.
- Summary of the business case analysis on project feasibility.
- Human resource requirements – Define the project team organisation, roles and responsibility requirements. Training requirements will need to be identified here and the development of a project training plan should begin.
- Material/land/equipment requirements – this section should clearly outline all resources that will be needed to complete the project.
- Project timelines, hold-points and milestones

- Budget and financial information
- Risk Management procedures – This section will summarise all risk assessments undertaken for the project and list possible constraints that might be encountered during project delivery.
- Issues escalation management and delegations – this section will outline how potential problems will be handled, who has delegation to make decisions and how issues communication will be managed up the line.
- Communication management – This section should outline the communications and consultation plan for the project.
- Approvals – This section will deal with any approvals required for the undertaking of the project.
- Attachments – this section will list all documents that have formed part of the project planning phase.

The larger and more complex the project the more detailed the material will need to be.

Resource management plan including an assessment of council’s capacity to undertake the project

A key consideration in determining whether a PPP is viable will be the council’s capacity to undertake its share of the project. One key indicator of this is council’s financial capacity as represented by its current and projected (for the life of the PPP project) balance sheet. Council responsibilities in relation to the proposal, on a year on year basis throughout the project’s lifetime, should be identified, clearly itemised, costed and subsequently applied to the balance sheet. In addition to financial capacity, an analysis of councils existing workforce and skill base in relation to the project needs must be undertaken. Where council does not have adequate staff resources and/or expertise, the proposed outside sources of that expertise should be noted and costed.

Projected Project Timeframes

Council should prepare Gantt charts or tables to show proposed project time frames and provide these charts to OLG.

Risk Assessment and Risk Management Plan as per the relevant AU/NZS

It is essential that, at an early stage in the evolution of a proposed PPP project, council develop and put into operation an appropriate risk management plan for the project, in accordance with the relevant AU/NZ standard. The plan should be reviewed, updated and amended, as and when required, during the development of the project.

Council should analyse and address the potential transfer of risk from the private party onto the council in the form of a Risk Allocation Table which identifies risks including actual and preferred risk allocation.

The allocation of any identified risk to the parties in the PPP (such as directors, elected officials, chief executive officers, senior executives, line managers and staff) as well as any mitigation strategies (such as treatment and control options) should also be addressed in the risk assessment as well as sensitivity testing to identify best and worst-case scenarios.

11.2.7 Pre-expression of interest (EOI) Phase Documents:

EOI documentation

The EOI process is a key element in ensuring that the community gets the best value for its investment in a project. A good EOI process will test the market to identify available competitive partners who have the capacity to deliver the project. All local government PPP proposals, regardless of whether they originate from within the council or from an external source, should be subjected to a formal EOI process to identify preferred partners for the project to ensure overall transaction costs are minimised.

Many councils receive unsolicited proposals from the private sector. Such proposals can provide a great opportunity for council to bring forward developments that may otherwise not have been considered. However, unsolicited proposals still need to be market tested to ensure councils identify whether there are other market participants who can bid for the opportunity so as to enable council to achieve value for money. Any potential project evolving from an unsolicited proposal must also undergo rigorous testing against council's strategic planning documents to ensure consistency with council's and the community's long-term strategic direction.



Beware of potential risk transfers
from the private party onto council!

Any EOI/market testing process should be undertaken based on the business plan prepared by the council. If it is proposed to seek expressions of interest for any part of the project, as a form of market testing, before council resolves to proceed with the project as a PPP then the requirements of the Tendering provisions in the Act and the Local Government (General) Regulation 2005 will be engaged. The OLG's Tendering Guidelines should be consulted in relation to any public advertisement asking for expressions of interest.

Details of the proposed EOI/market testing process are to be provided to the Chief Executive at the initial assessment stage and to the PRC if the project is referred. This documentation should contain as a minimum:

- an outline of the EOI process proposed;
- the project brief (this should be equivalent to the business plan);
- steps/mechanisms in place to safeguard the intellectual property of the council and of prospective bidders;
- establishment and composition of an evaluation panel to consider bids (panel members should not have any conflicts of interest);
- the evaluation criteria and methodology to be used in assessing bids (including weightings) – these should include experience in the successful design, construction, financing and maintenance of similar projects, the experience and capacity of bidders

to undertake the project and deliver the outcomes specified in the project brief (this may include control over appropriate land) and the bidder's financial capacity to meet anticipated contract obligations;

- treatment of non-conforming bids;
- a probity review of the proposed process by the probity advisor.

The EOI process should produce a shortlist of possible partners or, in cases where there is limited interest in the PPP proposal, a preferred partner. Where the EOI process yields a shortlist, it may be appropriate to invite those persons to submit a detailed proposal before the final selection of a preferred partner is made. In large or complex projects, it is good business practice to go through a "Detailed Proposals" phase because responses to an EOI do not always yield sufficient information for council to make a judgment on whether the proposals represent value for money.

The evaluation panel established by the council should have no other role than to assess bids in the EOI process against the criteria established by the Steering Committee (and be agreed to by Council by a resolution). Its role is to then make recommendations. The panel may rank the proposals in an order determined by its assessment of the relative merits of bids. If more information is required of a bid the panel should inform the Steering Committee of any deficiency against the set criteria and make a recommendation as to whether this deficiency can be easily remedied or is fatal to the bid.



Unsolicited proposals must still undergo rigorous testing against IPR.

Probity plan

Probity considerations are vital not only for the EOI and final contract stage, but are necessary at every step throughout the project. It is essential that the council develop a probity plan for the entire project early in the evolution of the project. Such a plan is needed to ensure that each aspect of the process is and is seen to be open and transparent, that conflict of interest is avoided, pecuniary interests are declared and that it complies with competition laws and principles.

The probity plan should document the relationship between parties and persons involved in the project. For example, where any financial, market and/or economic analysis is carried out by an independent authority, organisation or person with relevant expertise, the independence of these persons from the project parties, council or prospective private sector bidders for the project should be certified by both the assessor or principal of the assessing organisation and the PPP project manager.

If land must be rezoned to facilitate the project, the process to undertake the rezoning should be clearly outlined. The development application (DA) process should also be outlined, setting out how the development of the PPP arrangement will be kept separate from the DA determination process.

EOI Assessment plan

An assessment plan outlining criterion for the EOI assessment, including details on the assessment panel, criteria weightings and other considerations to be considered during the private partner selection process must be prepared. The plan must clearly detail all aspects of the proposed assessment process including timelines, communication with potential private partners as well as grievance procedures.

The criteria used by the evaluation panel should be made available to short-listed bidders in preparing their further bids/submissions. The process of refining selection should be fully documented.

11.2.8 Pre-Contract Phase Documents: Summary of EOI and subsequent selection process undertaken

A summary report documenting all considerations made throughout the EOI selection process as described above must be provided to OLG. The PRC may seek further information on any matter related to the selection process.

Keeping documentation that was produced in addition to EOI documentation

Council should maintain a complete record of all matters leading to the submission of any draft contract/project documentation. The material submitted to the PRC should be commensurate with the degree of risk associated with the project. The PRC does not expect voluminous submissions, but rather, reference to key documents which have been prepared in the normal course of the PPP development. It is recognised that “one size does not fit all”.

A positive assessment from the PRC that council has complied with the guidelines and the identified project procedures and process will be required before council may resolve to and subsequently enter into and sign the project documentation.

Final project specifications and objectives

A copy of the final project specifications and objectives must be provided to OLG/PRC. The documentation should clearly identify any major project variation since the time of council’s resolution to proceed with the project as a PPP and/or any assessment by the CE or PRC including variations such as a change in parties, scope, project cost of greater than 20% or of any expected delay in project timing of more than 12 months.

Final management structure for chosen PPP vehicle

An outline or chart of the final proposed management structure for the PPP project delivery must be provided to OLG/PRC if different to previously provided information.

Final Risk Management Plan

A copy of the finalised risk assessment and risk management plan for the project must be provided to OLG/PRC. This plan must consider all potential sources of risk including any previously unforeseen items that may have come to council's attention since selecting the final project partner. The Risk Assessment must be prepared as per the relevant Australian Standard applicable at the time.

Financial appraisal

A financial appraisal of the final project proposal must be provided if different to the appraisals undertaken as part of the business case. OLG and/or PRC may request additional financial appraisals on some or all aspects of the project by either council internal accountants or an independent financial consultant, which must be sourced and funded by council.

Proposed contract(s)

A copy of the final proposed contract documentation must be provided to OLG/PRC for assessment. Council cannot sign the contract documentation until OLG/PRC have provided written confirmation that council may proceed to do so.

Other documentation/information

OLG and/or the PRC may request other independent specialist consultant reports on certain aspects of the project. Any such request will need to be funded and commissioned by council.

12. On-Going Responsibilities

Council should notify OLG of major variations to the project at any stage in its development and delivery and be mindful that entering into a modified arrangement may offend against the prohibition in s. 400E of the Act.

If a contract has been signed and construction is underway there will often be variations within the contract that are not significant. If, however, the project itself or its outcomes change substantially with the potential to result in different outcomes then the revised project will need to be resubmitted to the Chief Executive and possibly to the PRC before new or revised contract documentation is entered. Contracts should not be split to avoid going through the review process.

If, during the implementation of the project (including the period before the relevant contractual or legal documents are signed) there is a proposed variation to the project, the council should immediately notify the OLG Chief Executive.

Where the OLG Chief Executive determines that the variation is significant, the council will be notified that an assessment of the project as varied of proposed to be varied is required by either the Chief Executive or the PRC depending on who undertook the original assessment. In either case the project won't be able to proceed until the Chief Executive or PRC (as required) form a positive assessment as to council's compliance with the procedures and process matters set out in these guidelines.

Significant changes may include:

- changes in the physical scope of the project;
- major changes in the cost of the project, either allied with a change in scope or not;
- a change in or departure from the original allocation of risk between parties;
- changes in the financial structure of the project;
- changes in the private sector partner.

This list is not exhaustive and will need to be determined on a case-by-case basis.



13. Consequences of Non-Compliance

A council that enters a PPP or carries out any project under a PPP, without complying with the Act and Guidelines is in breach of the Act. While there are no specific penalties prescribed for non-compliance with the Act or these guidelines, councils should be mindful that significant avenues of action are available to remedy or restrain a breach of the Act. These include:

- orders from the Land & Environment Court to restrain or remedy the breach;
- the imposition of a surcharge, under s.435 of the Act, if a council has entered into a contract in contravention of the requirements for PPPs. Individual councillors and staff may, in limited circumstances, also be held liable in respect of any action taken in the Court;
- an investigation of a council under s.430 of the Act;
- a public inquiry into a council under s.438U of the Act; or
- legal action by the private sector partner.

The OLG will view non-compliance seriously and take appropriate action.



Part C – Specific scenarios



14. Treatment of Staged Projects

Where a project is to be conducted in stages and involves a combination or series of potential contracts, the project is to be considered as one (1) project for the purposes of assessment and review. Breaking a project up into smaller parts to avoid the threshold condition is not acceptable and does not comply with the Act or Guidelines. For example, where a PPP project proposal is on land that is in close proximity to another PPP proposal and involves the same participants to a significant degree, all such “projects” will be considered part of one project and should be presented as such in any submissions required under the Act.

15. Treatment of Multi-Council Projects

15.1 Assessment of Significance

Where a project proposal involves a number of councils, but the estimated total cost of the project does not exceed \$50 million, the following criteria will be considered or taken into account in assessing the significance of the project in terms of council annual revenue:

- The project is to be treated as a single project and one joint submission or assessment is to be provided to the OLG Chief Executive.
- As part of that joint submission, however, each council involved in the project is to provide an assessment in respect of its own part of the project. That assessment should include relevant information and details as to the annual revenue of that council that is lawfully available to it for spending on

facilities or services of the kind to which the project relates, as if that project were a project to be carried out by that council alone.

- If one council reaches the 25% threshold for its part of the project then the whole project will be considered significant and will be subsequently referred to the Project Review Committee for review.

15.2 Assessment of Risk

As for single council projects, the project may be referred to the Project Review Committee for review if the OLG Chief Executive is of the opinion that the project is high risk.

The following high risk assessment principles will be applied to multi-council projects:

- Each council involved in the project is to provide a risk profile and assessment for their part of the project.
- If one council's risk assessment identifies their part of the proposal as high risk then the whole project will be deemed as high risk and will be required to undergo the review processes of the PRC.
- Even if no single council's part of the project is significant or high risk, the whole project will be still be assessed (by OLG on the basis of the information provided) for cumulative risk.
- If the cumulative risk is identified as being high then the project will be deemed high risk and will need to undergo the review processes of the PRC.
- If cumulative risk is not high then the councils can continue the project.
- Approval of the Minister for Local Government under s.358 of the Act must be sought if necessary.



Multi-council projects will be assessed as a single project.



OLG will assess the project's cumulative risk.

16. Unsolicited Proposals

When considering unsolicited proposals, councils must comply with the relevant provisions of the Act, these guidelines and any unsolicited proposal guidelines developed by council. Unsolicited proposals considered by councils must also align with the objectives articulated in their delivery programs and other associated integrated planning and reporting documents. Councils may find guidance from the *Unsolicited Proposals Guide for Submission and Assessment* issued by the Department of Premier and Cabinet and should also refer to Part B section 10.3.6 for further information.

17. Consent Authority for PPP projects where council is also the applicant

For most development undertaken as part of a PPP council is both the applicant as well as the consent authority, which can be concerning for the general public. The OLG continuously monitors how councils manage their separate roles as regulatory authority and developer and/or landowner. In addition, councils are obliged to act in accordance with the Guiding Principles set out in Chapter 3 of the Act. OLG provides assistance to councils on probity matters relating to managing conflicting roles in matters where they are the regulator of land and have a financial interest in the outcome. Documents such as the ICAC position paper "*Corruption risks in NSW development approval processes*" provides additional information and guidance to councils on this issue.

Consent authorities must take steps to manage conflicting development and regulatory roles. The appropriate approach will depend upon the type and scale of development. The options available include the use of external consultants or officers from another council, segregation of duties within council, and referral to an Independent Hearing and Assessment Panel (IHAP).



Councils must manage their conflicting development and regulatory roles.



Additional approvals from the minister may be required for loans or special rates variations.

18. Financing and Borrowing approvals

Where some of the funds to finance the project are to be borrowed, the council will need to establish an appropriate case for such borrowings, given the need for the council to comply with the provisions of Part 12 of Chapter 15 (see section 621 and following sections) of the Act. The intention to borrow must also be outlined in the council's draft Operational Plan.

The approval of the Minister for Local Government may be needed under sections 622 and 624 of the Act. Council should have regard to [Circular 09/21 - Revised Borrowing Order](#) (or any order superseding it) which is available on the OLG website.

Section 410(3) of the Act will also need to be complied with, and appropriate approvals obtained from the Minister for Local Government, in respect to a proposal to access any internal loans, that is, the movement of moneys out of a restricted fund, such as a water or sewerage fund.

Where some of the council sourced funds are to be raised by way of increased rates or charges over and above those allowed under the rate pegging provisions of the Act, approval from the Minister for Local Government for a special rate variation will also be needed pursuant to Part 2 of Chapter 15 of the Act.

19. Provision of Service – when is it considered to be a PPP?

Section 400B(1A) of the Act defines a PPP as the provision of public infrastructure or facilities including the **delivery of services** during the carrying out of any project under the PPP. This definition captures services delivered to a council that are directly associated with the provision of the infrastructure or facility. It includes services provided during the carrying out of the PPP project but excludes any subsequently contracted services such as ongoing maintenance or operation of that infrastructure. Any contract to provide a service after the completion of the PPP project must comply with the tendering provisions.

The definition was drafted in this way to clarify that for example, councils do not have to follow the PPP provisions for every cleaning contract of a public toilet block.

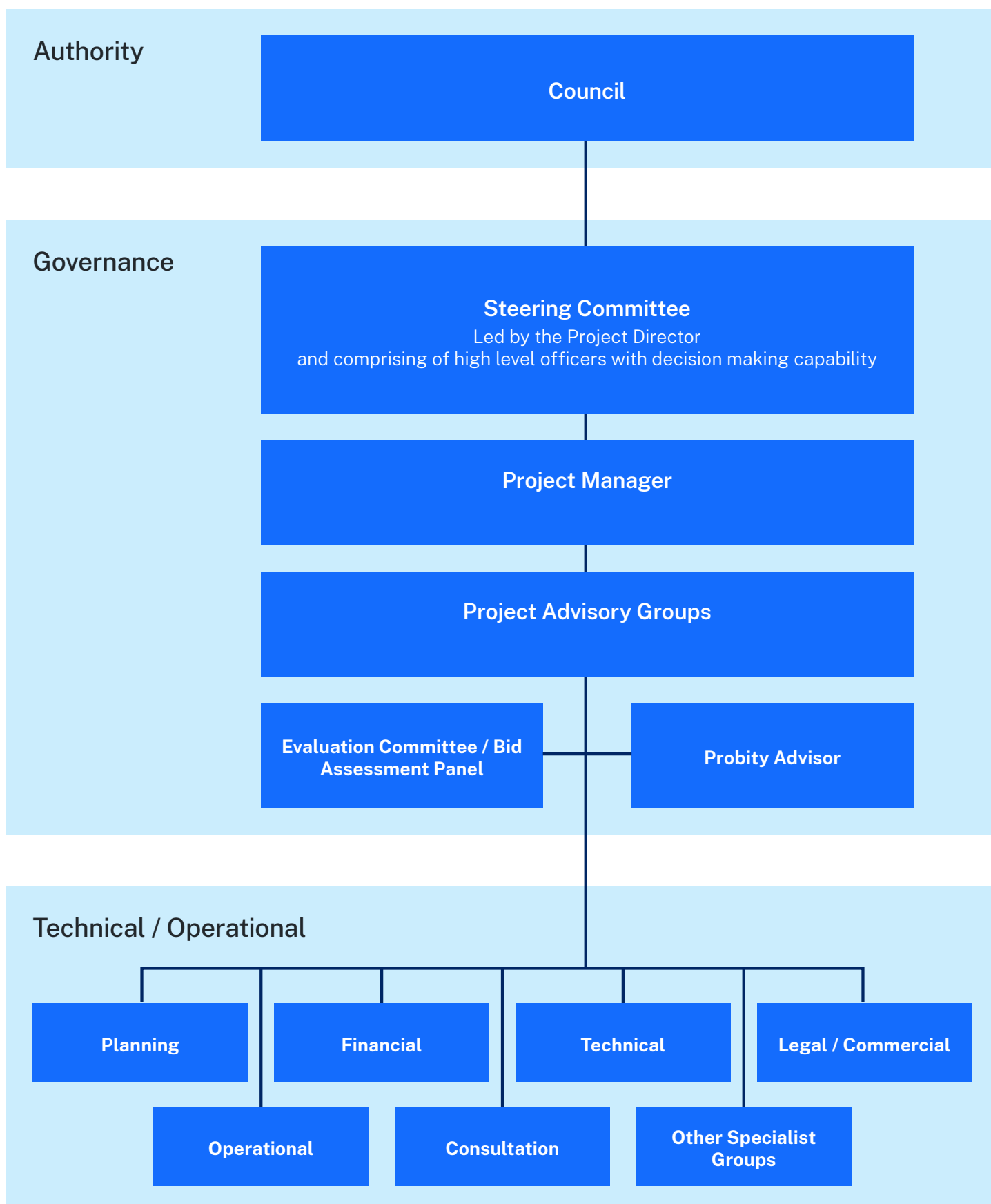


Only services provided during the carrying out of the PPP project fall under the ppp provisions.

Part D – Appendices



Figure 1: Illustrative Project Management Governance Structure



Form 1: Public Private Partnership (PPP) – Council Self-Assessment Questionnaire

Council Name:

Project Name:

Proposed parties for PPP:

Project Description:

QUESTION	YES	NO
Does the project have an estimated total cost of more than \$50 million?		
Does council's financial contribution or equity position amount to 25% or more of the council's annual revenue that is lawfully available for spending on facilities or services of the kind to which the project relates?		
Is there likely to be a risk of council losing money or asset/land value if the project fails?		
Is there likely to be a transfer of risk from the private party to council?		
Is the project consistent with council's community responsibilities?		
Has the project been planned for as per council's IPR documentation?		
Is council intending to form a new entity to deliver the PPP?		
Is council intending to provide land to facilitate the PPP project?		
Does the project involve other agencies?		
Has the project received external grant funding?		
Is the project reliant on external grant funding?		
Does the project require borrowings (please specify whether TCorp or bank borrowings will be used)?		
Is the project reliant on special rates variations?		
Was the project borne out of an unsolicited proposal by the private sector?		
Does the project combine several smaller projects into one larger project?		
Does the project involve more than one council?		
Is council both the applicant as well as the consent authority for any development approval required for the proposed project?		

- ✓ **Please note:** If any of your answers fall within the orange, your project will likely require a full assessment and referral to the PRC.
- ✓ **Please note:** If you answered yes to intending to form a new entity, you will be required to seek approval from the Minister under Section 358 of the Local Government Act.
- ✓ **Please note:** If any of your answers fall into the blue, please check the guideline for special considerations that need to be made in regards to your answer.

Form 2: Required Documents Checklist – Initial Assessment and Full Assessment

	Required Documentation	Initial Assessment (pre EOI)	Full Assessment (pre Contract)
Generic:			
1.	PPP Council Self-Assessment Questionnaire	✓	
Certification and Council Resolutions:			
2.	GM Certification that the information provided to OLG is correct is to be provided with all submissions to OLG	✓	✓
3.	Council Resolution to agree on outcomes and deliverables of the project	✓	
4.	Council Resolution to proceed with the project as a PPP and submit to OLG for assessment	✓	✓
5.	Council Resolution to enter into a contract		✓
Strategic Phase Documents:			
6.	Clear statement of project relationship to IPR documents (community strategic plan, delivery program, operational plans)	✓	
7.	Clear statement of outcomes and deliverables (as agreed by Council resolution – see required certification and council resolutions above)	✓	
8.	Clear outline of the proposed management and governance structure for the PPP entity	✓	
Business Case Phase Documents:			
9.	Justification of PPP as delivery model	✓	
10.	Justification of need to form new entity under S358 (if proposed)		✓
11.	Estimated total project costs and sources of funding	✓	
12.	Value of contributions	✓	
13.	Council annual revenue available for the type of PPP proposed	✓	
14.	Full Business Case and Economic Appraisal		✓
15.	Public consultation reports		✓
Project Planning Phase Documents:			
16.	Project management plan		✓
17.	Resource management plan including an assessment of council's capacity to undertake the project		✓
18.	Projected Project Timeframes		✓

19.	Risk Assessment and Risk Management Plan as per the relevant AS/NZS	✓	
Pre-expression of interest (EOI) Phase Documents:			
20.	EOI documentation	✓	
21.	Probity plan	✓	
22.	Assessment plan	✓	
Pre-Contract Phase Documents:			
23.	Summary of EOI and subsequent selection process undertaken		✓
24.	All tender documentation that was produced in addition to EOI documentation		✓
25.	Final project specifications and objectives		✓
26.	Final management structure for chosen PPP vehicle		✓
27.	Final Risk Management Plan		✓
28.	Financial appraisal		✓
29.	Proposed contract		✓
Other:			
	In some cases, OLG and/or the PRC may request independent specialist consultant reports on certain project issues, which will need to be funded and commissioned by council.		OLG will notify council of any need of special reports if and when required
Contract Variations:			
	Notification to OLG of any major project variation; i.e. a change in scope, change in project cost of >20% or a delay in project timing of more than 12 months.		OLG and/or the PRC may request updated versions of any of the above documents

References and Further Reading

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- NSW Treasury. (2006). Accounting for privately financed projects.
- NSW Treasury. (2012). Risk Management Toolkit for NSW Public Sector Agencies.
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