



National Public Private Partnership Guidelines

Roadmap for applying the Commercial Principles



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Commercial Principles**

February 2011

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	Roadmap for applying the Commercial Principles

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Introduction

The National PPP Guidelines include both Standard Commercial Principles for Social Infrastructure and Standard Commercial Principles for Economic Infrastructure.

PPP projects are complex commercial structures and applying the right commercial principles requires analysis of individual project characteristics. It is not always a direct translation of either set of principles to an individual project contract.

This overview is a practical guide to the appropriate mix of commercial principles that could form the basis for infrastructure project contracts. The National PPP Guidelines aim to promote a consistent approach to the application of the commercial principles.

The **economic** infrastructure principles have been drafted based on a demand-risk transfer payment model, which has most frequently been applied to toll roads, but is also applicable to car parks, energy generation/distribution facilities, water treatment facilities and potentially port facilities. Under this model third party users pay for use direct to the private partner (often within a regulated payment framework) over the life of the contract.

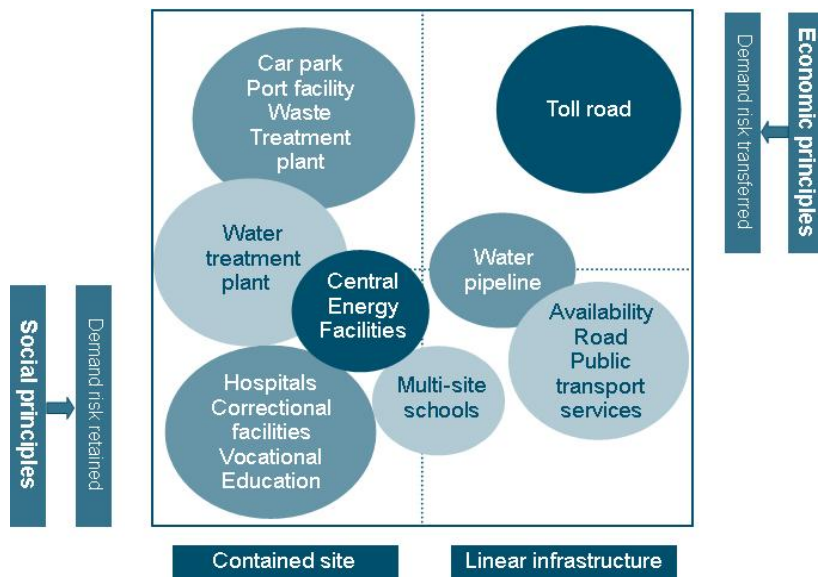
The **social** infrastructure principles have been drafted based on an availability payment model, which has most frequently been applied to hospitals, schools, public transport and correctional facilities. Under this model government pays for the community’s use of the infrastructure services through regular service payments to the private partner over the life of the contract.

At times individual projects may not readily fit into either of the economic infrastructure or social infrastructure principles, and a **hybrid** model borrowing from both the two sets of principles may be required.

Differences between jurisdictions apply for some of the commercial principles. Particular areas where there are jurisdictional differences are noted in both sets of principles, and specific jurisdictional positions can be found in the relevant Jurisdictional Requirements.

Possible Project Positioning on the Social – Economic Principles Spectrum

The diagram below shows a range of structures used in recent PPP projects.



APPLICATION OF APPROPRIATE COMMERCIAL PRINCIPLES

The National PPP Guidelines Practitioners' Guide describes the PPP delivery process. Within that process, PPP contract development is based on the National Commercial Principles (and Jurisdictional Requirements). The PPP project contract will normally be released as part of the suite of Request for Proposal (RFP) documents.

The commercial principles for an individual project are determined by the project team in consultation with the commercial and legal advisors, usually through the following steps.

1. Project Development



What is the appropriate structure for the project? What payment model and performance regime is appropriate?



Incorporate into the business case and procurement strategy the preliminary structure, payment model and possible performance regime. Identify the key project characteristics that will determine which commercial principles should be applied, including whether or not the infrastructure is a single contained site, multi-site, or linear.

2. Commercial principles workshops



What are the key commercial issues for the project that will need to be reflected in the contract between the government and private party?



The project team determines the key commercial issues/structures. These can be further developed at a commercial principles workshop.

Initial assessment at the workshop identifies:

- a) issues that can be dealt with based on standard positions; and
- b) issues that are project specific or require further analysis and are departures.



Issues that can be dealt with based on standard positions may, depending upon the nature of the project and other relevant factors, draw upon the social infrastructure principles, the economic infrastructure principles or, for hybrid projects, a blend of both sets of principles. (For example, a non-tolled road PPP with availability payments may utilise the social principles related to payment mechanisms and the economic principles related to matters such as "close-out".) Questions such as the following may help to indicate which set of commercial principles may be appropriate:

1. Does the project involve risk from variable demand for services it produces?
2. Could the government transfer demand risk to the private party?
3. Can the private party charge users directly for services the project provides, or earn other revenue from third parties?
4. Is availability of services from the project to all members of the public or a target group a government objective?
5. Would the income stream to the private party be in the form of regular service payments?



Issues that are project specific or require further analysis are the subject of individual papers, with technical advice often required to further define the appropriate commercial position (for example determining the parameters around energy volume risk transfer requires input from technical consultants).



Consideration also needs to be given as to whether the particular commercial principles are relevant to either a single contained site or a multi-site or linear infrastructure.

3. Drafting of contract



Once positions are agreed they form the drafting instructions for the project's contract legal advisors.

4. Issuing the RFP



The contract is issued with the RFP. The RFP may also include a commercial framework summary that reflects the commercial principles that underlie the contract.

5. Negotiation of contract



The project team evaluates the responses from bidders.



The project team enters into negotiations with bidder(s). Any departures from the RFP contract are the subject of negotiations with the bidder(s) and are approved in accordance with Jurisdictional Requirements.

6. Contract Management



The commercial principles that formed the basis of the contract remain relevant in any negotiation that occurs during the life of the contract. Negotiations over risk events and any change in scope negotiations are subject to the contractual framework.

Further Information

All of the National PPP Policy and Guidelines documents are available via the [Infrastructure Australia Website](#).

All guideline documents including the Commercial Principles for both social infrastructure and economic infrastructure are available as standard PDF documents or as on-line interactive library documents using the Affinitext platform.

The Jurisdictional Requirements documents for the Commonwealth, States and Territories are accessible on-line using the above link and also via individual jurisdictional websites.

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