

Implementation of the AusLink National Land Transport Plan

BILATERAL AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

AND

THE STATE OF TASMANIA

2004 – 2009

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AGREEMENT BETWEEN THE COMMONWEALTH OF AUSTRALIA AND THE STATE OF TASMANIA RELATING TO THE IMPLEMENTATION OF THE AUSLINK NATIONAL LAND TRANSPORT PLAN

Preamble

This Agreement provides the basis for funding between the Australian Government and the Government of Tasmania to deliver the AusLink National Land Transport Plan.

- 1) The Australian Government's formal policy statement *AusLink White Paper: Building Our National Transport Future* released in June 2004:
 - a) introduced a new strategic framework for the planning and funding of Australia's roads and railways to meet long term economic and social needs;
 - b) established a set of shared high level transport objectives and outcomes;
 - c) outlined a new National Land Transport Network which will be the focus of the Australian Government's future investment in land transport infrastructure;
 - d) set out a AusLink National Land Transport Plan including the first five year AusLink investment programme for the period 2004-05 to 2008-09; and
 - e) recorded the Australian Government's commitment to work with the States and Territories to deliver a better national transport system.
- 2) The Australian Government acknowledges that the National Land Transport Network represents one element of the Tasmanian transport system and that the Tasmanian Government has responsibility for the integrated development of the total transport system in Tasmania.
- 3) The objectives of this Agreement are to:
 - a) assist national economic and social development through the funding of projects aimed at improving the efficiency, safety and reliability of the AusLink National Land Transport Network; and
 - b) promote well based cross modal investment decisions through improving long term planning, project assessment and evaluation, and data sharing arrangements.
- 4) Measurement of the degree to which these objectives are being met will be made on a regular basis throughout the term of this Agreement using the performance indicators described in Clause 21 and the nationally consistent data collected in Clauses 67, 68 and 79 to 85.

- 5) Both parties intend that this Agreement provide a clear and effective framework for the planning, funding and development of the AusLink National Land Transport Network in Tasmania and for implementation of the AusLink National Land Transport Plan.
- 6) Both parties recognise the importance of sustaining overall investment in more efficient and better integrated land transport linkages aimed at improving Australia's economic growth and international competitiveness.
- 7) The Australian Government has increased its expenditure in real terms on projects on the AusLink National Land Transport Network in Tasmania during the five-year period to 2008-09. The Tasmanian Government undertakes to maintain during the period to 2008-09 expenditure from its own source revenue on the National Land Transport Network at a level at least equal in real terms to expenditure from its own source revenue over the five years to 2003-04. (Details of past expenditure by the Australian Government and the Tasmanian Government are set out in Schedule B.)
- 8) Both parties recognise the importance of funding for the development of land transport linkages at the regional and local level, which deliver economic and social benefits to regional and remote communities. The Australian Government has committed to increase the financial assistance that it will provide for regional and local transport infrastructure between 2005-06 and 2008-09. The Tasmanian Government undertakes that there will be no reduction in its financial assistance to local government for local transport infrastructure during the five year period to June 2009.
- 9) Both parties are committed to working together cooperatively and actively to implement this Agreement.

Scope and Purpose

- 10) This Agreement covers arrangements applying to funding made available by the Australian Government to the Tasmanian Government under the first five-year AusLink investment programme (2004-05 to 2008-09) and any agreed subsequent changes to, and extensions of, the programme. It also covers arrangements for infrastructure planning, identification of investment priorities, development and assessment of project proposals and evaluation of completed projects.

Commencement and Amendment

- 11) This Agreement commences upon signature by both parties. The parties may agree in writing to amend the Agreement.

Application of Commonwealth Legislation

- 12) Australian Government funding under this Agreement is provided by Section 96 grants and is subject to the provisions of the *AusLink (National Land Transport) Act 2005* and the *Australian Land Transport Development Act 1988*.

Funding Purposes and Contributions

Australian Government Contribution

- 13) Subject to the remainder of this Agreement, the Australian Government agrees to make available a total provision of up to \$77.27 million for construction projects in Tasmania in the five years 2004-05 to 2008-09. The Australian Government may, at its discretion, add to this amount from time to time.
- 14) Australian Government funding will be made available for:
 - a) the construction projects described, and up to the amounts specified, in Schedule A; and
 - b) road maintenance on the AusLink National Network in Tasmania, for the annual amounts specified in Schedule A, in accordance with the Australian Government's maintenance formula.

Tasmanian Government Contribution

- 15) The Tasmanian Government agrees to contribute funding from its own source revenue for the projects specified and on the terms specified in Schedule A. Own source revenue is defined as total Tasmanian Government general revenue (ABS uniform reporting basis) less Australian Government specific purpose payments to and through the Tasmanian Government. On this basis, own source revenue would include all Australian Government general purpose grants and the GST.

Bridgewater Bridge

- 16) In addition to the Australian Government funding contribution set out in Clause 13 above, the Australian Government has committed to provide the higher of \$100 million or 80 per cent of the cost of a new two-lane Bridgewater Bridge. Of these funds, \$57 million would be provided up to 30 June 2009, with the remainder of the Australian Government contribution to be provided beyond this date. Given the construction timing for this project, the Tasmanian Government would not be expected to provide funding before 2009-10. It would be open to Tasmania to construct a four lane bridge and fund the additional cost.
- 17) The Australian Government notes that the Tasmanian Government is reconsidering its position on the priority of various proposed roads projects, including construction of this project. In the event that the Tasmanian Government produced a proposal for an alternative project on the northern approaches to Hobart, the Australian Government undertakes to consider, in good faith, the application of funding in Clause 16 above to this alternative. The alternative proposal would need to include a reason and rationale for the alternative approach being sought, detailed costings, cost benefit analysis and timelines for matters such as planning, land acquisition, regulatory approvals and project construction to a comparable standard to a project proposal report.

- 18) The parties will use their best endeavours to reach agreement as soon as possible.

Project Scope

- 19) The scope of each project in Schedule A will be agreed in writing by both parties in conjunction with the project submission and approval process described in the AusLink Notes on Administration.

Project Timetable

- 20) Both parties will seek to ensure that projects are commenced and implemented in a timely way by working in good faith to establish and meet a project timetable agreed in writing by the parties.

Performance Indicators

- 21) Specific transport performance indicators for each project will be agreed in writing by the parties in conjunction with the project submission and approval process described in the AusLink Notes on Administration. The parties agree that, wherever appropriate and practical, specification of transport performance indicators for each project will have particular regard for the programme objectives (Clause 3) of improving the efficiency, safety and reliability of the National Land Transport Network. Performance indicators reflecting these objectives might typically be: changes in travel times and operating costs; accident statistics.

Phasing of Contributions

- 22) Both parties acknowledge that nothing in this Agreement obliges either party to make any payments on its contribution to a project in advance of the other or in advance of material progress. The objective is to ensure that project cash flows allow the most cost effective project delivery.
- 23) The parties agree that the phasing of their respective contributions may be separately agreed on a project by project basis, with the objective of ensuring that project cash flows allow the most cost effective project delivery. Similarly, the parties agree that they may, after consultation, vary the agreed phasing of their respective contributions to an individual project, if required.

Eligible Project Costs

- 24) Project costs that may be included for “continuing projects” listed in Schedule A have been agreed outside this Agreement.
- 25) For new AusLink projects listed in Schedule A, Australian Government funding may only be directed towards meeting “eligible project costs” set out in this Agreement.
- 26) For projects to which the Tasmanian has agreed to make a financial contribution, only expenditure on “eligible project costs” will be recognised as counting towards the Tasmanian Government contribution to the project.

27) For purposes of this Agreement, and unless otherwise agreed in writing at the time of defining the project scope or subsequently, “eligible project costs” includes:

- a) direct costs of planning, public consultation, environmental assessment, and construction of the project;
- b) costs arising from any latent conditions associated with construction of the project;
- c) direct costs of supervising projects within the programme of works;
- d) costs of meeting any conditions imposed on the project in respect of matters of National Environmental Significance under Environment Protection and Biodiversity Conservation Act 1999;
- e) costs of meeting conditions imposed on the project by Tasmanian environment, planning, heritage or workplace standards agencies;
- f) costs of reasonable landscaping;
- g) costs of project public recognition and publicity including any ceremonies connected to progress on the project;
- h) costs of necessary connections to the road network but limited to works within the road reserve or the limit of any access ramps of the National Land Transport Network;
- i) the costs of, or arising from, any legal action relating to projects in Schedule A that is not due to the Tasmanian Government failing to properly administer tender processes and supervise and manage relevant contracts; and
- j) costs of incorporating cost effective Intelligent Transport Systems (ITS) features or other alternatives to built infrastructure within the project, as agreed on a case by case basis with the Australian Government.

28) Unless agreed otherwise in writing at the time of defining the project scope or subsequently, “eligible project costs” does not include:

- a) any component of the oversight and administration costs of any Tasmanian agency not directly related to the programme of works;
- b) the cost of artworks or elaborate aesthetic features associated with a project; or
- c) any costs associated with sections of road or rail that might be bypassed by a project and cease to be part of the AusLink National Network.

- 29) For purposes of projects listed in Schedule A at the time of signing this Agreement, land acquisition costs will be treated as an item of “eligible project costs” for purposes of Clauses 25 and 26 above.
- 30) For projects which may after the signing of this Agreement be added to Schedule A, the treatment of land acquisition costs as a possible item of “eligible project costs” will be considered by the Australian Government on a case by case basis.
- a) Where the agreed outcomes of detailed planning studies identify land as being required for the National Land Transport Network that is not in the Tasmanian Government’s ownership, the Australian Government will agree to its inclusion in later projects and the Tasmanian Government will take action to acquire or reserve that land.
 - b) Where land needed for the project is transferred between Tasmanian Government agencies for the purposes of a project, the market value shall be assessed by the Tasmanian Valuer General and, if desired, an independent valuer of the Australian Government’s choosing. The parties agree to use the assessed market value in determining the cost to be attributed to the project.
 - c) In each case, the parties will reach agreement on the share of the cost to be borne by each party.

Processes for Programme and Cashflow Management

- 31) The parties will meet as necessary to review progress with the implementation of the projects covered by this Agreement.
- 32) To facilitate orderly management of the programme of projects and the associated annual cash flow requirements, the parties agree to the following processes:
- a) the Tasmanian Government will provide to the Australian Government, no later than 28 February each year, an expenditure budget for each project in Schedule A for each of the remaining years covered by Schedule A;
 - b) the Australian Government will provide to the Tasmanian Government each year, at the time of the Australian Government Budget, an indicative AusLink Investment Programme setting out a budget for eligible expenditure by the Tasmanian Government on the projects listed at the time in Schedule A;
 - c) the indicative AusLink Investment Programme will, to the extent possible within Australian Government Budget constraints, reflect the Tasmanian Government funding requirements for the projects listed in Schedule A and be in accordance with Clause 20 (Project Timetable);

- d) the Tasmanian Government will, in light of the announced State Government budget, and on receipt of the annual advice of the AusLink Investment Programme from the Australian Government, provide to the Australian Government an indicative funding commitment to individual approved projects on the AusLink Investment Programme within Tasmania;
- e) the indicative funding commitment by the Tasmanian Government will reflect, to the extent possible, the funding requirements of the projects listed in Schedule A and the agreed project timetables determined under Clause 20.

Variations to Projects and Funding

- 33) Both parties intend to maintain their contributions to the overall funding envelope specified in Schedule A over the period of this Agreement.
- 34) Both parties recognise that there may be a need from time to time to vary some of the project details in Schedule A as project proposals are further developed and refined or in response to circumstances that may potentially affect the scope, cost (and respective funding contributions) and expected timelines of projects.
- 35) Any variations to a project as described in Schedule A, including scope, cost and timelines, will be agreed in writing by the parties.
- 36) The parties agree to the following principles and processes for dealing with possible variations.

Increases in Project Costs

- 37) The Australian and Tasmanian Governments are committed to their respective contributions to the projects as set out in Schedule A. However, in the event of an increase in the cost of a project listed in Schedule A, the parties acknowledge that there is a range of possible approaches which will be considered as set out in Clauses 38 to 41, including:
- 38) The Australian Government may increase its funding to the project

Where there is an increase in the cost of a project listed in Schedule A, the Australian Government may increase its level of funding. However, where the Australian Government agrees to increase its funding contribution to a project during the five year period 2004-05 to 2008-09, this increased Australian Government funding will need to be provided from within the overall amount available to the Tasmanian Government under Clause 13 for approved construction projects in Tasmania in the five year period 2004-05 to 2008-09

- 39) The Tasmanian Government may decide to contribute or increase its contribution to the project

Where there is an increase in the cost of a project listed in Schedule A, the Tasmanian Government may contribute funding or increase its level of funding. Such a contribution may be greater than the percentage share being provided by the Tasmanian Government towards the original project cost estimate.

- 40) The parties may agree to change the project scope

Both parties may agree to reconsider the scope, or construction design being proposed for a project. Such reconsideration will include, in particular, the likely implications of the proposed change for the objectives identified for a project and the whole-of-life costs and benefits.

- 41) As a last resort, funding may be withdrawn

As a last resort, both parties reserve the right to withdraw funding for a project prior to awarding the construction contract, where it becomes clear that the initial estimated funding falls significantly short of the amount that will be required to complete the project, based on a revised cost estimate. In this event the parties agree to cover “eligible project costs” already incurred, prima facie on the same basis as the agreed funding shares for the project.

In the case of the Australian Government, this may be to reallocate the funding to another AusLink project or projects in Tasmania or in another State or Territory. In the case of the Tasmanian Government, this may be to other projects that may not be on the AusLink National Land Transport Network.

Treatment of Project Cost Savings

- 42) Where the final project cost to government is less than the amount(s) which the Australian Government, or in the case of a jointly funded project the Australian Government and the Tasmanian Government, has agreed to make available (as specified in Schedule A), the savings (including savings resulting from private sector participation in the project) will be treated in the following way:

- a) for fully funded Australian Government projects the savings will be applied, as agreed between the parties, as an Australian Government contribution to another project or projects listed in Schedule A;
- b) for projects to which each party has committed a specified funding contribution, the savings will be divided on a pro-rata basis and be respectively applied, as agreed between the parties, to another project or projects included in Schedule A

Project Delays

- 43) In the event that the parties are unable to agree on a timetable for a project or if significant delays occur in the agreed timetable for preparing the project for construction, both parties will meet to review their funding contributions and reserve the right to reallocate that funding:
- a) in the case of the Australian Government to another AusLink project or projects in Tasmania or in another State or Territory; and
 - b) in the case of the Tasmanian Government to other projects that may not be on the AusLink National Land Transport Network.

Notice and Consultation

- 44) Where circumstances give rise to the possible need for action under any of the Clauses 37 to 43 above, the parties agree to consult to ensure that alternative actions are explored and considered and that both parties are aware of any consequences resulting from particular courses of action.
- 45) If, after consultation, either party proposes to take action to vary or withdraw its financial assistance for a project under Clauses 37 to 43 above, the party concerned will formally advise the other in writing of its intention to take such action. The matter will then be subject to a 30 day period during which time the other party can make further submissions or the parties can agree to reconvene discussions prior to the decision being formally advised in writing and/or publicly announced.

Terms and Conditions of Australian Government Assistance for Approved Projects and Maintenance

- 46) In addition to the conditions attaching to the provision of Australian Government funding for approved projects under the *AusLink (National Land Transport) Act 2005* and the *Australian Land Transport Development Act*, the Tasmanian Government agrees that the provision of Australian Government funding for each project specified in Schedule A will also be conditional upon the Tasmanian Government complying with the following conditions.

Provision of the Tasmanian Government's Funding Contributions

- 47) The Australian Government's contribution to a project specified in Schedule A is conditional on the Tasmanian Government fully meeting the terms of any funding contribution to that project specified in Schedule A.

Conditions of Maintenance Funding

- 48) Australian Government road maintenance funding is subject to the Tasmanian Government maintaining to a mutually agreed fit for purpose level on those parts of the AusLink National Land Transport Network for which it is responsible, and supplying data on the condition, usage and funding of the Network to enable the Australian Government to meet its accountability and reporting requirements.

- 49) The parties will cooperatively develop the agreed standards of service that will be achieved on the relevant corridors within Australian and Tasmanian Government funding. The parties also agree to develop a schedule of proposed maintenance data that will be used to monitor the condition over time of relevant sections of the AusLink National Land Transport Network in Tasmania. These standards and data requirements will be reviewed and amended from time to time by the agreement of the parties.

National Code of Practice for the Construction Industry

- 50) The National Code of Practice for the Construction Industry (the code) and the Australian Government Implementation Guidelines for the Code (the guidelines) will apply to all construction projects where:
- a) the Australian Government's contribution to an individual project is \$5 million or more and where that contribution represents at least 50 per cent of the total project value;
 - b) the Australian Government's contribution to an individual project is over \$10 million, irrespective of the proportion that represents of the total project cost.
- 51) The code and guidelines apply to new projects approved by the Australian Government after 1 January 2004. *[These are appropriately designated in Schedule A.]*

Recognition Arrangements

- 52) Australian Government funding for each project in Schedule A is conditional on the Tasmanian Government providing the Australian Government with public recognition for its contribution to funding of projects undertaken under the Programme.
- 53) The parties acknowledge that public recognition for all projects undertaken on the National Land Transport Network in Tasmania should have regard to the respective contributions of the parties to the funding of the projects.
- 54) Where the Australian Government is fully funding all eligible project costs, it will receive major prominence in, and a determining say over the content and timing of, all public recognition.
- 55) Where a project is funded jointly, all public recognition for that project will be joint and agreed. Prima facie, each party will receive equal prominence in any public recognition.
- 56) Where any public recognition is proposed, the parties agree that they will provide the other party with adequate notice of the proposed public recognition and an appropriate opportunity to ensure that the proposed public recognition meets the other party's requirements.

57) The parties agree that they will not, without the prior agreement of the other party, provide public recognition for a project stating, requiring or implying a funding commitment to a project by the other party, by whatever means.

58) The definition of public recognition and the procedures for implementing this agreement in respect of recognition for the Australian Government contribution are set out in Schedule C to this Agreement.

Conditions Relating to National Land Transport Network Connections

59) Australian Government funding for each approved project on the AusLink National Land Transport Network is conditional upon:

- a) clear identification of, and agreement between the parties on, the way in which the project will connect to, or intersect with, the remainder of the transport network at a specific location or locations. This agreement will be reflected in the defined project scope (as provided for in Clause 19) prior to the construction of the project; and
- b) the Australian Government's agreement to any subsequent change to agreed arrangements relating to the way in which the project connects to, or intersects with, the remainder of the transport network at a specific location or locations.

60) The parties will negotiate in good faith to resolve any issues with connections to, or intersections with, the AusLink National Land Transport Network arising from the approved project as defined. If the parties cannot reach agreement, then the following options are available to either or both parties:

- a) reconsider the project's priority, scope, design and costing with a view to resolving outstanding issues with connections and/or intersections;
- b) or, if this is not possible, despite both parties' best endeavours:
- c) withdraw funding from that project and apply it (on a pro rata basis if appropriate) to another project or projects within Schedule A for Tasmania;

or, if the parties cannot agree on another project or projects within Schedule A for Tasmania, then:

- d) the Australian Government reserves the right to reallocate its surplus funding to a project or projects in another State; and
- e) The Tasmanian Government reserves the right to reallocate its surplus funding to other projects not on the National Land Transport Network.

Other Project Specific Conditions

61) Both parties may agree, in writing, additional terms and conditions relating to individual projects.

Arrangements for Project Planning and Delivery

- 62) The Australian Government recognises that the primary responsibility for project planning and delivery rests with the Tasmanian Government where it owns and controls the relevant links on the National Land Transport Network.
- 63) The Tasmanian Government acknowledges the Australian Government's right to participate in project planning and/or to review project delivery to ensure that its policy objectives and accountability responsibilities for the National Land Transport Network are satisfied. The Tasmanian Government also acknowledges that the Australian Government may from time to time undertake reviews of the planning and delivery of projects. The Tasmanian Government will cooperate fully with the Australian Government and its agents in the conduct of such reviews.
- 64) Both parties recognise that circumstances may arise where:
- a) the Tasmanian Government has chief responsibility for the planning and delivery of a project, but the project substantially affects the responsibilities or operations of a third party (or parties), such as rail track manager(s), or
 - b) a third party has chief responsibility for the planning and delivery of a project in Tasmania.
- 65) Both parties acknowledge that in such circumstances there may be a need to negotiate an additional agreement(s) related to the project to ensure that the interests of all parties are adequately recognised.

Arrangements for Infrastructure Planning, Identification of Investment Priorities and Development of Project Proposals

- 66) Both parties acknowledge the need for ongoing cooperation across a range of matters in order to ensure that future land transport infrastructure requirements are planned, prioritised and delivered in an orderly way.

Corridor Strategies

- 67) The parties will cooperate in assessing future priorities for the National Network in Tasmania by undertaking joint studies of individual corridors and developing a 20-year (or long-term) strategy for each corridor to guide future investment.
- 68) In developing each corridor strategy, both parties will examine:
- a) transport projections, the condition and capacity of infrastructure, and land use plans along the corridor;
 - b) the relationship between the National Network and its connections to the broader transport system; and

- c) a broad range of solutions to future transport needs, including those which might defer or limit the need to expand the physical capacity of the Network.
- 69) Both parties will meet their own costs of participating in meetings and consultations and share the costs of any consultancies or other developmental work required to undertake strategic planning and development of corridor strategies, as specifically agreed in writing in advance.

Broadening the Range of Solutions

- 70) The parties agree to consider, and where appropriate to trial and deploy, alternatives to built infrastructure, such as technology-based applications and urban travel demand management, which might limit or defer the need to extend the physical capacity of the Network and deliver transport safety, efficiency and environmental benefits.

Transport and Land Use Planning Affecting the National Network

- 71) Both parties recognise that the effective and safe operation of the National Network serves both national and State objectives. Accordingly, both parties recognise the need to:
- a) integrate transport and land use planning at a network level to ensure the safe and effective operation of the AusLink National Land Transport Network, and appropriate interaction between this Network and State arterial road and local road networks; and
 - b) to the degree that it is within their control, avoid excessive additions to the traffic load on the AusLink National Land Transport Network from State arterial or local road systems.
- 72) Both parties will act in good faith within their respective authorities to facilitate balanced outcomes consistent with the objectives set out in Clause 71.
- 73) The Tasmanian Government agrees to:
- a) inform the Australian Government of any proposed changes to planning schemes (particularly for metropolitan areas and major regional centres) which might materially affect the operation of the National Network;
 - b) inform the Resource Planning and Development Commission that the Australian Government is to be considered a stakeholder and potential respondent to proposed Planning Scheme changes for locations through which the National Land Transport Network passes or may pass; and
 - c) use its best endeavours, including the appropriate use of the State Government powers, including under the Land Use Planning and Approvals Act 1993, to ensure the impact of any project or planning scheme on the AusLink National Land Transport Network is minimised.

State Funded Projects on the National Network

- 74) The Tasmanian Government agrees to inform the Australian Government in a timely way of projects that it proposes to undertake on the National Network which are additional to those listed at Schedule A.

Project Cost Estimation

- 75) Both parties will cooperate in the identification and implementation of 'best practice cost estimating' with a view to being able to derive reliable cost estimates for projects to be funded under this Agreement. Both parties will work with each other, and with other jurisdictions as applicable, to identify appropriate data items, methodologies and processes to achieve this end.

Project Assessment

- 76) Both parties will progressively adopt a nationally consistent project assessment methodology drawing on the *National Guidelines for Transport System Management* developed by a Working Group including the Australian Government, States, Territories and the Australian Local Government Association.
- 77) The assessment methodology, as endorsed by ATC, will be phased in as follows:
- a) formal project proposals for projects identified in Schedule A will be accompanied by the information and data required for purposes of relevant elements of the assessment methodology so as to provide a benchmark for evaluation of project outcomes;
 - b) the assessment methodology will be applied in studies and analyses to support the development of corridor strategies to assist with identifying broad future investment priorities; and
 - c) all future new projects (not listed in Schedule A) will be subjected to assessments undertaken fully in accordance with the national methodology.

Project Evaluation

- 78) The parties agree to cooperate in the joint evaluation of projects so as to facilitate both performance review of this Agreement and continuous improvement of investment decision making. Evaluation of projects completed under this Agreement will, in particular, focus on establishing the extent to which project performance indicators established under Clause 21 have been achieved, and reviewing the accuracy of demand forecasts and cost estimates used in the assessment of the project prior to commencement.

Supporting Data

79) Both parties recognise the importance of improved data collection and sharing to support assessment and evaluation at National Network, corridor and project levels.

80) For purposes of:

- a) assessment of the performance of, and infrastructure investment requirements and priorities associated with, specific corridors forming part of the National Land Transport Network;
- b) periodic assessments of the composition and performance of, and infrastructure investment requirements associated with, the National Land Transport Network as a whole;
- c) assessing the effectiveness of maintenance activity in ensuring that the National Land Transport Network continues to be fit for purpose;
- d) conduct of evaluations of completed projects in accordance with Clause 78 (Project Evaluation) and having regard to project performance outcomes specified pursuant to Clause 21 (Performance Indicators); and
- e) AusLink programme evaluation, including baseline assessment.

the Tasmanian Government agrees to:

- f) provide, in response to reasonable requests from the Australian Government, any relevant data relating to the National Land Transport Network available to the Tasmanian Government;
- g) assist, subject to the Australian Government covering the cost of the collection of relevant data; and
- h) in conjunction with f) and g) above, work with the Australian Government as a matter of priority to ensure the availability of baseline data relevant to key performance indicators for projects, in particular, those measuring changes in the efficiency, safety and reliability of transport operations on the National Land Transport Network.

81) The Tasmanian Government will provide data to the Australian Government by 31 August each year showing its direct and indirect land transport expenditure (including payments to local government) from its own source revenue in the preceding financial year, and budgeted expenditure for the current financial year, by category, in a form acceptable to the Australian Government.

82) The Australian Government undertakes to fully consult with the Tasmanian Government in relation to the purposes for which any requested data is being sought, the proposed methodology of any analysis for which the data will be used and the possible publication of any of the data.

- 83) The Australian Government agrees that any data supplied to it under this Agreement will not be made available to third parties for any purpose unless expressly agreed with the Tasmanian Government.
- 84) The parties note that data and assessment requirements for projects submitted for consideration and possible approval under the *AusLink (National Land Transport) Act* will be separately specified in the AusLink Notes on Administration.
- 85) Both parties note that ATC Ministers have agreed to the establishment of an implementation Committee of Officials to further develop approaches for appropriate data sharing and coordination

Encouragement of Private Sector Participation

- 86) Both parties acknowledge that the encouragement of increased funding from the private sector under appropriate circumstances is important to meeting future land transport infrastructure requirements. The parties will work collaboratively to ensure that the potential for financial participation by the private sector in relation to projects on the National Land Transport Network is fully explored, and properly considered in the context of Governments role in the provision of infrastructure.
- 87) Both parties acknowledge that financial participation by the private sector may take a number of forms including ownership; financing and operation of a project; operation of business concessions associated with a project; or a financial contribution in recognition of specific benefits flowing from a project.
- 88) For future projects for which an Australian Government funding contribution is to be sought, the Tasmanian Government will provide an assessment of the potential scope and appropriateness of private sector participation to reduce the cost to government of the project, using the Tasmanian Department of Treasury and Finance's *Guiding Principles for Private Sector Participation in Public Infrastructure Provision (July 2000)* (attached at Schedule D).
- 89) The extent of each assessment will depend on the size of the project. In the case of projects estimated to cost in excess of \$500 million the parties agree that formal expressions of interest will normally be sought from the private sector as part of the assessment.

Notification and Resolution of Issues

- 90) Should a matter arise which could jeopardise either party's adherence to this Agreement, the affected party will advise the other party as soon as practicable and both parties will attempt to resolve the matter in good faith.

Non-adherence

- 91) Should there be a breach of the Agreement or if its funding is not used for the intended purpose, the parties will meet to resolve the issue in the first instance. As a last resort, the Australian Government may withhold all or part of its funding to the Tasmanian Government under this Agreement. This may involve reallocation of Australian Government funding to other projects, not necessarily in Tasmania. This is on condition that the funding withheld must be directly related to the alleged breach and be proportional to that breach and not in the nature of a penalty.

Review of Agreement

- 92) The parties agree to review this Agreement and the activities undertaken pursuant to it by 30 June 2008. The review will encompass the activities undertaken pursuant to the Agreement. The specifications for the review process will be agreed by both parties and confirmed in writing prior to the review process commencing. Both parties agree to pay their own costs incurred as a result of the conduct of the review.

Cessation of Agreement

- 93) Unless otherwise agreed by the parties in writing, this Agreement terminates on 30 June 2009.

Authorities to Act on Behalf of the Parties

- 94) In the interests of facilitating the expeditious handling of matters arising under this Agreement, the parties may authorise persons to act on their behalf in respect of particular matters and will notify each other in writing where they have done so.
- 95) The parties will each nominate a person or occupant of a specified position to be the contact point for issues relating to the Agreement.

SIGNED by the parties on the Day of 2005

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)
by the Minister for Transport and)
Regional Services)
.....

in the presence of)
)

.....
Witness

SIGNED for and on behalf of the)
STATE OF TASMANIA)
by the Minister for Infrastructure,)
Energy and Resources)
.....

in the presence of)
)

.....
Witness

SCHEDULE A – INVESTMENT PROGRAMME 2004-05 TO 2008-09

Projects the Australian Government (AG) intends to fund in first 5-year Plan	Total estimated project cost \$m	Allocated AG funding \$m	AG funding provided to 2003-04 inclusive \$m	AG base funding contribution 2004-05 to 2008-09 (out-turn dollars) \$m	Comment/Conditions
Continuing Projects					
Westbury-Hagley bypass	40.00	34.98	34.98	0.00	Australian Government to provide funding to meet costs of current legal proceedings. Costs to be offset.
Bass-Midland – junction upgrading programme	1.40	1.40	0.00	1.40	Australian Government providing 100% of funding, subject to any revisions of cost and clauses 37 to 39 of this agreement
Penguin to Ulverstone duplication stage 1	28.50	28.50	2.14	26.36	Australian Government providing 100% of funding, subject to any revisions of cost and clauses 37 to 39 of this agreement
Lilydale Main Road – Golconda Road	20.00	10.00	2.53	7.47	The Australian Government contribution capped at \$10m. Tasmanian Government will provide remaining funds required to complete project.
Expenditure on completing projects not budgeted for in the AusLink programme		0.04		0.04	Further payments beyond this will require offset.
New AusLink Projects					
Penguin to Ulverstone duplication stage 2	42.00	42.00	0.00	42.00	Australian Government providing 100% of funding, subject to any revisions of cost and clauses 37 to 39 of this agreement
Base Funding				77.27	
Maintenance Contribution		29.79*	0.07	29.72*	*Maintenance funding is \$6.68m in 2004-05 (\$6.75m less \$0.07m prepaid in 2003-04) and \$6.31m in 2005-06. Indicative funding is \$5.87m in 2006-07, \$5.43m in 2007-08 and \$5.43m in 2008-09. Funding in years 2006-07 to 2008-09 is subject to minor refinement in the light of revised data.
National Code of Practice for the Construction Industry					Australian Government funding is conditional on the application by Tasmania, to relevant projects, of the National Code of Practice for the Construction Industry and Implementation Guidelines as set out in the Notes on Administration. All projects in the above schedule are approved projects and do not require application of the Code with the exception of the Penguin to Ulverstone duplication stage 2 project, where construction approval will require application of the Code.

Notes:

1. This schedule does not preclude the provision of additional funding to Tasmania from AusLink national funds.
2. The figures in column 4 reflect outcomes for 2003-04 and may vary from the figures provided on 7 June 2004.
3. This schedule may not reflect recent applications for cost variations or revisions of cost estimates, as these are subject to consideration.

SCHEDULE B – HISTORICAL FUNDING CONTRIBUTIONS

Australian Government historical road construction funding for Tasmania

	Grants					
	99-00 \$m	00-01 \$m	01-02 \$m	02-03 \$m	03-04 \$m	TOTAL
National Highways	27.7	22.90	13.03	13.43	3.47	80.53
Roads of National Importance	0.08	0.00	0.48	3.25	3.28	7.09
TOTAL	27.78	22.90	13.51	16.68	6.75	87.62
REAL TERM TOTAL*	31.31	25.35	14.58	17.47	6.90	95.61

State historical expenditure on the National Land Transport Network

	Actual Expenditure					
	99-00 \$m	00-01 \$m	01-02 \$m	02-03 \$m	03-04 \$m	TOTAL
East Tamar Highway (Road reinstatement & Safety Projects)	0.30	0.96	0.58	0.11	0.00	1.95
State Contribution to Black Spot (East Tamar Highway Projects)	0.00	0.02	0.00	0.00	0.00	0.02
SUB-TOTAL	0.30	0.98	0.58	0.11	0.00	1.97
Maintenance (East Tamar Highway – pro-rata of road routine maintenance/minor works/road specific maintenance/bridge maintenance)	0.23	0.23	0.25	0.22	0.27	1.20
TOTAL EXPENDITURE	0.53	1.21	0.83	0.33	0.27	3.17
REAL TERM TOTAL*	0.60	1.34	0.90	0.35	0.28	3.47

State Government Assistance to Local Government for local transport infrastructure

	Actual Expenditure					
	99-00 \$m	00-01 \$m	01-02 \$m	02-03 \$m	03-04 \$m	TOTAL
Line Marking (Traffic Engineering Branch)	0.30	0.30	0.30	0.30	0.30	1.50
Compensation for removal of local road tolls	1.50	1.50	1.50	1.50	1.50	7.50
Island assistance for the construction/maintenance of roads	0.35	0.35	0.38	0.41	0.43	1.92
Assistance to Local Government	0.07	0.46	1.03	0.17	0.15	1.88
TOTAL	2.22	2.61	3.21	2.38	2.38	12.80
REAL TERM TOTAL*	2.50	2.89	3.46	2.49	2.44	13.78

* Indexed to 2004-05\$ using WCI6

SCHEDULE C – RECOGNITION ARRANGEMENTS

1 Definitions

- 'public recognition'* includes issuing any media release, giving any media interview, erecting signs, publishing brochures or community consultation pamphlets, staging sod turning or opening ceremonies or similar ceremonies or any other form of communication with the public or a section of the public claiming or giving the impression of responsibility for providing a transport infrastructure project.
- 'funding commitment'* means an agreement to accept some or all funding responsibility for a transport infrastructure project.
- 'fully funded'* means the provision of all or substantially all expenditure in relation to a project. The parties recognise that provision of incidental expenditure or indirect project supervision does not constitute joint funding of a project.

2 Public Recognition Forms and Principles

Recognition of the Australian Government's contribution is to be included in all means of dissemination, including, but not limited to:

- strategy documents, videos and electronic databases;
- advertisements relating to all elements of an Australian Government funded project, including those involving the calling of tenders and other aspects of a project;
- route selection reports, tender documents, maps, display material and other information products that relate to the project being funded or under investigation;
- media statements and electronic media 'grabs';
- publications associated with each project or groups of projects in a region or along a particular transport corridor;
- signs erected adjacent to projects, along transport corridors or on the project being funded, including traffic management signs where these include a logo or slogan of the Tasmanian Government or an authority of the Tasmanian Government;
- commemorative plaques and ribbons and temporary signs in prominent view at openings or during commemorative ceremonies; and
- invitations and order of proceedings associated with openings, launches, staged completions or other public activities.

3 Media Statements – Factual Information and Emergencies

Where information about a project or information concerning an emergency or other operational issue, such as unforeseen road closures due to flooding, accidents or similar events, concerning the sections of the National Land Transport Network need to be provided to the public, the relevant State officials may make public statements of a factual operational nature.

4 Brochures

When a brochure (whether for general information, a publication marking an official opening, information to affected households in surveyed areas) is prepared for any Australian Government funded or jointly funded works, it must acknowledge the Australian Government's contribution and objectives by:

- prominent wording stating that the project is funded (in the case of fully funded projects), or jointly funded (in the case of jointly funded projects) by the Australian Government;
- including short concise wording provided by the Australian Government, that does not obscure the message or reason for the brochure, explaining the AusLink objectives for the corridor in which the works will be constructed; and
- featuring the Australian Government crest prominently.

Where a brochure is proposed, the Australian Government Minister will be given proper opportunity to include a message and, if required, a personal photograph. The brochure copy and layout must be submitted for Australian Government approval prior to printing.

5 Electronic Media Dissemination

The recognition criteria applying to brochures will also apply to television advertisements, video, Internet or other forms of electronic broadcast.

6 Route Markings, Signs, and Plaques

States are required to place permanent AusLink signs and route markers at agreed intervals on the National Land Transport Network. The form, size and positioning of signs is specified in Appendix 1.

7 Opening/Commemorative Ceremonies

The Tasmanian Government is responsible for organising opening or completion ceremonies for projects on the National Land Transport Network within Tasmania. Wherever possible, these are to coincide with the date on which the project is opened to the public.

The Tasmanian Government will develop, in conjunction with the Australian Government, a forward programme of official ceremonies to mark the commencement and opening or completion of all Australian Government funded projects.

The Minister for Transport and Regional Services, or a representative, will be given the opportunity to open major projects funded by the Australian Government. The relevant Member and/or Senator(s) of the Australian Parliament will be invited to these ceremonies and other invitees nominated by the Minister. In addition, details of proposed arrangements, including invitations for ceremonies and the order of proceedings, should be forwarded to the Minister for consideration well before they are proposed for issue.

At opening ceremonies for projects fully funded by the Australian Government, the lectern signs and signs adjacent to the plaque will be those of the Australian Government. In the case of joint funded projects, the use of State or State agency signs is to be agreed with the Australian Government Minister well before the ceremony is to take place. Prima facie, public recognition will be proportional to the funding contribution of each party.

8 Commemorative Ribbons

Commemorative ribbons may be used for major Australian Government funded projects. The use of logos and crests on the ribbon is to be consistent with that on plaques.

9 Public Information

Australian Government may, from time to time, liaise with stakeholders including local government authorities, industry groups and others to ensure the AusLink programme is delivering on its objectives and to identify improvements in delivering the programme.

The Tasmanian Government agrees that the Australian Government may publish the AusLink corridor strategies and other documents to inform and obtain the views of the public to ensure that the programme remains relevant and continues to provide the best returns on the Australian Government's investment. Where the Commonwealth undertakes this form of activity it will liaise with and advise the Tasmanian Government before the event. It will provide the Tasmanian Government a complete copy of all findings as presented to the Australian Government.

APPENDIX 1 TO SCHEDULE C – SPECIFICATIONS FOR ROUTE MARKINGS, SIGNS AND PLAQUES

1 AusLink Network Route Marking

At regular intervals, not exceeding 50 km, and more frequently where State Highways or arterial roads join the National Land Transport Network, **network identification signs** (example in Appendix 2) shall be placed.

National Land Transport Network route marking (example in Appendix 2) should be in accordance with Australian Standard 1742, with the shield used being that designated for 'National Routes', with the word NATIONAL added at the top, above the route number. Colours are to be reflectorised yellow and reflectorised green background. There is no change from the existing national route shield for the National Highway.

Wherever possible, the National Route number will be consistent within the National Land Transport Network grid, along sectors, and run across State borders.

An alpha numeric route numbering may be used on the National Land Transport Network, but the number will reflect the National Route number and not be replaced by another route numbering designation.

The National Land Transport Network will be clearly marked in urban areas. Green and gold shield route markers may be continued beyond the National Network delineation points, where considered desirable, to provide navigation assistance for road users.

National Land Transport Network route marker information and graphics (including colour where appropriate) should be used on Road Authority maps and information supplied to road user organisations and other map makers.

Green and gold **route destination countdown markers** (example in Appendix 2) depicting the word NATIONAL are to be placed on the National Land Transport Network at regular intervals agreed with the State. They should be placed at junctions of arterial road connections with the network.

2 Signs

On major construction projects, a **project specific sign** (example in Appendix 2) is to be placed at each end of the physical work, facing oncoming traffic. Signs are not to be obscured by roadside objects, including any other information signs and must be maintained for one year beyond the opening of the project.

Sign sizes, text sizes, style, colour and material will be in accordance with the examples in Appendix 2.

The main sign can be in one of two sizes:

3000mm by 1600mm for major AusLink projects in open road locations; and

2000mm by 1400mm for locations where physical space is limited.

Where a project is fully Australian Government funded, there are to be no signs giving public recognition to the Tasmanian Government or an authority of the Tasmanian Government other than an auxiliary sign affixed below the main AusLink sign. The auxiliary sign will be of the same width and approximately 1/3 depth of the main panel. Text generally will be “Project managed by the Tasmanian Department of Infrastructure, Energy and Resources.

The Tasmanian Government will be required to submit a project signs plan for all major construction projects at the time Australian Government funding approval is sought.

Smaller project specific signs may be used for projects valued at \$5 million or less, or a **road safety project sign** (examples for both in Appendix 2) in the case of projects valued at less than \$2 million funded entirely by the Australian Government.

3 Signs for jointly funded projects

Where a project is jointly funded the parties agree to consult and agree on, before works commence, the sizes, text styles, colour, material and site display requirements of signs in relation to the project.

The Australian Government is prepared to agree on a ‘themed’ set of signs for projects along a corridor as has been the practice on several Roads of National Importance projects.

Generally, text will be in keeping with the examples in Appendix 2.

Where applicable, National Land Transport Network rail projects shall be identified using signs in keeping with this style.

4 Tourist Signage

The Australian Government also wishes to explore options for promoting national tourism, particularly road-based tourism on the National Land Transport Network. It wishes to negotiate with the Tasmanian Government on the use of the stylised kangaroo logo on brown and white tourism information signs.

5 Commemorative Plaques

These specifications apply to plaques unveiled at ceremonies associated with Australian Government funded road and other projects, whether or not the Minister for Transport and Regional Services or the Minister’s representative attends the ceremony.

This specification also applies to plaques for projects jointly funded.

Illustrative examples are provided in Appendix 2.

The wording of the plaque will include:

- the name of the project;
- recognition that the project was delivered under the AusLink programme;
- the name of the Minister or Minister's representative officiating at the ceremony and the name of the State Minister or State Minister's representative in attendance; and
- the date of the ceremony.

6 Commonwealth and State Crest

For projects fully funded by the Australian Government, the Australian Government crest is to appear on the plaque at the top centre. No other coat of arms, logos or emblems are to appear.

For jointly funded projects where the State authority wishes the State crest to appear, the Australian Government crest is to be positioned at the top left-hand corner of the plaque and the State crest at the top right-hand corner.

The Australian Government crest appearing on the plaque should be in accordance with the "Stylised Arms No. 1 (Outline)" as depicted in *Style Manual for Authors, Editors and Printers of Australian Government Publications*.

7 Approval of Layout

In all cases where the Minister or the Minister's representative is to officiate at a commemorative ceremony, the relevant State authority will submit details of the proposed wording of the commemorative plaque to the Australian Government.

APPENDIX 2 TO SCHEDULE C – LAYOUTS FOR SIGNS

National Land Transport Network sign



Route marker



Route distance marker



Destination board



These three signs are in draft - awaiting the finalisation of the Australian Standard

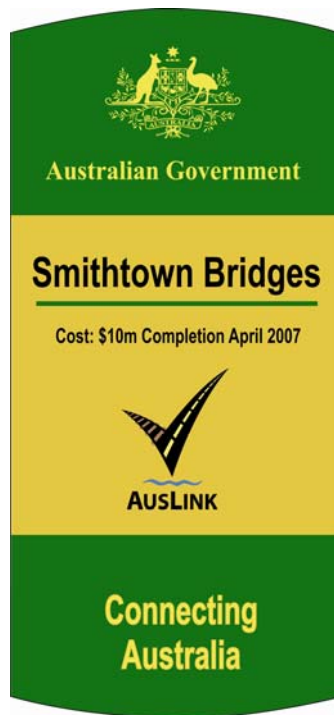
National Land Transport Network road project specific sign (erected at extremities of construction site) for major projects 100% funded by Australian Government



National Land Transport Network rail project specific sign (erected at prominent position such as at level crossings or close by stations) for projects 100% funded by Australian Government



National Land Transport Network project specific sign for projects between \$2 million and \$5 million



National Land Transport Network generic project sign for projects less than \$2 million (can be re-used following completion of construction)



Commemorative plaque for 100% Australian Government funded projects on the National Land Transport Network



Joint funding of National Land Transport Network projects

Example:



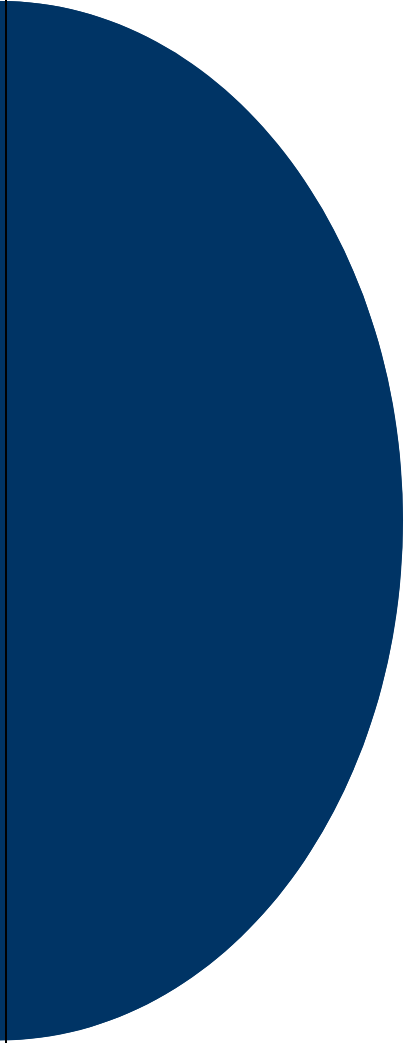
Commemorative plaque for joint funded projects on the National Land Transport Network



Commemorative plaque for tripartite (including public private partnership) projects on the National Land Transport Network



**SCHEDULE D – TASMANIAN DEPARTMENT OF TREASURY &
FINANCE’S GUIDING PRINCIPLES FOR PRIVATE SECTOR
PARTICIPATION IN PUBLIC INFRASTRUCTURE PROVISION
(JULY 2002)**



GUIDING PRINCIPLES
FOR
PRIVATE SECTOR
PARTICIPATION
IN
PUBLIC INFRASTRUCTURE
PROVISION

July 2000



Tasmania

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HOBART TAS 7001

Foreword by the Treasurer

The Tasmanian Government acknowledges that closer co-operation between the public and private sectors will assist in the economic growth of the State and help underpin the Government's economic development strategy. Ensuring that the State has in place the necessary infrastructure to facilitate a more productive economy requires involvement of both public and private resources.

This document sets out the guiding principles for private sector participation in the provision of public infrastructure. It provides agencies with a clear set of "ground rules" for optimising the participation of the private sector. The guiding principles will ensure a consistent approach to the development and implementation of projects by all relevant Government agencies. An accompanying document, *Private Sector Participation in Public Infrastructure Provision - Policy Statement*, outlines the framework within which the public sector will seek and develop infrastructure opportunities with the private sector.

The Government recognises that, when handled well, benefits can accrue to the community from involving the private sector on a competitive basis in infrastructure projects. It is important, however, that the public sector and private sector understand and acknowledge each other's requirements with a view to achieving successful project outcomes.

These guiding principles clarify the needs of the public sector in coming to the private sector to produce cost effective solutions for the agency involved, and the Tasmanian community.

I am confident that the guiding principles will facilitate increased involvement by the private sector in public infrastructure projects for the benefit of both industry and the general community.

David Crean

Treasurer

July 2000

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Executive Summary

This paper sets out the guiding principles for the development of infrastructure projects where private as well as public resources are involved.

The Government's objectives in publishing these guiding principles are to:

- make clear the Government's attitude to critical issues for private sector involvement (eg achieving improved net benefits to the community);
- provide agencies with clear guidance on how to engage with the private sector;
- clarify for the private sector, the public policy context of infrastructure provision;
- outline the lodgement, assessment and approval process through which a project must pass; and
- provide agencies with practical advice, covering a checklist of the process, the determination of a public sector benchmarks and development of a business case for an infrastructure proposal.

Private sector participation in the provision of public sector infrastructure can provide the opportunity for the public sector to secure improved value for money from engaging with the private sector. Properly implemented, the involvement of the private sector can work to the mutual advantage of users of public services, taxpayers and companies seeking new business opportunities.

The principles require infrastructure projects to feature:

- clear objectives and consistency with Government principles and the agency's strategic planning;
- realistic expectations by all parties producing a commercially viable solution;
- a demonstrated net benefit to the agency and the community on a whole-of-project-life basis;
- an appropriate sharing of risks and rewards;
- an appropriate management framework and an effective implementation process, adequately resourced, commensurate with project complexity;
- transparency in the process;
- a competitive bidding process, to the point of submission of detailed proposals, to ensure that the community receives the best possible outcome;
- financing arrangements that meet the Government's requirement that the project is not considered a finance lease;
- opportunities for local businesses to participate in the project; and
- a post-implementation review focusing on project outcomes.

These principles also provide an overview of the project approval process and the steps involved to ensure that the project meets a defined agency need and the best solution is selected to meet that need.

In considering a commercial relationship with the private sector, early consideration should be given to:

- service needs and priorities;
- objectives, outputs and outcomes;
- indication of viability;
- establishment of a public sector benchmark;
- likely risk allocation;
- the indicative timetable;
- use of advisers (probity, financial, legal etc); and
- competency of the agency procurement team.

New processes may be involved when private sector provision occurs and that these processes can be complex and resource intensive. Roles and responsibilities in the public and private sectors need to reflect a changing environment. In some cases, agencies are moving from being owners and operators of assets into becoming purchasers of long term services. The private sector involvement is more than just building, it may also extend to include operational aspects of infrastructure provision.

Private sector participation in the provision of public infrastructure needs to be considered as more than just an alternative option for the creation of infrastructure and provision of services to the Tasmanian community. It should involve a total approach to project life cycle management (ie whole of life approach).

1 Introduction

Traditionally, the private sector has played a role in the design and construction of public infrastructure in Tasmania. Funding for this purpose has been provided through the capital works programs of Government. However, considerable scope exists for broadening this involvement to include operation, management, ownership and financing of public infrastructure.

The key consideration for the Government is the achievement of value for money in the delivery of infrastructure while having regard to the Government's social, economic, financial and regional objectives.

Accordingly, the Government has been examining new ways to procure assets through privately-structured financing, leasing transactions or through contracting services to the private sector.

Furthermore, the Government is also aware of the important contribution made by Tasmanian businesses to the State economy and is keen to ensure that local businesses are given every opportunity to compete for the supply of infrastructure, goods and services to the Government.

These Guiding Principles have been developed primarily to assist agencies in understanding the Government's policy and the basis on which it seeks private sector participation in the provision of public infrastructure. For the private sector the principles will also assist in clarifying the public policy context of infrastructure provision.

The Government has also published an accompanying document, *Private Sector Participation in Public Infrastructure Provision - Policy Statement*, which outlines the Government's objectives and key considerations for the private sector involvement in public infrastructure.

1.1 Background

In considering the Guiding Principles, it is important to understand the background and fundamentals of the policy and how it fits into the Government's wider objectives.

Agency Strategic Asset Management Plans and the Capital Investment Program

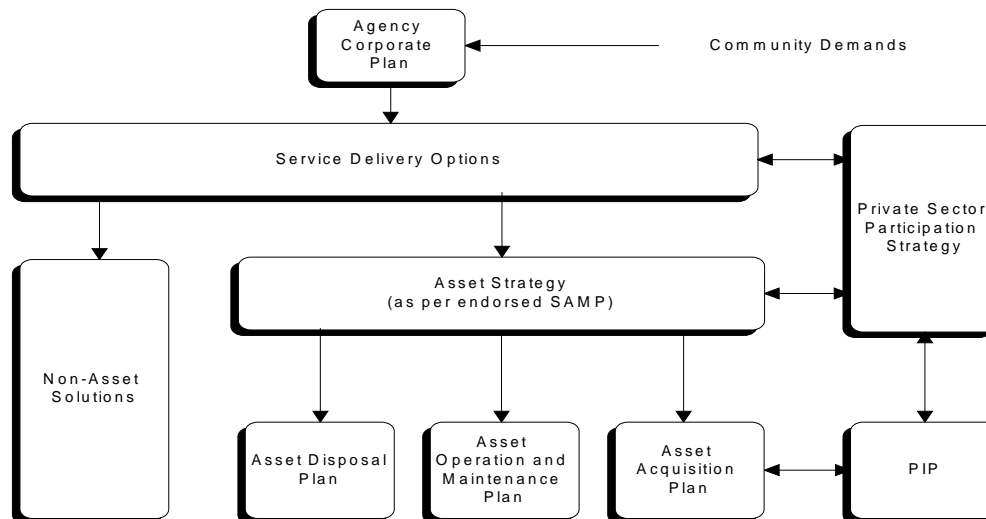
Agency Strategic Asset Management Plans (SAMPs) articulate agencies' planned utilisation of assets to meet the Government's broad service delivery plans and strategies for satisfaction of community needs. Agencies are required to develop SAMPs to ensure that service delivery needs guide asset management practices and decisions.

In implementing SAMPs, agencies are encouraged to consider alternative development options as part of the Project Initiation Process (PIP). By making agencies consider more than one development option, the PIP encourages the exploration of innovative service delivery options, including opportunities for private sector involvement.

The links between SAMPs, the PIP, service delivery strategies and community demands are

demonstrated in Diagram A.

Diagram A *Links between community demands and Government asset requirements*



Private sector participation should be considered where:

- a net benefit to Government can be demonstrated;
- commercial viability can be demonstrated without the need for a direct Government contribution;
- the private sector has particular technical, design, management, operational or financing capability; and
- the private sector can better manage the major risks associated with the project.

It should be noted that a direct Government contribution, in this context, refers to making a direct payment (which may be of a capital nature) to the private sector participant which would be necessary to make the project viable and would not ordinarily occur in a normal commercial arrangement for the delivery of a service. For example a large lump sum payment which would be necessary for the private sector participant to purchase any necessary equipment before any services can be provided would indicate a Government contribution to ensure the commercial viability of a project. Such an arrangement would not satisfy the above criteria and private sector participation should not be considered in such circumstances.

A direct Government contribution is distinct from the Government paying for the provision of a service in a normal contractual arrangement where payments directly relate to the delivery of a particular standard of service over a period of time and hence represent remuneration for

effort. The price charged by the private sector participant to its customers (who may not be limited solely to the Government) should not be artificially distorted because of any direct Government contribution towards a project.

Adding to Government debt - not an option

The Government is committed to a responsible medium term fiscal strategy. Key elements of the strategy include:

- the Government will not borrow to balance the Budget;
- the general government sector will also be maintained in surplus; and
- net debt will not be increased.

Given the above, the Government, under normal circumstances, will not be in a position to finance infrastructure projects by way of borrowings.

Through entering into projects with the private sector, the Government should be in a better position to retain flexibility in its decisions and be more able to focus on the outcomes that it aims to achieve, rather than the operational aspects of operating and maintaining infrastructure assets and paying a higher interest bill.

Private sector can add value

Whilst there can be little argument that the Government can achieve a lower borrowing cost than the private sector, the overall long term cost of entering into a contract with the private sector to design, build, own and/or operate infrastructure (with the possibility of leasing back or transferring the infrastructure to the Government at the expiration of the contract), must be cost effective relative to the public sector benchmark.

Cost effectiveness can be achieved through the following means:

- Efficient delivery of construction;
- Innovative approaches to design;
- A willingness to accept and manage certain risks;
- Lower recurrent costs for maintenance and property management; and
- Innovative ways of operating that may provide efficiencies.

Private sector design and delivery of assets can often provide a significant capital saving and anecdotal evidence suggests that private sector operators can often provide equivalent, or improved, services and deliver cost efficiencies to the Government.

1.2 Forms of Private Sector Involvement

The Government is not committed to any one form of private sector participation. However, there is an overriding requirement to ensure that the project can be structured in a manner to achieve ongoing benefit to both the private sector and the Government.

Without limiting the range of possible projects, areas of private sector involvement in a number of jurisdictions have included:

- operating or management contracts, in areas such as:
 - maintenance of public sector assets;
 - vehicle fleet management; and
 - information technology.
- build-operate-transfer projects and build-own-operate projects, such as:
 - privately built and operated port facilities;
 - design, construction and operation of prisons; and
 - private water treatment plants and reticulation, sewerage and drainage systems.

Appendix A provides a summary of different types of private sector involvement in public infrastructure and also includes a “spectrum” demonstrating diagrammatically where each sits in relation to the degree of public sector involvement and private sector involvement.

1.3 Scope and Purpose of Paper

These Guiding Principles apply to public infrastructure where it is considered there is the potential to benefit from involving the private sector in the delivery of infrastructure. Furthermore, these Guiding Principles apply irrespective of the size of the project or which sector initiates the project. Delivery of infrastructure may include, but is not limited to, arrangements which have a number of facets of delivery eg delivery of health care services in a new suburb would require both the construction of a health care facility, possibly include the ongoing upkeep of the premises and may extend to the provision of health care for a contractually agreed level of services. These Guiding Principles would not ordinarily apply to simple one-off contracts, for example the refurbishment of the roof of a government property or a contract for twelve months painting maintenance. However, to the extent that such contracts represent subcontracts for larger projects, then the Guiding Principles will apply.

These Guiding Principles apply to all Tasmanian Government agencies and the principles outlined should be followed as consistently as possible when developing infrastructure projects and documentation. The Guiding Principles will therefore cover public hospital services, public educational facilities, prisons, transport infrastructure etc. The Guiding Principles will generally not apply to the commercial activities of Government Business Enterprises and State-owned Companies.

Whilst this paper outlines the principles for the private sector participation in public infrastructure, its use should be for guidance purposes only and does not in any way replace the contract documentation relating to each particular infrastructure project. Furthermore, it should be read in conjunction with other related guidance papers and policy documents, details of which are found in Appendix F – Relevant Publications.

2 Key Issues

2.1 *Government Perspective*

In considering private sector involvement in public infrastructure projects, the Government is seeking:

- *A closer relationship between the public and private sectors* - This means that:
 - there is a co-operative approach by all parties, producing the most cost effective, best practice solution for tax payers and users over the life of the facility (ie there is a net positive impact to Government);
 - there is proper regard for probity and due process under a clear competitive bidding framework that can stand up to public scrutiny; and
 - there is an identifiable commercial opportunity for the private sector.
- *Innovative solutions* - The Government values flexibility and innovative proposals in infrastructure provision. Such proposals should be consistent with the Government's priorities and have appropriate risk/return allocations.
- *Maximum opportunities for local businesses* - The Government is keen to promote opportunities for local businesses in infrastructure provision and this should be factored into all stages of the project, from preliminary planning through to project delivery.

Whilst preference cannot be given to Tasmanian businesses, the Government's procurement policy ensures that local business is actively encouraged to submit competitive offers for Government business.

Appendix B provides a summary of "what the Government is seeking" and the degree of attractiveness of private investment proposals.

2.2 *Private Sector Perspective*

From the Government's viewpoint, the private sector is seeking the following:

- *Clarity in Government objectives and constraints* - The private sector needs the Government to be clear on what it is seeking so that the private sector can prepare a suitable proposal. This also includes clearly defining both the opportunities and constraints related to the project.
- *A commercially viable solution* - It is important that infrastructure projects are commercially viable for the private sector and achieve a commercial result that is considered reasonable in the market place. It is important, therefore, that agency officers involved in the project understand the issues both from the Government's perspective and from the commercial perspective.

- *Assurances that in going to the market there is a commitment to progress to completion* - The private sector requires reasonable assurances that the Government intends to follow acceptable proposals through to completion. Therefore, “in principle” support from the final decision maker (Agency Head, Minister or Cabinet) for proceeding with the project should be received before there is any approach to the private sector for the preparation of submissions.
- *Advice on the Government’s approach to intellectual property and exclusivity* - The private sector must have confidence that any intellectual property contained in their submissions is treated with appropriate regard to confidentiality issues. Government agencies must at all times be aware of the sensitivity of the information they receive, and protect it from unauthorised leakage to competitors or illegal use by other agencies.
- *Guidance as to the Government’s requirements for risk sharing and key commercial and legal parameters* - In calling for Expressions of Interest (EOI), the responsible agency should provide the private sector with an outline of risks that are associated with the project, as well as an indication of its preference for the allocation of each risk. The private sector is to be made aware of the fact that risk allocation is a key factor in the evaluation process for projects.

3 Guiding Principles

The Government requires the delivery of infrastructure projects to be governed by ten guiding principles. This chapter provides further discussion and explanation of the guiding principles.

The ten guiding principles are:

- project objectives must be clearly defined and understood by all stakeholders;
- project viability must be established prior to approaching the market;
- there must be a net benefit to Government;
- risks must be adequately identified, assigned and managed;
- a project management framework must be established;
- probity must be maintained at all levels and at all stages of the project;
- a competitive bidding process should be undertaken wherever possible;
- operating lease status must be achieved for leasing of capital assets;
- opportunities for local businesses are to be encouraged; and
- a post-implementation review should be undertaken.

3.1 Project Objectives must be clearly defined and understood by all stakeholders

The objectives and constraints of a project must be identified and clearly defined in advance of approaching the private sector and the project should be consistent with the agency's SAMP. Without clearly defined project objectives, misunderstandings may occur and desired outcomes may not be achieved.

The Government's expectations for a project need to be clearly stated and the private sector needs to clearly understand the scope of work involved.

It is essential for project objectives to be stated in terms of outputs and performance terms rather than in terms of defining how the project should be done. That is, the focus should be firmly on the service that is required and not on the assets that will help provide it.

Defining projects in terms of output requirements allows suppliers the maximum scope to innovate or otherwise use skills and experience to design efficient solutions without being constrained by past practices and "old habits". That is, there is scope for the private sector to demonstrate innovation in design, construction techniques and in operating, maintenance and financing arrangements.

However, whilst projects should be defined in terms of outputs, the specifications should not be so general that they provide bidders with no indication of the cost/quality trade-off

preferred by the purchaser. This can be a difficult task of specifying a preferred level of quality without unduly constraining the options open to the supplier.

To increase the likelihood that bidders do submit bids which meet the Government's requirements, agencies should make clear the project's objectives and how the project relates to the agency's outputs and planning objectives.

Project objectives should:

- Define a realistic and appropriate standard beneath which a project will not proceed;
- Maximise the opportunity for innovation by specifying outcomes, but should not prescribe the means for achieving targets;
- Address a project's scope, constraints, commencement and duration timelines; and
- Incorporate high-level policy objectives such as equity investment and establishment of competition.

3.2 Project Viability must be established prior to approaching the market

A thorough business case must be prepared by the relevant agency early in the project implementation process to demonstrate the project's viability. This should build on the information that was prepared for the PIP and include the results of investigation of the most appropriate options for delivery of the desired outcomes from a practical commercial perspective. Furthermore, it should address whether the project should proceed at all, and whether seeking private sector submissions is likely to demonstrate value for money.

The business case provides the break even point for the Government.

Project viability essentially focuses the attention of the project team on the project and market realities. The project should not proceed unless the business case confirms the project's viability. Given the complexity of some infrastructure projects, it is important that financial models be established at an early stage. These can be used to establish the business case and assist in assessing the community benefit.

It is important that rigorous analysis is undertaken in sufficient time to permit good decisions being made. Agencies should always avoid being put in the position of making decisions when the situation has got to the point where "something has to be done and there isn't enough time to do the necessary analysis". Such circumstances are not conducive to good decision making.

Furthermore, it is important that the viability of projects is assessed on a realistic basis. To overestimate opportunities for achieving efficiencies and/or underestimate the requirement for future expenditure, will not only result in an overly optimistic project viability assessment,

but could make it difficult in future years to fund the resulting commitment for the Government. A further important consideration in establishing project viability is the need to ensure that any recurrent expenditure commitments which may result (for example future lease commitments) are carefully analysed as representing the best outcome for the Government in the long term. Decisions to enter into off-balance sheet financing arrangements must reflect good economic sense and not be adopted simply because capital funding from the Budget may be limited.

Implicit in assessing the viability of a project is the requirement that once the project is operational, project expenditure will be managed in accordance with the budget estimates, rather than simply spending over budget and then trying to find a way to fund the additional expenditure. That is, the ongoing management of the project must concentrate on managing expenditure so as to stay within budget forecasts. Otherwise, the initial viability projected for the project may not be achieved.

A suggested format for a Business Case is outlined in Appendix E. Use of a common business case template, as provided in Appendix E, not only ensures that project proposals are carefully considered and alternative options are properly evaluated, but also enables a consistent methodology for evaluation of projects. Without a common template, the quality of information and rigour of analysis may vary significantly. Alternatively, some factors may be overlooked entirely or only receive superficial consideration.

In determining the project's viability, there should also be identification and consideration of the major project risks that might arise. Similarly, all stakeholders in the project should be identified and consulted.

It is important to allow sufficient time to adequately research a project before approaching the market. Otherwise it could result in an approach to the market for an outcome which is impossible to satisfy.

The demand for the project outcomes should be determined and an assessment made of its priority and urgency within Government, having regard to the degree of unsatisfied need, the economic attractiveness of the project and the Government's objectives and priorities.

It is important that all options that satisfy the identified need are considered. These may include:


- asset-based solutions (eg redevelopment or refurbishment of an existing asset or new asset creation);
- non-asset solutions (eg demand management, competitive tendering of service delivery);
- whether a public or private sector delivery option is more appropriate;

- whether there is a business opportunity for the private sector; and
- whether private sector responses consistent with the proposed objectives are likely.

Whilst often the viability of the project is considered in isolation, any potential synergies between a proposed project and other public or private sector projects should also be considered and explored. That is, there may be other opportunities which can be exploited at the same time.

3.3 There must be a Net Benefit to Government

Where the Government currently provides infrastructure/services, it is possible to establish benchmarks for delivering the required outcome for a project. The project benchmarks should represent the most efficient public sector delivery costs for the outcome required over the life of the project and be developed in accordance with National Competition Policy principles. The benchmarks, which are project specific and determined on a case by case basis, will be the guide by which private sector submissions will be evaluated for determining whether private sector bids represent value for money (ie whether there is a net benefit to the Government in having the private sector deliver the outcome).



Benchmarks should be established on all projects before the public sector approaches the private sector for proposals. The project benchmark is important as it enables the public sector to ensure the optimum value for money outcome is achieved.

Where the Government doesn't currently provide a service or infrastructure assets (the project represents a "first" for the State), it may still be possible to establish benchmarks based on information available elsewhere, either from other jurisdictions or internationally.

Private sector involvement in the provision and operation of public infrastructure can generate improved value for money in a variety of ways, including:

- ensuring that assets are fully fit for the purpose but no more. That is, any tendency to over-design or gold-plate assets is removed;
- closely integrating design with operational needs so that the asset can be operated and maintained with maximum efficiency;
- increasing the efficiency of both construction and operation by applying existing expertise;
- making use of new technology and/or new, more effective business processes;
- achieving economies of scale by designing the asset to provide scope for sharing its use between the public sector and other customers (or between two or more public sector customers) where permitted; or
- designing the asset to improve its resale value or its capacity to be transferred to new uses on completion of the contract term.

Further guidance on establishing public sector performance, financial and risk benchmarks is outlined in Appendix D.

If the Government proceeds with a project involving private sector participation, the Government should be able to demonstrate publicly that it is more beneficial for the project to have been undertaken with private sector involvement than without. Project benchmarks are vital to demonstrating the net benefit to the Government.

Furthermore, the net benefit to Government should not focus solely on the agency undertaking the project nor just on the financial impact. The whole-of-Government impact of a project, including its financial, social and economic impact, should be taken into account when determining the net benefit to Government. To do otherwise has the potential to create false economies and efficiency for the Government through transferral of costs, and possibly social outcomes, from one agency to another. If a whole-of-Government approach is not considered, the gains achieved in one agency may be more than offset by the additional burdens placed on other agencies through flow-on implications. For assistance in considering the whole of Government impact of an infrastructure project proposal, agencies are

encouraged to call on the knowledge and experience of the Project Consultative Group. Further information on the Project Consultative Group is provided in Chapter 4.

3.4 *Risks must be Adequately Identified and Managed*

The fundamental underlying objective for the Government is the achievement of value for money for the taxpayer's dollar. Related to the achievement of value for money is the allocation of the risks associated with a project to the party best able to manage those risks. As parties bear more risks, the requirement for compensation for the risks increase.

Specific project risks should be allocated to the party best able to manage those risks with the Government's preference for maximum commercial risk transfer to the private sector.

The Government recognises that the type and level of risks vary from project to project. Therefore, the identification and subsequent allocation of risk to the parties involved must be negotiated in each case. However, there are some general classes of risk which clearly are better managed by different participants. By placing responsibility for a particular risk with the party identified as being best able to manage that risk, the likelihood of the risk eventuating should be reduced, or the impact of the risks in the event of their occurrence, minimised. This reduction of likely occurrence and reduced impact should equate to a lower cost for the Government, hence the relationship with the value for money objective.

The range of risks associated with an infrastructure project which should be identified and allocated include the following:

- design
- financial
- demand
- political
- process
- force majeure
- construction
- investment
- operational
- property
- probity
- change of law and regulation
- environmental
- ownership
- industrial relations
- public liability
- intellectual property
- technological
- market
- contractual dispute
- community impact
- organisational change

This list is by no means exhaustive and consideration of other risks should also be undertaken.

Having identified all risks involved in each component of a project at the earliest practical stage, they then need to be assessed and responsibility allocated as early as possible. A risk allocation table or management plan is useful for documenting this. It is important to also recognise that often risks will have their own "sub-category" risks that also need to be addressed in a similar fashion.

The Risk Matrix, which sets out the Government's expectations for risk allocation, represents the benchmark by which submissions will be evaluated. The Risk benchmark is explained more fully in Appendix D.

When allocating risks, the following points should be both recognised and considered:

- There should be fair allocation of the appropriate rewards for the parties taking on the inherent project risks;
- Project and process risks should be allocated to the party best able to manage those risks (willingness to bear a risk, however, is not always an indication of the party's ability to manage the risk);
- The allocation of risks should not lessen the incentive of involved parties to manage the risk together over time; and
- The risks that the Government will accept should be identified on a project-by-project basis. However, some legislative, regulatory, policy or similar risks will always rest with the Government and may be non-transferable.

The Government's preference is for maximum commercial risk to transfer to the private sector. The Government should not assume those risks that underwrite the commercial viability of a project, nor will the Government carry any finance risk in projects.

It is important that risks associated with the project are continually monitored and actively managed. This requires a strong management culture within agencies and carefully prepared contracts which specify what will happen in the event of the realisation of such risks.

3.5 A Project Management Framework must be Established

Suitably experienced and competent management and sufficient time should be assigned to the project.

A project governance, planning and implementation process should be established with adequate resourcing commensurate with project complexity.

When determining project processes, agency management should be mindful that the processes ensure a fair, cost effective, results oriented outcome, which satisfies the requirements of public accountability and probity.

The project implementation process must:

- be clear and transparent;
- enable public accountability to be demonstrated;
- have realistic timeframes that are met;
- match the size, scope and sophistication of the market;

- support the project (ie be a means to an end, not an end in itself); and
- incorporate any relevant requirements of codes of practice or tendering.

The Steering Committee and project teams

In many projects there is considerable benefit in establishing a Project Steering Committee to oversee the project. Such a committee should include representatives from the sponsor agency, central agencies, planning agency, and other appropriate stakeholders but should exclude actual or potential bidders for the project. Steering Committee and project teams should exclude any people with conflicts of interest, or potential conflicts of interest.

Supporting the Steering Committee would be a project manager with responsibility for the implementation process. Generally a Steering Committee and a dedicated project team is necessary when:

- *The project involves some degree of complexity*

A project may be able to be implemented relatively easily, notwithstanding its size, if well understood project implementation procedures and fairly standardised documentation are used.

- *Individuals with the necessary skills are widely distributed*

If personnel from a number of areas of the Department or other agencies are required, it may be more practical to bring the resources together in a central, dedicated office. This will address any physical communication issues and ensure that reporting lines, in the first instance, are to the project manager, rather than to individual agencies.

- *The project timetable is lengthy*

The cost of a separate team may not be warranted if the development program is relatively short.

Attributes of the project team

Assuming the project is one that satisfies the criteria for having a project team, the following attributes should be possessed by the project team participants. The project team should have relevant commercial knowledge and skills, and be competent, suitably qualified, experienced, committed and available. The project team should be resourced at the earliest possible stage to enable proper feasibility and project studies to be undertaken. It should contain personnel to match the needs of the project, and the expertise of the likely bidders.

Team skill areas should match the key components of the proposed project and typically include the following:

- commercial/financial;
- technical and service delivery;
- assets/facilities delivery;
- legal;
- negotiation; and
- process management.

In circumstances where internal resources are not adequate to complete the tasks, consultants should be engaged to supplement the core team.

Depending on the size of the project, it may be advisable to have a separate steering committee for the tender evaluation and/or implementation process as these steps require different skills to those that may have been required at the project development stage. That is, it may be necessary for different governance arrangements to be in place for different phases of a project.

The provision of transparent, timely and accurate reports by the project management team to the Steering Committee and Minister/s should instil confidence that good asset management principles are being applied. Furthermore, it is important that standard, effective project status reporting that differentiates between cost variances and schedule variances is provided to the Project Steering Committee. Regular and accurate reporting will help mitigate project “scope creep” and assist with keeping projects on track and on time.

Another key issue that should be addressed by the governance arrangements is limiting the impact of changes in key project personnel. Proper documentation of a project’s progress should assist in this regard.

3.6 Probity must be Maintained at all Levels and all Stages of the Project

Probity is an important issue for Government as custodian of the community’s public assets. Use of a probity process provides all parties with assurance that the Government is spending money wisely to achieve outcomes to satisfy the community’s needs. Probity also assists in obtaining value for money by ensuring that decisions are not influenced by the presence of conflicts of interest, unfair access to information, biased evaluation criteria etc.

A probity protocol should be established at the beginning of the project.

It is important to establish a probity protocol at the early stages of a project’s development. This will ensure that the integrity of the parties and the process is not compromised at any stage of proceedings.

A probity protocol must:

- ensure that the project implementation process is fair in all respects;
- ensure probity in obtaining “market intelligence” during the feasibility stage to avoid using commercial-in-confidence knowledge when packaging the project;
- include mechanisms to:
 - * have bidders execute conflict of interest and confidentiality agreements;
 - * exclude transfer of information between bidders; and
 - * ensure equality of access by bidders to general (non-proprietary) information and enable clarification of issues arising out of the tender documents (briefs or submissions).
- document the evaluation process before the evaluation is undertaken and prepare a report on the outcome; and
- ensure regular probity checks are made.

A probity process should guard against conflicts of interest, unequal access of bidders to information, failure to protect confidential information or intellectual property and some project costs being tilted towards favouring some proponents over others. Probity processes also enhance the transparency of decisions.

For larger projects a specialised probity adviser should be appointed to verify the integrity of the project process and oversee and ensure that all parties are complying with the process and decisions are made on fair and objective grounds. The early engagement of a probity adviser, with relevant experience, to a project can also assist in ensuring that submission requests are not too onerous, project outcomes and selection criteria are clear, unambiguous and objective and there exists a reasonable expectation that a commercially viable solution will result from a Call for EOI. To assist agencies in selecting a suitable probity adviser, a panel of probity advisers has been established.

Further information in relation to probity principles is contained in the Treasury paper, *Probity Guidelines for Tendering and Contracting*, published in May 1999. Information relating to the probity panel is contained in the Treasury paper, *Probity Adviser Panel – A Directory for Tasmanian Government Agencies*, published in July 1999.

3.7 A Competitive Bidding Process should be Undertaken

Unless there are valid reasons to the contrary, (eg explicit Government policy) agencies operate on the presumption that all new infrastructure and related projects would need to be carefully considered for competitive bidding.

A competitive bidding process will ensure that the community achieves the best possible outcome.

Competitive bidding, to the point of submission of detailed proposals, should result in efficient and effective proposals being put forward by the private sector. As a result, the Government will have a range of options from which to choose. Competition will ensure that, whilst innovative solutions may be proposed which represent greater net benefits to the Government or represent improved value for money, costs should be fair relative to other bids.

The Government permits the submission of in-house bids, but must ensure that such a bid is submitted on a competitively neutral basis and is consistent with the Competitive Tendering and Contracting Implementation Manual released by Treasury in May 1997.

3.8 Operating Lease Status must be Achieved for Leasing of Capital Assets

Where the project involves the use of a capital asset under a lease arrangement, any underlying transaction must be structured as an operating lease in accordance with relevant Australian Accounting Standards. Tasmanian agencies are prohibited from entering into finance lease arrangements. Only the Treasurer has the statutory authority to borrow, and hence to enter into finance leases. Given the Government's desire to reduce debt levels, finance leases are incompatible with this objective.

Any underlying lease transaction must be structured as an operating lease in accordance with relevant Australian Accounting Standards.

Furthermore, a finance lease results in ownership risks resting with the Government. This is generally not the preferred risk allocation basis the Government is aiming to achieve through involving private sector participation in public infrastructure.

Infrastructure projects with any resultant lease transaction must be structured as an operating lease in accordance with the relevant Australian Accounting Standards (AAS 17 - Accounting for Leases). This Standard and the *Guidelines for Leasing*, issued by the Department of Treasury and Finance in November 1997, provide guidance in relation to both the subjective and objective tests for an operating lease.

It is incumbent on private sector proponents to provide an independent accounting opinion that any lease transactions in their submission represent the necessary operating lease status and that details are provided to the Tasmanian Auditor-General in order to satisfy him as to the lease transactions' classification as an operating lease. Furthermore, it is important that, before the Government commits to a significant operating lease, adequate consultation with the Auditor-General takes place. In order that transactions can be properly evaluated, the Auditor-General should be advised in relation to the transaction at the earliest opportunity and as a minimum, sufficient time be provided to allow for due consideration of the elements of the proposed transaction.

3.9 Opportunities for local businesses to be encouraged

Full account needs to be taken of the Government's procurement policy which requires that local businesses be given every opportunity to submit competitive offers for Government business. Furthermore, consideration of the regional impact of Government procurement should also be kept in mind at all times.

Local businesses should be given every opportunity to submit competitive bids for Government business.

While the Government's procurement policy provides for procurement activities to be carried out in a manner which enhances the opportunity for local suppliers to be considered for Government business, the Government is also bound by the provisions of the Australia New Zealand Government Procurement Agreement.

Under the Agreement, the Commonwealth, States, Territories and New Zealand agreed that all forms of discrimination directly based on the state of origin of goods and services would be eliminated. The Tasmanian Government is therefore not able to provide preferential support to local suppliers in competition with Australian or New Zealand based suppliers.

Whilst preference cannot be given to Tasmanian suppliers, the Government procurement policy ensures that local business is actively encouraged to submit competitive offers for Government Business.

The *Handbook for Government Procurement*, issued by the Department of Treasury and Finance in May 1997, outlines how opportunities for local businesses can be enhanced.

Consistent with the national strategy *National Action on Small to Medium Enterprises in Government Procurement* to enhance the access of small to medium enterprises (SMEs) to Government business, the Government has approved a strategy that will assist Tasmanian business to compete for the provision of goods and services to the Government.

The Tasmanian Government acknowledges that there is capacity within the local business community to form partnerships, joint ventures and other commercial arrangements in order to competitively tender for Tasmanian infrastructure projects. To encourage Tasmanian businesses to submit competitive offers for Government business, consideration of the calling for submissions for projects on a dual basis (ie delivery of sub-components versus delivery of the full project) should be kept in mind by agencies and scope provided in the corresponding documentation for submissions based on such a dual approach. However, calling for submissions on a dual basis will increase the complexity of the process.

3.10 A Post-Implementation Review should be undertaken

All private sector infrastructure projects should be subjected to a post-implementation review. The review should be undertaken independently of the agency that initiated the project and be undertaken within six months after physical completion of the project implementation phase.

A post-implementation review of each infrastructure project should be undertaken.

The post-implementation review serves as a mechanism for ensuring that the outcomes originally sought from the infrastructure project are actually being delivered and savings previously identified are actually being realised.

The review should focus on an assessment of:

- project objectives;
- approval process;
- project delivery;
- risk exposure/risk sharing;
- delivery time;
- budget performance;
- project management/procedures;
- functional competent of infrastructure;
- project operations; and
- financing.

Furthermore, the review will also assist in identifying any weaknesses which may have been experienced in the conduct and processes for the project, and enable suggestions to be made for improvements which can be used to benefit subsequent infrastructure projects.

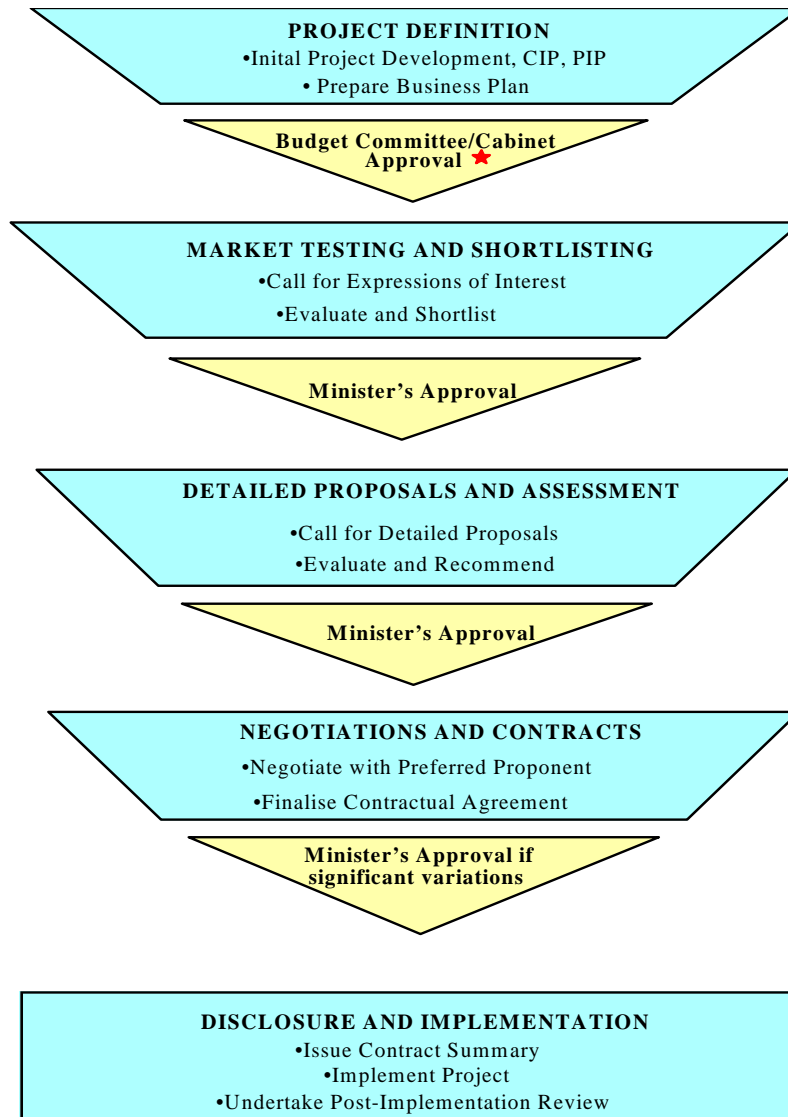
A report will be prepared by the sponsor agency on the outcome of the post-implementation review and submitted to the Budget Committee of Cabinet.

4 Government Approval Process

4.1 Steps in the Government approval process

For major infrastructure projects (i.e. >\$5 million as indicated by the financial benchmark or if determined to be major by the Project Consultative Group) the approval process follows a number of well defined steps designed to ensure that the project meets an identified need and the best solution is selected to meet that need. Infrastructure projects require special consideration due to the potential risks and issues surrounding them. As such, Ministerial approval is required irrespective of the level of delegation that may exist within a Department relating to contractual commitments.

The key approval steps are summarised in the following project flowchart.



★ Requirement for Budget Committee / Cabinet Approval will depend on the size and complexity of the project, whether there is any direct impact on the Consolidated Fund or whether there is a significant risk exposure for the Government.

Appendix C provides a brief checklist of tasks which underlie some of the flowchart steps and which should serve as a “memory prompt” to guide agencies through the process. Whilst not exhaustive, the checklist will ensure that, at a minimum, the matters identified have been considered and some thought given to any actions which may be required.

The following points outline the steps to be followed in instances where the Government is the initiator of a project. Typically, a minimum of three approvals is required for a project, the first being for the project in principle, the second relating to approaching the market for detailed proposals and the third, when the “Requests for Detailed Proposals” have been evaluated and a recommendation regarding a preferred proponent is required.

4.1.1 Steps for a major project

Step 1 Project Definition

Agencies will be expected to seek private sector options for those identified infrastructure projects which could reasonably benefit from private sector involvement. Such projects will be highlighted as a result of completing the PIP.

However, before approval to approach the market can be gained, the agency should undertake some initial development and a business case should be completed. These steps should ensure that there is a reasonable likelihood that a viable solution to the recognised need exists as well as providing a degree of confidence that the private sector will be interested in the opportunity and will be able to submit a solution which could prove satisfactory to the Government. The Project Consultative Group (see Section 4.2 below) should be consulted prior to this stage to ensure that all key issues are taken into account.

The business case would be the key document for obtaining “in-principle” approval for the project. It should clearly specify the cost effectiveness of the project relative to the public sector benchmark.

Step 2 Budget Committee/Cabinet Approval

Following “in-principle” approval from the Government, the agency can approach the private sector for “Expressions of Interest” or “Registrations of Capability” for a particular project. Budget Committee/Cabinet will, in granting “in-principle” approval, establish the framework for the project. This is likely to include the financial framework, any broad service standards required, any progress reporting which may be required and the extent to which any variances to the project will require resubmission to Budget Committee/Cabinet.

By seeking this initial approval, the agency is acknowledging that there is an expectation that the private sector can potentially provide a benefit to the Government.

Step 3 Market Testing and Shortlisting

This step involves the calling for EOIs from the private sector and, assuming sufficient responses are received which appear to satisfy the requirements of the Government, the short listing of bids to a manageable number of submissions which will then be requested to submit detailed submissions as part of a full and open tender process. In the event that no submissions meet the Government’s requirements, the Government is not committed to accepting any submissions. This should be clearly specified in all EOI documents.

Step 4 Ministerial Approval

The Relevant Minister is advised of the outcome of the market testing and shortlisting exercise and, where there appears to be sufficient interest capable of achieving the project's objectives, grants approval for approaching the market with a "Request for Detailed Proposal".

Step 5 Detailed Proposals and Assessment

The Government recognises that for infrastructure projects the preparation of detailed submissions can involve a sizable cost, depending on the complexity of the project. Proponents that have been shortlisted as a result of the EOI process will be invited to submit a detailed submission as part of the full and open tender process. By utilising the process of shortlisting candidates, only those candidates shortlisted for submission of detailed proposals need to incur the expense required to prepare a detailed submission. Once again, in the event that no submissions meet the Government's requirements, the Government is not committed to accepting any submissions.

Having received "Requests for Detailed Proposals", the agency will undertake an evaluation of the submissions on the basis of the objective selection criteria provided in the Request documentation. As with all stages and decisions of the project, this evaluation must have consideration for probity requirements and be conducted on an objective and impartial basis.

Step 6 Ministerial Approval

Assuming submissions that satisfy the criteria are received, the agency will make a recommendation to the Relevant Minister for the preferred tenderer to be announced and with which the agency intends to proceed to contract negotiation stage.

Step 7 Negotiations and Contracts

Having received approval to progress to contract negotiation stage, the agency negotiates the detailed agreement with the preferred proponent. This will require the development of a comprehensive set of negotiating parameters which are consistent with the parameters set by Budget Committee/Cabinet and achievement of the benchmark position, prior to negotiating with the preferred proponent.

In the event that agreement is reached, that the final negotiated position is not significantly different to that initially approved by the Relevant Minister, that the project remains within the benchmark and satisfies all other objectives as disclosed in the "Request for Detailed Proposal" documentation, no further Government approvals should be necessary.

Should the agreement negotiation process raise any significant issues which would materially

alter the respective positions of the Government and the preferred proponent:

- the Government may elect to cease negotiations with the preferred proponent and abandon the project or select an alternative proponent. In such a case, the preferred proponent will be given a reasonable period of time to prepare a case as to why negotiations should not be discontinued; or
- the preferred proponent may elect to withdraw from the process.

Step 8 Minister's Approval in instances where significant variations have occurred, for what ever reason

In the event that the final negotiated position is significantly different to that initially approved by Cabinet and Budget Committee, further approval by the Relevant Minister will be required before any legally binding contracts or agreements can be signed and enacted.

Step 9 Disclosure and Implementation

Having reached the stage of signed contracts, the project can commence implementation. The contract summary is completed and forwarded to Treasury within 90 days of finalising the contract implementation phase. Within six months of implementation of the project, a post-implementation review will be conducted, with results reported to Budget Committee.

4.1.1 Steps for a minor project

For minor projects approval should be sought in writing from the Treasurer at the following stages:

- *Before the call for expressions of interest*, where the emphasis is upon the scope of the project, its economic value and financial implications, the complexity of the arrangements and the likely level of market interest; and
- *Prior to contract finalisation*, where the emphasis is upon approving the negotiated arrangements.

Whilst this approval process is simplified, projects will still be required to conform with the documentary requirements for infrastructure projects in accordance with these Guiding Principles. Documentary requirements include business cases, approval from Ministers to proceed and shortlist, project summaries prepared and post-implementation reviews completed.

4.2 Project Consultative Group

In view of the limited availability of expertise in infrastructure projects, and the necessity to develop further skills in this area, and as a means of drawing on the skills and knowledge

which is currently available in the Tasmanian State Service for such projects, a Project Consultative Group is to be established for all infrastructure projects.

The Project Consultative Group is to be comprised of representatives from the Department of Treasury and Finance, the Department of Premier and Cabinet and selected officers from other agencies with experience in infrastructure projects. The agency initiating the infrastructure project is responsible for convening the Group.

The objectives of the Project Consultative Group, which will meet on an “as needed” basis, is to enhance consistency in the analysis of infrastructure projects and reporting to Government. Depending on the needs of the Project team, the Project Consultative Group may be convened several times during the different stages of a project.

The Project Consultative Group has an advisory role and aims to draw on the experience gained from previous infrastructure projects. The Project Consultative Group will ensure that:

- the whole of Government impact of a project is properly considered early in the process;
- all options for delivery of the infrastructure are properly considered;
- advice is provided to the initiating agency as to whether the project is considered a major or minor project;
- best practice techniques for assessing projects are accessed; and
- any issues that will need to be addressed by the Project team are highlighted.

The Project Consultative Group is to act as an initial filter for classifying infrastructure projects as major or minor, a mechanism for passing on guidance and successful solutions as well as a means of ensuring that any lessons learnt from problems experienced in previous projects are passed on to future projects.

Whilst a Project team may consult with the Project Consultative Group, accountability for the project itself remains with the Project team.

As public sector skills further mature in this area, the need for a Project Consultative Group will be reviewed at a later date.

4.3 Project Responsibility

Responsible Minister

To assist project development and to facilitate private sector involvement, each infrastructure project will be the responsibility of one Minister to whom the proposed project will be allocated. Thereafter, the Responsible Minister will co-ordinate and facilitate consultation with any other Government Ministers and agencies which may be involved in the

development of the project.

Treasurer's Responsibility

Although responsibility for each project will be assigned to a single Minister, the Treasurer's finance, Loan Council and other responsibilities require that the Responsible Minister and the Treasurer work in partnership to develop projects. To help implement this partnership, it is desirable that a Treasury representative be included on the Project Steering Committee from the time of its establishment.

The Department of Treasury and Finance is responsible for the maintenance and supervision of processes under these Guiding Principles.

5 Related Issues

5.1 *Non-Conforming Proposals*

Non-conforming proposals are those that do not meet the tender specifications. These may be considered at the Government's discretion when the proponent has also submitted the preferred conforming bid, or where no conforming bid has been submitted by any party.

Submissions which involve enhancements over and above the requirements as specified in the project brief can be carefully analysed in terms of who benefits, whether any additional Government funding may be required and the net benefits/value for money which the non-conforming bids may represent. Ideally, any non-conforming bids should still deliver the required outcomes for Government within the broad framework conditions previously approved by Budget Committee/Cabinet.

However, the Government is in no way obliged to consider such a non-conforming bid.

5.2 *Intellectual Property and Confidentiality Arrangements*

It is the primary responsibility of any proponent who considers that it has a proposal, concept, design, etc which includes significant intellectual and commercial property to take all reasonable commercial and legal steps to protect its intellectual property.

However, the Government is sensitive to the need to ensure that the intellectual property of private sector proponents is adequately protected against unauthorised disclosure to competitors or improper use by Government agencies. The Government will, if requested, treat as confidential any information disclosed to it, where such information is likely to possess commercial value and utility in the market place.

The Government will use all reasonable endeavours to maintain confidentiality, particularly during initial evaluation and provide timely responses to proposals.

Any confidentiality agreements relating to commercially sensitive information must have regard to the responsibilities of the Auditor-General, the *Freedom of Information Act 1982*, any other public disclosure statutes and Parliament's right to be informed of financial commitments entered into by the Government.

In circumstances where an unsolicited private sector submission has been received, the Government reserves the right to call for EOIs, or not proceed at all if the unsolicited submission fails to satisfy the Government's criteria. If it is subsequently decided to subject the project to competitive bids, information contained in the original proponent's proposal

will not be released without prior agreement of the initial private sector proponent and bids will be called in such a generalised way as to not infringe the intellectual property.

In the event of a BOOT, or similar arrangement, being agreed, the final contract documentation will need to, where appropriate, provide for the transfer of any intellectual property associated with any transferring assets to also transfer to the Government at the end of the contract term.

5.3 *Appointment of Advisers*

External consultants may be required to be engaged, especially when undertaking large infrastructure projects. The requirement for consultants will vary from project to project and depend on the level of complexity of the issues but may include financial advice, probity advice, legal advice and technical advice.

It is important to give consideration to the timing of appointment of advisers, as their advice can be useful at different phases of a project, for example when defining the appropriate project requirements, assisting in the management of the procurement process, assisting with negotiation of an optimal contract and ensuring probity is maintained at all levels and at all stages of the project.

Consideration of the appointment of such external consultants should be made on the basis of what skills are realistically available to the project team and whether failure to appoint such consultants may lead to the project:

- costing more than it should;
- being delayed;
- damaging the credibility of the agency;
- producing a sub-optimal service; or
- raising issues of probity, thereby compromising the integrity of the parties involved.

It is important to note that the procurement policy, detailed in the *Handbook for Government Procurement*, requires public tenders to be called for consultancies valued in excess of \$50 000. For goods and services costing in excess of \$10 000 but less than \$50 000 three written quotations should be obtained.

5.4 *Contract Summaries*

Within 90 days of finalisation (signing) of the contract, a contract summary should be prepared by the relevant agency and submitted to Treasury. The Contract Summary should contain a range of elements, including:

- the full identity of the successful proponents, including any details on cross ownership of relevant companies;
- the duration of the contract, including details of future transfers of assets of significant value to Government at no or nominal cost and details regarding the right to receive such assets and the date of the transfer;
- the identification and timing of any assets transferred to the contractor by the Government;
- all maintenance provisions in the contract;
- the price payable by the public, and the basis for any future changes in this price;
- any provisions for renegotiation in the contract;
- the risk sharing in any construction and operational phases; and
- any remaining key elements of the contractual arrangements.

The Treasurer, in consultation with the Responsible Minister, may decide to make public the contract summaries, in the interests of public accountability but after deleting any matters where disclosure would substantially disadvantage the contracting firm commercially with its competitors.

However, firms contracting with the Government must also appreciate that there is a legitimate public interest in the principal features of such contracts, especially where they involve large amounts of money and/or constrain future governments.

The Auditor-General retains the ability to peruse Government contracts independently and, in appropriate instances, may consider that the need for Parliament and the public to know aspects of contracts not ordinarily contained in the contract summary, overrides the private sector provider's need for confidentiality. If this situation were to arise, discussions with the private sector provider will precede disclosure.

5.5 *Links with other policies*

The Guiding Principles detailed in Chapter 4 operate in conjunction with other Government policies and processes integral to the development of infrastructure projects. These include the power to declare a project as being a Project of State Significance under the *State Policies and Projects Act 1993* and the ability to streamline the approval process required for major infrastructure projects under the *Major Infrastructure Developments Approval Act 1999*. This legislation reflects the Government's commitment to facilitate the involvement of the private sector in the provision of infrastructure. The legislation provides proponents with more streamlined approval processes, thereby reducing the risks and number of approvals that may ordinarily be required for projects and enhancing the private sector's ability to invest in public infrastructure.

Appendix A - Forms of Public-Private involvement in Infrastructure

Traditional Design and Construction (TDC)

The Government, as principal, prepares a brief setting out project requirements before inviting tenders for the design and construction of the project. Private sector contractors undertake to design the project in accordance with the brief, and construct it for an agreed sum, which may be fixed or subject to escalation.

Operation and Maintenance Contract (O&M)

These projects involve the private sector operating a publicly-owned facility under contract with the Government.

Lease - Develop - Operate (LDO)

This type of project involves a private developer being given a long-term lease to operate and expand an existing facility. The private developer agrees to invest in facility improvements and can recover the investment plus a reasonable return over the term of the lease.

Build - Own - Maintain (BOM)

This type of arrangement involves the private sector developer building, owning and maintaining a facility. The Government leases the facility and operates it using public sector staff.

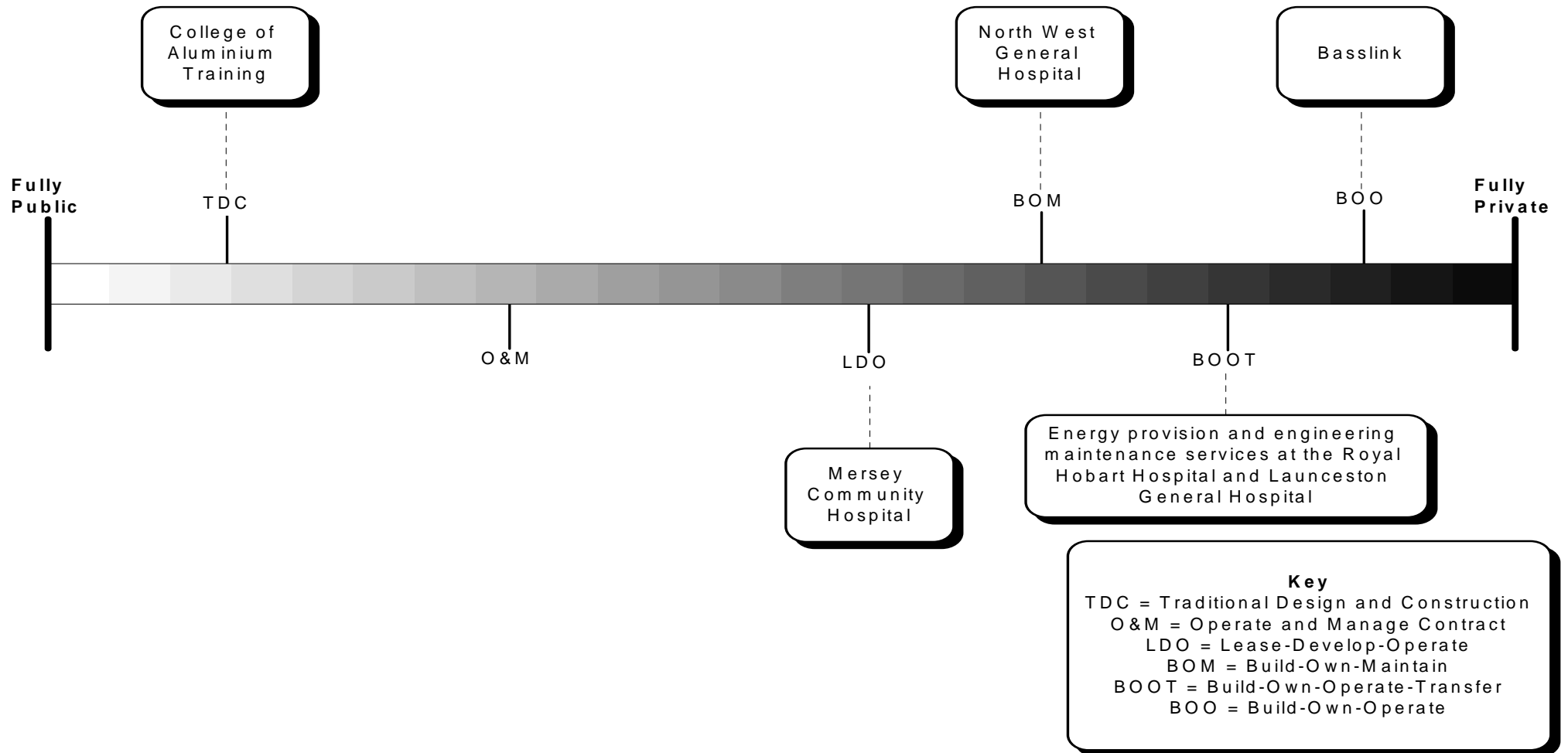
Build - Own - Operate - Transfer (BOOT)

Projects of the Build-Own-Operate-Transfer (BOOT) type involve a private developer financing, building, owning and operating a facility for a specified period. At the expiration of the specified period, the facility is returned to the Government.

Build - Own - Operate (BOO)

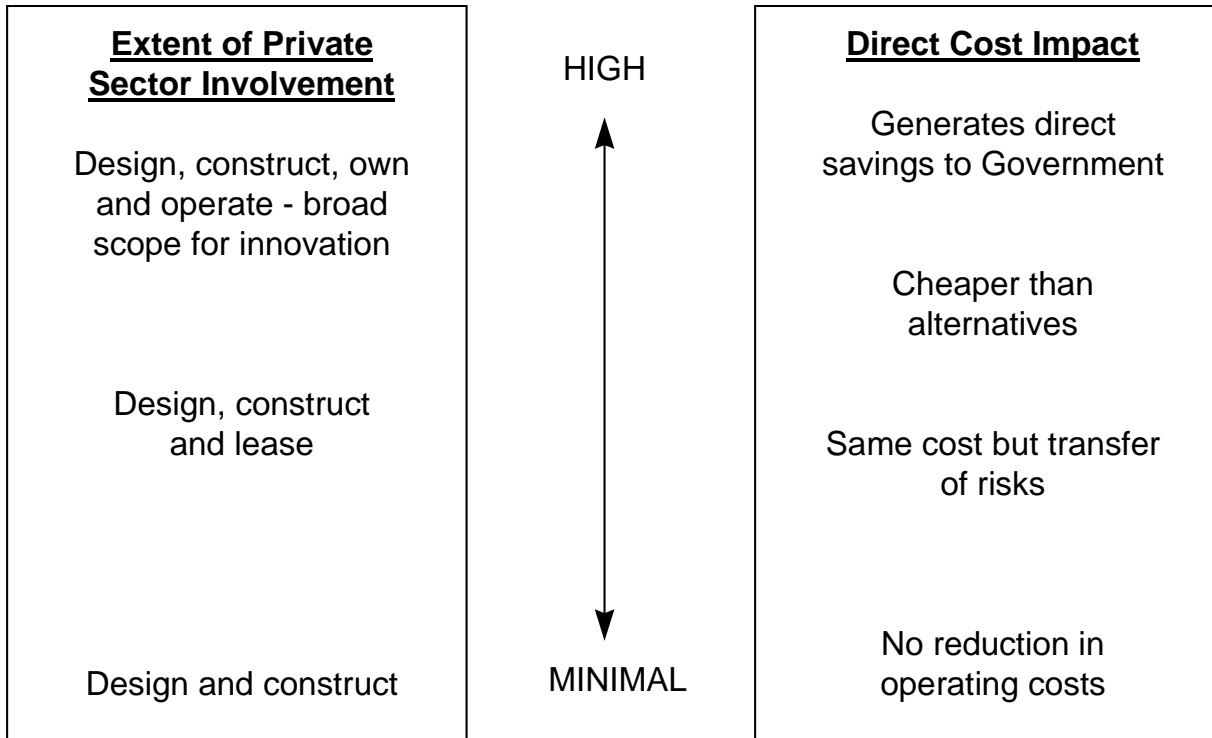
The Build-Own-Operate (BOO) project operates similarly to a BOOT project, except that the private sector owns the facility in perpetuity. The developer may be subject to regulatory constraints on operations and, in some cases, pricing. The long term right to operate the facility provides the developer with significant financial incentive for the capital investment in the facility.

The Public-Private Spectrum of Infrastructure Provision

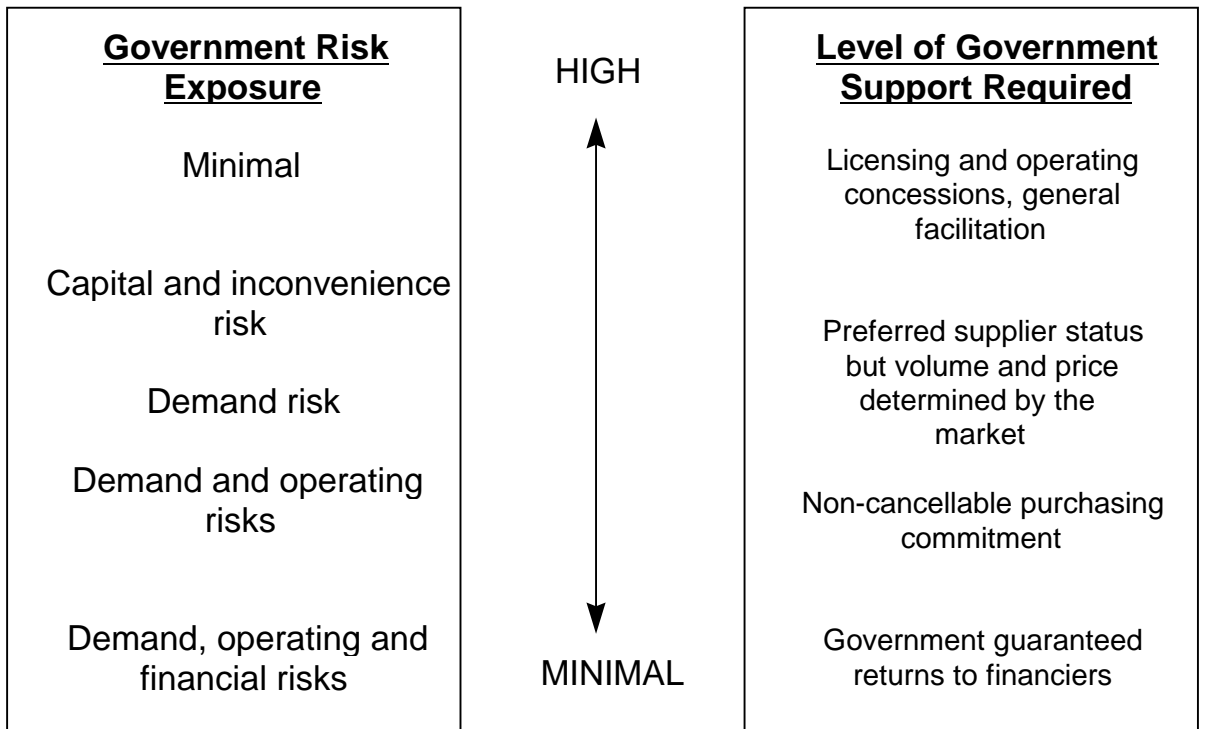


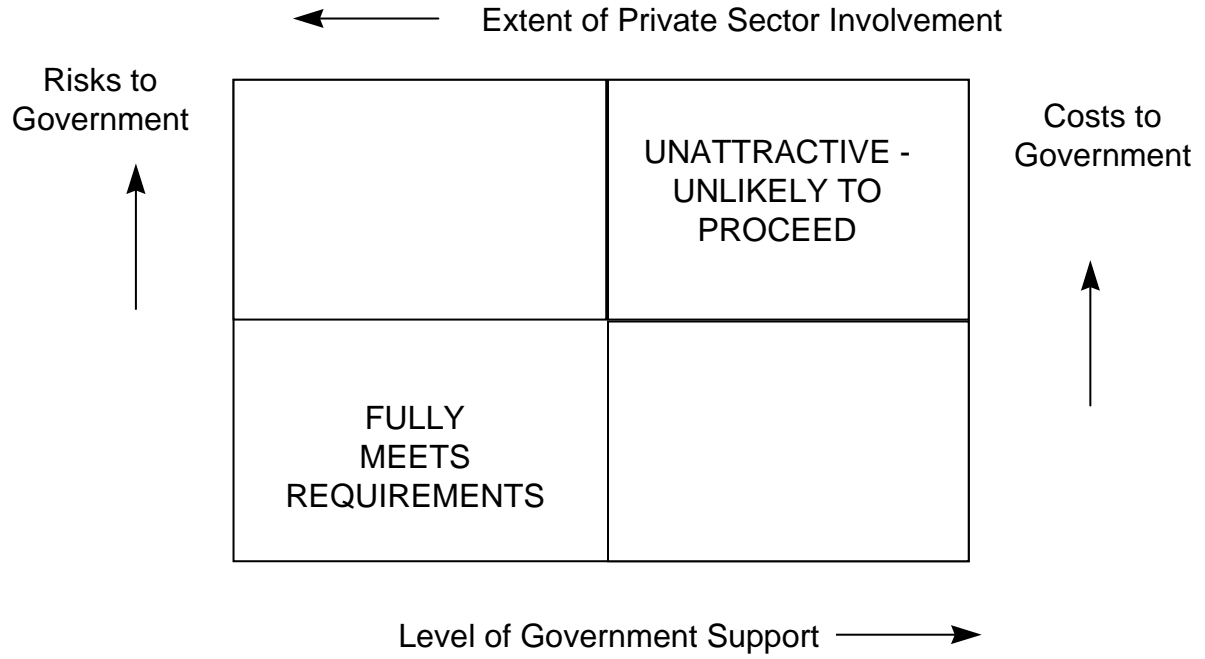
Appendix B - Degree of Attractiveness to Government

Part 1: Cost Impact



Part 2 Government support/risk



Part 3: Summary

Appendix C - Checklist of the process

Matter for consideration	Considered?	Action Taken
Has a “needs assessment” been completed?		
Have all service delivery options been researched and evaluated?		
Has a comprehensive business case been prepared to demonstrate the project’s viability?		
Have Agency and Ministerial approvals to proceed been sought and received?		
Has a project management team been established with an appropriate and relevant skill distribution?		
Have financial, performance and risk benchmarks been developed?		
Has the Project Consultative Group been established and consulted?		
Has a probity protocol been established?		
<p>Has consideration been given to the preparation of any necessary documentation:</p> <ul style="list-style-type: none"> • legal? • financial? • design? 		
Has the call for Expressions of Interest been arranged?		
Have the EOI submissions been evaluated on the basis of:		

<ul style="list-style-type: none"> • capability • deliverability • experience • personnel • finance structure 		
Have Agency and Ministerial approvals to shortlist been obtained?		
Have arrangements been made for debriefing unsuccessful registrants?		
Has the tender documentation been completed and distributed?		
Have the final tender submissions been received and evaluated?		
Assuming that at least one submission achieves the outcome desired and represents value for money, has Agency and Ministerial approval for a preferred tenderer been obtained?		
Has debriefing of unsuccessful tenderers been arranged and conducted?		
Have all aspects of the contract been negotiated satisfactorily and necessary documentation duly executed?		
Have all necessary steps been undertaken to permit commencement of any necessary construction?		
Have plans for monitoring progress been followed and arrangements for commencement of operations been planned and completed?		
Have all aspects of any lease arrangements been finalised		

and put into place?		
Has a contract summary been prepared and submitted to Treasury?		
Has a post-implementation review been conducted and results analysed?		

Appendix D - Public Sector Benchmarks

All major projects should have public sector benchmarks established in advance. Benchmarks can, and should, be established for each of the following aspects of a project:

- performance;
- financial; and
- risk.

Benchmarks are an important part of an infrastructure project as they establish the standards against which private sector bids are assessed. Benchmarks enable the project submission evaluation team to determine the criteria against which submissions are to be measured, enable the assessment of whether the required standards are met or bettered and allow comparison of bids on a considered and objective basis.

It is the intention of the Government that if a bid or bids meets or better each of the performance, financial and risk benchmarks, the Government will proceed to implementing private sector delivery of the project. As such, agencies need to undertake careful consideration of the objectives of a project and the Government's requirements prior to calling for submissions. Furthermore, the project brief should be sufficiently detailed for the private sector to be clear as to what the Government's objectives are and the assessment criteria should properly and fully measure the Government's requirements.

The performance benchmark

The performance benchmark sets the minimum functional (technical) requirements for a project, specified in delivery terms. For example, a performance benchmark for the delivery of water treatment services may include minimum levels of treated water quality with respect to bacteria, colour, turbidity, heavy metals and taste, plant and storage capacity, emergency protocols etc.

The performance benchmark should include information on:

- prescribed performance standards (these may include standards defined by statute, contract or professional requirements e.g. occupational health and safety standards, reporting requirements and applicable ISO Accreditation Standards);
- improvement expectations over time in terms of service levels and quality (aimed at capturing improvements in technology and capacities over the term of the proposed contract);
- customer/community expectations with respect to outcomes (these may be difficult to define but may include, for example, timely and professional delivery of services); and
- a commitment to innovation and technological advancements (to incorporate best practice

where appropriate).

As it is difficult to predict how infrastructure projects may benefit from technological improvements many years hence, it is important that the benchmarks relating to performance that are incorporated in the project brief/request for tender documentation should provide a flexible framework for dealing with technological improvements and other advancements, and allow for the incorporation of these improvements in quality of service delivery over the contract period.

Performance benchmarks apply to both physical infrastructure and any associated service delivery components. Both should be specified in the project documentation.

Furthermore, minimum levels of performance need to be outlined, such that it is clear to proponents that if a certain standard is not achieved, then the Government will not be committed to proceeding with the project.

The financial benchmark

The financial benchmark represents the financial cost to the government agency, including competitive neutrality adjustments to ensure comparability with the private sector. The financial benchmark indicates the best financial outcome to the Government, if the Government were to undertake ownership, funding and operation of the assets to deliver the required outcomes, service levels and standards ie at the desired quality and quantity.

The public sector financial benchmark should be developed in accordance with National Competition Policy principles. Furthermore, it should represent the lowest possible public sector cost (the full capital and recurrent costs including all overheads, fixed costs etc.) for the required level of quality **plus**, in order to provide a valid basis for comparative purposes, the notional impact of all taxes, rates, charges, costs of finance etc and an appropriate margin for the equity risk which would be found in a private sector equivalent project.

In determining the public sector financial benchmark, consideration should also be given to opportunities to reduce the costs of the public sector service provision. That is, the benchmark should indicate the most efficient delivery of the service as provided by the public sector. It should not incorporate inefficient practices.

When determining a project financial benchmark, there will be a number of underlying assumptions. These include the specified volume or quantity of outcome, the period on which the calculation is based, the standard which is required, and the assumptions regarding the type, allocation and likely occurrence of each element of risk for the project. Therefore, the financial benchmark should include the costs of insuring for the insurable risks, as well as the

costs of managing the uninsurable risks, as defined in the risk benchmark matrix. To fairly evaluate private sector submissions, responses should be based on these same assumptions and be capable of pricing in risk allocation differentials.

If the project financial benchmark is equalled or bettered by a private sector proposal, assuming all other evaluation criteria are met to the required standard, the project should proceed. However, when budgetary constraints prohibit public sector delivery and private sector proposals do not meet the benchmark, the project should not proceed. Where budgetary conditions permit the public sector delivery option and private sector bids fail to add value in all of the benchmark areas, the project should proceed under the public sector delivery option.

Generally, the financial benchmark for a project is kept confidential. However, depending on the expected level of competition, disclosure of the benchmark may be warranted. This decision must be made on a case-by-case basis. Where there is a strong industry or many competitors in the market, the need to disclose the benchmark declines.

Project cost components which should be benchmarked include:

- estimated public sector capital costs (eg design, construction, commissioning, maintenance, refurbishment and equipment upgrades) using a discounted cash-flow analysis of the real public sector cost of funds;
- costs of finance, measured against the appropriate government bond rate for the appropriate term, incorporating the risk margin and acknowledging the Government's equity risk position;
- any relevant service delivery costs, based on the known recurrent cost estimates and adjusted for the estimated impact of the preferred capital solution;
- estimated cost of inherent project risks;
- all insurances; and
- any relevant staff costs and transitional costs, including redeployment, retraining or redundancy costs, superannuation, accrued annual leave, accrued sick leave and other future or contingent liabilities.

The risk benchmark

Recognising that in some circumstances the private sector is better able to manage particular risks, the risk benchmark identifies the individual risks associated with the infrastructure project and indicates the Government's preference for allocation between the Government and the private sector for those risks. Typically the preferred allocation of risks is set out in an indicative risk matrix.

Whilst the financial benefits to the Government of transferring risks better able to be managed

by the private sector to the private sector should be taken into account in determining the financial benchmark, it is still important to use a risk benchmark for infrastructure projects. This is because the benefits of risk transfer can be difficult to quantify accurately and having a risk matrix clearly indicates which party is responsible for which risks.

Generally, the preferred private sector proponent bears the maximum commercial risks, including ownership, funding, completion and operating risks.

The risk benchmark indicates the Government's minimum requirements regarding risk and does not represent a starting point for negotiations.

Benchmarks and the Evaluation of Bids

The establishment of the finance, performance and risk benchmarks assists with determining the appropriate criteria against which bids are to be evaluated. At the discretion of the Project Management/Evaluation Panel and depending on the nature of the project, weightings may be attached to the evaluation criteria as an indication of the relative importance of each criterion.

It is important that evaluation criteria against which bids will be assessed link in to the benchmark standards required. If the evaluation criteria do not properly reflect the required benchmark, then the evaluation process could deliver a sub-optimal outcome.

Where one or two of the benchmarks are met but the remaining benchmark/s are not achieved, the Government may still find it preferable to pursue private sector delivery of the infrastructure rather than public sector delivery. However, this would need to be considered

carefully on a case by case basis. In these circumstances, the Government retains the discretion regarding proceeding with private sector provision and is not bound to accept any bid.

Initial Benchmarks versus Detailed Benchmarks

Initial benchmarks must be determined early in the project initiation phase. An indicative initial benchmark:

- will provide an indication as to whether there is an interest and/or capability in the marketplace and whether tender submissions are likely or not;
- will provide an indication of the band in which submissions may be forthcoming;
- will provide an indication of the commercial viability of the project;
- will form part of the initial project proposal/documentation that is submitted to Cabinet for approval; and
- assists in the determination of whether the State will be getting a good-to-reasonable deal by moving to private sector delivery or if public sector provision is the best option.

As a project progresses from the initial phases, more information and clarity in defined objectives will become available and therefore will form the basis of more detailed benchmarks which will form part of the request for tender documentation. As such, benchmarks are revised during the development of the project brief.

Initial benchmarks are typically based on the conventional way in which Government would procure the infrastructure. In order for any private sector bid to rank as an acceptable alternative, it should be required to readily demonstrate additional benefits to the community beyond those of the traditional delivery techniques.

However, the initial benchmark may not always be calculated on the basis of the status quo, that is the current manner of providing the infrastructure, if in fact the status quo is not sustainable. For example, if the current condition of an infrastructure complex is such that it is effectively operating beyond its useful economic life, then it is inappropriate to use the existing operation as a benchmark as it will incorporate inefficiencies attributable to utilising infrastructure which is operating beyond the capacity for which it was designed.

Alternatively, where the infrastructure project represents a “first” for the Government, relevant benchmarks may be available from other jurisdictions and/or internationally. That is, the benchmark should reflect best practice not only by Tasmanian standards, but also national and international standards.

Appendix E -
Outline of a
Business Case

[Suggested format for a Business Case supporting an
Infrastructure Initiative]

PROJECT TITLE

A Business Case

AGENCY

MONTH YEAR

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Introduction

Purpose of the Business Case

What is this document intended to do?

Overview

A short description of the project.

In this section a succinct outline of the business case is presented. This enables decision makers to quickly appreciate what the proposal is about.

OBJECTIVES, OUTPUTS & OUTCOMES

Title

A short title for the proposed project.

Objectives

Concise statement of primary objectives.

Services needed to be addressed

What service needs have been identified?

Often there are different drivers for projects that influence the type of analysis required. Key drivers can include compliance with statutory and regulatory requirements, safety, environmental issues, revenue related matters, cost reduction, public image etc. To understand the issues, decision makers must know what the key drivers are that the business case aims to address.

Relationship with Government Policy

Relate the proposed project to specific Government policies.

This allows decision makers to understand exactly what outcome the project is aimed at achieving.

Relationship with the agency's Corporate Plan and Strategic Asset Management Plan (SAMP)

Relate the proposed project to the Agency's Corporate Plan and SAMP.

This ensures that the project links in with the overall business of the agency and Government objectives.

Outputs and outcomes

What are the desired end results of the project?
Explain the type of outputs required to achieve the desired outcome.
How are all key stakeholders affected (clients, staff, the Agency, the State)?

SUMMARY OF PROPOSAL

Overview of investment options evaluated

A brief description (one or two sentences) of each option evaluated.

Summary financial analysis

A summary table showing the Net Present Value (NPV) of each option.

TABLE 1.1 SUMMARY OF FINANCIAL EVALUATION RESULTS					
<i>Measure</i>	<i>Base Case</i>	<i>Option 2</i>	<i>Option 3</i>	<i>Option 4</i>	<i>Private</i>

NPV					
-----	--	--	--	--	--

Qualitative analysis (socio-economic impacts)

Summary of all direct non-financial impacts from the perspective of the key stakeholders.

The Public Sector Benchmark

If a private sector option is being evaluated then a public sector benchmark must be developed against which the private sector options are compared.
Summarise the results of the public sector benchmark.

Preferred Option

Based on the financial and qualitative analysis, what is the preferred option?

Impact of the preferred option on the consolidated fund

Use the summary table provided to state the impact on the Consolidated Fund of the preferred option.

TABLE 1.2 IMPACT ON THE CONSOLIDATED FUND									
	Capital Investment			Net Recurrent Expenditure			Total		
	Program								
	1999-00	2000-01	2001-02	1999-00	2000-01	2001-02	1999-00	2000-01	2001-02
To the proponent Agency:									
To other affected Agencies									
1.									
2.									
3.									
Sub-total									
TOTAL									
GRAND TOTAL									

Risk Management

Summarise the key areas of risk and the strategies that have been identified to minimise the risks.

This should also extend to including an outline of contingency plans for dealing with such risks, should they eventuate.

Implementation and Management Plan

Summarise how implementation of the preferred option is to be managed, together with key stages and target dates.

This should also incorporate a post implementation review to assess whether the initiative is delivering the benefits intended.

Sign-Off

Head of Agency

Date

Supporting Information

Detailed Options analysis

Explain the advantages and disadvantages of:

- the Base Case (do nothing); and
- other options (including private sector).

This section should describe the proposed undertaking and include a clear statement of the scope of the project and the timelines associated with it. When analysing the options it is important to include information on how each option enables the project objectives to be met and to what degree.

Public Sector Benchmark

Detail the basis of determining the public sector benchmark

Analysis of the financial impact

This section covers:

- underlying assumptions;
- discount rates applied; and
- a table showing the direct and indirect financial impacts (cash inflows and outflows) associated with each option using discounted cash flow analysis to calculate the Net Present Value (NPV) of each option.

Analysis of qualitative factors

Identify and discuss in detail the non-financial impacts and where possible quantify the impacts in monetary terms.

Preferred option

Based on the analysis undertaken, comment on the preferred option in the context of objectives, risk, etc.

This should include information on the criteria used for evaluating the various

options. These may include technical, engineering, environmental, legal as well as financial criteria. The key reasons for supporting the preferred option should also be stated.

Consolidated Fund impact

Discuss the total Budget impact in terms of:

- the capital costs; and
- the recurrent costs.

Use a table showing the impacts over a three year period.

The method of funding should be specified as well as the impact of the proposed expenditure on current and future operational and capital budgets.

Implementation and management

Discuss

- major activities, together with accountabilities and target dates;
- major resourcing requirements and costs;
- management and reporting arrangements;
- the implementation and transition process; and
- communications strategy.

Appendix F - Relevant Publications

* *Procurement Practices Manual*, Department of Treasury and Finance, August 1998

Guidelines for the Recording, Valuation and Reporting of Non-Current Physical Assets in Tasmanian Government Departments, Department of Treasury and Finance, June 1995

* *Project Initiation Process*, Department of Treasury and Finance, April 1997

* *Handbook for Government Procurement*, Department of Treasury and Finance, May 1997

Competitive Tendering and Contracting Implementation Manual, May 1997
incorporating *Competitive Tendering and Contracting: A Policy Framework for the Tasmanian Public Sector*, Department of Treasury and Finance, September 1996

Strategic Asset Management Framework, Department of Treasury and Finance, May 1997

Guidelines for Leasing, Department of Treasury and Finance, November 1997

* *Probity Guidelines for Tendering and Contracting*, Department of Treasury and Finance, May 1999

* *Probity Adviser Panel – A Directory for Tasmanian Government Agencies*, Department of Treasury and Finance, July 1999

* *Private Sector Participation in Public Infrastructure Provision - Policy Statement*, Department of Treasury and Finance, July 2000

* Available on the Treasury website: <http://www.tres.tas.gov.au>

Appendix G - Key Contact Point

Department of Treasury and Finance web site:

<http://www.tres.tas.gov.au>

Director
Commercialisation and Financing Branch
Department of Treasury and Finance
21 Murray Street
HOBART TAS 7000
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