

30 August 2024

s9(2)(a)

Via email: s9(2)(a)

Dear s9(2)(a)

I refer to your Official Information Act request, received on 2 August 2024. You requested copies of, or links to, advice about the use of PPPs for the Defence estate (and for Defence generally).

Your request is an administratively challenging one to deal with. It is not time limited and is broad in scope. We have tried several options to address this – e.g., by interpreting the timeframe for your request to be from 26 September 2019 (the date that the New Zealand Infrastructure Commission/Te Waihanga was established); and by running a series of different searches of our records. However, this has still resulted in a large volume of emails and documents within scope. This would require substantial collation and research to compile and significant consultation with other agencies we work with on these issues.

Even if we could do this work, much of the information within scope would need to be withheld in full or heavily redacted as it is under active consideration or commercially sensitive.

In light of this, we have decided to meet your request by preparing a summary of issues and work within scope of your request (see attached). We are permitted to do this under section 16(2) of the OIA because otherwise it would impair the efficient administration of our agency.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Yours sincerely



Barbara Tebbs  
**General Manager – Policy**

## Attachment: Summary of information requested

In addition to information specific to your request, the summary of information we have provided below includes, for context, information on the government's programme to improve infrastructure funding and financing. This context summary includes work being led by the New Zealand Infrastructure Commission | Te Waihanga (the Commission) on an update to the New Zealand public-private partnerships (PPP) model.

### Government priority

The Government is working on a range of initiatives to address New Zealand's multi-billion-dollar infrastructure investment challenge. Across government, work is underway to ensure that Crown and private investment delivers high value, to lower the cost of infrastructure, and to reduce barriers to investment.

The Government has identified six priorities for addressing the infrastructure challenge. One of these is to improve infrastructure funding and financing, including more use of tools like road pricing, value capture, tolls and PPPs.

Countries with relatively long PPP histories have found that PPPs manage construction relatively better than traditional public procurement, with projects coming in on time and on budget more often. This is because of the incentives created by the PPP structure. A PPP bundles design, construction, operating and maintenance responsibilities in a single performance-based contract. This gives the private sector partner the long-term revenue certainty and delivery flexibility necessary to optimise and innovate in ways the public sector cannot under traditional delivery and funding models.

It is also critical that agencies have the capability and resources to manage these projects well so that the benefits can be realised. Two Independent Reviews of the Transmission Gully project have underscored the importance of project governance and contractor relationships. These lessons might be more pronounced in a PPP but apply to all complex infrastructure procurement.

The Minister for Infrastructure, Hon Chris Bishop, has asked Parliamentary Under-Secretary Simon Court MP to assist him on the following areas of work:

- policy development on infrastructure funding and financing tools, including use of PPPs, value capture, road tolls, lease backs and other potential new tools;
- commissioning policy issue papers on health and education infrastructure, with a focus on how to achieve greater efficiencies through better value for money, and better use of existing Crown assets;
- general assistance in the portfolio;
- other initiatives as agreed from time to time.

## Our role

The New Zealand Infrastructure Commission/Te Waihanga Act 2019 outlines the functions of the Commission that guide our work:

- to coordinate, develop and promote an approach to infrastructure that improves the wellbeing of New Zealanders;
- to improve the certainty of future New Zealand infrastructure projects;
- to lift New Zealand's infrastructure procurement capability;
- to provide high-quality advice in relation to infrastructure.

In regard to PPPs, our role is to support government agencies, local authorities and others to procure and deliver major infrastructure projects. As part of this, we are responsible for:

- developing PPP policy and processes;
- assisting agencies with PPP procurement;
- the Standard Form PPP Project Agreement;
- engaging with potential private sector participants;
- monitoring the implementation of PPP projects.

We provide guidance on PPPs for public sector entities (referred to as Procuring Entities throughout our guidance) that are considering or implementing PPP as a procurement option for a major infrastructure project. Responsibility for planning and delivery sits with the procuring entities.

The Commission is currently leading advice to government on options to refresh the government's PPP model and policy framework. This includes considering the potential for using a PPP model in a variety of Crown investments including potentially with the Defence estate.

The Commission's role on PPPs will change from 1 December 2024, in line with the Government's announcements on 28 August 2024<sup>1</sup> about the new National Infrastructure Agency (NIA). From that time:

- the NIA will facilitate private sector investment in infrastructure, including in relation to PPPs; and partner with agencies, and in some cases local government, on projects involving private finance
- the Treasury will assume the Commission's responsibility for PPP policy, and take primary responsibility for supporting the Minister for Infrastructure
- the Infrastructure Commission will retain its role as the Government's independent strategic advisor on infrastructure matters – focusing on long-term strategy.

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<sup>1</sup> [www.beehive.govt.nz/release/1-december-start-national-infrastructure-agency](https://www.beehive.govt.nz/release/1-december-start-national-infrastructure-agency) [1 December start for National Infrastructure Agency | Beehive.govt.nz](https://www.beehive.govt.nz/news/1-december-start-for-national-infrastructure-agency)

## Summary and extracts of our advice related to Defence and PPPs since 2019

In relation to the Defence estate, the Commission's advice has been focused on the Accommodation, Messing and Dining Modernisation (AMDM) Business Case, including the potential for this to be delivered as a PPP. This advice is reflected in the project's Detailed Business Case. We have not provided any reports or briefings directly to the Minister for Infrastructure. We are unable to provide details of our advice and our feedback on core project documents (including Business Cases) as the details of the project remain under active consideration by Ministers.

The Commission has advised more broadly around the execution readiness of PPP projects currently in the pipeline which included the NZ Defence Force's (NZDF) proposal on the AMDM at Linton. In assessing 'execution readiness' we provide free and frank assessment of market awareness, agency internal capability, committed funding and likely funding requests, prioritisation within agencies, target timeframes for investment decisions and transaction execution).

Further, a significant amount of our engagement on this project has been through workshops and project team meetings and supporting NZDF internal governance group considerations at decision points. As such, much of our advice to NZDF has been verbal as the model has been developing. Recurring themes from our advice to the project team include:

- The AMDM programme has been in the planning phase for some time. In an effort to warm the market up to bid on New Zealand barrack accommodation, market engagement occurred as early as 2017. The project has received Cabinet approvals from successive governments to progress through detailed planning stages but has not secured funding to date. We also participated in the most recent round of engagement with the market, during which NZDF received positive feedback on the potential project.
- Delivering a project as a PPP should be on the basis that it will deliver better service outcomes and value for money than the most likely and efficient non-PPP counterfactual. However, investment decision makers should also consider the broader pipeline of projects which may come to market in the near term and ensure that they are programmed optimally.
- In programming out projects across multiple sectors, it is essential that strong consideration is given to the timing of when projects enter the market. This is true across all forms of procurement when delivering major infrastructure projects. New Zealand has limited capacity not only across the design and build market, but also key commercial and technical advisors, and debt and equity providers.
- The Commission was consulted throughout the development of the detailed business case, participating in market engagement sessions, assessing the quantitative analysis and attending internal governance group discussions on the preferred procurement model. The Commission has provided assurance that the process followed by NZDF

to date has been robust and compliant with established PPP practice and expectations.

- The Commission has provided advice on the cashflow and balance sheet implications of a PPP for Linton:
  - If the AMDM Linton project is delivered as a PPP, no cash will be paid to the private sector consortium until after the facilities have been constructed, passed rigorous works completion tests, and are available for service. From then, a quarterly service payment is made over a ~25-year concession period. That quarterly payment will be reduced for any availability or performance failures over the project term. The net present cost of these service payments (assuming zero performance or availability abatements) will be no greater than the modelled net present cost of payments made by the Crown if the project were delivered under a non-PPP method, such as a Design and Construction for the construction phase with separate lifecycle asset renewals and other asset management costs.
  - The quarterly service payments cover the repayment of debt and equity investment raised by the private sector to construct the assets, the return on that private capital, and the 25-year asset management services. There is therefore a capital and operating component. While the cashflows occur after construction, and over a 25-year period thereafter, the liability to make these payments is crystallised once NZDF signs the PPP Project Agreement, and recorded as a liability on balance sheet (affecting the Core Crown Net Debt fiscal indicator).
- Some of the Commission's more technical feedback on considerations particular to delivering a PPP in a Defence Area included whether a lease can be given in a Defence Area:
  - A PPP is paid for through a unitary payment over the course of the operating term. At the end of the construction phase, there is a one-off Design and Construction payment from the Crown to the Contractor and an equal and offsetting Rental Prepayment from the Contractor to the Crown. Inland Revenue Binding Rulings have been given for each project and the Standard Form Project Agreement based on the Facility Lease structure, and could potentially be disturbed if the prepayment of a licence was not treated the same way.
  - The precedent Facility Lease does grant quiet enjoyment and uninterrupted possession to the Lessee, but that is subject to the extensive rights of use, access and inspection that the Lessor retains under the PPP Project Agreement.
  - The Lessee grants the Lessor an irrevocable Licence to enter the land for the purpose of exercising its rights and complying with obligations under the Project Agreement. If the Facility Lease was to be replaced with a Facility Licence it would then be unusual or problematic for the Licensee to then grant an equivalent Licence back the Licensor.

- Financiers may value the ability to register the Facility Lease and take a security interest, but given the limited practical benefit of that security, we do not anticipate that will be a difficult component to remove.
- The Commission has emphasised the importance of specific technical capability for the procurement and ongoing management of a PPP project, which we see as essential to improved project delivery outcomes.
- Improvements to the Investment Management System (which the Treasury oversees) will result in greater Cabinet consideration of the Strategic Assessment before initiatives are progressed through business cases. The National Infrastructure Plan (NIP) and Infrastructure Priorities Programme (IPP) framework will also help in this regard.

### Further information

As part of our approach to providing transparency of advice we provide, we publish lists of advice we have provided to the Minister for Infrastructure each month on our website. We aim to update these lists within a few weeks from the end of each month. The advice we provide the Minister for Infrastructure includes reports, briefings and aides memoire. The list does not include advice which is under active consideration or commercially sensitive. You can find this list here: <https://tewaihangagovt.nz/about-us/corporate-documents-official-information/ministerial-advice>. This list can give you a sense of the key advice we have provided on the matters at issue in your request.

We also routinely publish our responses to Official Information Act requests, including requests for copies of specified briefings. You can find these releases here: <https://tewaihangagovt.nz/about-us/corporate-documents-official-information/oia-responses>. If you click on the release titled 'Te Waihangā Briefings – 31 May 2024' and scroll to page 43, you can view a redacted copy of our briefing titled 'Considerations for the future application of Public Private Partnerships'. This is the only briefing of relevance to your request that we have released to date.