

**GOVERNMENT
OF
COOK ISLANDS**

**PUBLIC PRIVATE PARTNERSHIP
POLICY**

August 2018

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LIST OF ABBREVIATIONS

3PPT	PPP Project Team
ADB	Asian Development Bank
AMS	Activity Management System (also known as Te Tarai Vaka (TTV))
BOO	Build Own Operate
BOLT	Build Own Lease Transfer
BOT	Build Operate Transfer
CIG	Cook Islands Government
CIIC	Cook Islands Investment Corporation
CLO	Crown Law Office
DBFO	Design Build Finance Operate
GCF	Green Climate Fund
ICI	Infrastructure Cook Islands
MFEM	Ministry of Finance and Economic Management
NIIP	National Infrastructure Investment Plan
PPP	Public Private Partnership
PPPGC	PPP Governance Committee
PPP Policy	Cook Islands PPP Policy
PPP Unit	Public Private Partnership Unit
Procurement Policy 2016 or Rules	Cook Islands Government Purchase and Sale of Goods and Services Policy
SCI	Statement of Corporate Intent
SOE	State-owned Enterprise
SPV	Special Purpose Vehicle
TAU	Te Aponga Uira
TC	Tender Committee
TTV	Te Tarai Vaka (also known as the Activity Management System (AMS))
VfM	Value for money
VGF	Viability Gap Funding

Currency used: New Zealand Dollar

NZ\$ = US\$0.68

EXECUTIVE SUMMARY

This Public Private Partnership Policy (PPP Policy), while drawing upon best practices adopted by countries that have used Public Private Partnerships to procure new infrastructure, manage and maintain existing infrastructure and to contract the provision of services from the private sector, has been developed to suit Cook Islands' needs.

The Policy is based around the Government's existing processes and procedures, such as the Purchase and Sale of Goods and Services Policy and the Activity Management System but recognizing that PPPs are generally more complex than standard procurement methods, the Policy introduces additional features and establishes new implementing agencies. Wherever possible new implementation agencies draw upon existing groups and approving or reviewing agencies.

For the Government to maximize the benefits from using PPPs, and reduce transaction costs, a centralized and coordinating PPP team must be established that can oversee the development and implementation of the PPP proposal from concept to conclusion. In some cases, the PPP life cycle could be over twenty years. The Policy recommends the establishment of a PPP Unit to undertake this oversight and coordination role. The PPP Unit, once established, would then act as the central hub of knowledge and experience for all Government's procurement and activities.

PPPs are a well-recognized procurement model, having been used for many centuries internationally and for a number of years in the Cook Islands. This Policy provides an implementation framework to assist Government streamline PPP processing and capture learnings from PPP implementation.

INTRODUCTION

The Cook Islands Government (CIG) has facilitated the use of “contracting out” services historically undertaken by government, directly or through State-owned Enterprises (SOEs), where contracts are negotiated with private sector providers. Examples of these contracts include the collection of household refuse on Rarotonga, grass mowing around the airport tarmac, and the installation of power poles. Some of these contracts are basic service contracts, some involve the private sector providing capital equipment.

The Government wishes to improve the quality and depth of engagement with the private sector to ensure value for money. CIG has requested the Asian Development Bank review the opportunities to contract out and to utilize public private partnerships for the provision of assets and services, recognizing and supporting the delivery of the Government’s ambitious capital investment program. The Budget Capital Plan for the financial year 2016/17¹ identifies a total Government capital investment requirement of \$160 million in the four years 2016-2010, of which \$85.5 million is to be funded by Government. State-owned Enterprises also have significant investment plans. Some of these projects could be provided, and funded, through PPPs.

Public Private Partnerships (PPPs) are not new and early examples can be found from the days of the Roman Empire. Many of the bridges in Paris were built through PPPs as 20 to 50-year concessions. The private sector developer would generate revenue from tolls paid by pedestrians and horse riders and in some cases from rent paid after houses were built on the bridges. The bridge Pont Marie still exists and was constructed on the back of a 20-year concession after an unsolicited proposal. Construction started in 1614 and the bridge was opened in 1640.²

Today Public Private Partnership is a proven infrastructure procurement method that, in the appropriate circumstances, can optimize the inputs of skills and resources from both the public and private sectors. However, use of PPPs is still a relatively new delivery mechanism for infrastructure and services in many developing countries in the Pacific region.

What is a PPP?

There is no universal definition for PPPs. Countries often adopt a definition that reflects their own investment and development needs and priorities. The New Zealand Treasury only defines a multi-year, performance-based, risk sharing contract with a private sector provider a PPP when the private partner also provides project finance. The Cook Islands PPP Policy

¹ Budget 2016/17, Book 3 Capital Plan.

² *Xavier Bezançon, 2000 Ans d’Histoire du Partenariat Public-Privé (Paris: Presses de l’École Nationale des Ponts et Chaussées, 2004*

(PPP Policy) adopts a wider definition: a PPP is a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility and remuneration is linked to performance. This wide definition is appropriate for the Cook Islands as the country is at an early stage of PPP development and use. Adoption of a tighter definition may be appropriate at a later stage, but it is not recommended at this time.

Due to the nature of PPP contracts, they are more complex to prepare, procure, and manage than traditional public procurement contracts and present different challenges and risks. This PPP Policy aims to provide a framework for managing PPPs in the Cook Islands that capitalize on PPP value drivers while assisting Government manage the associated risks.

A list of the legislation and documents reviewed and taken into consideration in the development of the PPP Policy is contained in **Appendix 1**.

PURPOSE OF POLICY

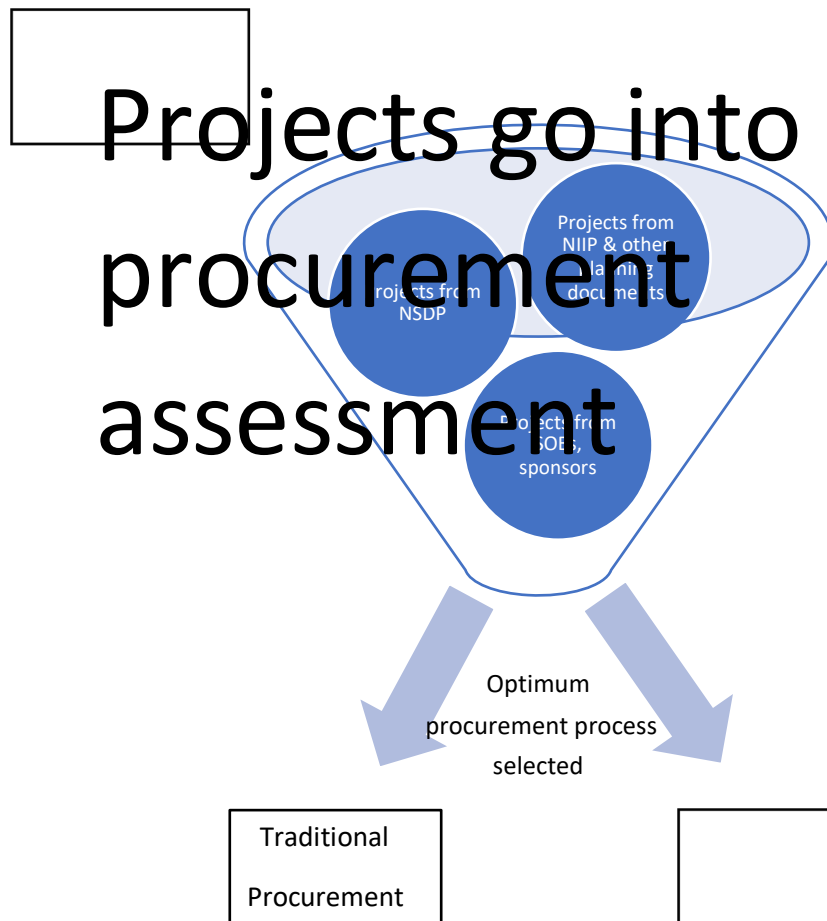
- 1.1. The PPP Policy is designed to ensure delivery of improved services and better value for money, primarily through appropriate risk transfer, encouraging innovation, better asset utilization and integrated whole-of-life asset and contract management. In some cases, access to private financing will be an additional benefit. Implementation of the PPP Policy will ensure a transparent and consistent PPP process.
- 1.2. The Policy recognizes that PPPs are a continuum from contracting out; the Cook Island Government and government agencies such as State-owned Enterprises (SOEs) are already engaged in a significant level of contracting with the private sector providing public services. In some cases, these are multi-year contracts that require the private sector to also provide equipment and capital. The CIG and government agencies (including SOEs) are also engaged in contracts that have all of the requirements to meet the PPP definition; currently these tend to be smaller scale and for comparatively shorter duration.
- 1.3. The size of PPPs in dollar terms can range significantly from modest multi-year contracts that involve the private sector party providing small scale capital equipment such as a tractor, to large and complex transactions. To avoid requiring modest transactions that can more efficiently be assessed and approved as part of the Government's existing Cook Islands Government Purchase and Sale of Goods and Services Policy (Procurement Policy 2016) and Activity Management System, and within existing delegated authorities, the PPP Policy sets some minimum thresholds. If a proposed PPP exceeds those thresholds, then it will be subject to this Policy and the approvals contained herein. If the proposed PPP does not achieve the thresholds, then this Policy should be read as a descriptor of good practice, but it is not binding.

The thresholds are discussed in **Section 3.1.7**. Bearing in mind limited resources and capacities in the Government of the Cook Islands and government agencies to develop, negotiate and manage complex multi-year performance-based contracts, implementation of the PPP Policy is intended to facilitate cross-learnings between PPPs covered by this Policy and those that are not, and to share resources, experience and expertise across the Government's full contracting out and PPP activities.

- 1.4. The PPP Policy builds upon the associated Policies already adopted by the CIG, such as the Procurement Policy 2016, National Infrastructure Development Plan (NIIP) and the Activity Management System (AMS), also known as Te Tarai Vaka (TTV). It is recommended that this PPP Policy be reviewed within 3 years from its adoption, once Government has some experience with its implementation; some fine tuning may be required.
- 1.5. This PPP Policy sets out the following:
 - PPP definition, and the essential features of PPP contracts (Section 2);
 - objectives and scope of the PPP program, in the context of Cook Islands' development plans (Section 3);
 - institutional responsibilities for the PPP program, and for developing, implementing and approving PPP projects (Section 4);
 - processes by which PPP projects will be identified, developed, procured, approved and managed (Section 5);
 - PPP project appraisal criteria (Section 6);
 - key commercial principles by which PPP contracts will be structured (Section 7);
 - responding to unsolicited bids (Section 8);
 - list of documents reviewed as input to the development of this Policy (Appendix 1);
 - Parties consulted on the development of the Policy and earlier drafts (Appendix 2); and
 - approach to managing the fiscal implications of PPP projects (Appendix 3).
- 1.6. The PPP Policy provides a high-level framework and will be supported by detailed guidance material and tools intended to clarify and help Government officials meet the requirements set out in this policy. The PPP Policy adds to the Cook Islands Government Purchase and Sale of Goods and Services Policy (Procurement Policy 2016 or "Rules"). The Government's Activity Management System governs the implementation of this Policy unless noted otherwise.

PPP DEFINITION

2. PPPs are an alternate procurement method to traditional procurement



2.1.1 While there is no universally accepted definition for PPPs, the following has been adopted for the purposes of this Policy.

A PPP is a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility and remuneration is linked to performance.

PPPs differ to traditional Government procurement - various elements of a PPP such as design, construction, finance, maintenance and operations are often bundled into a single contract: the contract details the asset to be provided and service outputs³ to be provided over time by the private sector party. In contrast, traditional government procurement involves contracts for the building of an asset without any ongoing related contractual service requirement (e.g. turnkey infrastructure) or one-off contracts for the provision of services (e.g. consultancy, catering, maintenance and repairs).

2.1.2 PPPs are also different to privatizations. Privatization involves permanent transfer of ownership in a government entity or assets to the private sector, through sale of shares or assets. The government’s ongoing interest in a fully privatized entity is limited to regulatory and policy setting roles, or as a purchaser of the entity’s products

³ Not all PPP contract involve designing and building assets and service provision. The full range is used purely for illustrative purposes.

or services. In a PPP, the Government retains strategic control over the activity and remains accountable for the delivery of the public services, using its rights under the PPP contract to ensure the private sector partner meets the contractual service requirements throughout the duration of the contract. In a PPP, assets generally revert to Government ownership at contract termination.

2.1.3 PPPs can take a variety of forms but generally possess the following common characteristics:

- clearly specified measurable service outputs;
- transfer of management responsibility for a public asset to the private party over the duration of a long-term contract. This may involve financing, designing, building or rehabilitating, maintaining and operating the public asset and associated services; or some subset of these functions;
- the private party's remuneration is based on delivery of contracted outputs to clearly defined performance standards, such as the availability of the asset or the provision of services. Payments to the private party may be "user pays", government pays, or a combination of the two; compensation or penalties may also be payable to the government by the private party for failure to meet contractually-specified or regulatory standards;
- risks are allocated to the public and private parties clearly, comprehensively and in a way that achieves value for money by ensuring each party bears the risks they are best able to manage;
- performance-based maintenance contracts or operation and maintenance contracts typically have contract duration of 3 to 10 years; and
- in PPPs, where the private sector party provides new infrastructure and/or rehabilitates existing infrastructure:
 - the contracts are generally relatively longer in duration, up to 20 years or more; and
 - the assets are generally returned to the government at contract expiry for nil or minimal financial consideration; the private party having recovered their investment and investment returns during the duration of the PPP contract.

2.1.4 **Viability Gap Financing** is a term used to describe government's provision of funding to a PPP project to ensure or enhance its viability. The funds can be provided directly to the PPP in the form of loans or upfront grant subsidies. Viability Gap Financing (VGF) can be critical for project viability, where revenue projections show that the project is not viable without government funding support. Government's may also provide finance to PPPs to avoid excessive risk premiums; mitigate government risk by providing subsidies or payments upfront; and to improve the availability or reduce the cost of finance. Any decision to provide VGF should be explicit in the PPP appraisal and approved by Cabinet.

2.2 Types of PPPs

2.2.1 While there is a broad range of contractual relationships that are categorized as PPPs, the table below provides the main descriptions of PPP models together with characteristics:

Table 1: Traditional Types of PPPs

Contract Nomenclature	Overview Description and Reference	Type of Asset	Functions Transferred	Payment Source
Design-Build-Finance - Operate-Maintain (DBFOM); Design-Build-Finance-Operate (DBFO); Design-Construct-Manage-Finance (DCMF)	In this category the range of PPP contract types is described by the functions transferred to the private sector. The <i>maintain</i> function may be left out of the description (so instead of DBFOM, a contract transferring all those functions may simply be described as DBFO, with responsibility for maintenance implied as part of operations). An alternative description along similar lines is Design-Construct-Manage-Finance (DCMF), which is equivalent to a DBFOM contract.	New Infrastructure	As captured by the contract	Can be either government or user pays
Build-Operate-Transfer (BOT); Build-Own-Operate-Transfer (BOOT); Build-Transfer-Operate (BTO)	This approach to describing PPPs for new assets captures legal ownership and control of the project assets. Under a BOT project, the private company owns the project assets until they are transferred at the end of the contract. BOOT is often used interchangeably with BOT. In contrast, a Build-Transfer-Operate (BTO) contract, asset ownership is transferred once construction is complete. Ownership rights mainly affect how handover of assets is managed at the end of the contract.	New Infrastructure	Typically, design, build, finance, maintain, and some or all operations Under some definitions, BOT or BTO may not include private finance, whereas BOOT always includes private finance.	Can be either government or user pays
Rehabilitate-Operate-Transfer (ROT)	<i>Rehabilitate</i> may take the place of <i>Build</i> where the private party is responsible for rehabilitating, upgrading, or extending existing assets.	Existing Infrastructure	As above, but <i>Rehabilitate</i> rather than <i>Build</i>	Can be either government or user pays
Concession	<i>Concession</i> is used for a range of types of contract. In some jurisdictions, concession may imply a specific type of contract; while in	New or existing infrastructure.	Design, rehabilitate, extend or build, finance,	Usually user pays— in some countries,

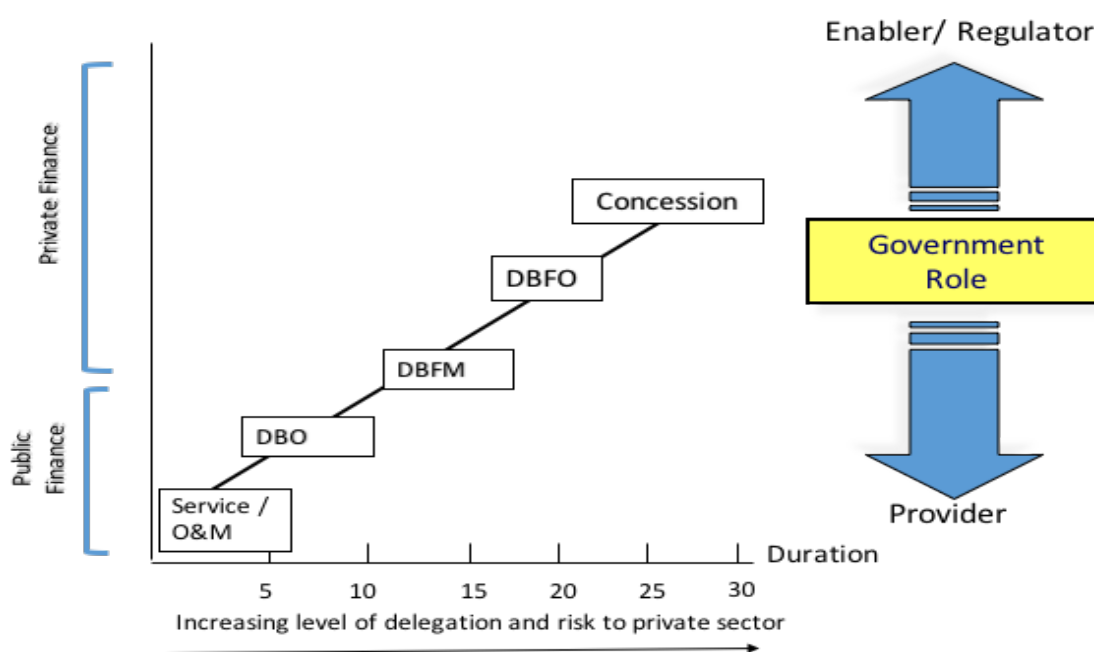
	<p>others it is used more widely. In the PPP context, a concession is mostly used to describe a user-pays PPP. An example of a concession contract in the Pacific; in 2016 the Tongan Government entered into a 50-year contract with a private party to manage their exotic forest assets. The private party paid some cash at the commencement of the contract, supplied working capital and new equipment and was required to replant harvested stock. In consideration the private party retains all of the proceeds from the sale of felled timber and has use of the assets during the life on the contract.</p>		<p>maintain, and operate— typically providing services to users</p>	<p>depending on the financial viability of the concession, the private party might pay a fee to government or might receive a subsidy</p>
Operations & Maintenance	<p>O&M contracts for existing assets may come under the definition of PPP where these are performance-based, long-term, and involve significant private investment (sometimes also called performance-based maintenance contracts).</p>	<p>Existing Infrastructure – these are “service” only contracts</p>	<p>Operations and maintenance</p>	<p>Government pays</p>
Affermage	<p>An <i>affermage</i> contract is similar to a concession, but with the government typically remaining responsible for capital expenditures. <i>Affermage</i> in particular may have a specific meaning in some jurisdictions. <i>Affermage</i> contracts may or may not come under the definition of PPP, depending on the duration of the contract.</p>	<p>Existing</p>	<p>Maintain and operate, providing services to users</p>	<p>User pays— private party typically remits part of user fees to government to cover capital expenditures</p>
Management Contract	<p>The state retains asset ownership, and capital expenditure is the responsibility of the public sector, whereas operation and maintenance is the handled by the private sector. These types of contracts are 3-5 years in duration.</p>	<p>Existing</p>	<p>Operations and maintenance</p>	<p>Management fees extended to the contractor</p>
Franchise	<p><i>Franchise</i> is sometimes used to describe an arrangement similar to either a concession or a lease or <i>affermage</i> contract.</p>	<p>Existing or new</p>	<p>May include design, build, and finance, or may be limited to maintaining and operating an asset</p>	<p>User or government pays</p>

Source: Public Private Partnerships Reference Guide; Version 3; World Bank; 2017

2.2.2 The roles of the public and private sector vary depending on the form of the PPP, as does the allocation of risk. This is illustrated in Figure 1. Successful PPPs allocate risk to the party best suited to manage the relevant risk.

Figure 1 – Different Forms of PPPs – risk allocation and role of Government

Forms of Public-Private Partnership Contracts



Legend: O&M: operations and maintenance; DBO: design build operate; DBFM: design build finance maintain; DBFO: design build finance operate.

2.2.3 The private sector in a PPP can be an individual firm or, often, a consortium of equity partners who collectively create a special purpose vehicle (SPV) as the contracting party with Government. The consortium may include specialist equity investors, constructors and/or operators among others. All Government dealings with the private sector party generally will occur through the SPV, which will need to be appropriately resourced by the equity partners.

2.2.4 Where the private sector party is contributing finance borrowed from an external financier as their contribution to the PPP, then the financier / bank would normally provide their finance to the project through the SPV. The SPV's gearing - the ratio of investor equity to external bank debt – should be assessed to ensure that the equity partners' risk capital is sufficient to ensure they are financially committed to the project and its successful execution.

Figure 2 – Typical Risk Sharing

Risk	Traditional Procurement	O&M	DBO	BOT/BOO	Concession
Market	△	△	△	△	▲
Interest rate / Exchange rate	△	△	△	▲	▲
Financing	△	△	△	▲	▲
Site / Land	△	△	△ ▲	△ ▲	△
Construction / Completion	△	△	▲	▲	▲
O&M	△	▲	▲	▲	▲
Payment to provider	△	△	△	△ ▲	▲
Environment	△	▲	△ ▲	▲	▲
Change in domestic law	△	△	△	△	△

▲ = private sector risk

△ = government risk

POLICY’S OBJECTIVES AND SCOPE

3.1.1 The Government of the Cook Islands is committed to developing and expanding infrastructure assets and services provided to Cook islanders. Government recognizes that its ability to develop the assets and provide the services is limited by its access to capital and its implementation capacity: total Government capital investment planned in the period 2016-2010 is \$160 million with \$85 million to be funded by Government. These figures do not include services provided by Government over that period. CIG also believes that, as much as possible and practical, it should have greater control over the timing and prioritization of the development of the assets and provision of services. While CIG acknowledges the contribution of its development partners, the Government alone is responsible to the people of the Cook Islands to ensure that they have the assets and services required to achieve the desired economic and social outcomes.

3.1.2 The CIG has invested in the development of robust, transparent and effective processes and planning documents. The Procurement Policy was updated in 2016 and

the Activity Management System (AMS) was approved in 2015 and updated in 2018. The Government's National Infrastructure Investment Plan (NIIP) is reviewed annually, and projects are prioritized through the annual Budget's Capital Plan. The Government has also been proactive in ensuring that its processes meet requirements to obtain direct access to funding support from development partners such as the Green Climate Fund (GCF).

- 3.1.3 The Government has determined that the private sector, both domestic and international, through the judicious use of contracting out and PPPs, can assist it achieve its development goals in the most efficient and cost-effective manner while also supporting domestic private sector growth. Wherever possible, priority will be given to local providers when this is consistent best value for money⁴. Development projects will be publicized in a transparent manner through the Government's planning documents, such as the NIIP, enabling local private sector providers develop strategic alliances with international providers for the larger projects.
- 3.1.4 Contracting out and PPPs will be used by Government to facilitate priority investments and infrastructure projects and services aligned with the Government's development objectives where doing so is expected to provide the best value for scarce resources. Implementation of the PPP Policy will encourage best use of the financial and technical resources of public and private sectors to provide high-quality, responsive, resilient and sustainable public assets and services in a way that achieves value for money for the Government and users of the services.
- 3.1.5 PPPs will be utilized to:
- achieve the Government's current and future development plans and strategies and expand access to infrastructure and services for the people of the Cook Islands;
 - improve efficiency and quality in the delivery of infrastructure and services by encouraging private sector competition that in turn fosters innovation (including technical and management expertise and use of technology);
 - ensure that the projects being undertaken by the line / sector ministries or agencies comply with regulatory standards, including environment and health;
 - mobilise private sector investments in infrastructure projects and services and to gain from the private sector's capacity and expertise
 - enhance contractual arrangements that create incentives for project completion and on-time delivery, and maintenance throughout the life of the project;
 - achieve value for money for the Government on a whole-of-life cost basis through optimal risk transfer and risk management, subject to such costs being within the Government's fiscal and debt management strategies;
 - create value added opportunities through synergies between the public and private sectors;

⁴ The Procurement Policy 2016 positively weights local private sector participation in its scoring methodology.

- create opportunities for innovative output design and development;
- support the development of the domestic private sector; and
- promote capacity development and skills transfer to the PPP Unit undertaking these complex commercial transactions and between the PPP Unit and wider Government agencies.

3.1.6 All PPP projects proposed by the Cook Islands Government ministries, departments or agencies, including SOEs, that meet the financial thresholds listed in Section 3.1.7 are subject to this PPP Policy. For PPPs that do not meet the financial thresholds in Section 3.1.7, this Policy represents a statement of good practice and should be followed, but approvals will be determined by existing delegations (see Processes and Approvals - Section 5).

3.1.7 The Government will therefore consider a PPP for proposed investment projects that have the following characteristics:

PPPs that must be considered and approved under this Policy

- **Assets with significant investment value.** Since the cost of preparing and managing a PPP contract is significant for both public and private parties, a PPP under this Policy will only be considered for projects with a minimum investment value of \$5m⁵. However, smaller projects could be considered on a case by case basis.
- **Services with significant annual payments.** Where the PPP involves the provision of services only, such as a performance-based maintenance contract, to be considered under this Policy the term of the contract must be no less than 5 years with annual payments to the private sector partner of not less than \$1 million or for a term of not less than 3 years with annual payments to the private sector partner of not less than \$1.75 million.

3.1.8 Requirements for all PPP arrangements – those approved under this Policy and those that do not meet the thresholds in Section 3.1.7

- **Output requirements that can be clearly specified and monitored.** PPPs will be used only for delivering assets and services where outputs can be clearly and comprehensively contractually specified and monitored.
- **Outputs address stable needs over the contract lifetime.** The long-term nature of PPP contracts reduces the flexibility of the Government to adjust specifications over time. PPPs will therefore be considered for assets and services for which needs are expected to be relatively predictable while also building in mechanisms for dealing with change.
- **Scope for innovation or improved infrastructure performance.** The use of PPPs will be focused on those sectors and services that are currently under-performing,

⁵ Investment by either the public or private sector party

or where the Cook Islands could benefit most from introducing private sector and / or international experience and expertise.

- **Ability to generate revenues beyond Government payments.** To maximize benefits in alleviating fiscal constraints, the use of PPPs will primarily focus on projects that are expected to generate revenues, whether from charging service users or ancillary sources. The revenues need not meet all of the project's operational and capital costs, but priority will be given where there is a significant level of user pays, either at project inception, or anticipated through the life of the project.
- **Opportunities for significant risk transfer.** Where there are few opportunities for risk transfer, or where it is difficult to assess, identify or quantify the risks, then other procurement methods may be more appropriate. Risks will vary between PPPs and PPP arrangements and in some cases, risks may be few in number but large in impact. PPPs as a delivery and contracting mechanism add most value when risks can be identified and quantified and allocated to the party best able to manage that risk.
- **The private sector can add value through innovation.** Innovation can apply to all aspects of the PPP contracting arrangement, from initial design, construction, how maintenance is undertaken, how services are performed and how the assets are maintained. Innovation can also be sought through the tender structure, where government might simply tender an output without defining how the output should be delivered. Where there is potential for gains through innovation, PPPs can add real value; and
- **Sufficient bidder appetite.** Contracting out and PPPs normally deliver better outcomes when there is good bidder appetite leading to competition. Competition is first established through the tender process – depending on the type of asset or services which is the subject of the PPP, different tender structures may result in different levels or degrees of competition. Care will need to be taken selecting the tender method. The Procurement Policy, for example, allows both open and closed tenders. Lack of process transparency could cause potential bidders to withdraw. A well-structured tender process can result in healthy competitive tension, even when there is only one bidder.

3.2 The prioritisation and approval process for SOEs will vary from other Government ministries, departments or agencies as specified in this Policy. Project approval will be set by the SOE's board in accordance with its business plan and statement of corporate intent (SCI). As statements of corporate intent require Cabinet approval, Cabinet will have an early opportunity to consider any material project that might be procured as a PPP.

3.3 This policy does not apply to the procurement of one-off services by Government agencies, such as consultancy or catering, or the supply of turnkey infrastructure. These forms of procurement are not PPPs.

- 3.4 Implementation of this PPP Policy will be fully consistent with the responsibilities for financial management and accountability as outlined in the Ministry of Finance and Economic Management Act 1995-96. The annual Budget and Budget Capital Plan will continue as the central process for the ultimate prioritization of expenditure (including debt financing) by the Government. International practice for managing and reporting financial risk is discussed in **Appendix 3**. Government should seek its own advice regarding the proper accounting treatment for financial obligations arising from PPPs.

INSTITUTIONAL RESPONSIBILITIES FOR PPPS

4 ROLE OF INSTITUTIONS

- 4.1.1 Developing and implementing PPP projects will require close coordination between several Government agencies. Given that Cook Islands is in the initial phases of the PPP program, the Government will, as much as possible, utilize the existing resources and unit structures, except for the development of the PPP Unit, to undertake PPP projects. Based on the Government's actual PPP experience, it will review the need to develop further agencies, or restructure existing agencies. It is recommended that this Policy, including processes and implementing agencies, be reviewed within three years following its adoption, once Government has gained some implantation experience.

Table 2: Roles and Approvals relating to PPPs

Entity	Role and Approvals
Cabinet	Approves PPP process, structure, business case and draft contract prior to commencement of Tender process (stage III in Figure 3) for Government activities or for SOEs, as specified in the SOE's Business Plan.
PPP Project Team (3PPT)	Appointed by PPP Governance Committee (PPPGC) in Stage I. Team comprises members of the PPP Unit and other agencies selected due to their knowledge, skills and experience relevant to the PPP project. The project sponsor will be a member of 3PPT. The PPP Project Team provides support and technical advice to the PPP Unit and may, if approved by PPPGC, be the PPP Unit for a particular transaction. Unless determined otherwise by PPPGC, the chair of 3PPT will be a member of the PPP Unit. For SOEs, the 3PPT will comprise those members determined by the SOE's board including at least one member of the PPP Unit.
PPP Unit	Unit responsible for processing all PPPs and contracting out activities that meet the thresholds determined by this Policy. Comprises the Procurement Unit, team responsible for the Activity Management

	<p>System, special projects team currently residing in CIIC and other members as determined by Cabinet. The PPP Unit will make its combined skills available to all Cook Island Government agencies, including SOEs, to oversee all procurement, contracting out, PPPs and projects as determined by its terms of reference. The Unit will function as a center of excellence and knowledge. To encourage the development of contract monitoring and management skills the Unit will be the contract counterparty (Government representative) in all PPP contracts that meet this Policy's thresholds (except for SOEs). The line or sector ministry that is responsible for the economic sector relevant to the PPP will provide technical monitoring advice and input; assisting in the development and monitoring of contracted performance measures and as a member of 3PPT.</p> <p>In the case of SOEs, the SOE will be the contracting party with the private sector and the PPP Unit will act as the expert and technical advisor to the SOE's board and management.</p>
PPP Contract Management Team	<p>The PPP Contract Management Team or "contract management team" is the group responsible for managing and monitoring performance of the PPP contract post financial closing / contract execution. The Team will be chaired by a member of the PPP Unit or the Unit's nominee and will usually comprise a subset of the 3PPT. The team will always include representation from the ministry or government agency responsible for, or benefiting from, the PPP output, for example ICI for road PPPs, Ministry of Education for school PPPs. For SOEs the membership of the contract management team will be determined by the SOE board and will include a member of the PPP Unit.</p>
Procurement Policy	<p>Recognizing the nature of SOEs, Paragraph 1.2.2 of the Procurement Policy provides that SOEs may adopt a procurement process other than that prescribed in the Policy, if approved by the Financial Secretary or Gazetted. Similarly, Cabinet may also approve a specific procurement process for PPPs and contracting out activities that fall within this Policy different to that contained in the Procurement Policy.</p>
Tender Committee	<p>The Committee, comprising the Financial Secretary and Solicitor General, will ensure tenders are undertaken in accordance with the Procurement Policy, including PPPs and contracting out transactions under this Policy. Where Cabinet has determined that a PPP or contracting out activity should be undertaken outside of the Procurement Policy, the Committee will ensure that the process implemented follows the process approved by Cabinet. The Tender Committee's confirmation that the mandated process has been followed is required before approval of contract execution (see Stage V in figure 3). The Tender Committee is also responsible for approval of all relevant legal documents and contracts and approval of the business case and feasibility study developed in stage III of figure 3 for Government PPPs. In the case of SOEs, the board of the SOE will undertake the role of the Tender Committee.</p>

PPP Governance Committee	Comprises members of the Infrastructure Committee and National Sustainable Development Committee (NSDC). While there is some duplication in membership, the Financial Secretary sits in both committees, the combined committees recognize that not all PPPs will focus on infrastructure. The PPP Governance Committee (PPP GC) must approve all papers that are to be submitted to Cabinet in stage III, approve the selection of a project as a PPP in stage I (both figure 3) and has overall governance responsibility for Government PPP projects approved under this Policy.
SOE Board	For all PPPs and contracting out activities where the project proponent or sponsor is a SOE, the board of the SOE will undertake the functions of the PPP Governance Committee and Tender Committee. If the project meets the financial threshold in Section 3.1.7, the Minister responsible for SOEs will submit any Cabinet papers relating to the PPP project through his / her office.

4.1.2 Proposed PPPs will be reviewed and approved at key stages in the development process (see Figure 3).

4.1.3 The key agencies or ministries to be involved in the oversight, review, analysis, implementation and monitoring of a PPP project are:

- **PPP Unit** – will have lead responsibility for PPP matters that is, review, analysis, implementation and monitoring;
- **PPP contract management team** – responsible for managing and monitoring performance of the contract post contract execution.
- **Ministry of Finance and Economic Management** – role is critical given the potential for PPP projects to require budget funding for investment and/or operation and also through the potential for PPP contracts to expose the Government to both actual and contingent fiscal liabilities;
- **Crown Law Office** – will provide legal guidance, as PPP projects involve contractual dealings; and
- **Project sponsor** – PPP projects would also be the responsibility of the ministry, Government agency or SOE that is responsible for the sector or activity relating to the PPP – in this Policy that will normally be termed the Project Sponsor but could also be described as “relevant agency”. For example, for schools it would be the Ministry of Education, for power projects – Te Aponga Uira (TAU), for roads - ICI; and
- **PPP transaction advisor** – the PPP transaction advisor/s or transaction advisor/s would provide project specific expertise and skills in various fields such as, technical, finance, legal, market/demand, tax, accounting and insurance. Transaction advisor costs must be included in the PPP project costs. Use of internationally based legal and other advisors will be required when the projects are significant and / or complex.

4.2 PPP Project Team

4.2.1 Unless Cabinet determines otherwise, for each proposed PPP project the PPP Unit will establish a PPP Project Team (3PPT) in consultation with the Minister of Finance with the following representation:

- PPP Unit (Chair) unless determined otherwise by Cabinet;
- Ministry of Finance and Economic Management (budget division);
- Office of the Solicitor-General;
- Relevant agency considered for PPP (Project Sponsor); and
- PPP advisor/s.
- Others as determined that possess the skills, knowledge and experience to assist the project be successful.

4.2.2 The composition of the PPP Project Team will be determined on a case by case basis by the PPP Unit subject to approval of Cabinet. The PPP Project Team will report directly to the PPP Governance Committee through its chair.

4.2.3 For projects undertaken by SOEs, the composition of 3PPT will be determined by the SOE's board but will include at least one member of the PPP Unit either as a full member or as an advisor to the 3PPT with rights to attend every meeting.

4.3 PPP Unit

4.3.1 The PPP Unit will provide direction and oversee the PPP program and take on the following functions:

- Suggest projects to be developed as a PPP and endorse projects for development of a business case, based on an initial screening by the PPP Unit;
- Hold 3PPT accountable for developing and implementing PPP projects, following an agreed project timeline;
- Lead, on behalf of government, contract negotiation and coordinate development of performance measures with the relevant agency (for SOEs this role will be responsibility of the SOE board with the PPP Unit providing technical advice and input to the board);
- Develop, with the relevant agency, a performance monitoring regime for whole of contract duration and audit performance monitoring; and
- Guide contract management team as needed to manage change during the lifetime of the PPP contract.

4.3.2 The responsibilities would include:

- ***Develop and disseminate PPP policy*** - advice on development of PPP policy and regulation; develop guidance material and templates and build understanding in public and private sectors of the Government's PPP program.

- **Monitor the PPP program** - ensure that all PPP projects are developed in accordance with PPP policy, principles, and processes. This includes ensuring projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are well managed.
- **Assessment of suitability** – assessing project proposals for PPP delivery, and development and maintenance of a PPP project pipeline.
- **Contribute to development of PPP projects** - responsible for developing the business case for each PPP project and implementing the PPP transaction. Act as experts to assist SOEs develop PPP projects.
- **Be a repository of skills and knowledge** - continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling information on PPP projects in Cook Islands, and systematically analyzing the success of those projects—what has worked and what has not—to inform the development of the PPP program.

PROCESSES AND APPROVAL

5 PPP PROCESSES AND APPROVALS

- 5.1 Most commonly, PPP projects will be initiated by the Government or State-owned Enterprises; some could originate from an unsolicited proposal by a private party⁶. Government initiated projects can occur in a variety of ways, particularly:
- a Government agency, such as ICI, contacts the PPP Unit directly when they have a proposal that they believe may be suitable for PPP delivery;
 - the Ministry of Finance and Economic Management refers proposals it identifies as potential PPP projects to the PPP Unit. Identification could occur through the preparation of the budget’s Capital Plan or budget bids submitted as part of a government agency’s Budget Submission; or
 - CIIC refers proposals it identifies as potential PPP projects when reviewing a SOE’s business plan and SCI, as part of CIIC’s role as administrator and manager of Crown assets, or relating to the development of new Crown assets;
 - SOEs may identify potential PPP projects; or
 - the PPP Unit identifies projects that may be suitable for PPP delivery.
- 5.2 PPP process and the Procurement Policy and TTV: To achieve the Objectives in Section 3, all PPP projects in Cook Islands will be developed and implemented following a consistent and transparent process. The PPP process consists of six stages as shown in Figure 3 and as detailed below. The institutional entities that will be involved in the PPP process are listed and their roles described in Section 4. The PPP process must follow the Procurement Policy unless alternate rules are approved in accordance with

⁶ See Section 8

the Procurement Policy. The Activity Management System is the overarching process and the PPP Policy implementation sits within that System, with additional features or steps as detailed in Section 5 of this report and Figure 3.

5.3 PPP Process (**Refer Figure 3**). There are six stages in the PPP assessment and approval process numbered Stage I to Stage VI. The Stages relate to five Phases in TTV, being Concept, Planning, Implementation, Completion and Evaluation. The TTV Concept Phase is covered in PPP Stage 1 and 2; this recognizes the more complex nature of PPP arrangements, requiring more upfront planning, and the requirement to assess the value for money as a PPP procurement.

5.4 TTV is weak in two areas particularly important for PPPs – (1) pre-appraisal capacity assessments and stakeholder engagement plans; and (2) contract or asset management plans. Recommendations on how these weaknesses can be addressed are contained in the Report on Legislation, Regulations, Contracting and Procurement Arrangements⁷ Impacting PPPs. The TTV Phase corresponding to the PPP Process stages is noted in Figure 3.

5.5 PPP Process stages described in detail (Figure 3):

- I. **Identifying and screening potential PPP projects** - The aim of this stage is to select from among the priority projects, as determined through the NIIP⁸, Budget's Capital Plan or SOE's business plan, those that are expected to provide better value for money if implemented as PPPs rather than traditional procurement. PPP Governance Committee's (PPPGC)⁹ confirmation that the project should be processed as a PPP will be sought before proceeding to the next stage. The analysis will be undertaken by the PPP Unit¹⁰ and will include an assessment of value for money as a PPP procurement. A first draft Concept Note is prepared in accordance with TTV at this stage.
- II. **Inception** – The project should be registered with the PPP Unit. At this stage a project sponsor may be identified. The project sponsor may be an individual with a strong interest in the development of the project and usually with technical knowledge relevant to the project, or the relevant line or sector ministry. In the case of an individual, the project sponsor may be a member of the PPP Unit or someone employed by the government agency that is promoting the project. Also, at this time the PPP Project Team is selected. The PPP Project Team will comprise members of the PPP Unit and others whose skills, knowledge, experience and responsibilities are relevant to the project. For example, if the project relates to roads, it will include ICI staff. The intention is to form a group that has the best mix of skills, knowledge and

⁷ Deliverable D under TA-9292

⁸ Or any successor document

⁹ For all Government projects; SOE boards will undertake this role for projects developed by SOEs with technical expertise provided by the PPP Unit.

¹⁰ In the case of projects developed by SOEs, the SOE Board / management will undertake the assessment with support from the PPP Unit.

experience to progress the project. Depending on the size and complexity of the project, the team would normally consist of 4 to 10 people (including staff from the PPP Unit). The PPP Unit will act as secretariat for the 3PPT. In the case of PPP projects developed by SOEs, the SOE board will determine the composition of the 3PPT which will include at least one member from the PPP Unit. The TTV Concept note for the project as a PPP is finalized during this stage.

- III. **Developing a business case & project feasibility** – This stage encompasses the TTV Planning phase. A project business case will be developed setting out the scope and proposed structure of the project, and a detailed assessment of its viability and suitability for implementation as a PPP. Project risks and allocation will also be included in the business case. The business case will be carefully reviewed and scrutinized by the PPP Unit before being submitted to the PPP Governance Committee (see Figure 4) and Tender Committee (TC), or SOE Board in the case of SOEs. If the PPPGC and TC are satisfied with analysis, process and documentation, the PPP Unit will seek Cabinet approval to move to implementation. In the case of SOEs, they will follow their usual practice for approval of major projects, which may include seeking CIIC, Ministerial and Cabinet approval, or any one or combination of those approvals.
- IV. **Preparing for and implementing a PPP transaction** - Once PPP Governance Committee approval¹¹ is given to proceed based on the business case, the PPP Unit will prepare and implement the PPP transaction. The objective at this stage is two-fold: to select a competent firm or consortium to act as the private developer/operator; and to identify the most effective and efficient solutions to the proposed project’s objectives or outputs—both from a technical and value for money perspectives. The specific transaction process may vary depending on project needs; it will typically include the following steps:
 - a. Select a transaction advisor¹² / s. This will most likely involve a competitive tender;
 - b. Invite Expressions of Interest (EoIs) and identify qualified bidders;
 - c. Prepare transaction documents;
 - d. Issue Request for Tender and manage interactions with bidders; and
 - e. Evaluate and select the preferred bidder.
- V. **Contract Finalization and approval** – This is the final contracting stage. The preferred bidder has been selected and the contract is finalized. Any changes to the contract should be for clarification purposes only and not substantive. In some situations, the public partner may seek to enter into substantive negotiations with the successful tender – termed post tender negotiations; this is not recommended. The need for substantive changes to the contract would usually indicate a need to re-tender. The main steps in this final stage are
 - a. Finalize the contract;

¹¹ Of board approval for SOEs.

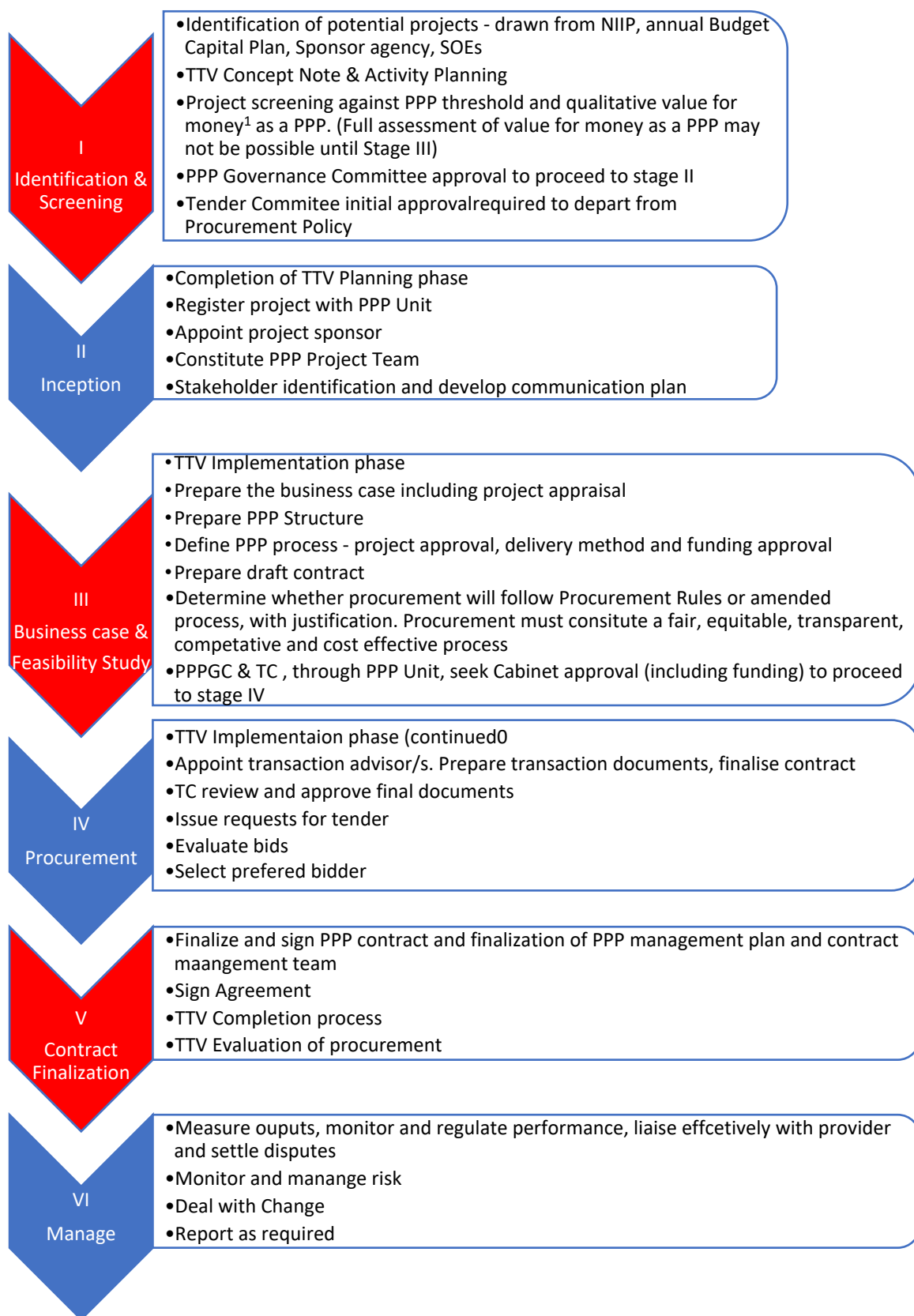
¹² For smaller and less complex PPPs a transaction advisor / s may not be required

- b. The Tender Committee and PPP Governance Committee provide final approval to sign contract¹³; and
 - c. Contract execution and financial close.
- VI. **Managing PPP contracts** – The value in PPP contract is significantly impacted by the original concept design, tendering and post financial closing contract management. A contract management team will be appointed that has the responsibility to manage the contract through its expected life, which could be twenty to fifty years. The contract management team will normally comprise a subset of the 3PPT and will always include members from the implementing or purchasing agency and a representative from the PPP Unit. In the case of SOEs, the board will determine the membership of the contract management team, which will include a representative from the PP Unit. The PPP contract must be monitored and managed over its lifetime to ensure all parties' obligations are met, and assets and services are delivered as contracted. As PPPs are long-term performance-based contracts much of the PPP's value and benefit is derived through this period and the full value will only be achieved if contract monitoring is effective and any underperformance or breach is dealt with promptly.

RED = Approval stages; BLUE = Process stages

¹³ For SOEs, the board will authorize contract signing subject to any approval conditions imposed by the Responsible Minister and / or CIIC.

Figure 3 – PPP Process and Approvals



¹Value for money in terms of procurement method used. Does PPP produce value for money compared with traditional procurement methods. See also Definition used in Cook Islands Financial Policy and Procedures Manual as quoted in TTV

PROJECT APPRAISAL CRITERIA

6 PPP PROJECT APPRAISAL CRITERIA (Stage III Figure 3)

6.1 To ensure that the objectives of the PPP program and the potential benefits of using PPPs are achieved in practice, the Government will ensure that all PPP projects meet the following five criteria. Assessment of the project's ability to achieve the criteria must be evident in the business case:

- **Feasibility and economic viability of the project** – whether the underlying project makes sense, irrespective of the procurement model. The assessments include (a) is the project listed as a priority project in NIIP and the Budget Capital Plan or SOE's business plan? (b) Is the project technically feasible, and technology is readily available and appropriate for use in Cook Islands¹⁴; (c) legally sustainable and feasible; (d) environmentally sustainable; and (e) socially feasible. The feasibility test also includes - is the project economically cost-benefit justified and the least cost solution to the identified investment or service need? Activity Value for Money (VfM) analysis will be undertaken at this stage as detailed in Section A4 of the Activity Management System. If full quantitative analysis is not feasible due to lack of meaningful or measurable inputs, then qualitative assessments may be used, or a mix of the two. Where qualitative measures are used they must be identified in the end of Stage III Cabinet Paper seeking approval to proceed; and
- **Commercial viability** – an assessment of whether there are qualified private parties available to undertake the project, and whether the project will provide a commercial rate of return sufficient to attract such parties and create competitive tension¹⁵. This is subsequently verified through the tender process; and
- **Fiscal responsibility** – where the project relies on a component of user pays, are revenue projections within the capacity of users to pay and can government fund the difference between required revenues and user payments – the viability gap. Also, an assessment of whether the project's cost to the Government¹⁶ are consistent with fiscal priorities, and whether risks retained by the Government¹⁷ are fiscally sustainable; and
- **Qualitative Value for money as a PPP** - the proposed PPP is expected to achieve value for money compared to alternative implementation options such as direct government procurement. This assessment should be undertaken in Stage I, but if

¹⁴ The technology may not be available at the time of tender, but there is no reason why it could not be made available as part of the PPP project.

¹⁵ It is possible to create and sustain competitive tension even where there is only one bidder provided the bidder does not know they are the only one.

¹⁶ And / or SOE

¹⁷ And / or SOE

there is insufficient data available in Stage I, it should be completed in stage III; and

- **Project management** – whether the contracting agency (usually the PPP Unit or SOE in the case of a SOE being the project sponsor) have the authority, capacity, and fiscal resources to prepare and tender the project, and manage the contract during its term. Analysis of this criteria should be undertaken in stage I but may be fine-tuned in stage III when project details are confirmed and may result in the Government allocating additional resources to the PPP Unit and agency responsible for the PPP output to ensure they can manage the contract effectively. This could involve coopting expertise from other Government agencies, seeking donor support through Technical Assistance programs, or purchasing the expertise through a competitive tender or other approved method.

6.2 Unless determined by Cabinet as part of the approval in stage III, PPP procurement and implementation will follow the processes set out in the Procurement Policy and Activity Management System. If an alternate procurement process is determined appropriate, it must be tentatively approved by the Tender Committee at the end of Stage I to allow the project to proceed to Stage II. Departure from the Procurement Policy will then be confirmed in the Cabinet approval required at the end of stage III.

PPP COMMERCIAL PRINCIPLES

- 7 PPP contracts will be designed to achieve the best value for money for the Government and service users. The following commercial principles will guide the preparation of PPP contracts in the Cook Islands for Government and SOEs. The Government may develop and adopt detailed guidance material and standard PPP contract clauses that capture these principles.
- use of competitive procurement processes in line with the Procurement Policy as updated in 2016;
 - ensure projects are adopted that are consistent with the Government's priority needs and proposed outcomes are consistent with the Government's fiscal and debt management policies;
 - use rigorous project governance arrangements that provide predictability, transparency and fairness of process for bidders; and
 - use consistent processes and approaches to risk allocation to ensure Government's and / or SOE's risks are identified and where possible costed and procedures are implemented to reduce transaction cost and time.

UNSOLICITED PROPOSALS

- 8 An unsolicited proposal (USP) is a proposal initiated by a private party to undertake a PPP project which was not specifically requested by the Government or a SOE. Unsolicited proposals may allow the public party to benefit from private sector innovation and ideas meeting infrastructure or service needs. The Government will consider unsolicited proposals that are demonstrated to be of public benefit on a case by case basis.
- 8.1 Where Government receives an unsolicited proposal, subject to any conditions imposed by the proposer at the time of submitting the proposal, the Government has the option of responding by electing to undertake a competitive tender.
- 8.2 Unsolicited proposals should follow the process described in Figure 4. The public party retains the right to exit at decision points during the development of the USP into a binding transaction as shown in Figure 4, if the public party believes that the proposal no longer meets its requirements as defined.
- 8.3 The process steps for USPs are:
- 8.3.1 Project Identification: USP proponent submits proposal to government agency or SOE. The government agency / SOE checks whether USP submission is compliant with project needs and consistent with planning documents.
- 8.3.2 Screen and appraise proposal: Project is submitted to PPP Unit¹⁸ who verifies whether the USP proponent meets the evaluation criteria; requests evidence of USP proponent qualifications (if relevant); uses benchmarking and market testing (if relevant) to evaluate the project; seeks Tender Committee approval for tender waiver. If tender waiver approved, discloses relevant documentation; and determines the most appropriate project development, contracting and procurement method.
- 8.3.3 Structure PPP / Appraise PPP: The PPP Unit¹⁹ establishes a PPP Project Team who either (1) undertakes project development with external advisors (or) signs a Project Development Agreement with the USP proponent for specific studies; uses benchmarking and market testing (if relevant) to evaluate the project; completes a business case; discloses relevant documentation and confirms the most appropriate procurement method.

¹⁸ SOE board, through SOE management, in the case of SOEs, with PPP Unit specialist input as required.

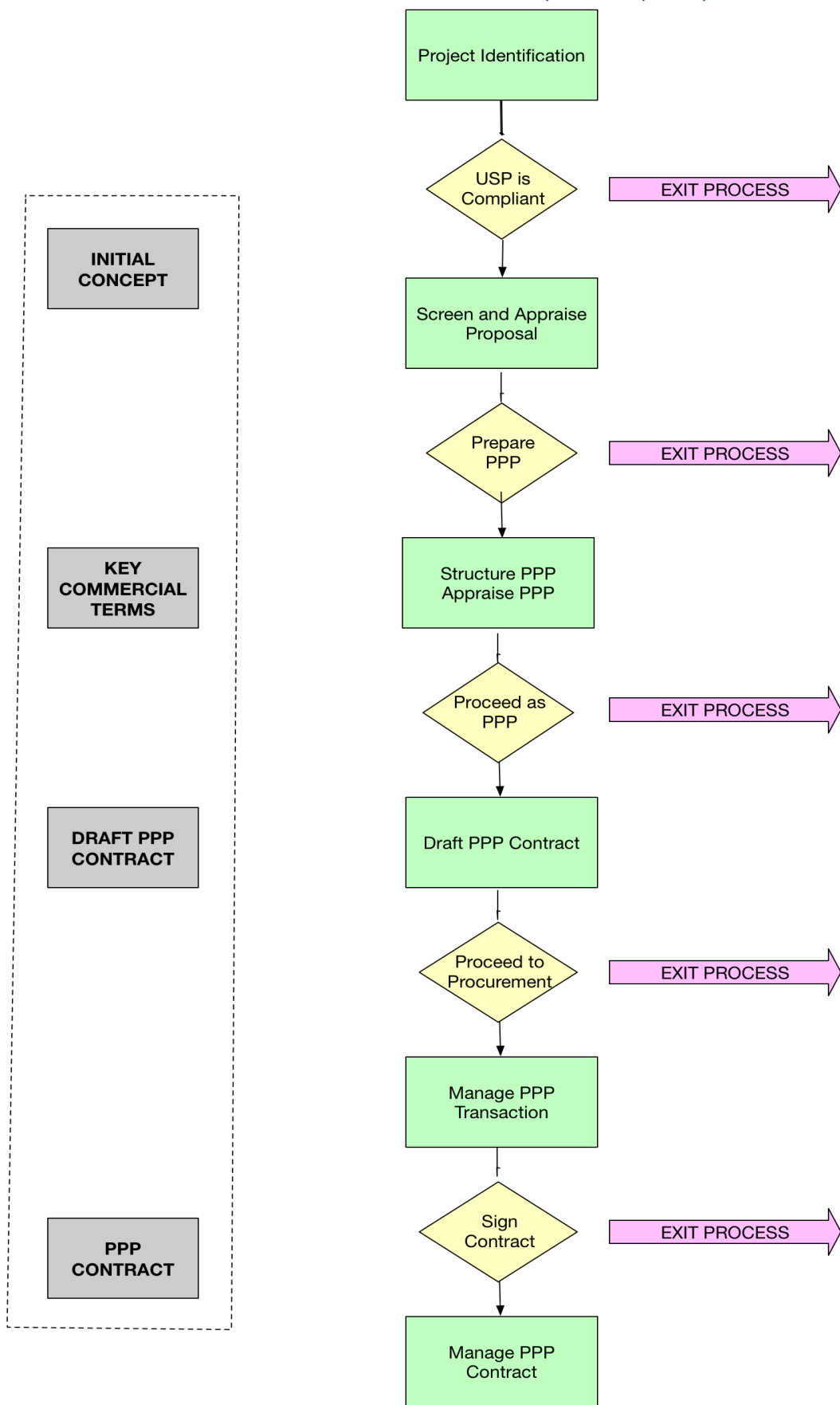
¹⁹ SOE board, in the case of SOEs

- 8.3.4 Draft PPP contract: To prepare for procurement, the PPP Project team – secures government contribution (land, right of way, budget allocation), obtains environment and social clearance, develops a draft PPP contract (with external advisors if required, under the oversight of Solicitor General’s Office). PPP Unit²⁰ may at this stage elect to competitively tender the project. If competitively tendering, draft documentation to support tender, if continuing direct negotiation seek Tender Committee confirmation and use benchmarking and market testing if required.
- 8.3.5 Manage PPP transaction: PPP Unit²¹ either (1) undertakes competitive tender or (2) directly negotiates the PPP contract.
- 8.3.6 Manage PPP Contract: Set up contract management structures and establish contract management team. Monitor and manage PPP delivery and risk, deal with change.

²⁰ SOE board in the case of SOEs

²¹ Or SOE board in the case of SOEs

Figure 4: Process to deal with Unsolicited Proposals (USP)



APPENDIX 1

LIST OF LEGISLATION AND DOCUMENTS REVIEWED

Legislation

Airport Authority Act 1985
Arbitration Act 2009
Constitution of the Cook Islands 1964
Cook Islands Act 1915
Cook Islands Bank Act 2003
Cook Islands Investment Corporation Act 1998
Island Government Act 2012-13
Ministry of Finance and Economic Management Act 1995-96
Ministry of Supportive Services Act 1973-74
Ports Authority Act 1995-95
Te Aponga Uira act 1991

Bills

Cook Islands Reticulated Services Bill
Cook Islands Roads and Public Infrastructure Bill
Cook Islands Solid and Hazardous Waste Bill
Rarotonga water authority Bill
Telecommunications Bill

Documents

Activity Management System
Budget Capital Plan 2016/17
Cook Islands Infrastructure Investment Plan 2015
Cook Island Government Purchase and Sale of Goods and Services Policy
National Infrastructure Policy for the Cook Islands 2018

Appendix 2

Organizations that participated in introductory training and were consulted on the development of this Policy

Training

Cook Islands Investment Corporation

Infrastructure Cook Islands

Development Coordination Division overseeing the development and implementation of Te Tarai Vaka

Procurement team, Ministry of Finance and Economic Management

Ministry of Finance and Economic Management

State-owned Enterprises

Airport Authority

Bank of the Cook Islands

Ports Authority

Te Aponga Uira

Private sector representatives through the Cook Island Chamber of Commerce

Consulted on draft PPP Policy

Government Agencies

Cook Islands Investment Corporation

Crown Law Office

Infrastructure Cook Islands

Development Coordination Division overseeing the development and implementation of Te Tarai Vaka

Procurement team, Ministry of Finance and Economic Management

Ministry of Finance and Economic Management

State-owned Enterprises

Airport Authority

Bank of the Cook Islands

Ports Authority

Te Aponga Uira

Appendix 3

FISCAL MANAGEMENT AND ACCOUNTING FOR PPPs²²

Even in cases where the private party is responsible for raising the financing needed for the PPP; PPPs typically create fiscal obligations for the Government, which can in some cases be similar to those arising from traditionally-procured projects financed by Government debt. It is important that Government fully assess the fiscal risks, actual and contingent. PPP fiscal obligations may be direct—that is, where the payment need is known or contingent where the occurrence, timing, and magnitude of a payment depends on some uncertain future event.

The Government is committed to responsible management of its fiscal commitments arising from PPP projects. This includes identifying and appraising the fiscal implications of all proposed PPPs and ensuring these are in line with fiscal priorities.

Following international practice (**International Public-Sector Accounting Standard (IPSAS) 32**), the Government will determine when and how PPP projects and their associated liabilities should be recognized as contributing to public debt:

- ***For ‘Government-pays’ PPPs*** - where the revenue stream to the private party comprises payments from the responsible Government entity. The Government will recognize and include in measures of public debt a liability equal to the value of the PPP asset.
- ***‘User-pays’ PPPs*** - will not generally be considered as creating liabilities that should be recognized and factored into public debt measures. Nonetheless, where these projects involve fiscal risk through the provision of Government guarantees or other risk-sharing mechanisms, the associated contingent liabilities will be disclosed in notes to public financial statements and reported alongside information on public debt in [list other important financial reports]. These contingent liabilities will be recognized as public liabilities only if payment is considered probable.

For PPP projects involving a combination of Government and user payments, the treatment in accounts and public financial reporting will be split accordingly.

²² Source: Draft PP Policy for Fijian Government; Asian Development Bank; Private Sector Development Initiative; Glenn Maguire, 2017