NEW ZEALAND
INFRASTRUCTURE
COMMISSION
Te Waihanga

New Zealand public private partnership (PPP) framework: Cabinet material and key advice

Proactive Release

December 2024

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Documents Proactively Released			
Item	**Date**	**Document**	**Section of the Act applied**
1	4 July 2024	TW-2024-442 IIMG update on the workplan for PPP model and policy enhancement	9(2)(a), 9(2)(f)(iv), 9(2)(i)
2	9 August 2024	TW-2024-456 August IIMG agenda item – PPP model and policy update	9(2)(a), 9(2)(f)(iv), 9(2)(g)(i), 9(2)(i), 9(2)(j)
3	20 September 2024	TW-2024-490 Draft market facing document on enhancements to the NZ PPP framework	9(2)(a)
4	30 September 2024	TW-2024-491 Enhancements to the New Zealand PPP framework	9(2)(a), 9(2)(f)(iv), 9(2)(g)(i), 9(2)(i)
5	15 October 2024	Cabinet Paper EXP-24-SUB-0056: Enhancements to the New Zealand Public Private Partnership Framework	9(2)(f)(iv), 9(2)(i)
6	15 October 2024	Cabinet Committee Minute EXP-24-MIN-0056 Enhancements to the New Zealand Public Private Partnership Framework	None

Accessibility

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NEW ZEALAND INFRASTRUCTURE COMMISSION Te Waihanga

Te Kāwanatanga o Aotearoa New Zealand Government

IIMG update on the workplan for PPP model and policy enhancement

Date:	4 July 2024
Report No:	TW-2024-442

To	Action sought	Deadline
Simon Court, Parliamentary Under-Secretary to the Minister for Infrastructure CC Hon Chris Bishop, Minister for Infrastructure	**Advise** the Infrastructure Commission on any changes to this paper before it is submitted to Treasury on 9 July for the IIMG on 23 July	8 July 2024

Attachments

1. Appendix A: PPP Policy Issues List (grouped by stage in PPP lifecycle)
2. Attachment 1: Prospective PPP Projects and Readiness A3

Contact details

Name	Role	Phone
Hannah Ouellet	Senior Advisor	s9(2)(a) [redacted]
Brendan Herder	Director (Acting), Investment and reviews	
Andy Hagan	General Manager, Infrastructure Delivery	

Purpose

1. The purpose of this Aide Memoire is to provide you with draft content for the next Infrastructure Investment Ministers Group (IIMG) on 23 July, for any feedback ahead of submission to the Treasury who manage the IIMG meetings, agenda and paper distribution process. We propose using the content of this Aide Memoire to support the discussion, formatted as applicable for the IIMG meeting.

2. The paper for IIMG will provide an update on the workplan to modernise the Crown's Public Private Partnership (PPP) model and policies, as set out in this paper, and includes:

    - a timeline for interim deliverables, final deliverables, and reporting milestones,

- a plan for how we will work with and inform Ministers, and
- A list of PPP Policy Issues Papers that we will write (these papers represent the substantive policy review/update and will outline specific policy issues, considerations, options for improvement, and recommendations).

Background and context

3. On 22 May 2024, the Cabinet Economic Policy Committee endorsed the Government's work programme on *Improving Infrastructure Funding and Financing* [ECO-24-MIN-0076, and ECO-24-SUB-0076 refers]. This includes a workstream on modernising the Crown's approach to PPP procurement, which the Infrastructure Commission is responsible for delivering.
4. Treasury is responsible for the wider work programme, as well as specific workstreams that are related to the PPP policy and model update, including Funding and Financing Principles, and Long-Term Leasing [ECO-24-MIN-0076 refers].
5. The Infrastructure Commission is currently responsible for PPP policy and project support and is leading the cross-agency policy workstream to enhance New Zealand's PPP model and policies [ECO-24-MIN-0076 refers].
6. We have consulted Treasury on this paper as they are the stewards of the Government's Investment Management System (IMS) (including considering the merit of and completing assurance on capital PPP investments) and are responsible for Crown Balance Sheet matters (including implications of taking on Crown debt through PPP). As such, we are working with Treasury to ensure that PPP policy development (and the potential PPP project pipeline) appropriately considers IMS rules and processes, and wider Crown Balance sheet implications.
7. We are also aware that the new National Infrastructure Agency (NIA) is likely to have a role in supporting agencies with PPP transactions. If the NIA is established before this work is completed, the Commission will ensure that they are well-informed of updates to PPP policy, agency guidance, and the standard form contract framework/suite.

Deliverables and reporting milestones

Final deliverables

8. As set out in the Minister for Infrastructure's Cabinet Paper "Improving Infrastructure Funding and Financing," we will provide the following:
    - Final policy advice by 30 *[now 26th]* September 2024 on modernising the Crown's approach to PPP procurement to:
        - apply lessons from the New Zealand and international experience to date,
        - better reflect the unique nature of prospective projects, and
        - enhance deliverability in a range of market conditions.

9. There will be two final deliverables from this work:
   - **A final report to the Minister for Infrastructure** (and IIMG) that outlines our findings and recommendations on the PPP model. This will allow decisions on key policy changes to be made on the PPP model during early October. We assume that the IIMG will make final decisions, and plan to draft a Cabinet paper as an interim deliverable (see below) to support the Minister for Infrastructure's report back to Cabinet and to seek delegations.
   - **A public-facing document** that agencies and the market can use as the blueprint for future New Zealand PPP transactions (i.e., agency guidance). The guidance will outline amendments to PPP policy, procurement process, contracting model/s, and standard form contract suite.

Interim deliverables

10. The PPP policy workstream is ambitious but achievable, and will require interim deliverables and timely feedback. Interim deliverables include:
    - **Substantive PPP policy progress reports** (to US Court and the IIMG in August),
    - **A Cabinet paper** to support the Minister for Infrastructure's report back to Cabinet and to seek delegations (where needed). We do not expect the PPP model and policy updates to require Cabinet decision making. However, in the case that any updates require Cabinet decisions, we will seek a joint delegation for the Minister of/for Finance and Infrastructure. We will send a draft of this Cabinet paper to the Minister for Infrastructure's office on 15 August, with a view to the paper being lodged on 5 September for consideration by the Cabinet Economic Policy Committee on 11 September and Cabinet on 16 September.
    - **PPP Policy Issues Papers**. Issues Papers will outline specific policy issues, considerations, options for improvement, and recommendations – and will be used to seek feedback/decisions from US Court, the Minister for Infrastructure, and the IIMG as the PPP workstream progresses. They will then be used to support and inform the final deliverable.

Post-policy deliverables

11. The Infrastructure Commission will incorporate legal expertise during the policy development phase and begin scoping contractual changes required. However, we do not expect to formally instruct lawyers to begin drafting changes to the New Zealand PPP standard form contract suite until after the policy advice is complete and any necessary Ministerial or Cabinet approvals are confirmed.

12. We aim to have a consultation version of the draft updated contract suite ready to begin agency and market consultation by 31 October. Consulting with agencies and the market on a draft is important to ensure that we are recommending bankable and transactable updates

to the PPP standard form contract. For context, New Zealand's initial Standard Form Project Agreement was developed over a period of years and the recent harmonisation of New South Wales and Victoria's PPP project deeds took approximately twelve months. As the foundation for billions of dollars of future risk sharing with the private sector, it is critical to ensure the contractual framework is fit for purpose and the drafting gives effect to the policy changes intended, which will require meaningful consultation and engagement.

Timeline for PPP update

13. Table 1 below outlines an overview of the PPP model and policy workplan.

Figure 1: Overview of workplan for PPP policy and model update

	June			July					August				September				
	10	17	24	1	8	15	22	29	5	12	19	26	2	9	16	23	30
Reporting milestones																	
Meetings with U-S Court			◉ 27						◉ TBD								
IIMG Meetings							◉ 23				◉ 20					◉ 27	
Interim and final deliverables																	
1-Workplan paper	◆ 13																
2-Prospective PPP Projects and Readiness paper		◆ 20															
3-Policy issues slides			◆ 26														
4-IIMG update on workplan paper				◆ 4													
5-Substantive policy progress paper to US Court								◆ 1									
6-IIMG paper on substantive policy									◆ 6								
7-Draft Cabinet paper to support Minister's report back and to seek any delegations required										◆ 15							

Final draft advice for feedback			◆ 19	
Final advice				◆ 26
Substantive policy work				
Policy Issues Papers		**Priority issues papers**	**Other issues papers**	

What we have already delivered

14. As of 4 July 2024, the Commission has completed the following key deliverables:

- **Deliverable 1:** PPP Model and Policy Development Workplan [TW-2024-430 refers]
- **Deliverable 2:** Prospective PPP Projects and Readiness [TW-2024-432 refers]
- **Deliverable 3:** Policy Issues List and Chew Session Slides
- **Deliverable 4:** Workplan for PPP model and policy enhancements [this paper, TW-2024-442 refers]

15. For your reference, we have appended the PPP Policy Issues List (including who is holding the pen on the first drafts of specific Issues Papers) in Appendix A and have attached the Prospective PPP Projects and Readiness A3 in Attachment 1.

16. s9(2)(i), s9(2)(f)(iv) [redacted]

PPP Priority Policy Issues List

17. As outlined in Table 1, the Infrastructure Commission and Treasury have identified six priority policy issues that, if addressed, are likely to build market confidence and appetite for PPPs. These priority issues could be communicated at the Infrastructure Summit in November 2024. A more comprehensive list of PPP Policy Issues Papers that we will produce is outlined in Appendix C. Note that this event is being proposed for a later date

18. We know that the market and agencies would like certainty of funding and staging of the PPP project pipeline. However, like all capital investments, PPP proposals must go through robust IMS and Budget processes. We understand the Treasury will advise the Ministers of/for Finance and Infrastructure on this matter, which is best resolved with the Prime Minister and Portfolio Ministers and is out of scope of the Infrastructure Commission's current PPP policy work.

Table 1: PPP Policy Priority Issues List

Policy Issue	Description
Bid costs	Explore policy options to reduce the cost of bidding for PPP projects (including by reimbursing a proportion).
Risk allocation, including interface with planning approvals	Explore policy options and guidance to better allocate risks to parties that can manage them, and enable parties to manage the risks they are allocated. There will need to be a careful balance between responding to market feedback and retaining material performance incentives in the model. For example, the Crown could take on more risk associated with environmental/ planning approvals, or create conditions that enable compliance with approvals to be managed by others.
Collaborative tendering	Explore the role and design of Enhanced Interactive Tendering process, and an extended collaborative/development stage with a preferred tenderer pre-contractual and financial close.
Liquidated damages (LDs)	Explore options to right-size LDs, including amendment to the project finance structure such as Crown contributions for debt repayment during construction, or early commencement of components of the unitary charge related to debt service.
Claims management and dispute resolution	Explore strategies to avoid or mitigate the impact of disputes (e.g., increase Alternative Dispute Resolution thresholds), and review the appropriateness of relief and compensation regimes (e.g., CEE, Pandemic). Overall goal is to mitigate the impact of claims on productivity and value for money outcomes. Consider alliance approach, FIDIC dispute resolution process, and the case for client side KPIs.
Affordability Thresholds, pricing, and value for money assessment	Explore options to improve the process of assessing a PPP project against the Crown directly financing or funding the project, and how this flows through into the pricing mechanism during procurement.

Governance and reporting structure

19. The Commission will regularly report to the Minister for Infrastructure and Under-Secretary Court to seek feedback on specific policy direction and to ensure the materials (e.g., updates, progress reports, and final deliverables) we present to the IIMG are in line with expectations. For testing specific policy direction, we will host workshops with Under-Secretary Court. The Commission will also support the Minister for Infrastructure's report(s) back to the IIMG and Cabinet on this workstream.

20. Given the breadth and nature of PPP policy issues (e.g., interaction with the IMS, dispute resolution, and Crown Balance Sheet), colleagues from Treasury's Balance Sheet team and National Infrastructure Unit are collaborating with us on this work. We are also collaborating with agencies and Crown Entities leading existing project negotiations and contract management activities and developing business cases for (potential) future PPP transactions.

21. Treasury will lead the drafting of various individual Policy Issues Papers that relate to areas of responsibility outside the scope and mandate of the Commission. This is to ensure that the PPP policy development (and the potential PPP project pipeline) appropriately considers IMS

rules and processes, the (upcoming) Funding and Financing Principles, and wider Crown Balance sheet implications.

Next steps

22. We will support you to discuss this workplan with IIMG on 23 July, including a progress update on the Policy Issues Papers (i.e., which papers are in-draft or completed). The Commission and Treasury have started drafting the "Priority" Policy Issues Papers, and will provide a substantive policy update (i.e., discuss and test where the policies have landed) to US Court in the first week of August and to the IIMG on 20 August.

Appendix A: PPP Policy Issues List

23. Table 2 below outlines a comprehensive issues list, grouped by stages in the PPP lifecycle:

- Planning (Business Case and approvals)
- Procurement process
- Construction phase
- Operational phase

24. The Commission and Treasury will be across all policy issues, with responsibility for the advice sitting with the Commission.

Table 2: PPP Policy Issues List

Policy Issue	Holding the pen for first draft
Planning (Business Case and approvals)	
PPP quantitative tests – (Public Sector Comparator, Value for Money, Discount Rates etc)	InfraCom
PPP qualitative tests – procurement options analysis (Project characteristics and procurement model evaluation)	Infracom
How much to borrow (Private finance vs Crown capital contributions)	TSY
Conditional debt pay down options	TSY
Availability and Economic PPPs	InfraCom
Procurement process	
Bid development reimbursement	TSY
Non-price and price evaluation (including Affordability Threshold, all in fixed price, partially fixed price schedules, Incentivised Target Costs)	InfraCom
Collaborative tendering (e.g., Enhanced interactive tendering sessions/process with bidders)	InfraCom
Timing of preferred bidder selection, financial close, and role of progressive development phase agreement	InfraCom
Optimal risk allocation	InfraCom
Evaluation criteria (e.g., past performance, subcontractor strategy, no weightings, DD)	InfraCom
Construction phase	
Crown governance, monitoring and oversight (incl. role of central agencies e.g. RAMA approach to report to MoF)	TSY
SPV resourcing and equity levers / risk (incl. options for Crown 'seat at the table')	TSY
Dispute resolution strategies and pathways (e.g. increased ADR threshold), review relief clauses (CEE, Pandemic etc)	TSY
Project level governance groups (RMG, PGG)	InfraCom

Policy Issue	Holding the pen for first draft
Design development (refer procurement phase FC timing issue, i.e. should design be better developed pre-contract)	InfraCom
Completion regime, including role of IR, Crown step-in / direction / termination levers	InfraCom
Right-sizing liquidated damages (e.g., through amendment to the project finance structure such as Crown contributions for debt repayment during construction)	InfraCom
Operational phase	
Refinancing and (including debt pay down options for existing projects)	TSY
Change of ownership protocols	Infracom
Contract Management and information hygiene (e.g. maintenance of Final Design Documentation)	InfraCom
Major expansion / augmentation (beyond scope of Change regime)	InfraCom
Commercial reset and price benchmarking provisions (incl. regulated asset base models)	InfraCom
Preparation for hand-back – plan early	InfraCom

Prospective PPP Projects & Readiness

ATTACHMENT 1

Project	Current Status	Target Cabinet Approval	Target Funding Decision	Target EOI in Market	Potential Contractual & Financial Close	Market awareness & appetite	Agency PPP capability and readiness	PPP Policy Issue "Use Case"
Department of Corrections **Waikeria Prison PPP Expansion** Provides an estimated s9(2)(i) [redacted] expansion at Waikeria Prison. Currently proposed to be delivered by the existing PPP Consortium ~[$ subject to negotiation]	Department in preliminary negotiations for expansion, supported by Infrastructure Commission	s9(2)(i) [redacted]	Funded in Budget 2024 ✓	June 2025 (following funding approval)	s9(2)(i) [redacted]	Awareness High Appetite mixed	s9(2)(i) [redacted]	• s9(2)(i) [redacted] • Sole sourced process • Major augmentation
NZDF **Accommodation Messing and Dining Modernisation at Linton Camp** s9(2)(i) [redacted] new barrack rooms and new messing facility at Linton Camp. s9(2)(i) [redacted]	s9(2)(i) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	High	[redacted]	• Vanilla PPP using existing standard form and precedent
Ministry of Justice **Waitākere and Rotorua Courts** Two new District Courthouses and Maori Land Court on sites already acquired by MoJ s9(2)(i) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	High	[redacted]	• s9(2)(i) [redacted]
Department of Corrections **Christchurch Men's Prison Redevelopment** Staged construction of s9(2)(i) [redacted] new prison capacity and various supporting buildings at (adjacent to) existing site. Stage 1 s9(2)(i) [redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	High	[redacted]	• Framework for subsequent stages to enhance deliverability, procurement efficiency and performance incentives
NZTA **SH1 Warkworth to Te Hana (first component of Northern RoNS programme)** First proposed project in the Northern Corridor to unlock regional economic growth and deliver improved resilience and safety for Northland	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Formal market awareness limited to Draft GPS at this stage		• s9(2)(i) [redacted] • Framework for subsequent transactions for procurement efficiency and performance incentive

NEW ZEALAND INFRASTRUCTURE COMMISSION Te Waihanga

Te Kāwanatanga o Aotearoa New Zealand Government

August IIMG Agenda Item – Public Private Partnership model and policy update

Date:	9 August 2024
Report No:	TW-2024-456

To	Action sought	Deadline
To Simon Court MP, Parliamentary Under-Secretary to the Minister for Infrastructure	**Provide feedback** on the content and level of detail that should be included in the August IIMG Meeting Pack	Midday Monday 12 August
CC Hon Chris Bishop, Minister for Infrastructure		
Attachments		
1. Draft 20 August IIMG Coversheet		

Contact details

Name	Role	Phone
Brendan Herder	Director, Investment and Reviews	s9(2)(a) [redacted]
Andy Hagan	General Manager, Delivery	s9(2)(a) [redacted]

Actions for Office Staff

Provide any feedback on the content of this paper to the Commission by midday Monday 12 August

Comments for Infrastructure Commission

IN-CONFIDENCE

Recommendations

We recommend that you:

1. **Provide any feedback** on the content and level of detail that should be included in the paper for the 20 August meeting of the Infrastructure and Investment Ministers Group meeting, by midday Monday 12 August

s9(2)(a) [redacted]

Andy Hagan
General Manager, Delivery

Simon Court MP
Parliamentary Under-Secretary to the Minister for Infrastructure

_____ / _____ / _____

Purpose

2. This aide memoire proposes content for a paper for the meeting of the Infrastructure and Investment Ministers Group (IIMG) on 20 August. The IIMG paper is due to be submitted to the Treasury Secretariat on 13 August, for distribution to IIMG on 14 August. We welcome your feedback by midday Monday.

3. Based on your feedback, we will take the content of this aide memoire and convert it into a format suitable for IIMG. This will include a summary of the content of this paper and potentially a table summarising key issues and the direction of travel.

Background

4. The PPP Policy work programme is progressing well. We have held our second cross-agency workshop to discuss our emerging advice on the priority policy issues and received strong support for our work from current and prospective PPP client agencies. The market is responding positively to our soft signalling of what we have learnt from the New Zealand PPP Programme to date and testing of where the future New Zealand PPP Framework is heading. We have also boosted our resourcing with some targeted specialist consultant support as we finalise our advice for the end of September.

5. In July, you presented the workplan for PPP model and policy enhancement to the Infrastructure Investment Ministers Group (IIMG), sought agreement to the identified 'priority policy issues list', and invited members to add policy issues to our work programme . A further PPP model and policy update is on the agenda for the 20 August IIMG meeting so that you can provide a more substantive update on the emerging policy positions. This will be the last IIMG meeting where members' feedback on PPP policy issues can be provided and incorporated into officials' advice (including a Draft Cabinet Paper) and public facing material, which will be finalised in September.

6. IIMG papers need to be succinct, highlight any decision being sought, policy or delivery risks, interdependencies with other infrastructure priorities, and the timing of next steps. We consider the August paper should:

   a. include a succinct summary of the direction being taken in relation to various PPP policy issues (including those identified and agreed as priority issues at the July IIMG meeting), to ensure members are comfortable with where final advice is expected to land on those issues.

   b. s9(2)(g)(i) [redacted]

   c. highlight the importance of a smooth transition of PPP responsibilities to new system settings from 1 November, and risks of disruption to current momentum and market confidence if this is not handled effectively. You should note this is out of scope of your PPP policy delegation but you are flagging it as a risk to members.

note that the 1 November date subsequently changed to 1 December

d. outline the process to conclude the PPP policy work programme, and a high-level communications and consultation strategy (noting that you will speak to some of the likely policy conclusions at Building Nations in late August).

Summary of emerging positions for an enhanced PPP Framework

7. A summary of our emerging recommendations on various PPP policy issues is provided below. This includes the priority policy issues agreed by IIMG members in July (which reflected priorities for announcement to market participants at the Prime Minister's Infrastructure Summit and other events).

The framework has since been published. This event is being proposed for a later date

Strong time, cost and performance incentives, without undue concentration of risk

Nature of issue

8. PPP projects have to date been criticised for transferring too much risk to the Contractor (which are borne disproportionately by the Construction Major-Subcontractor within the Contractor Consortium) undermining appetite for new projects.

Direction of travel

9. There are options for the Crown to take back targeted risks that the Contractor may not be well placed to manage in project-specific circumstances, including some ground condition risk, sub-contractor insolvency, and risk relating to uncertain consent conditions at the time of contracting. There are also options to retain strong risk transfer and the incentives this provides, if we de-risk the project through enhanced up-front planning preparation, and collaboration.

Discussion

10. One of the fundamental elements of a PPP is that it provides strong incentives for high performance and innovation during the construction phase, at completion and handover of the constructed asset to the operating phase, and throughout the ~25 year operating concession period.

11. s9(2)(i), s9(2)(j) [redacted]

13. We note the current PPP model and contract suite is flexible to specific or global risk carve outs, and can therefore accommodate project-appropriate risk settings. Agencies

have and are using these provisions on a 'best for project' basis. Updated guidance and practice will encourage the use of these mechanisms, as appropriate, and learning from past transactions.

14. In addition, procurement process improvements will assist with this. Increased up-front planning and enabling conditions (such as land acquisition, confidence in consent conditions, geotechnical investigations, and clear scope and design requirements) will also be critical for setting projects up for success. Stage 1 of the proposed Northland Corridor Road of National Significance and NZTA's accelerated delivery strategy are good examples of learning these lessons from past projects.

15. One of the areas where existing risk transfer is perhaps too significant is in the application of liquidated damages related to financing costs. By way of illustration, at interest rates of 4% the Builder on a project with $1 billion of debt faces liquidated damages of $769,000 per week for debt service alone. The most practical way to reduce this burden without unintended consequences on other incentives is to have less private debt in the transaction. This consideration, along with options for reduced debt and the associated benefits and trade-offs, are described further under "Right-Sizing Liquidated Damages" and "Modified Financing Options" below.

16. Another area that requires careful review to ensure greater pragmatism without losing critical performance incentives is the Works Completion regime at the conclusion of the construction phase. This is not discussed in this paper but will feature in our final advice.

Lowering the cost of bidding PPPs and financial contributions to bid cost reduction

Nature of the issue

17. Bidding for a PPP is a longer and more expensive process than other procurement processes, which makes then unattractive to participate in if you are not confident of winning.

Direction of travel

18. There are choices project teams can make which influence the cost of bidding, such as how much design work is required at the competitive RFP phase, or whether bids must be submitted with fully committed finance. The number of bidders shortlisted and the duration of the competitive phase are also relevant to bidders' appetite to participate. A sensible and consistent policy for making a contribution to unsuccessful bidders' costs will also be one of our key recommendations to enhance the attractiveness and therefore value for money achieved from a competitive procurement process.

Discussion

19. Some of the more common complaints about PPPs from market participants is that the procurement process is long, transaction costs are high, and they are generally asked to do significantly more design development during the competitive procurement phase (i.e. at risk of not being successful and recovering those costs).

20. There are existing choices client agencies can make to lower the cost of bidding, and we will encourage greater consideration of these through our guidance. These include:

    a. how much design development is done internally before procurement commences (this can streamline the bidding process if the client agency knows what it wants, but reduces the potential for innovation in design during the bid phase).

    b. the length of the competitive RFP phase and how many bidders are taken through that phase (we recommend only two, subject to confidence that they are two credible bidders who will see the process through to completion).

    c. How consortia are required to form, including whether bids must be 'fully funded' with committed bank debt. Debt financier due diligence is one of the benefits of PPP but can add time and cost to the procurement phase, and it may not be practical to require fully-committed debt for all bids based on the expected volume and scale of potential transactions. An alternative would be to make debt providers compete to particpate in the proejct separately from the rest of the consortium during the preferred bidder phase, which as well as streamlining the RFP phase can result in sharper pricing (but conversely reduce confidence in the robustness of bid proposals as a result of deferred due diligence).

21. Despite the options above to lower the cost of bidding, it will still be an expensive process for respondents when compared to other infrastructure delivery models. We therefore recommend that client agencies offer a bid stiped (partial reimbursement of unsuccessful bidders' costs) subject to some clearly identified parameters, including:

    a. a maximum value or cap is agreed for each project. This ensures that the Crown's contribution to bid costs does not exceed a predetermined limit.

    b. The cap is linked to the original capital cost of the project. This approach helps align the funding with the project's financial requirements.

    c. The bidding process should account for, and support the involvement of, international consortiums. This could include provisions for covering or subsidising some of the bid costs to make it more feasible for international groups to participate.

22. There are some downsides to this. For example, it risks diminishing the quality of bids, as the 'at risk' nature of unfunded bid costs provides a strong incentive to win, and bidders without high confidence they can win will self-select out of the process. Conversely, this is precisely why offering partial reimbursement to unsuccessful bidders can provide value for money, as increased competition can result in higher quality winning bids. We note however that paying a second bidder to participate solely to keep competitive tension on a likely winner, while likely to provide value for money, is not appropriate.

23. Our detailed final advice will canvass the approach to bid costs in other jurisdictions and make more specific recommendations, but we suggest that early announcements (such

as your Building Nations speech) include a strong signal that that the Government will encourage a consistent approach to reimbursing bid costs.[1]

Right-sizing liquidated damages for late delivery so they are an appropriate incentive

Nature of the issue

24. Because private debt is accrued to finance the construction of a PPP asset, but no revenue flows from the public sector client agency unless and until the asset is completed to the contractually specified standard and available to deliver services, liquidated damages (LDs) are payable to the debt financiers (and generally borne by the Construction Major-Subcontractor as they are best placed to managed on-time delivery risk). However, the expectation that they bear this risk has been heavily criticised by the construction sector, and is a significant factor in their appetite to participate in PPPs (or financial ability to participate due to bonding requirements that flow from the LD risk).

Direction of travel

25. We are exploring potential mechanisms to provide some targeted relief from the burden of LDs in appropriate circumstances. However, we are finding that setting a reasonable and achievable construction programme, and right sizing the amount of private finance (specifically debt) used in PPP transactions, are likely to be more effective policy responses with a less distorting effect on other incentives.

Discussion

26. Liquidated damages (LDs) are a contractually pre-agreed sum that one party pays to the other if they breach the contract, typically linked to schedule delays, with the amount reflecting loss caused by the breach. In PPPs, schedule risk is transferred to the SPV through the ability to withhold the Unitary Payment until construction completion. A significant portion of that Unitary Payment is debt service, and the SPV transfers this risk down to the Design-Builder through LDs sized to service the outstanding debt. As mentioned above, this results in high LDs, with $1 billion of debt resulting in significant liquidated damages of $769,000 per week for debt service alone.

27. The most effective way to right-size LDs is to reduce the maximum amount of debt required in the PPP. This is only one consideration in the overall analysis around right-sizing private finance, discussed below in Modified Financing Options (along with options to achieve this). Considerations should include the relative size of potential LDs to total construction cost, financial capacity and capability of likely market participants, size of the contractor market, and impact on incentives to deliver on-time.

28. Other options do exist for mitigating the potential impact of LDs, including LD sharing regimes, but these are considered less appropriate options to the one discussed above.

[1] This is an option already available to agencies but only materially implemented on some projects to date. The future guidance will state it should be standard practice where certain conditions are met.

Modified financing options

Nature of the issue

29. Modified financing refers to using general Crown borrowing to finance PPPs instead of project finance and may improve value for money in PPPs and alleviate the impact of LDs.

Direction of travel

30. There are options to either apply Crown finance alongside private finance during the construction phase (generally referred to as 'Crown Contributions') or to pay down private finance with Crown finance at various milestones (generally referred to as 'Conditional Debt Paydowns'). Both are good options to explore as with the scale of projects increasing it is not necessary to fully private-finance multi-billion dollar projects to achieve the desired performance incentives that project finance provides.

Discussion

31. Modified financing options should be considered where value for money can be improved. Although modified financing options such as Crown capital contributions (including conditional debt pay downs) can improve value for money, it is important to maintain sufficient private capital at risk to absorb the remaining risks the private sector is taking to incentivise performance.
32. Modified financing arrangements generally include capital contributions or a form of concessional debt finance, debt subsidy or debt guarantees from government. Each modified financing option has unique and consequential impacts on the PPP incentive structure and must be tailored on a case-by-case basis to achieve the desired outcome (i.e. reducing financing risk, or improving value-for-money, or reducing an economic feasibility gap). The Crown may consider a partial capital contribution through:
    a. milestone payments during construction;
    b. a lump sum payment once construction is complete; and/or
    c. a lump sum payment at a refinancing event during the operational phase of the project.
33. A partial capital contribution approach ensures projects have a level of private sector capital in the operations period, which is appropriate for the risks being absorbed. It provides an incentive to deliver the desired outputs. Government should only pay for the optimal level of risk capital to deliver desired performance and improved value outcomes. A capital contribution once construction is finished is appropriate to achieve greater value for money, while maintaining the integrity of risk transfer during the design and construction phase when project risk is at its peak.
34. Optimising the funding and financing structure should be undertaken on a project by project basis as part of the business case process, however Public entities will require more specific guidance on how to assess and develop the optimal structure. We will present an approach for implementing modified financing in our final advice.

Improving our collaborative tendering practices

Nature of the issue

35. The Interactive Tender Process (ITP) is a key part of the PPP Procurement Process that provides opportunities for bidders to test their developing solutions with the client agency. However, they have not always been used optimally in the past, with the exchange of information and feedback stifled by varying sophistication of bidders in the skilled use of ITP sessions; as well as an overly-cautious approach to probity restricting free and frank feedback by client agencies.

Direction of travel

36. We do not consider much policy change is needed here, but clear guidance and expectations on how to run effective and appropriate ITP sessions to increase engagement and improve project outcomes would be beneficial.

Discussion

37. The Interactive Tender Process (ITP) is an important mechanism used during the RFP stage in PPPs (and other complex procurement processes) to facilitate significant interaction between a procuring agency and the bidders, ensuring that each bidder understands the procuring agencies requirements and can develop their best possible response. It is intended to improve confidence in the procuring agency of receiving bids that meet their requirements, and confidence in the bidders that their bid is developing in a way that most optimally meets the procuring agency's requirements. The high costs and long timelines associated with procuring and bidding these complex projects require this increased confidence from all involved parties.

38. s9(2)(g)(i) [redacted]

39. We have committed to ensuring that future ITPs are as collaborative and valuable to all parties as intended. However, to maximise the value of ITP sessions, all parties involved (bidders and procuring agencies) need to have a good understanding of the purpose of the sessions and how they should be conducted, with collaborative discussions encouraged. Probity is a critical element of a fair procurement process, but probity advisors should be seen as an enabler of collaboration, with their presence ensuring that no lines are crossed.

40. Guidance will be developed to help ensure all parties understand the intent of ITP sessions, and are appropriately skilled to plan and conduct them in a way that achieves that intent.

The Affordability Threshold and other pricing mechanisms, and how they interplay with the value for money assessment of a PPP proposal

Nature of issue

41. If the Affordability Threshold (AT) is set too low (because of optimistic or inaccurate business case estimates, or because costs escalate during the procurement phase due to factors unknown at the time the AT was set), delivery of the project outcomes will be at risk. If there is insufficient or negative construction contractor margin in a project, the incentives will skew towards claims and disputes rather than high performance and delivery.

Direction of travel

42. The Affordability Threshold should be validated at key milestones to ensure it is sufficient to deliver the project outcomes.

Discussion

43. A critical stage of a PPP procurement, and a direct responsibility of Project Governance, is the setting of the Affordability Threshold[2] (AT) due to its potential impact on the level of market competition, the feasibility of the private sector delivering the project and the level of value for money received by the public sector.

44. The fact that a PPP requires a fixed price to manage complex risks over the construction and operating phase of a project makes it essential to ensure that the AT is appropriate. Inaccurate or optimistic cost estimates at the procurement phase may place excessive stress on the ability of the Contractor to deliver the project outcomes, resulting in undesirable trade-offs occurring in real time during either the procurement or construction phase, and straining relationships between the parties.

45. Significant time can elapse between cost estimates being developed to inform the Public Sector Comparator (PSC) and AT during the business case phase and the submission of a complying fixed price proposal at the conclusion of the RFP. The AT and PSC should be monitored during the procurement process and updated at appropriate milestones if inputs or assumptions change materially. Given the importance of the AT to a successful procurement, Te Waihanga recommends that agency facing guidance on setting the AT be updated to include the three principles below:

    a. the project governance group should consider and interrogate the AT to be included in the RFP. This ensures that appropriate governance checks are in place and that governance considers the risks and trade-offs in setting the AT too high or too low;

    b. design or scope changes that are likely to impact on a bidder's ability to meet the AT should be limited;

[2]Equal to the net present cost that a consortium's project bid must be below.

c. the governance group should consider any feedback from bidders on the sufficiency of the AT during the RFP process to determine whether the AT should be revised (particularly where there is clear and consistent evidence that the AT may be set too high or too low).

Claims management and dispute resolution strategies

Nature of the issue

46. Recent PPP projects have been beset by significant claims and disputes. s9(2)(i) [redacted] Managing disputes absorbs significant resource that could be productively applied elsewhere for the good of the project, so they should be avoided where practicable.

Direction of travel

47. There are dispute resolution procedures in the Standard Form PPP Project Agreement that we will seek to improve. Guidance to agencies on the effective management of claims, and centralised oversight of significant disputes, will also feature in our final advice.

Discussion

48. If we address many of the other issues described in this paper, including reasonable time and cost parameters, and continuing monitoring and validation of the sufficiency of affordability threshold during the procurement process, the frequency of significant disputes should reduce.

49. New Zealand's current PPP Standard Form Agreement sets out the contractually agreed dispute resolution requirements. Implementation of these processes has proven challenging in practice, with parties often opting to operate and seek resolution outside of the contract structure. Existing contractual provisions that introduce independent parties into dispute resolution processes have not resulted in the timely resolution of disputes, with parties opting to seek resolution through the Courts system.

50. Our final advice will consider the component parts of the PPP dispute resolution process and how these might be updated and strengthened to give effect to the intent of the policy (that there should be clear and binding processes set out in the PPP Project Agreement). This would cover the role of the Independent Reviewer and the contractual dispute resolution processes.

51. The Independent Reviewer could act as a neutral third party during the escalation of disputes, reviewing claims made by the private sector and assessing them impartially to ensure that they are grounded and reasonable before escalating further. They could make recommendations for resolution, which can help in deescalating disputes before they reach formal adjudication and save on potential legal and administrative costs.

Crown resourcing and capability

Nature of the Issue

52. PPP projects are complex transactions with whole of life project monitoring and contract management requirements. Project teams (and the Crown's centralised PPP functions) must be appropriately resourced to plan, procure, negotiate and manage these contracts.

Direction of Travel

53. Emphasis to relevant agencies of the criticality of key senior leadership appointments and an appreciation of the necessary funding requirements by investment decision makers should be sufficient to ensure appropriate resourcing.

Discussion

54. Previous PPP projects undertaken in New Zealand have demonstrated that successful delivery of outcomes is heavily influenced by the level of specific PPP capability and capacity within Crown agencies. This applies equally to the procuring agency and the centralised PPP centre of expertise.

55. As with many large-scale commercial and procurement projects, PPP projects require a diverse range of capabilities. These capabilities fit into the following broad categories:

    a. Governance

    b. Project Management

    c. Commercial (e.g. procurement, legal and financial advice)

    d. Technical (e.g. advice on construction and service delivery).

56. The Infrastructure Commission has developed a project leadership capability framework that can assist agencies in appointing project leaders and investing in their capability development.[3]

57. We note that a core lesson from all PPPs undertaken in New Zealand to date is the criticality of the eventual asset owner retaining high levels of commercial capability beyond financial close and through the construction and operational phases of the project.

58. Given the specialisation of some of these skills and the capacity required to successfully complete a PPP project, the public sector entity may need to procure resources externally on a temporary basis. Individual agencies with a pipeline of PPP projects should of course consider building much of this capability internally.

59. We intend to update guidance on the appropriate levels of resourcing and expertise required to support the successful delivery of PPP projects at both project team and governance levels. Areas of focus in our final advice will include the function and scale of

[3] https://tewaihanga.govt.nz/our-work/project-support/guidance/project-leadership-capability-framework

the project team through different stages of delivery (business case development, procurement, construction, operations and handover), agency project/ programme governance, the role of the Crown on project governance, the role of centralised support and the monitoring of agency delivery.

The public sector comparator vs proxy bid model qualitative "value for money test"

Nature of the issue

60. There is an established methodology for determining if a PPP provider can be sufficiently efficient in the management of risk and optimising whole of life costs to overcome the additional costs of PPP procurement (relative to the public sector counterfactual). However, there are concerns this methodology may not be as robust as it appears, as it relies on subjective assessments and assumptions but is presented as hard qualitative analysis.

Direction of travel

61. We are considering both potential improvements to the methodology and replacing it with a more explicitly and transparently subjective qualitative test, based on observable outcomes from comparable projects.

Discussion

62. Governments and infrastructure users benefit from having value for money (VFM) at the centre of PPP decisions. However, the assessment of VFM needs to strike the right balance between qualitative and quantitative approaches – particularly in new PPP programmes, where there is very limited data available to inform assumptions for quantitative analysis; and in some cases a lack of capacity to implement complex risk analysis. Generally speaking, this will involve greater emphasis and scrutiny on qualitative aspects of PPP decision-making.

63. Quantitative analysis can be useful to inform decision-making, but should be understood and communicated more as a tool to consistently and systematically assess the combined result of a set of assumptions than as a scientific process that provides "proof" of VFM. VFM analysis is just the start of the process of achieving value through a PPP. The best-structured and -assessed PPP still requires careful shepherding over the project lifetime – with well-defined contract management structures, attentive management of emerging risks, and an appropriately flexible approach to dealing with change – to achieve value for money in practice.

64. We are still working through whether this piece of detailed PPP business case analysis should be improved, or replaced by increased emphasis on qualitative criteria. In the interim, s9(2)(f)(iv) [redacted] We will provide recommendations on a way forward in our final advice, however, some related

observations on lessons from PPP project assessment for asset management, business cases generally and investment decision making are outlined later in this report.

PPPs, the PSC and lessons for asset management, business cases, and investment decisions

65. Our consideration of the PPP quantitative VFM test and justification of the whole of life performance benefits of PPP over traditional procurement and delivery methods has revealed some of the root cause for why PPP projects appear more expensive than traditional non-PPP delivery. This is despite our framework for economic analysis that concludes they can be delivered at no greater net present whole of life cost.

66. On an economic whole of life net present cost analysis (i.e. the basis of the Business Case process) a PPP can offer superior performance levels. The criteria for determining if that is true of any given project are mostly qualitative and subjective. It is most likely to be true where the characteristics for a successful PPP are present, including clear opportunities to out-perform the whole of life asset management practices and operating service levels delivered by traditional public sector delivery.

67. PPP providers can achieve this superior performance because they are empowered by long term funding certainty to make decisions informed by whole of life performance and service levels, rather than upfront costs – and by better managing risks that public sector often manages poorly (usually due to competing funding requirements and difficult trade-offs required). One example of this is the often light resourcing of project team capacity and capability.[4]

68. An economic whole of life net present cost analysis recognises that under the counterfactual to a PPP (the Public Sector Comparator), the Crown is exposed to, and therefore meets, the cost of all the same whole of life asset condition, availability and performance risk. It is therefore a 'Modelled' Public Sector Comparator, that recognises all the costs and risks of construction and ownership. These whole of life costs and risks are recognised in the Business Case justification for a PPP, but are not accounted or appropriated for in the 'Real' Public Sector Comparator, s9(2)(g)(i) [redacted]

69. The hidden liability of deferred maintenance does not meet the accounting recognition criteria to be included on balance sheet. A PPP recognises and crystallises our asset management obligations. When we contract for whole of life asset performance, the accounting standards require us to recognise the whole of life liability to pay a contractor to manage the exact same risks that we are exposed to under the counterfactual, but do not recognise and manage well.

[4] The public service is being asked to show fiscal restraint but when it comes to significant infrastructure, investment in senior project leadership capability can have a disproportionately positive return on value for money outcomes from public spending. We need to match the private sector's level of skill and capability but this can be difficult on public sector remuneration scales.

Consultation on our final advice

70. It is important that the views of industry are heard and incorporated in our work. Engagement with and by representative bodies such as Infrastructure New Zealand (INZ), Association of Consulting, Engineering New Zealand (ACE NZ) and Civil Contractors New Zealand (CCNZ) are useful in this regard.

71. INZ's recent attempts to represent the combined views of its membership demonstrated that there is not complete consensus on the detailed and specific approaches to a new PPP Framework, as some model and policy changes benefit some participants more than others. However, there is broad alignment and consensus on some key themes.

72. Debt financiers, for example, are unlikely to advocate for reduced private finance being incorporated in large transactions, but have communicated to us their views on the minimum attractive and viable deal size (~$300 to $500m of debt will get most investors interested in participating and justify the transaction costs). Not surprisingly, construction contractors will advocate for reduced risk and performance accountability sitting with them; however, their concerns that they carry disproportionate risk within the consortium, s9(2)(i), s9(2)(f)(iv) [redacted]

73. We have had broad and detailed conversations with market participants to inform our work to date, but an important next step is our market consultation and engagement on our draft findings and advice. We had previously programmed this in for the week of INZ's Building Nations conference in late August. This was on the basis that industry would be gathered in Auckland and the timing was broadly aligned with the development of our final advice for 30 September.

74. However, as the NZTA-led Staged PPP market sounding for the Northland RoNS concludes in Auckland on 26 and 27 August, a number of PPP-related discussions are on the Building Nations conference programme for 28 and 29 August, and various market participants are hosting networking events in Auckland that week, we decided that there would be a high risk of PPP consultation fatigue if we were to add further engagement into that week. The NZTA market engagement, INZ-led discussions on their thought leadership document, and your address on Day 2 of the conference will set a fertile platform for us to consult with market participants in the weeks that follow.

75. This revised consultation programme also has the benefit that you can announce some of the PPP policy direction at Building Nations, as by the time our final advice is considered by Cabinet in October and publicly released, there should be few "surprises" left to reveal if we have consulted and engaged well.

Upcoming Treasury advice that is a critical dependency, but out of scope of your policy work

76. We note that the Treasury has provided advice to the Minister of Finance on accounting implications of a PPP (Aide Memoire: Fiscal Implications from Public Private Partnerships

dated 25 July 2024). There is further work being performed by the Treasury, which will provide an indication of the budget steps required and budget implications of a PPP project. Additional work by Treasury is being undertaken on the estimated fiscal headroom required of the PPP pipeline.

77. Ministers Bishop and Willis are leading on these matters, and it will be important that the fiscal approach to PPP is coordinated with agency project planning and any public messaging on the potential pipeline of PPP projects coming to market. We understand advice on these matters is being progressed around mid-August and it may be the case that Treasury can update the IIMG at the August meeting.

Transition to new system settings from 1 November

78. The Infrastructure Commission is currently involved in all existing PPP project governance and monitoring, all live PPP project negotiations (disputes and expansions), and all prospective PPP business cases and pre-procurement planning. This includes:

    a. BAU project contract management and monitoring (including attending project Governance group meetings).
    b. Transmission Gully s9(2)(i) [redacted]
    c. Puhoi to Warkworth completion s9(2)(i) [redacted]
    d. Northland Corridor RoNS Staged PPP planning, commercial structuring and upcoming market sounding.
    e. Waikeria Prison (current PPP) completion s9(2)(i) [redacted]
    f. Waikeria Prison (expansion) negotiations
    g. Christchurch Men's Prison Redevelopment s9(2)(i) [redacted]
    h. Auckland South Corrections Facility s9(2)(i) [redacted]
    i. Ministry of Education expansions across all three Schools PPP project agreements (finalising negotiation of wrapping-in a Ministry-led D&C to the existing PPPs).
    j. NZDF Linton AMDM (barracks and messes) PPP s9(2)(f)(iv) [redacted]
    k. s9(2)(i), s9(2)(f)(iv) [redacted]

79. This is a heavy workload which has increased as a result of Government signals about the future application of PPP, and for which the Infrastructure Commission is not currently fully resourced (and is partially the intent of the NIA proposal). From 1 November, when the National Infrastructure Agency is proposed to be established, it will take on ongoing role in either PPP policy or project support. The NIA will need to rapidly gear up to take on these project support responsibilities from 1 November, and additional resource and

capability will be needed in the system as these projects progress and to support consistency.

80. A key element of the Crown's centralised PPP project support function is bringing cross-sector project experience and insight. This means that even with new capability in the system, it will take time to build that cross-sector project knowledge base. There is a risk that the Crown's centralised PPP capability and coordination decreases in the short term due to system change and disruption, at what is a critical point in time for the renewed PPP project pipeline, with many potential transactions s9(2)(f)(iv) [redacted]

81. The Commission is working, and will continue to work, closely with our colleagues at the Treasury and Crown Infrastructure Partners in the lead up to establishment of the NIA to ensure a smooth transition of responsibilities.

Developing the new Standard Form Project Agreement(s) and associated documentation on a 'live' project

82. As signalled in our previous advice, development of an enhanced PPP Framework can and should occur in parallel with delivery agencies' prospective project planning. Our policy work programme is well integrated with the work underway by agencies and the policy direction is well aligned with agencies proposed commercial structures.

83. In terms of drafting the specific contractual responses to our policy development work and applying lessons learned from existing projects, we believe the most efficient approach to creating a new Standard Form PPP Contract Suite is to do this in the context of a 'live' project. NZTA needs to develop its contract documentation for the Northland RoNS in the short term, so we propose to begin with a new Standard Form PPP Project Agreement for horizontal civil infrastructure, to be developed in parallel with (and by the same legal team) as the Stage 1 PPP Project Agreement for the Northland RoNS.

84. NZTA has had recent experience addressing a number of the issues more applicable to horizontal projects (consenting issues and risk allocation, bulk land acquisition, geotechnical and site risk) as well as more generic issues (completion mechanics, liquidated damages regime), many of which overlap with our policy work and market feedback. It also needs to develop an expansion/pre-agreed modification regime for these projects, which will be relevant across all asset classes. We also expect that many of other contractual updates developed for the Northland project may be equally applicable to, or easily tailored for, vertical projects.

85. NZTA needs to commence its drafting of updated contractual documents in the short term s9(2)(f)(iv) [redacted] It is therefore not practical from a timing perspective for a stand-alone Standard Form PPP Contract Suite to be developed without significantly impacting the Northland RoNS critical path.

86. We believe a central approach to policy and strategy that then leverages agency-driven investment planning to develop model detail is an effective and efficient approach. We

have been working closely with the Northland Corridor team and it has a number of individuals with good PPP experience that provides us confidence that this approach can be delivered well and that they are in a good position to help update and modernise the PPP contractual framework. NZTA has been involved in all our work to date on the PPP policy development as part of our cross-agency engagement and we will of course continue to work closely with the NZTA Northland Corridor team to ensure that the outputs meet any policy requirements agreed by Cabinet.

Next steps

87. Papers for the 20 August IIMG meeting are due with the Treasury on 13 August. We have provided a draft IIMG meeting coversheet for the item as an attachment with this report.

88. In parallel to your consideration of this paper we will prepare the substantive IIMG paper based on the content of this report, but summarised to a more accessible level of detail suitable for the meeting.

89. Any feedback on the content of this report, that will influence the IIMG paper, is therefore requested by midday Monday. Should you have more substantive feedback, we can liaise with Treasury and your office to agree a way forward.

<table>
<tr><th colspan="2">Infrastructure and Investment Ministers Group
Meeting Item #3: Public Private Partnership model and policy update</th></tr>
<tr><td>Meeting date</td><td>Tuesday, 20 August 2024</td></tr>
<tr><td>Agenda item</td><td>Public Private Partnership model and policy update – substantive policy matters</td></tr>
<tr><td>Lead Minister</td><td>Minister for Infrastructure, Hon Chris Bishop – with delegation to Parliamentary Under-Secretary Simon Court</td></tr>
<tr><td>Lead Agency</td><td>Infrastructure Commission – Andy Hagan (General Manager, Delivery), Brendan Herder (Acting Director, Investments and Reviews)</td></tr>
<tr><td>Reason for consideration</td><td>• This item provides a summary of the direction being taken in relation to various PPP policy issues (including those identified and agreed as priority issues at the July IIMG meeting), to ensure members are comfortable with where final advice is expected to land on those issues.
• It flags the potential risk of growing momentum in the prospective PPP project pipeline (and market preparedness) being at odds with fiscal strategy and budget allowances, and the trade-offs of not funding any projects in advance of Budget25.
• It highlights the importance of a smooth transition of PPP responsibilities to new system settings from 1 November, and risks of disruption if this is not handled effectively.
• This is the last IIMG meeting where members' feedback on PPP policy issues can be provided and incorporated in officials' advice (including a Draft Cabinet Paper) and public facing material which will be finalised in September.
• It outlines the process to conclude the PPP policy work programme, and a high-level communications and consultation strategy (including that Parliamentary Under-Secretary Simon Court will speak to the direction of policy updates outlined in this paper at Building Nations in late August.).</td></tr>
<tr><td>Key focus aas</td><td>• Emerging policy positions expected in officials' final advice.
• The design of the Crown's future PPP policy and project support functions and the importance of a smooth transition to new system settings.
• Fiscal implications of PPPs, and how these differ based on key policy parameters around right-sizing the amount of private finance in any given transaction.</td></tr>
<tr><td>Decisions sought</td><td>• Indicate any concerns with the directions policy positions described in the attached paper.
• Note the Treasury will provide advice to the Ministers of Finance and Infrastructure on:
    o the fiscal strategy implications of PPPs,
    o the potential effect on fiscal indicators should some or all projects in the pipeline be funded, and associated affordability implications.
• Note that the fiscal strategy referred to above and the timing of funding decisions has an impact on pipeline momentum and project delivery.
• Note there are options to right-size the amount of private finance in a PPP transaction, which should not necessarily be driven by fiscal strategy but is a potential lever to optimise how public investments are delivered.
• Agree Parliamentary Under-Secretary Simon Court will speak to the direction of policy updates outlined in this paper at Building Nations in late August.</td></tr>
</table>

Draft market facing document on enhancements to the NZ PPP Framework

Date:	20 September 2024
Report No:	TW-2024-490

To	Action sought	Deadline
To Simon Court MP, Parliamentary Under-Secretary to the Minister for Infrastructure	**Provide feedback** on the content and level of detail in the attached document, and how the policy which underpins it should be presented to Cabinet	Midday Tuesday 24 September
CC Hon Chris Bishop, Minister for Infrastructure		

Attachments
1. Draft '*NZ PPP Framework: A Blueprint for Future Transactions*'

Contact details

Name	Role	Phone
Brendan Herder	Director, Investment and Reviews	s9(2)(a)
Andy Hagan	General Manager, Delivery	s9(2)(a)

Actions for Office Staff

Provide any feedback to the Infrastructure Commission by Tuesday 24 August

Comments for Infrastructure Commission

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Recommendations

We recommend that you:

1. **Provide feedback** on the content and level of detail included in the draft market facing document attached.

s9(2)(a)

[redacted]

Andy Hagan
General Manager, Delivery

Simon Court MP
Parliamentary Under-Secretary to the Minister for Infrastructure

_____ / _____ / ____

Purpose

2. At their meeting on 20 August 2024, the Infrastructure and Investment Ministers Group (IIMG) were provided with an update on the PPP policy work programme [TW-2024-461 refers]. The paper outlined next steps, which included providing you with a draft Cabinet Paper and a public facing document detailing enhancements to New Zealand's PPP Framework by 30 September.
3. This aide memoire provides you with a draft market facing document on the enhancements we will recommend the government makes to the PPP Framework.
4. Your feedback on this document will inform our final advice and accompanying Cabinet Paper on the policy considerations and PPP model changes that underpin the attached document.

Background

5. We are on track to deliver our advice on enhancements to New Zealand's PPP Framework by the end of this month, including the key deliverable – a market facing document outlining how government will approach future PPP transactions.
6. The direction of travel on various policy issues appears well supported by a broad range of stakeholders – including the Infrastructure Investment Ministers Group (IIMG), the Treasury and delivery agencies – and responds to matters raised by market participants and industry bodies through market sounding.
7. We have also held a successful initial transition workshop with Crown Infrastructure Partners in relation to our PPP project support function. We continue to liaise closely with Crown Infrastructure Partners to share and seek feedback on our developing advice on the PPP Framework, and to assist with various queries regarding the transition and future operationalisation of PPP project support functions.

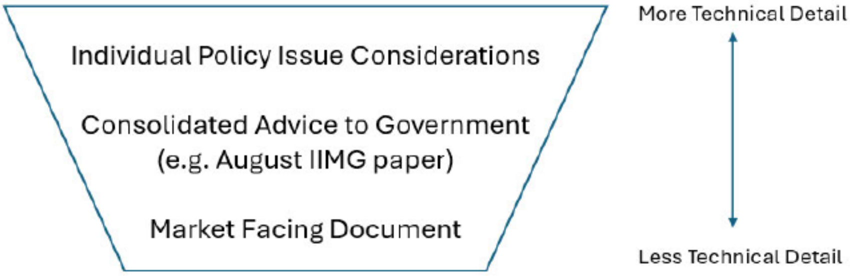
A Blueprint for Future Transactions

8. The attached draft document is provided for your review and feedback.
9. This document reflects our final policy recommendations (which were signalled in the August IIMG paper and will be provided to you next week) and is intended to signal to the market how the government will approach future PPP transactions. It should demonstrate we are willing to update the model to accommodate project and market specific circumstances, but also hold to key fundamental principles of PPP.
10. There has been detailed policy consideration and market sounding required to develop the positions outlined in this document.

Scope and detail of final advice

11. We had originally envisaged that the level of technical detail necessary in the various products generated as part of this policy process would follow the general hierarchy outlined in Figure 1.

Figure 1



12. Now that we have drafted the market facing document, it has become apparent that in order to speak to the material model and policy issues PPP practitioners care about, some quite detailed technical discussion is required. The draft market facing document already includes 15 pages of substantive content.

13. We therefore expect that a lower level of explanation in our final advice and Cabinet paper will be required to avoid significant duplication. Instead, we can append the draft market facing document to the Cabinet paper, provide a summary of the rationale for the policy changes, and seek endorsement to the overall package of model enhancements as represented in the market facing document, rather than seeking Cabinet consideration and approval of each policy change.

14. We understand the Infrastructure Commission will be invited to the Under-Secretary's meeting with officials on Monday 23 September, where we can discuss your views on this ahead of finalisation of our advice later next week.

Enhancements to the New Zealand PPP Framework

Date:	30 September 2024
Report No:	TW-2024-491

To	Action sought	Deadline
Hon Chris Bishop, Minister for Infrastructure Simon Court MP, Parliamentary Under-Secretary to the Minister for Infrastructure	**Agree** to the package of enhancements to the NZ PPP Framework outlined in the attached Cabinet paper and market facing document **Agree** to commence Ministerial consultation on the attached Cabinet paper	Ministerial consultation on attached Cabinet paper to commence as soon as practicable

Attachments

1. Draft Cabinet Paper: Enhancements to the New Zealand PPP Framework
2. *New Zealand PPP Framework: A Blueprint for Future Transactions*

These attachments are publicly available

Contact details

Name	Role	Phone
Brendan Herder	Director, Investment and Reviews	s9(2)(a)
Andy Hagan	General Manager, Delivery	s9(2)(a)

Actions for Office Staff

Provide any feedback to the Infrastructure Commission by Monday, 7 October

IN-CONFIDENCE

Comments for Infrastructure Commission

Executive summary

1. The attached market facing document titled *New Zealand PPP Framework: A Blueprint for Future Transactions* and draft Cabinet paper reflect our final policy recommendations on enhancements to the way the New Zealand Government plans, procures and delivers future PPP transactions. It demonstrates that the government is willing to update the PPP model to accommodate project and market specific circumstances, including being responsive to market feedback, while holding firm to key fundamental principles of PPP.

2. The fundamental principles of PPP are payment for performance, and risk allocation that incentivises that performance. It creates these incentives by bundling a range of services typically procured individually under a single long-term contract, and placing private capital at risk if the contracted outcomes are not achieved. The Crown's single contractual counterparty – the PPP contractor consortium – will allocate risk to the party best able to manage it, in order to ensure it receives its long-term performance and availability based revenue stream unabated. The Crown pays nothing until construction is completed to the standard required to ensure long term performance and operating efficiency (as agreed between all parties during procurement). The Crown is also assured that at the end of a multi-decade operating period the asset remains in a pre-agreed condition for hand-back and can continue providing public services for many more decades.

3. The whole of life service delivery outcomes of PPP are achieved at no greater net present cost than delivering the same construction and operating period services using non-PPP delivery methods. An Affordability Threshold is set based on the Crown's financial indifference point where the PPP will be no more expensive than non-PPP delivery, and the PPP contract will not be entered into unless that Affordability Threshold is met. This indifference point includes consideration of PPP specific costs such as increased project team resource and capability.

4. The key benefits that can be achieved through effective PPP delivery include:

    a. An increased focus on the specification and performance of service outcomes required from infrastructure investment (rather than asset input specification)

    b. Integrated service and asset design solutions ensuring a focus on 'whole of life' optimisation and performance

c. Better risk management through appropriate allocation of risk to parties best able and incentivised to manage them well

d. A long-term contract that provides greater cost certainty to decision makers over the whole life of the asset

e. Strong performance incentives, based on payment for good performance and abatement for poor performance, providing greater certainty that assets will deliver the desired service levels over their useful life, and

f. Wider benefits to New Zealand's infrastructure sector as a result of leveraging private sector expertise, including the potential to deliver innovations, attract new entrants who bring new skills, and increase competition.

5. There are no material fiscal strategy implications or benefits of delivering a given project as a PPP when compared to the fiscal implications of delivering the same project using non-PPP delivery. The Treasury has advised that in terms of fiscal indicators Ministers should be relatively agnostic as to choice of procurement and delivery models (Treasury Report T2024/2487 refers). PPP does not provide a means of delivering more infrastructure than New Zealanders can otherwise afford, it simply provides a framework for potentially delivering it better and achieving greater value over the long term.

6. The enhanced approach to New Zealand PPPs outlined in the attached Cabinet paper and market facing document represents a series of subtle but important operational updates to the way agencies approach future transactions. Individually they would not usually require Cabinet approval, as the financial implications of any PPP project proposal will be considered by Cabinet on the advice of the relevant portfolio Minister. However, the draft Cabinet paper also clarifies when and why PPP should be considered for significant infrastructure which, as there have been no new PPPs for several electoral terms, and the model improvements, could be considered a shift in Government Policy.

7. The key enhancements we recommend for future PPPs include:

a. Enhanced client project preparation and tender phase collaboration which de-risks projects for all participants. This will require a willingness to invest in public sector project team capability, and will be supported by the establishment of the National Infrastructure Agency.

b. Careful and targeted consideration of shared risk allocation (rather than wholesale sharing in project time and cost risk which would undermine fundamental principles of PPP). Only where risks are genuinely too uncertain to be efficiently priced or effectively managed should the Crown consider sharing in construction and performance risks that have traditionally been transferred in PPP projects.

c. Acknowledgement that the Affordability Threshold set for the project must be reasonable and sufficient to deliver the project outcomes and should be validated at key stages of the project.

d. Consideration of direct Crown contributions to project financing so that they are no longer necessarily 100% fully privately financed throughout their life.

e. Improving the opportunities and incentives for innovation, through evaluation criteria, performance requirements, design development and other measures.

f. Planning for major expansions or augmentations at the time the original project agreement is entered into, to ensure value for money options remain available to investment decision makers beyond the date of the original contract.

g. More effective dispute de-escalation and resolution (without relying on adjudication through the courts).

8. Agencies have been kept well informed and support the outcome of our policy development work programme. We recommend that you run an accelerated consultation process for this Cabinet paper to ensure that it receives Cabinet consideration as soon as practicable and ahead of other PPP related papers from Portfolio Ministers.

Recommendations

We recommend that you:

1. **Agree** to the package of enhancements to the NZ PPP Framework outlined in the attached Cabinet paper and market facing document.

   Agree / disagree

2. **Agree** to commence Ministerial consultation on the attached draft Cabinet paper, subject to incorporating a more detailed section on the fiscal treatment of PPPs in conjunction with the Treasury.

   Agree / disagree

3. **Agree** to an accelerated consultation period for the attached Cabinet paper to ensure that it can be considered by Cabinet ahead of other relevant papers on potential PPP projects, without delaying the progress of those projects.

   Agree / disagree

4. **Note** that bipartisan understanding of PPP project delivery and support for the high-level 'benefits of PPP' (both across the Coalition Government and with the parties in Opposition) are important signals to the market that the New Zealand approach to PPP will be stable and enduring, resulting in increased competition for future PPP projects and better value for New Zealanders.

   Agree / disagree

5. **Agree** to the Infrastructure Commission providing a high-level briefing to relevant Opposition spokespersons on the nature and benefits of the New Zealand PPP Framework and the direction of enhancements being considered.

   Agree / disagree

6. **Note** that PPP projects are sophisticated commercial arrangements that require considerable expertise to be delivered well. Project teams must be appropriately resourced (internally and with expert external advisors) and well supported by centralised PPP expertise. The Infrastructure Commission has been supporting multiple agencies with existing and prospective projects and will transition this function to Crown Infrastructure Partners by 1 December 2024.

   Agree / disagree

s9(2)(a) [redacted]

General Manager, Delivery

Hon Chris Bishop
Minister for Infrastructure

_____ / _____ / _____

Simon Court MP
Parliamentary Under-Secretary to the Minister for Infrastructure

_____ / _____ / _____

Purpose

1. This paper concludes the Infrastructure Commission's current work programme to review and update the New Zealand PPP Framework to ensure that it remains a useful option for delivering significant infrastructure projects with a whole of life focus on the public service outcomes delivered from infrastructure investment. It should be read in conjunction with the discussion on the emerging policy direction outlined in our previous report (TW-2024-456 refers).

2. Our policy recommendations are based on years of working closely with agencies on live project negotiations and contract management matters, engagement with market participants and experienced New Zealand and international PPP practitioners, and consideration of the prospective PPP project pipeline and market context. The attached draft Cabinet paper and market facing document titled *New Zealand PPP Framework: A Blueprint for Future Transactions* reflect a package of targeted enhancements to the way government plans, procures and delivers future PPP transactions.

Background

3. In May, Cabinet endorsed the work programme you set out for Improving Infrastructure Funding and Financing (ECO-MIN-0076 refers). Responsibility for developing advice on PPPs was sub-delegated to the Parliamentary Under-Secretary from the Minister for Infrastructure, with the Infrastructure Commission leading the advice.

4. You asked us to provide advice on modernising the Crown's approach to PPP procurement to apply lessons from the New Zealand and international experience to date, better reflect the nature of prospective projects, and enhance deliverability in a range of market conditions. This work is now concluded.

5. In developing this advice, we reflected on our experience supporting agencies through PPP procurement in the 2010s, various settlement negotiations and contract management issues (including the Transmission Gully road opening direction and various Covid-era claims across multiple projects), and agencies planning and market sounding for future projects. We are confident that it appropriately reflects current market tends and expectations while holding firm to key fundamental principles of payment for performance and risk allocation incentives.

6. We have ensured that policy development thinking has been well integrated into agency project planning and worked closely with Treasury representatives. Since the announcement of the National Infrastructure Agency we have also begun the process of engaging with Crown Infrastructure Partners for the transition of PPP related functions, including sharing our draft advice.

7. Infrastructure Investment Ministers were also appraised of the direction of travel of various policy issues in August and the final positions are consistent with that August IIMG paper (TW-2024-456 and related IIMG paper refers).

Why update the New Zealand PPP framework

8. The New Zealand PPP model was developed to deliver improved public services from significant infrastructure investments. It has been highly successful from the perspective of taxpayer value and the end-user service delivery experience, but s9(2)(i) [redacted]

s9(2)(i) [redacted]

9. The Government wants to deliver more efficient, effective and responsive public services and develop a long-term, sustainable pipeline of infrastructure investments. PPP remains a very useful tool in achieving these objectives, but we will not be able to continue to use it effectively if we do not apply lessons from our recent experience and international best practice.

10. The objectives of this policy work programme have been to identify targeted enhancements to the New Zealand PPP Framework to ensure that it:

    a. Retains the core performance incentives of PPP delivery, which contribute to greater time and cost confidence and enhanced whole of life service provision and asset performance.

    b. Achieves better public service outcomes and value for money for taxpayers and users of infrastructure, through better aligning private and public incentives over the life of projects and minimising the likelihood and cost of disputes.

    c. Enhances the efficiency and effectiveness of the PPP model for procuring agencies, by making it easier to optimise the delivery approach on a project-by-project basis, while retaining a consistent and disciplined approach to core commercial matters and transferring lessons across the programme of future transactions.

    d. Improves the market attractiveness of, and participation in, PPP projects by ensuring project outcomes are deliverable, the costs of bidding are reasonable, and increased opportunities for collaboration and innovation benefit all parties.

11. We consider that the attached document titled *New Zealand PPP Framework: A Blueprint for Future Transactions*, and the policy work that underpins it, meets all the above objectives. It carefully balances the need for future PPP projects to attract sufficient market appetite for competitive procurement processes (including from new entrants), while preserving critical value for money and performance requirements.

12. The primary audience of this document is market participants (including construction firms, asset management and maintenance operators, investors, technical experts including design engineers and commercial, financial and legal advisors) to whom we want to communicate how we will adapt our approach to future PPP projects. It also signals to other stakeholders, including the New Zealand public, the way and circumstances in which agencies will consider the suitability and benefits of PPPs.

13. *New Zealand PPP Framework: A Blueprint for Future Transactions* is not a substitute for detailed agency facing guidance on all aspects of PPP project delivery, including the elements that are not changing. The Infrastructure Commission's approach over the past five years has been to provide context specific guidance directly to agencies rather than rely on prescriptive published guidance. This approach has been appropriate during the period in which there have been no new PPPs initiated but written agency facing PPP guidance will need to be updated in due course.

14. The contractual implications of the PPP model enhancements will be operationalised through agency-led legal drafting on future projects, with oversight from the Crown's

centralised PPP expertise. At an appropriate time those contractual updates will be codified in a new Standard Form PPP Contract Suite.

Benefits, costs and misconceptions of PPP

15. PPPs can deliver significant benefits, when applied effectively to the right type of project. They do carry additional costs (such as SPV management overhead and the higher cost of limited-recourse project finance) but the business case process will assess whether these costs can be offset through the achievement of whole of life delivery efficiencies, such as greater cost optimisation and better risk management.

16. PPP should not be categorised as a mere 'funding and financing tool'. Availability based[1] PPPs do not raise additional funding (although bidders could be permitted or encouraged to incorporate third party revenue opportunities in their bids). PPPs do incorporate financing, but this is only as a necessary ingredient to achieve the desired performance incentives that project finance provides, not for the cash flow spreading benefits that could equally be achieved at an all of Crown level through general government borrowing.

17. It is also important to recognise that all external borrowing by public sector agencies is reflected on the consolidated Crown balance sheet, and private finance raised through a PPP is no exception to this. PPP does not offer unique financing benefits and should not be referred to as a mere financing tool, instead it should be considered a comprehensive whole of life project delivery model that utilises private capital and expertise to achieve enhanced delivery outcomes. There are no material fiscal strategy implications or benefits of delivering a given project as a PPP when compared to the fiscal implications of delivering the same project using non-PPP delivery.

18. The Treasury has advised that in terms of fiscal indicators we should be relatively agnostic as to choice of procurement and delivery models[2], and therefore select the model that offers both the greatest confidence that projects will be delivered on time and on budget and the greatest public value from significant financial investment in infrastructure.

19. The specific characteristics of a project, and market conditions at the time, will determine whether PPP is likely to deliver better whole of life performance and value for money. PPP is more likely to be successful where:

    a. The project is of sufficient scale or complexity that it would benefit from increased contractual incentives to manage risk and performance, and that innovative design, construction and service delivery approaches may be employed.

    b. The nature of the asset required is specific and can only be applied to the purpose intended (ruling out other long-term infrastructure delivery models, such as strategic leasing, where the Crown does not need to own the asset).

[1] "Availability Based" means that PPP payments are made only once the asset is available and performing to the agreed standard. The PPP provider takes risk on ensuring the asset is available for service on time and throughout the contract period, not on the patronage, use or other measure of demand for the asset (which would make it a demand-risk or revenue-risk PPP, sometimes referred to as 'Economic PPPs").

[2] Treasury Report - T2024/2487

c. Desired outcomes or outputs can be well-specified, enabling clear articulation and monitoring of performance requirements and standards.

d. There is a stable long-term service need, and it is unlikely that the service requirements will vary unpredictably over the contract term.

e. There is sufficient market appetite and depth to ensure a competitive procurement process.

f. There is a reasonable expectation that the PPP provider will be able to realise risk management and cost optimisation efficiencies, such that they can outperform the most likely counterfactual for non-PPP delivery within the Affordability Threshold.

g. The public sector client is, or will be, adequately resourced with the requisite skills and capacity to procure and manage the project effectively, including the behavioural/cultural shift required to realise the benefits of an outcomes focused partnership which may require significant departures from standard practices.

20. The key benefits that can be achieved through effective PPP delivery include:

a. An increased focus on the specification and performance of service outcomes required from infrastructure investment (rather than asset input specification).

b. Integrated service and asset design solutions ensuring a focus on 'whole of life' optimisation and performance.

c. Better risk management through appropriate allocation of risk to parties best able and incentivised to manage them well.

d. A long-term contract that provides greater cost certainty to decision makers over the whole life of the asset.

e. Strong performance incentives, based on payment for good performance and abatement for poor performance, providing greater certainty that assets will deliver the desired service levels over their useful life.

f. Wider benefits to New Zealand's infrastructure sector as a result of leveraging private sector expertise, including the potential to deliver innovations, attract new entrants who bring new skills, and increase competition.

Enhancing the NZ PPP framework

21. We must demonstrate that we are committed to learning from the shared experience of PPP delivery agencies and contractors to continue to ensure the model is attractive and successful. Officials will continue to engage with the sector and refine the New Zealand PPP Framework to ensure that it remains attractive and successful for future projects.

22. We have identified three broad categories of updates to the PPP model that support this goal, as well as areas that do not require a policy change but will benefit from greater clarification of existing policy.

Clarifying when and how we consider PPP

23. Cabinet has set out its expectations for the management of public investments throughout their lifecycle.[3] PPP is primarily considered during the planning phase, during which all agencies are required to test the merits of an investment from different perspectives, including whether an investment optimises value, any supporting investment needed to realise the intended outcome of an investment, opportunities to scale, phase or consolidate investments, and alternative ways of financing and funding the investment.

24. The investment decision (i.e. whether an investment offers value for money and is a priority for the application of scare public resources) is separate from the procurement or delivery method decision. Both decisions should be supported by a robust business case, and are therefore generally taken at the same time, but should not be conflated.

25. The investment decision requires a value for money assessment, or cost-benefit analysis, comparing the expected benefits of an investment with its estimated costs.

26. To inform the separate decision of whether to deliver an investment as a PPP, agencies will assess the likely benefits of PPP outlined above. They must also consider whether a PPP provider can achieve sufficient cost and risk management efficiencies to offset the additional costs that are not present in non-PPP procurement. These additional costs can include the incremental cost of private financing (relative to the cost of general government borrowing) and additional procurement and contract management costs. This assessment (confusingly also referred to internationally as a 'value for money test') is clarified in the attached document.

Policy enhancements

27. The key policy matters outlined in the attached document include:
    a. New Zealand PPPs will remain primarily focused on transferring availability and performance risk, not revenue generation risk. Third party revenue streams should be explored and maximised but our intent is not to transfer that risk to the private sector (noting that attractive proposals to take that risk should be considered).
    b. Very large PPPs may not need to be fully project financed, with direct Crown contributions likely to offer better value for money in some cases. This will be considered on a project-by-project basis but signalling that this is an option that may be available for agencies represents a shift from past practice. It is important to signal our intent that a material private finance component will remain. Treasury modelling has concluded that the fiscal implications of this change are negligible.

28. Keeping our focus on availability based PPPs does not preclude procuring agencies from seeking novel revenue opportunities, but it does ensure that revenue-risk does not compromise PPP project success and service delivery outcomes. If revenue opportunities are identified (by bidders or by the agency) these can offset the costs of the project without being integrated with the performance regime and payment mechanism.

[3] Cabinet Office Circular 23 (9) https://www.dpmc.govt.nz/sites/default/files/2023-09/co-23-09-investment-management-asset-performance.pdf

29. Using direct Crown contributions keeps the cost of financing and fiscal profile of PPP transactions closer to 'business as usual' non-PPP projects, while preserving the option to use up to 100% project finance if desired. In other words, this is not a prescribed change, but creates greater flexibility in how PPPs are structured and can reduce the total cost of financing. Having less private finance accrued at the end of the Construction period also has the added benefit of taking appropriate pressure off the liquidated damages associated with late delivery, which becomes extremely difficult for construction contractors to provide security packages (bonding) and cashflow for, and will constrain contractor appetite for the model.[4]

Model and contract suite enhancements

30. The most important model and contract suite enhancements relate to ensuring that the risk allocation, performance expectations and incentives for innovation are optimal. This will be achieved through careful consideration of a number of elements of the PPP structure, including:

    a. Careful and targeted consideration of shared risk allocation.

    b. Improving the design development process.

    c. Setting the right evaluation criteria and performance incentives.

    d. Planning for major expansions or augmentations at the time the original project agreement is entered into, to ensure value for money options are available later.

    e. More effective dispute de-escalation and resolution (without relying on adjudication through the courts).

    f. Expectations of equity partners and SPV performance.

    g. Greater pragmatism in the works completion regime, where this does not compromise whole of life performance.

31. These amendments are all geared around making sure that PPPs are calibrated to extract the best possible design innovation and performance from the private sector while remaining pragmatic about the risks that it is efficient to transfer and the performance standards that we prescribe. If cost and performance expectations are calibrated well then we can hold all of our project partners to account and minimise the cost and likelihood of disputes.

32. s9(2)(f)(iv), s9(2)(g)(i), s9(2)(i) [redacted]

Procurement process enhancements

33. Procurement process enhancements outlined in the attached document include:

    a. An acknowledgement that tendering for a PPP is a costly and time-consuming process and that this will be streamlined where practicable. We also confirm that a material contribution should be made to verifiable costs incurred by

[4] As discussed further in TW-2024-456

unsuccessful tenderers where this offers value for money (this is not a new policy and bid stipends have been paid on a case by case basis for past PPPs). Bid cost reimbursement or payment of a 'stipend' is an additional cost to the project which must be overcome by the efficiencies referred to in paragraph 26, and will be included in project Budget initiatives. This cost will be justifiable where it enhances the competitive procurement process by ensuring multiple credible tenderers participate.

b. Acknowledgement that the Affordability Threshold set for the project must be reasonable and sufficient to deliver the project outcomes. It should be validated at key stages of the project.

c. Opportunities to enhance collaboration and feedback during the procurement phase, including through the interactive tender process and consideration of progressive procurement approaches that support the collective de-risking of a project for all parties.

d. An emphasis on the importance of client capability and resourcing.

34. These changes and clarifications will ensure that investment decision makers have confidence that expected benefits and project outcomes will be delivered with value for money. Retaining the Affordability Threshold as a component of the procurement model means that PPP projects will not cost any more than the modelled non-PPP counterfactual for delivering the same whole of life services.

35. This comparison includes allowances for bid cost contributions and any incremental cost of resourcing a high performing client-side project team (which is essential to get value from a more collaborative process). It is also essential however, that initial project cost estimates are robust so that this comparison is credible, and that those estimates are periodically updated with the latest available information.

Cabinet Paper consultation and lodgement

36. The enhanced approach to New Zealand PPPs outlined above represent a series of subtle but important operational updates to the way agencies approach future transactions. Individually they would not usually require Cabinet approval, as the financial implications of any PPP project proposal will be considered on the advice of the relevant portfolio Minister. However, as there have been no new PPPs for several electoral terms, the clarification of how and why agencies should consider PPP for delivering significant investments, alongside the model enhancements, could be considered a shift in Government policy.

37. The enhancements to the PPP Framework we recommend are generally clarifications or operational enhancements to existing PPP policy. To the extent that it comprises a shift in Government policy the most significant item is signalling we will reconsider the most efficient way of financing very large PPPs (injecting some direct Crown contributions using general Crown borrowing, rather than 100% project financing the PPP throughout its life). This change provides guidance to agencies that they should consider how much project finance is necessary to achieve the desired level of risk transfer and incentive, but will always require engagement with the Treasury, and Minister of Finance and Cabinet/Budget approval on a project-by-project basis.

38. We have engaged with relevant agencies and Crown entities during the development of our advice, and they have recently been shared the draft Cabinet paper. We therefore

recommend that the attached draft paper be finalised based on your feedback and any further agency comment this week, and Ministerial consultation commences immediately thereafter. As part of this process we will work with Treasury to include a more fuller explanation of the fiscal impacts of PPP, as we understand your office will commission us to do.

39. **Assuming this timeline, the paper could be lodged on 17 October for ECO consideration on 23 October and Cabinet consideration on 28 October.** If you would like to pursue an even greater acceleration of Ministerial consultation you could aim to bring those dates forward one week earlier, s9(2)(f)(iv) [redacted]

40. We understand there will be a number of PPP related papers requiring Cabinet consideration before the end of the year. These include s9(2)(f)(iv) [redacted]

41. We consider it highly important that a) Cabinet has the benefit of understanding how you consider agencies should approach these future PPP transactions before these other PPP project related papers are considered, and b) your paper on enhancements to the PPP Framework does not delay critical project momentum.

Next steps

42. We consider that senior and bi-partisan support for the Government's approach to PPP transactions is an important signal to the market. Based on your verbal instruction we have begun the process to brief the opposition spokesperson on PPP and the high level direction of the model refresh.

43. One approach to signalling bi-partisan support of PPP would be include Foreword statements from government, and the opposition, in *New Zealand PPP Framework: A Blueprint for Future Transactions*. DPMC has advised that they support this approach. If you agree with this approach, we will work with the relevant offices to draft the foreword statements in parallel with Ministerial consultation.

44. Following Cabinet consideration and endorsement we will publish the market facing document on our website, and engage with the market to communicate the targeted enhancements for future PPP transactions. This includes a webinar being organised with the Spanish Trade Office for the first week of November.

45. We now move into the National Infrastructure Agency transition phase, and will work closely to hand over our broader PPP work programme to Crown Infrastructure Partners and the Treasury (including updating detailed agency facing guidance and working with agencies as they draft their proposed PPP project agreements, which will inform an updated Standard Form Contract Suite), while ensuring that agencies continue to receive access to the centralised PPP expertise that they need to bring prospective projects to market.

Attachments are publicly available

IN CONFIDENCE

Office of the Minister for Infrastructure
Office of the Parliamentary Under-Secretary to the Minister for Infrastructure

Cabinet, Expenditure and Regulatory Review Committee

Enhancements to the New Zealand Public Private Partnership Framework

Proposal

1 This paper provides a report back on enhancements to the New Zealand Public Private Partnership (PPP) framework, a key component of my work programme to Improve Infrastructure Funding and Financing.

2 Enhancements to the way we consider, procure, and deliver projects using the PPP model are represented in the attached market facing document "*New Zealand PPP Framework: A Blueprint for Future Transactions*" that my Under-Secretary, Simon Court, and I are seeking Cabinet endorsement to publish.

Relation to government priorities

3 Enhancing the New Zealand PPP Framework will ensure that more of our nationally significant infrastructure is delivered, operated, and maintained effectively – in a way that incentivises and attracts world-leading innovation and best practice. This will support the Government to achieve our priorities to:

3.1 Lift New Zealand's productivity and economic growth.

3.2 Deliver more efficient, effective and responsive public services to all who need and use them.[1]

3.3 Get the government's books back in order and restore discipline to public spending.[2]

3.4 Develop a long-term, sustainable pipeline of infrastructure investments.[3]

4 The New Zealand PPP Framework will support the delivery of an ambitious pipeline of infrastructure investment by maximising the outcomes and benefits received from that investment. PPPs also support our priority to deliver enduring savings across government infrastructure, through improved risk management, asset management practices, and service level and/or asset condition provision, which is more cost-effective in the long term when compared to current and historic management of our infrastructure asset base.

Executive Summary

5 In May, Cabinet endorsed the work programme I set out for Improving Infrastructure Funding and Financing (ECO-24-MIN-0076 refers). Responsibility for developing advice on PPPs was sub-delegated to the Parliamentary Under-Secretary to the Minister for Infrastructure, with the Infrastructure Commission leading the advice.

6 After careful consideration of agency and market feedback, we have concluded that the New Zealand PPP model remains a useful tool for planning, procuring and

[1] Budget Policy Statement 2024 - overarching goals for this term of office https://budget.govt.nz/budget/pdfs/bps/bps24.pdf
[2] Ibid
[3] Ibid

delivering significant infrastructure well, due to its increased incentives for whole of life performance and value for money. In the right circumstances, PPPs can provide decision makers with greater confidence that our infrastructure investments will be delivered on time and on budget, and that they will deliver the benefits sought throughout their economic life.

7 From its inception nearly two decades ago, the New Zealand PPP model benefitted from international insights and best practice, while also developing its own reputation for embedding a world-leading focus on outcomes and service delivery. However, some recent transactions have faced commercial challenges, and despite delivering great public services, are subject to ongoing disputes with respect to cost and risk allocation. It is timely to review our approach to PPPs and ensure that successful projects can be delivered in a range of circumstances.

8 Future PPPs should retain the fundamental objective of enhanced whole of life service delivery, for a commensurate net present cost (when compared to non-PPP delivery of the same whole of life services). Infrastructure cost-savings should be sought across the Government's investment programme, and we have concluded that this is best achieved through enhanced infrastructure planning and procurement discipline[4], rather than introducing price-competition to the PPP tender evaluation framework that leads to unrealistic bids, creating problems down the track.

9 The fiscal and balance sheet impact of PPPs and conventional delivery approaches are similar. Over the medium-term, our ability to deliver more infrastructure investment will not be meaningfully impacted by whether investments are delivered as PPPs versus using conventional delivery approaches. PPP is not a funding tool and does not provide a means of delivering more infrastructure than New Zealanders can otherwise afford.

10 When we decide to invest in appropriately scoped and planned infrastructure, PPP incentives and discipline offer decision makers the maximum level of confidence that:

10.1 the construction phase will be completed on time and on budget,

10.2 the intended benefits and outcomes will be delivered over the asset's life, and

10.3 the asset's useful life will be extended through greater asset management discipline and hand-back requirements at the end of the PPP term.

11 The attached *Blueprint for Future Transactions* is a market-facing document prepared by the Infrastructure Commission that outlines how we recommend New Zealand approaches future PPPs. It is intended to signal the material enhancements that we consider respond well to market and agency feedback, while holding firm to the fundamental principles of PPP project delivery. We are seeking Cabinet endorsement to finalise and publish this market facing document in early November 2024.

12 The key enhancements we recommend for future PPPs include:

12.1 Enhanced client project preparation and tender phase collaboration, which de-risks projects for all participants. This will require a willingness to invest in public sector project team capability, and will be supported by the establishment of a National Infrastructure Agency (NIA).

[4] This is supported by initiatives such as enhancements to the Treasury's Investment Management System and Better Business Case Framework, and the Infrastructure Commission's National Infrastructure Plan, Infrastructure Needs Assessment and Infrastructure Priorities Programme.

12.2 Careful and targeted consideration of shared risk allocation (rather than wholesale sharing in project time and cost risk which would undermine the fundamental principles of PPP). Only where risks are genuinely too uncertain to be efficiently priced or effectively managed should the Crown take back traditional PPP construction and performance risk allocation.

12.3 Acknowledgement that the Affordability Threshold set for the project must be reasonable and sufficient to deliver the project outcomes and should be validated at key stages of the project.

12.4 Consideration of direct Crown contributions to project financing so that they are no longer necessarily 100% fully privately financed throughout their life.

12.5 Improving the opportunities and incentives for innovation through evaluation criteria, performance requirements, design development, and other measures.

12.6 Planning for major expansions or augmentations at the time the original project agreement is entered into to ensure value for money options are available to investment decision makers later.

12.7 More effective and timely dispute de-escalation and resolution (without relying on adjudication through the courts).

Background

13 Delivering the Government's infrastructure priorities requires a collaborative effort across Ministerial portfolios and Crown agencies. I have established an Infrastructure and Investment Ministers Group (IIMG) to oversee this significant cross-agency work programme [ECO-24-MIN-0048]. In May, Cabinet endorsed the more specific work programme I set out for Improving Infrastructure Funding and Financing [ECO-24-MIN-0076].

14 Responsibility for developing advice on PPPs was sub-delegated to the Parliamentary Under-Secretary to the Minister for Infrastructure, with the Infrastructure Commission leading the advice. The IIMG has been informed at monthly meetings regarding the direction of travel for updates to New Zealand's PPP Framework as outlined in this paper.

Why update the New Zealand PPP Framework

15 The New Zealand PPP model was developed to deliver improved public services from significant infrastructure investments. It has been highly successful from the perspective of taxpayer value and end-user service delivery experience. s9(2)(i) [redacted]

16 The objectives of this policy work programme have been to identify targeted enhancements to the New Zealand PPP Framework to ensure that it:

16.1 Retains the core performance incentives of PPP delivery, which contributes to greater time and cost confidence and enhanced whole of life service provision and asset performance.

16.2 Achieves better public service outcomes and value for money for taxpayers and users of infrastructure, through better aligning private and public incentives over the life of projects and minimising the likelihood and cost of disputes.

16.3 Enhances the efficiency and effectiveness of the PPP model for procuring agencies, by making it easier to optimise the delivery approach on a project-by-project basis, while retaining a consistent and disciplined approach to core commercial matters.

16.4 Improves the market attractiveness of, and participation in, PPP projects by ensuring project outcomes are deliverable, the costs of bidding are reasonable, and increased opportunities for collaboration and innovation benefit all parties.

17 I consider that the attached *Blueprint for Future Transactions*, and the policy work that underpins it, meets all the above objectives. It carefully balances the need for future PPP projects to attract sufficient market appetite for competitive procurement processes (including from new entrants), while preserving critical value for money and performance requirements.

Benefits, Costs and Misconceptions of PPP

18 PPP delivery can achieve significant benefits, when applied effectively to the right projects. They do carry additional costs (such as special purpose vehicle management overhead and the higher cost of limited-recourse project finance) but the business case process will assess whether these costs can be offset through the achievement of whole of life delivery efficiencies, such as greater cost optimisation and better risk management.

19 PPP should not be categorised as a mere ‘funding and financing tool’. Availability based PPPs do not raise additional funding (although bidders could be permitted or encouraged to incorporate third party revenue opportunities in their bids). PPPs do incorporate financing, but this is only to achieve the desired performance incentives, not for cash flow spreading benefits that could equally be achieved at an all of Crown level through general government borrowing.

20 The fiscal and balance sheet impact of PPPs and conventional delivery approaches are similar. All external borrowing by public sector agencies is reflected on the consolidated Crown balance sheet, and private finance raised through a PPP is no exception. PPPs also have associated operating expenditure, including through operations, maintenance, financing costs and depreciation.

21 PPPs can support enhanced delivery outcomes, but do not provide a new funding source for infrastructure. Over the medium-term our ability to deliver more infrastructure investment will not be meaningfully impacted by whether investments are delivered as PPPs or using conventional delivery approaches (except to the extent that PPP incentives offer a decreased likelihood of cost-overruns).

22 The specific characteristics of a project, and market conditions at the time, will determine whether PPP is likely to deliver better whole of life performance and value for money. A PPP is more likely to be successful where:

22.1 the project is of sufficient scale or complexity that it would benefit from increased contractual incentives to manage risk and performance, and that innovative design, construction and service delivery approaches may be employed,

22.2 the nature of the asset required is specific and can only be applied to the purpose intended (ruling out other long-term infrastructure delivery models, such as strategic leasing, where the Crown does not need to own the asset), 22.3 desired outcomes or outputs can be well-specified, enabling clear articulation and monitoring of performance requirements and standards,

22.4 there is a stable long-term service need, and it is unlikely that the service requirements will vary unpredictably over the contract term,

22.5 there is sufficient market appetite and depth to ensure a competitive procurement process,

22.6 there is a reasonable expectation that the PPP provider will be able to realise risk management and cost optimisation efficiencies, such that they can outperform the most likely counterfactual for non-PPP delivery within the Affordability Threshold, and

22.7 the public sector client is, or will be, adequately resourced with the requisite skills and capacity to procure and manage the project effectively, including the behavioural/cultural shift required to realise the benefits of an outcomes focused partnership which may require significant departures from standard practices.

23 The key benefits that can be achieved through effective PPP delivery include:

23.1 An increased focus on the specification and performance of service outcomes required from infrastructure investment (rather than asset input specification)

23.2 Integrated service and asset design solutions ensuring a focus on ‘whole of life’ optimisation and performance

23.3 Better risk management through appropriate allocation of risk to parties best able and incentivised to manage them well

23.4 A long-term contract that provides greater cost certainty to decision makers over the whole life of the asset

23.5 Strong performance incentives, based on payment for good performance and abatement for poor performance, providing greater certainty that assets will deliver the desired service levels over their useful life, and

23.6 Wider benefits to New Zealand’s infrastructure sector as a result of leveraging private sector expertise, including the potential to deliver innovations, attract new entrants who bring new skills, and increase competition.

Enhancing the NZ PPP Framework

24 The Parliamentary Under-Secretary and I have identified three broad categories of updates to the PPP model that support this goal, as well as areas that do not require a policy change but will benefit from greater clarification of existing policy.

Clarifying when and how we consider PPP

25 An infrastructure investment decision (i.e. whether an investment is required to meet a strategic need, offers value for money and is a priority for the application of scarce public resources) is separate from the related procurement or delivery method decision (i.e. should it be delivered as a PPP). Both decisions should be supported by a robust business case, and are therefore generally taken at the same time, but should not be conflated.

26 To inform the separate decision of whether to deliver an investment as a PPP, agencies will assess the likely benefits of PPP outlined above. They must also consider whether a PPP provider can achieve sufficient cost and risk management efficiencies to offset the additional costs that are not present in non-PPP

procurement. On a whole of life basis, this assessment means that PPPs should cost no more than conventional delivery methods, but offer superior outcomes as well as greater time and cost confidence.

Policy enhancements

27 The key policy matters outlined in the attached document include:

27.1 New Zealand PPPs will remain primarily focused on transferring availability and performance risk, not revenue generation risk. Third party revenue streams should be explored and maximised, but our intent is not to transfer that risk to the private sector as a matter of course.

27.2 Very large PPPs may not need to be fully project financed, with direct Crown contributions likely to offer better value for money in some cases. A material private finance component will remain to drive performance incentives.

Model and contract suite enhancements

28 The attached document signals a number of important matters that agencies must give attention to for future PPP projects. The most important of these relate to ensuring that the risk allocation, performance expectations and incentives for innovation are optimal. This will be achieved through careful consideration of a number of elements of the PPP structure, including:

28.1 Planning for major expansions or augmentations at the time the original project agreement is entered into, to ensure value for money options are available later.

28.2 Improving the design development process, and considering greater pragmatism in the works completion regime where this does not compromise whole of life performance.

28.3 More effective and timely dispute de-escalation and resolution (without relying on adjudication through the courts).

Procurement process enhancements

29 Procurement process enhancements outlined in the attached document include:

29.1 An acknowledgement that tendering for a PPP is a costly and time-consuming process and that this will be streamlined where practicable. We also confirm that a material contribution should be made to verifiable costs incurred by unsuccessful tenderers where this offers value for money.

29.2 Acknowledgement that the Affordability Threshold set for the project must be reasonable and sufficient to deliver the project outcomes. It should be validated at key stages of the project.

29.3 Opportunities to enhance collaboration and feedback during the procurement phase, including through the interactive tender process and collaboration that supports the collective de-risking of a project for all parties.

PPP Project Pipeline, Institutional Settings, and Next Steps

30 The matters outlined in this paper will be operationalised at the project level, and Cabinet will have the opportunity to consider the project specific implications (including funding implications) when those projects seek investment approvals.

31 I understand Cabinet will be asked to consider various PPP related investment proposals and report backs from relevant portfolio Ministers in the coming months, including:

s9(2)(f)(iv)

[redacted]

32 The attached document provides high-level guidance to agencies by clarifying the policy direction for PPPs but further and more detailed guidance to agencies, together with centralised PPP project support, oversight and monitoring will be required to fully realise the benefits of PPP projects.

33 The contractual implications of the PPP model enhancements we have outlined in this paper will be codified in an updated Standard Form PPP Contract Suite. We anticipate this will include specific variations for horizontal infrastructure such as roads, vertical infrastructure such as schools, and a variation for smaller projects.

34 The exact approach to updating the Standard Form PPP Contract Suite will be worked through between Treasury (PPP Policy Lead from 1 December 2024), NIA (Crown's Funding and Financing Agency from 1 December), and the Infrastructure Commission (current PPP policy lead and PPP advisor to the Crown).

35 I have reported separately to Cabinet on the establishment of a NIA and associated changes to institutional settings and responsibilities as they relate to PPPs.

Cost-of-living Implications

36 Improvements to the infrastructure funding and financing system will enable greater economic growth and deliver efficient infrastructure, which will have long term impacts on the cost-of-living.

Financial Implications

37 There are no fiscal implications directly arising this paper. Subsequent infrastructure investment decisions, and associated decisions on whether to deliver those investments using PPP, will have fiscal implications at that time.

Legislative Implications

38 There are no legislative implications in this paper.

Impact Analysis

Regulatory Impact Statement

39 There are no regulatory impacts with this paper.

Climate Implications of Policy Assessment

40 There are no CIPA-related implications with this paper.

Population Implications

41 There are no direct population implications with this paper.

Human Rights

42 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of external resources

43 External subject matter experts have been engaged and consulted in a targeted manner, to ensure this work programme meets the needs and expectations of a range of expert PPP practitioners and market participants.

Consultation

44 The Infrastructure Commission has consulted with relevant agencies throughout the development of its advice, including the Treasury, New Zealand Transport Agency, Department of Corrections, Ministry of Education, Ministry of Justice, New Zealand Defence Force, Health New Zealand, and Crown Infrastructure Partners Limited.

45 The Department of the Prime Minister and Cabinet's Policy Advisory Group has also been informed.

Communications

46 I propose that the Infrastructure Commission releases the finalised *Blueprint for Future Transactions* on its website in early November 2024, and continues to engage with the sector to communicate and explain these targeted enhancements to New Zealand's PPP Framework.

47 I will work with the Prime Minister's office, Parliamentary Under-Secretary to the Minister for Infrastructure, and Opposition Spokesperson for Finance and Infrastructure to draft appropriate Foreword statements. An emphasis on cross-party support and bipartisanship is an important signal to the market that the project pipeline, and government PPP policy, will be stable and enduring.

Proactive Release

48 I propose to proactively release this paper.

Recommendations

The Minister for Infrastructure recommends that the Committee:

1 **note** that Public Private Partnerships do not provide a means to deliver more infrastructure than New Zealanders can otherwise afford, but can give investment decision makers greater confidence that infrastructure investments are delivered on time and on budget, and deliver the benefits sought throughout their life.

2 **note** that well planned and executed Public Private Partnerships can deliver the following benefits:

2.1 An increased focus on the specification and performance of service outcomes required from infrastructure investment (rather than asset input specification),

2.2 Integrated service and asset design solutions ensuring a focus on ‘whole of life’ optimisation and performance,

2.3 Better risk management through appropriate allocation of risk to parties best able and incentivised to manage them well,

2.4 A long-term contract that provides greater cost certainty to decision makers over the whole life of the asset,

2.5 Strong performance incentives, based on payment for good performance and abatement for poor performance, providing greater certainty that assets will deliver the desired service levels over their useful life, and

2.6 Wider benefits to New Zealand’s infrastructure sector as a result of leveraging wider private sector expertise, including the potential to deliver innovations, attract new entrants who bring new skills, and increase competition.

3 **note** that the specific characteristics of a project, and market conditions at the time, will determine whether a Public Private Partnership is likely to deliver better whole of life performance and value for money, and that Public Private Partnerships are more likely to be appropriate and successful where:

3.1 the project is of sufficient scale or complexity that it would benefit from increased contractual incentives to manage risk and performance, and that innovative design, construction and service delivery approaches may be employed,

3.2 the nature of the asset required is specific and can only be applied to the purpose intended (ruling out other long-term infrastructure delivery models, such as strategic leasing, where the Crown does not need to own the asset),

3.3 desired outcomes or outputs can be well-specified, enabling clear articulation and monitoring of performance requirements and standards,

3.4 there is a stable long-term service need, and it is unlikely that the service requirements will vary unpredictably over the contract term,

3.5 there is sufficient market appetite and depth to ensure a competitive procurement process,

3.6 there is a reasonable expectation that the PPP provider will be able to realise risk management and cost optimisation efficiencies, such that they can outperform the most likely counterfactual for non-PPP delivery within the Affordability Threshold, and

3.7 the public sector client is, or will be, adequately resourced with the requisite skills and capacity to procure and manage the project effectively, including the behavioural/cultural shift required to realise the benefits of an outcomes focused partnership which may require significant departures from standard practices.

4 **endorse** the PPP policy, model and process enhancement settings set out in this paper and attached *Blueprint for Future Transactions*.

5 **authorise** the Minister for Infrastructure and Parliamentary Under-Secretary to the Minister for Infrastructure to finalise and release the attached *Blueprint for Future Transactions* in early November 2024.

Authorised for lodgement

Hon Chris Bishop	Simon Court MP
Minister for Infrastructure	Parliamentary Under-Secretary to the Minister for Infrastructure

Cabinet Expenditure and Regulatory Review Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Enhancements to the New Zealand Public Private Partnership Framework

Portfolio **Infrastructure**

On 15 October 2024, the Cabinet Expenditure and Regulatory Review Committee:

1 **noted** that Public Private Partnerships (PPPs) do not provide a means to deliver more infrastructure than New Zealanders can otherwise afford, but can give investment decision makers greater confidence that infrastructure investments are delivered on time and on budget, and deliver the benefits sought throughout their life;

2 **noted** that well planned and executed PPPs can deliver the following benefits:

2.1 an increased focus on the specification and performance of service outcomes required from infrastructure investment (rather than asset input specification);

2.2 integrated service and asset design solutions ensuring a focus on whole of life optimisation and performance;

2.3 better risk management through appropriate allocation of risk to parties best able and incentivised to manage them well;

2.4 a long-term contract that provides greater cost certainty to decision makers over the whole life of the asset;

2.5 strong performance incentives, based on payment for good performance and abatement for poor performance, providing greater certainty that assets will deliver the desired service levels over their useful life; and

2.6 wider benefits to New Zealand's infrastructure sector as a result of leveraging wider private sector expertise, including the potential to deliver innovations, attract new entrants who bring new skills, and increase competition;

3 **noted** that the specific characteristics of a project, and market conditions at the time, will determine whether a PPP is likely to deliver better whole of life performance and value for money, and that PPPs are more likely to be appropriate and successful where:

3.1 the project is of sufficient scale or complexity that it would benefit from increased contractual incentives to manage risk and performance, and that innovative design, construction and service delivery approaches may be employed;

3.2 the nature of the asset required is specific and can only be applied to the purpose intended (ruling out other long-term infrastructure delivery models, such as strategic leasing, where the Crown does not need to own the asset);

3.3 desired outcomes or outputs can be well-specified, enabling clear articulation and monitoring of performance requirements and standards;

3.4 there is a stable long-term service need, and it is unlikely that the service requirements will vary unpredictably over the contract term;

3.5 there is sufficient market appetite and depth to ensure a competitive procurement process;

3.6 there is a reasonable expectation that the PPP provider will be able to realise risk management and cost optimisation efficiencies, such that they can outperform the most likely counterfactual for non-PPP delivery within the Affordability Threshold;

3.7 the public sector client is, or will be, adequately resourced with the requisite skills and capacity to procure and manage the project effectively, including the behavioural/cultural shift required to realise the benefits of an outcomes focused partnership which may require significant departures from standard practices;

4 **endorsed** the PPP policy, model and process enhancement settings set out in the paper under EXP-24-SUB-0056 and *Blueprint for Future Transactions*, attached as an annex to the paper;

5 **authorised** the Minister for Infrastructure and Parliamentary Under-Secretary to the Minister for Infrastructure to finalise and release the *Blueprint for Future Transactions* in early November 2024.

Sam Moffett
Committee Secretary

Present:
Hon David Seymour (Chair)
Hon Nicola Willis
Hon Chris Bishop
Hon Simeon Brown
Hon Erica Stanford
Hon Louise Upston
Hon Mark Mitchell
Hon Simon Watts
Hon Brooke van Velden
Hon Casey Costello
Hon Andrew Bayly
Hon Chris Penk
Hon Andrew Hoggard
Hon Mark Patterson
Simon Court MP

Officials present from:
Officials Committee for EXP
Office of Hon Chris Bishop
Office of Simon Court MP