



New South Wales
TREASURY

**NEW SCHOOLS
PRIVATELY FINANCED PROJECT
POST IMPLEMENTATION REVIEW**

Office of Financial Management

Research &
Information Paper

PREFACE

This NSW Treasury Research & Information Paper - *New Schools Privately Financed Project Post Implementation Review*, is the outcome of the first Post Implementation Review to be conducted under the *Working with Government Guidelines for Privately Financed Projects*, November 2001.

Under the Guidelines, Post Implementation Reviews of Privately Financed Projects (PFPs) should be initiated around 12 months after the infrastructure commenced operations. The purpose of these Reviews is to assess the process and outcomes associated with formulating the project, allocating risks, the performance of the infrastructure, the delivery of the project and the management of stakeholders.

The first tranche of schools procured under the first New Schools PFP opened in January 2003, with the second tranche opening in January 2004.

This Review was particularly timely because it was conducted during the procurement of a number of other PFPs, including: the second New Schools PFP, the Mater Hospital Redevelopment and the Long Bay Prison and Forensic Hospitals. Lessons learnt from this Review were applied to refine the procurement processes of these as well as other projects. Where actions have been taken to address particular recommendations made by the Steering Committee, this has been indicated in this Report.

I wish to express my appreciation to all the agencies who participated in this Review, as well as the private sector bodies that took the time to make submissions to the Steering Committee.

The NSW Government has endorsed the public release of this Review.

Contact Officer: Ms Ros Martin, Principal Financial Analyst, ph 02 9228 5825, email: Ros.Martin@mail.treasury.nsw.gov.au.

John Pierce
Secretary
NSW Treasury
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| <p>General inquiries concerning this document should be initially directed to: Ros Martin (Tel: 9228 5825, or E-mail: Ros.Martin@mail.treasury.nsw.gov.au) of NSW Treasury. This publication can be accessed from the Treasury's Office of Financial Management Internet site http://www.treasury.nsw.gov.au/. For printed copies contact the Publications Officer on Tel: 9228 4426.</p> |
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1 EXECUTIVE SUMMARY

1.1 INTRODUCTION TO THE PROJECT

The New Schools Project was the first project delivered under the NSW Government's *Working with Government: Guidelines for Privately Financed Projects*, released in November 2001. It was also the first social infrastructure privately financed project (PFP) in NSW and the first schools PFP in Australia.

The New Schools Project commenced in 2000 with investigations by the Department of Education and Training (DET) of the feasibility of packaging schools delivery as a privately financed project. The project then progressed to Expression of Interest phase in October 2001, moving through a Request for Detailed Proposals and Best and Final Offer before financial close was achieved in March 2003.

The project required the development of new procurement "tools" for the acquisition of school facilities, including a schools output specification, risk analysis and allocation, and payment mechanism.

A total of nine schools have opened in north-western and western Sydney, the Illawarra and the Central Coast. Four schools opened in 2004 and five in 2005. These include:

| | |
|-----------------------------------|---------------------------------------|
| § Dapto Primary School | § Woongarra Primary School |
| § Kellyville Ridge Primary School | § Glenwood High School |
| § Sherwood Ridge Primary School | § John Edmondson High School |
| § Ironbark Ridge Primary School | § Talwood School for Special Purposes |
| § Shell Cove Primary School | |

The private sector financed, designed and constructed these schools to standards that meet or exceed the Department of Education and Training's (DET) school facilities standards. In addition the private sector will provide cleaning, maintenance, security, safety, utility, furniture, equipment and grounds maintenance and other services for these school buildings until 31 December 2032, when the buildings will be handed over to DET (DET Summary of Contracts 2003:1 available at <http://www.treasury.nsw.gov.au/wwg/projects.htm>).

The PFP schools were delivered some two years earlier, on average, than would have been possible had traditional public sector funding been used. PFP delivery has enabled a faster response to demographic needs in urban growth areas.

In addition, the schools were constructed in a shorter time frame, some three months faster, than is usually achievable under traditional design and construct contracts. This enabled a January 2004 opening for the first tranche of schools rather than a mid term opening.

In addition to the school facilities, the Contract has provided a child care centre at eight of the schools. The child care centres occupy a discrete part of the site and are run independently of the schools by a private operator. The consideration for licensing a portion of the site was a one-off \$2 million payment to DET.

To manage the school facilities the Contractor, Axiom, has also provided each school with an on-site manager. The on-site manager performs a mix of tasks such as minor maintenance and grounds maintenance, interfaces with the Contractor, sub-contractors and responds to

security call-outs. The provision of an on-site manager was not required by the Government and is essentially a bonus resource.

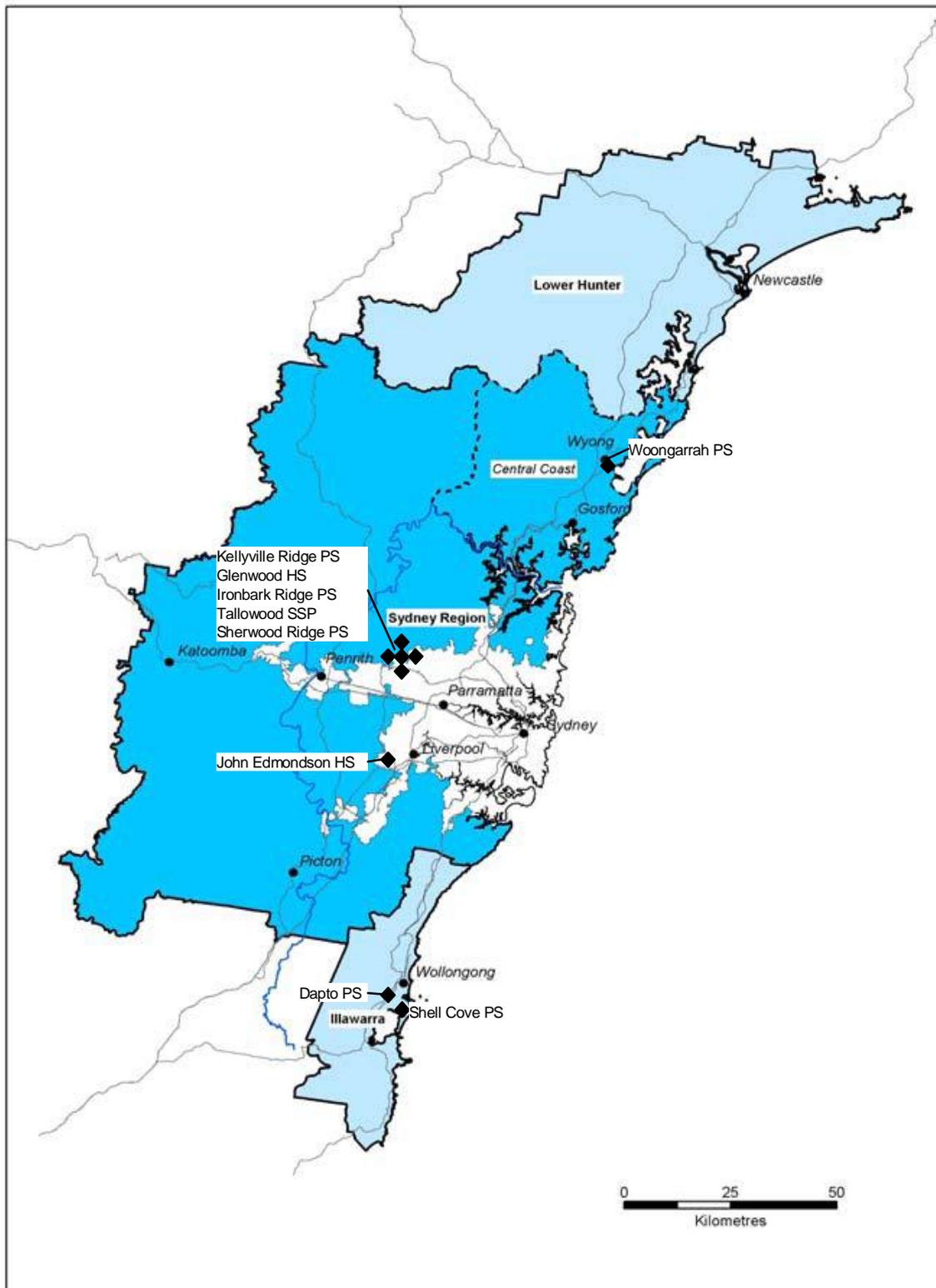
The Working with Government Guidelines require that a PFP project deliver better value for money than traditional delivery. To ensure that this occurs the PFP is compared to the cost and benefits of traditional delivery of the project – taking account of both quantifiable factors and quality issues. The New Schools Project was able to deliver better value for money as tested against the Public Sector Comparator (PSC). The risk adjusted PSC produced a range of likely costs as follows:

| | | |
|---|---|--|
| PSC best case \$134.3 million | PSC most likely \$141.8 million | PSC worst case \$152.6 million |
|---|---|--|

The risk adjusted cost of private sector delivery over the 30 year life of the Project was \$131.4 million. The Project's savings are measured against the most likely scenario for public sector delivery (\$141.8 million), producing an estimated saving of just over 7%. The savings achieved were returned to DET, with \$7 million of capital savings retained within DET's capital program, thus freeing up funds for use on other projects.

The outcomes of the tender process, as outlined above, are positive and an improvement on traditional delivery. The Post Implementation Review was conducted to assess compliance with the Working with Government (WWG) Guidelines and identify key lessons and areas for improvement for any future projects. The WWG Guidelines provide detailed procedural guidance and specify certain objectives and evaluation criteria that should be common to all PFP projects. To assess the New Schools Project against the Guidelines a mix of evaluation and auditing conclusions have been drawn.

Map of Schools Delivered under the first tranche of the New Schools PFP located by a diamond shaped marker



1.2 REVIEW FINDINGS

Project Development

The project was delivered over a relatively long period of time. Initial scoping work for the project commenced in June 2000, some 16 months prior to the issue of Expression of Interest (EOI) documents. This demonstrates the careful pre-planning and consideration that was undertaken before any approaches to the market were made. It also reflects the fact that this was the first PFP done by DET, and therefore a learning process was occurring. The project preparation involved detailed analysis, including identification of possible schools, accounting treatment, economic appraisals and Public Sector Comparator development.

The Working with Government (WWG) Guidelines for Privately Financed Projects, which were released in November 2001, are the Government's formal policy on PFP delivery. The WWG Guidelines provide detailed guidance and requirements that agencies need to follow prior to seeking approval to release an Expression of Interest (EOI).

The New Schools Project met the majority of the WWG Guidelines requirements. The few requirements that were not fulfilled (addressed in the section on 'Project Development' below) did not appear to hinder the success of the Expression of Interest process, or indeed the subsequent stages in the procurement process.

The EOI generated a good deal of interest from the private sector, and eleven proposals were received. The EOI process resulted in the short-listing of four proponents to proceed to Request for Detailed Proposals stage, including:

- § The Axiom Education consortium (ABN AMRO, Hansen Yuncken, St Hilliers and Spotless)
- § The Community Education Partnership consortium (Bilfinger Berger, Baulderstone Hornibrook and Tempo Facility Services)
- § Livings Schools Ltd (John Holland, Jarvis and SG Australia)
- § The Schools First consortium (Theiss and Tempo Facility Services)

The Review has found that the Working with Government (WWG) Guidelines are reasonably complex and has recommended that the requirements be simplified. This should make it easier for agencies to quickly identify steps and procedures to be undertaken when considering the PFP option. NSW Treasury will be reviewing the WWG Guidelines in the first half of 2006, taking into account the recommendations made in this Post Implementation Review.

The Review also considered the objectives and evaluation criteria for the Project. The Project was found to have a high degree of consistency between the objectives and evaluation criteria and throughout the tender process. That is, the objectives did not change from one stage of the process to the next.

Finance and Risk Considerations

The New Schools Project triggered many ‘firsts’ in the finance and risk area. These included the Department of Education and Training’s first Public Sector Comparator (PSC); the first output specification for a range of services over a 30 year period; the first costings at the school level; the first formal risk allocation; and the first performance and abatement regime.

The Review engaged an independent consultant to run a Finance and Risk Workshop and prepare an assessment report. While Workshop participants had divergent views about the final recurrent costings settled on during the Project, it was generally agreed and acknowledged that the processes and procedures used for deriving the recurrent costings were robust and rigorous. Also, to some extent the accuracy of information contained in the PSC was borne out by the fact that the private sector bids were fairly close to government’s estimated cost of delivery. It can reasonably be expected that PSC estimates for future schools projects will improve further as DET improves its information base and gains experience with the PFP procurement model.

A key aspect of privately financed projects is the performance and abatement regime. These provisions allow agencies to abate payments if the contractor does not meet the required standards. The Schools Project drew on UK experience in this area. A series of recommendations on this aspect have been made by the Review. For future projects, these include, simplifying the payment mechanism, expanding the abatement regime from the individual school level to the package level to put at risk the whole project payment, and reviewing the current 25% performance abatement cap. The second New Schools PFP included a review of the payment mechanism and the adoption of a simpler scheme, taking into account lessons learnt from the first New Schools Project.

The Review also found that some unanticipated benefits had arisen from the PFP. This primarily included the release of a school Principal’s time that was previously spent dealing with facilities management issues. This is an important benefit that should be recognised in procurement assessments and, as far as possible a notional opportunity benefit attached.

Finally, consideration of budget and accounting issues was provided. PFP projects are handled by two areas in the NSW Treasury: the Private Projects Branch (PFP policy and project advice) and the Resource Allocation (agency budget management) Branch. PFP projects extend well beyond the four year forward estimates period and it is vital that Treasury maintain easy to access records, particularly of changes to the way the PFP transaction is recorded for budget reporting purposes (as compared with traditional procurement). It is recommended that Treasury explore the introduction of electronic data capture of these adjustments to improve existing records management.

Infrastructure Performance

This section of the report reviews the performance of, and changes to, service delivery; the division of core and non-core services; innovation; the impact of PFP on school planning and brief appropriateness and use of the variations mechanism.

Service Delivery

The New Schools Project packaged a group of nine schools and their associated facilities management. Services provided under the PFP include building maintenance, grounds maintenance, security, cleaning, pest control, help desk, waste management, furniture and portage, fire and disaster management and third party revenue. Traditionally these services are delivered separately by contracts managed by DET and/or the Department of Commerce, and/or the individual schools.

The Review has found that a key benefit of the PFP is the single point of contact under the PFP contract. The Contractor has provided a help desk plus an onsite manager to respond quickly to queries or requests for assistance from the schools. This relieves school Principals or teaching staff of sometimes having to navigate or deal with different Contracts, Contractors and sub-contractors and different government departments in order to address a facilities management issue.

It has also highlighted the critical role of school Principals, and the potential for cross-over with the Project Director's formal responsibilities under the contract. It is recommended that DET maintain frequent contact with Principals to support contractor interfaces at the school level; and it is recommended also that the role of school Principals in future projects be further clarified. As a consequence of this Post Implementation Review, the Concession Deed and contract documents for the second New Schools Project provide a clearer definition of the school Principal's role.

The Contractor appears to be delivering services in an efficient and effective manner. Evidence gathered from site visits and the submissions process indicates that users are satisfied with the Contractor's performance. Similarly, DET's records indicate a low level of failure under the contract and a correspondingly low level of abatement. Schools cited as evidence of good performance, a smooth building warranty defects period and the provision of additional resources, such as landscape gardeners and trades people, during the early opening stage.

As noted, the Contractor has provided an on-site manager to the PFP schools. This was not required under DET's output specification. There is some overlap between the formal duties statement of General Assistants provided by DET and the onsite manager. DET should review the duties of General Assistants at PFP schools with a view to removing any duplication.

Under the auspices of 'furniture and portage' the Contractor provides furniture and equipment for schools, and their ongoing maintenance and replacement for 30 years. A portion of a schools' establishment grant is held by the Contractor for the initial supply of furniture. Feedback was mixed, with some Principals feeling this was a major benefit of the Contract while others felt that this constrained their ability to reallocate funding between furniture and non-furniture related items. It is the view of the Review that the benefit of having long term certainty about the provision of furniture and equipment maintenance and replacement outweighs any concerns regarding any loss of short term flexibility to spend on other (non-furniture or equipment) items.

Service Changes

The Review found that some changes to service delivery had occurred during the operations phase of the Contract. These included changed payment arrangements for utilities and the cancellation of Out of School Hours (OOSH) care.

Difficulties in implementing the Deed in these areas provide lessons for future projects. Simplification of the utilities provisions is recommended and further policy decisions are required on how schools and/or DET should procure OOSH services.

The utilities provisions of the first Schools PFP have since been simplified, with the Contractor taking responsibility for paying the bills and DET reimbursing the Contractor for 50% of the bill. In the case of the second New Schools PFP, risks associated with changes in enrolments and the payment of utilities are allocated to the Contractor, rather than shared between the Contractor and DET.

Innovation

Innovation is defined by the Working with Government policy guidance as including “wider opportunities and incentives for innovative solutions to deliver service requirements” (WWG 2001:11). The Schools PFP provided a high degree of innovation in this area, delivering the first comprehensive bundling of facilities management services over a lengthy period of time. The PFP has provided a point of comparison against traditional arrangements in this area.

Apart from financing and procurement structure, many participants felt that innovation was lacking in the facility design area. The Review has found that innovation in building design was restricted during the Project due to a range of factors, including probity concerns restricting communication with the private sector, the desire to protect minimum facilities standards, and the need for the project to be affordable.

DET retains responsibility for educational service delivery under PFP. It is therefore important that DET ensure that all designs are compatible with the underlying service need. DET has indicated it is willing to consider design changes and it is a recommendation of this Review that future projects seek to better reconcile ensuring minimum facilities standards without compromising innovation.

The second New Schools Project included a value engineering study which assisted in identifying “inputs” that could be redefined or replaced with “outcomes” or “outputs” to provide more flexibility. In addition, a bidder engagement strategy is now part of the standard PFP process for the RDP tender stage. This enables bidders to better understand government requirements without compromising probity.

School Program Planning

PFP allowed DET to bring forward new school delivery by three years on average, for this Project. The faster time frames achievable with PFP delivery have created new challenges for DET’s planning for new school provision.

DET is already exploring ways to increase flexibility for planning changes under PFP delivery. It is recommended that this be complemented by DET seeking to adapt and improve its planning process to provide greater certainty of outcomes and ensure that

facilities are procured in a competitive market, rather than through the variations mechanism, post contract award.

Variations

The Review found that changes to facilities provision had been effected through both the variations mechanism and an “overs-and-unders”¹ system. The Contract had not envisaged an “overs-and-unders” system. This Review makes a number of recommendations in this regard, notably that future contracts anticipate the need for an “overs-and-unders” system and support it with clear Government authorisation procedures at both the agency and Treasury level. This recommendation will be taken into account in Treasury’s forthcoming review of the WWG Guidelines.

Project Delivery, Procedures and Management

Timelines

The project faced delays in its original time lines. Delays were caused in part by the reallocation of Ministerial/portfolio responsibilities; document preparation; the non-compliance of private sector bids at Request for Detailed Proposals (RDP) stage; and the inclusion of a Best and Final Offer (BAFO) process. Financial close was reached in March 2003, seven months later than originally anticipated.

Delays of this magnitude are not expected to occur in future Schools Projects, as many of the factors contributing to the delays are attributable to either factors beyond the control of the departments or to a learning process due to this being the first project of its type. In fact, the procurement period (from EOI approval to contract award) for the second New Schools PFP was only 9 months compared to 16 months for the first New Schools PFP.

PFP projects have a more stringent approvals process than traditional projects, with Budget Committee approval required at more stages. In the case of the Schools Project, the bundling of the nine schools (capital) plus the bundling of service delivery (recurrent) increased the total project value beyond traditionally delivered discrete schools, where each school and service component is considered separately.

Approvals

The Working with Government Guidelines provide some flexibility around seeking approval to issue RDPs and are silent on the issue of BAFOs. It is the Review’s recommendation that the WWG Guidelines be updated to provide clearer guidance on the circumstances requiring RDP approval and to include guidance on BAFO processes and procedures. This recommendation will be taken into account in Treasury’s forthcoming review of the WWG Guidelines.

Project Management

The Schools Project was overseen by a Steering Committee comprising officers of the Department of Commerce (formerly Public Works and Services), DET and NSW Treasury. The Steering Committee was supported by a Project Control Group, a probity auditor and

¹ “Overs-and-unders” is a process used through the design and construct phase to offset potential cost increases against decreases.

various Advisory Committees. An independent review by the probity auditor has found that the project management structure with respect to probity matters was appropriate and effective.

Some anecdotal evidence was presented to the Review that the large number of agencies and persons involved in the committees proved unwieldy in certain areas. To address this, subsequent PFP projects have refined and reduced the membership and structure of committees to provide a greater focus and concentration on the service delivery agency (as owner of the project) and Treasury's supporting role.

The Working with Government Guidelines provide limited guidance on the contract implementation phase. DET has established a team to implement and contract manage the PFP project on a day to day basis. This complies with the requirements of the WWG Guidelines. It is the view of the Review that, due to the length of PFP contracts and the expected ongoing changes, it is desirable that continuity of central agency and service delivery agency corporate knowledge be assured. It is recommended that this be achieved through the creation of a Project Management Steering Committee, which will meet quarterly initially, but no less than semi-annually. Through the operation of this Committee it is envisaged that Treasury will be able to provide greater guidance and support to agencies on contract implementation and management.

Stakeholder Management

Development of the New Schools Project coincided with the release of the Working with Government Green Paper and consultation process. This resulted in a fairly high degree of public and media interest in Privately Financed Projects in NSW and the Schools Project in its own right.

Criticism of the project at the time included concerns that it represented an outsourcing or privatising of public education; that the Government would abrogate responsibility for teaching and student outcomes; that facilities standards would be less than traditionally delivered schools and that the Project financing would be more expensive than for traditional delivery (leading to reduced resources for education).

The Review received formal submissions from the New South Wales Teachers Federation, The Public Service Association and the Secondary Principals Council. While these submissions do contain some criticisms of the schools, mostly in the area of DET's design standards, they are positive regarding the operation of the Contract. The positive sentiments expressed, including satisfaction with resources provided, and responsiveness to queries or calls for assistance on facilities management issues, represent a substantial shift from early concerns.

The Working with Government (WWG) Guidelines require that PFP contracts comply with certain industrial relations and community relations requirements. The PFP contract complied with the WWG Guideline requirements. In terms of industrial relations, no employees were transferred to the private sector under the Schools Project. DET was able to meet the WWG Guideline requirements for community relations planning through its standard community consultation procedures. DET undertook a range of activities and consulted broadly during the development of the project.

2 RECOMMENDATIONS, KEY FINDINGS AND ACTION TAKEN

PROJECT DEVELOPMENT (Chapter 4)

EOI Guidance

Key Finding:

The aim of the Working with Government Guidelines is “to provide a consistent, efficient, transparent and accountable set of processes and procedures needed to select, assess and implement Privately Financed Projects”. The transparency and efficiency of the Guidelines could be improved by streamlining the guidance material for seeking approval to proceed to Expression of Interest (EOI).

Recommendation:

That the following EOI guidance material be simplified:

- EOI document requirements (WWG 2001:21)
- EOI generic evaluation criteria requirements (WWG 2001: 22)
- Table 3.1 and 3.2 (WWG 2001:16, 18)
- Pre-EOI project definition requirements (WWG 2001:19)
- Additional EOI document requirements (WWG 2001:20)

Other Specific Suggestions:

1. The need for agencies to prepare a probity plan prior to seeking approval to proceed to EOI should be reviewed. A probity plan should only be required after approval has been received and before the EOI is issued.
2. Requiring agencies to identify the Public Sector Comparator (PSC) information to be disclosed is probably premature. The PSC is likely to evolve during the tender process to take account of any brief / project changes. It is for these reasons that agencies may not be able to definitively identify when and what parts of the PSC should be disclosed to the private sector.
3. Currently the Guidelines require an economic appraisal and a preliminary financial appraisal prior to receiving EOI approval. This should be amended to provision of an economic and/or financial appraisal, depending on the nature of the project.

Action Taken/Proposed:

These recommendations will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

Objectives and Evaluation Criteria

Key Finding:

The use of educational evaluation criteria tested new ground in the procurement process. Many consortia engaged educational consultants and provided creative solutions. Despite this, many participants felt the educational objectives and evaluation criteria needed to be more tangible to provide clear benefit.

FINANCE AND RISK CONSIDERATIONS (Chapter 5)

Payment and Abatement Regime

Key Finding:

The Schools Project payment mechanism was considered by Workshop participants to be complex - it contains many inputs, such as usable floor area, priority weightings, as well as minimum deductions, caps, ramp-ups, demountable, utilities and failure escalation criteria. A simple payment mechanism might allow finer pricing from the private sector and reduce costs associated with contract management.

Recommendations:

1. Any future schools projects should consider expanding the abatement to the whole package rather than quarantining payment at risk at the school level.
2. That any future Schools Projects seek to simplify the payment mechanism.
3. In relation to performance deduction caps, Treasury and service delivery agencies should consider whether or not a 25% cap is necessary; and whether or not they desire a cap applied monthly or a cap applied at each performance failure.

Action Taken/Proposed:

In undertaking the second New Schools PFP, the payment mechanism was reviewed and simplified, taking into account the lessons learned from the first New Schools project.

Previously Unquantified Benefits

Recommendation:

The additional time Principals are able to devote to educational matters should be quantified in terms of hours and a notional value attached. This should be incorporated into procurement assessments undertaken prior to the Expression of Interest stage.

Action Taken/Proposed:

An estimate of the benefit of additional time Principals are able to devote to educational matters will be taken into account in assessing the procurement options for any future New Schools proposals.

Treasury Recording of PFP Projects

Key Finding:

It is important that Treasury maintain an accurate, non-paper based record of adjustments to budget reporting (both capital and recurrent) that are associated with PFPs (as compared with traditional procurement).

Recommendation:

That Treasury explore improving the FIS (financial management) system to allow electronic footnoting of capital adjustments beyond the forward estimates period.

Action Taken/Proposed:

Treasury is currently implementing a Record Improvement Management System (RIMS) project which will improve document location and retrieval. Changes to the FIS system have not yet been addressed.

INFRASTRUCTURE PERFORMANCE (Chapter 6)

PFP Service Delivery

Key Finding:

The single point of contact for schools has been a major benefit. Feedback indicates that the PFP has allowed Principals to devote more time to educational matters, such as staff and school development. DET may also wish to seek ways to incorporate the positive service delivery aspects of PFP into traditional contract arrangements.

Role of the School Principal

Key Finding:

Principals have broad responsibilities to their school and community. The role of the Principal under PFP differs from that of the Project Director. It appears in day-to-day operation there is potential for cross over. It is important that Principals are kept up-to-date with the operation of the contract and understand their rights and responsibilities at a PFP school. This finding reinforces current practice in DET.

Recommendation:

That future schools projects seek to provide greater clarity around the role of the School Principal, if appropriate in the Concession Deed.

Action Taken/Proposed:

The second New Schools Project has provided a clearer definition of the school Principal and their role in the Concession Deed and Contract documents.

Utilities

Recommendation:

For the current project:

- a) That the charging under the Contract for air-conditioning and community use be clarified and, once clarified, that guidance material be provided to the schools.
- b) To minimise risk of non-recovery, DET could seek to make reimbursement to Axiom of 50% of the bill dependent on Axiom producing proof of payment of their 50% to the school.

For future projects:

- c) That alternative risk allocation for utilities be explored, with a view to simplification of the billing arrangements.

Action Taken/Proposed:

Axiom is now responsible for the payment of utilities accounts, with DET reimbursing Axiom for 50% of the bill. This resolution reflects the intention of the Deed.

The second New Schools Project has allocated risk and payment of utilities to the proponent.

Third-Party Use

Recommendation:

Future contracts should consider the nature of third party use whether or not the Government/DET:

- a) Is satisfied with an arms length service provision (i.e. the third party provider provides no services directly to the schools); or
- b) Considers it desirable for cross service provision and a contracting of service provision by the third party provider to the school community either:
 - i) As part of the PFP contract or
 - ii) By allowing schools to develop their own relationship with the third party service provider.

Action Taken/Proposed:

The provision of third party revenue and use of school site is considered to be a positive outcome of the first schools PFP. A relatively minor problem has arisen in the area of cross service provision of out of school hours care (OOSH). DET is taking action to formally terminate and/or amend the Deed in relation to the provision of OOSH services on the school site. The issue of contracting third party services for the school, for use by school students, is a broader policy issue. Some service provision, such as OOSH may be best handled at the school level.

Role of the General Assistant

Key Finding:

The Contractor is performing some duties performed by General Assistants at other schools, potentially leading to a “freeing up” of resources at PFP schools.

Recommendation:

A review of General Assistant duties at PFP schools is needed to avoid duplication.

Action Taken/Proposed:

Treasury will encourage a Review of the General Assistant duties.

Probity / Innovation

Key Finding:

The Project was innovative in its packaging of the schools and in its bundling of service delivery arrangements. This was a fundamentally new and innovative way of procuring school facilities and ancillary services.

Innovation in facilities design was potentially limited by a combination of concerns around probity, the desire to protect minimum facilities standards and affordability constraints.

Recommendation:

That future schools Projects seek to achieve a better balance between achieving market understanding of government requirements and protection of probity. This may involve more extensive use of workshops, bidder engagement sessions and earlier and fuller release of the Public Sector Comparator.

That future schools Projects seek to better reconcile ensuring minimum facilities standards without compromising innovation.

Probity / Innovation (continued)

Action Taken/Proposed:

A bidder engagement strategy has been introduced in all PFPs during the Request for Detailed Proposals stage. This enables bidders to better understand government requirements without compromising probity. In addition, the second New Schools Project included a value engineering study. This process helped to identify any areas in the output specifications and corresponding DET facilities standards where “inputs” could be replaced or redefined at “outcomes or outputs” to provide more flexibility.

School Planning

Key Finding:

The acceleration of delivery under PFP and the longer planning time frames highlighted the dependency of school provision on demographic demand and timely release of new housing developments. DET is already seeking ways to adapt the PFP process to cater for the need to adjust new school provision to align with areas of highest demand. However, this approach needs to be complemented with other measures as it is desirable for PFP projects to have a higher certainty of outcome than Design and Construction contracts.

Recommendation:

It is desirable to have a high degree of certainty of outcome when entering into a PFP contract. Improvements should be sought to improve school planning to cater for specific local demographic needs. Current planning processes should be adapted to provide this or alternatively new methods for capturing local risk factors should be developed.

In addition, as far as possible, DET should seek to settle on school facility standards during the tender process to ensure that the facilities are procured in a competitive market.

Action Taken/Proposed:

Treasury will encourage DET to improve its planning processes, taking into account the PFP procurement process.

Contract Variations

Key Findings:

The Project was able to cater for a number of changes in facilities provisions. The changes benefited school communities by providing for updated school facilities standards and responding to specific local needs. DET and schools value this flexibility.

The Contract did not envisage an “overs-and-unders”² system during the design and construction phase.

Substantial variations were run through the variation mechanism.

² “overs-and-unders” is a process used through the design and construct phase to offset potential cost increases against decreases.

Contract Variations (continued)

Recommendation:

That future PFP contracts consider the need for an “overs-and-unders” system during the design and construction phase; and that this system be recognised in the Contract deeds.

That for changes running through an “overs-and-unders” system, an assessment and sign-off procedure be developed.

That a variation limit be agreed between Treasury and the agency. For traditional projects, agencies must return to Treasury for variations in capital of 10%. An appropriate level for privately financed projects should be determined.

That for all post financial close contract changes or variations, an assessment and sign-off procedure within Government be developed. The Working with Government Guidelines could be updated to provide agencies with guidance in this area.

Action Taken/Proposed:

These recommendations will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

School Establishment Grant

Key Finding:

The allocation of a portion of the establishment grant to the Contractor has generated mixed feedback.

The benefit to the State in terms of having curriculum based furniture and equipment maintained and replaced over a 30 year period outweighs any short-term flexibility gains that may be achieved at the school level if Principals had discretion to procure outside the Contract.

Recommendation:

DET should look to issue guidance to Principals on how to allocate the grant to best balance the short term set-up needs of the school against the longer term needs for curriculum based furniture and equipment.

Action Taken/Proposed:

Treasury will encourage DET to issue guidance to Principals on how to allocate the establishment grant.

Acceleration

Key Finding:

The flexibility to open schools early was beneficial. Students were able to start the school year in their new school.

PROJECT DELIVERY, PROCEDURES AND MANAGEMENT (Chapter 7)

Request for Detailed Proposal Approval Guidance

Finding:

The Working with Government Guidelines are currently flexible as to whether or not Budget Committee approval is required to proceed to RDP.

- § Table 3.2 indicates that Budget Committee approval is required to proceed to RDP.
- § Section 3.5 indicates that Budget Committee approval is required to proceed to RDP.
- § Table 3.1 indicates that Budget Committee approval is only necessary to proceed to RDP for “very large projects, where there are a number of bidders, or where there are divergent proposals to consider”.

Recommendation:

That the Working with Government Guidelines be clarified regarding the approval requirements for proceeding to Request for Detailed Proposals.

Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

Best and Final Offer Guidance

Recommendation:

The Working with Government Guidelines are silent on the Best and Final Offer (BAFO) process. An update to the Guidelines should be issued to provide guidance to agencies on the purpose, process and how to identify the need for a BAFO. The provision of guidance on BAFOs would assist users of the Guidelines better understand the possible full procurement process, associated timeframes and resources needed.

Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

Reporting to Parliament Guidance

Recommendation:

That the WWG Guidelines be updated to provide greater clarity around the timing requirements for tabling of Contract Summaries. The current requirements for tabling 120 days after the contract “becomes effective” is open to interpretation. For example it is not clear whether tabling is required 120 days after financial close, commercial close or when the operations phase of the contract commences.

Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

Steering Committee Guidance

Recommendation:

Any update of the Working with Government (WWG) Guidelines should consider the need for The Cabinet Office (TCO) and Infrastructure Coordination Unit (ICU) representation on the Steering Committee of PFP projects. Agencies should be able to assess the skills and expertise required for their project and resource accordingly.

Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury's review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006. Note that the ICU has been subsumed within the Infrastructure Implementation Group (IIG) and the Office of Infrastructure Management (OIM).

Contract Management

Recommendation:

1. That Treasury give consideration to developing more comprehensive guidance and support for agencies during the implementation phase of a PFP contract as well as ongoing contract oversight support.
2. That a Project Management Steering Committee be formed comprising officers of the Department of Education and Training and NSW Treasury plus an independent, preferably from a major infrastructure agency. That the Project Management Steering Committee:
 - a) Meet quarterly initially, but no less than semi annually.
 - b) Monitor the financial and operational performance of the Contract.
 - c) Review / Approve contract variations or changes.
 - d) Commence the establishment of measures for the five yearly benchmarking process.

Action Taken/Proposed:

NSW Treasury has agreed with DET that an on-going contract management Steering Committee would be desirable.

STAKEHOLDER MANAGEMENT (Chapter 8)

Stakeholder Management

Key Finding:

Anecdotally, the PFP project seems to have employed effective community, industrial and ongoing liaison techniques. DET is to be commended for managing the process of community consultation through project formulation to project implementation in a competent, proactive manner.

3 INTRODUCTION

In December 2004 NSW Treasury commenced a Post Implementation Review (the Review) of the New Schools Privately Financed Project. The Review was led by a Steering Committee Chaired by the Director of the Private Projects Branch of the NSW Treasury, and consisting of representatives from the Department of Education and Training (DET), The Cabinet Office, Roads Traffic Authority and NSW Treasury.

The Review Terms of Reference were endorsed by the Steering Committee in late December 2004 and are set out in Attachment 1 of this Report. The Terms of Reference reflect the requirements of Working with Government: Guidelines for Privately Financed Projects November 2001 for the conduct of post implementation reviews. The Guidelines require that post implementation reviews consider seventeen items, ranging from design performance through to community relations management. The Review has sought to divide these requirements into five key areas:

- § Project Formulation
- § Finance and Risk Considerations
- § Infrastructure Performance
- § Project Delivery
- § Stakeholder Management

Submissions were received and consultations were held with a broad range of stakeholders including:

- § New Schools Project Steering Committee and Advisory Committee members
- § External advisors
- § Proponents
- § School Principals
- § The Probity Auditor
- § Stakeholders, including professional associations, unions and community representatives

Further details about submissions and consultations are in Review Methodology, Attachment 2.

The Review also consulted with the NSW Audit Office throughout the conduct of this review. Feedback received from the Audit Office has informed the Review. NSW Treasury would like to thank the Audit Office for their time and availability.

It is important to read this report in the context of the policy development time frames surrounding the New Schools Project.

- The New Schools Project project formulation period, from June 2000 to October 2001, coincided with the release of the NSW Government Working with Government Green Paper in November 2000. Consultations were undertaken as part of this green paper and resulted in the final Working with Government: Guidelines for Privately Financed Projects, released in November 2001. The lessons learned from the New Schools Project also informed and influenced the final Guidelines.

- The Project was further influenced by accounting policy determinations for Privately Financed Projects (PFPs) by the Heads of Treasury (HOTS), which were made after the Guidelines were released and in parallel to the schools project.
- As the New Schools Project (“the Project”) commenced prior to the release of the Government’s PFP policy and each informed the development of the other, some divergence from the Guidelines can be expected. In some instances, the divergence reflects the learning process occurring during the policy development and project formulation phases of the New Schools Project (the Project).

In May 2005 the Government released a call for Expression of Interest (EOI) for a second New Schools Public Private Partnership (PPP). The coincidence of this review and the release of the EOI has allowed DET and Treasury to consider and integrate some of the findings of this Review into early decision making for the second project.

The Privately Financed Project (PFP) area generally has benefited from continuous improvement, with each project, be it in education, health or other areas, building on the lessons learnt from earlier projects. In this sense, this Review reinforces and formalises some of these lessons. Where this has occurred, it is noted that improvements have already been made in the applicable area.

Recommendations and/or key findings have been made in twenty-one areas. Subject to acceptance of the recommendations, DET and NSW Treasury will need to develop a strategy for implementing the findings.

3.1 REVIEW OF REPORTS

The Post Implementation Review is not the first review of the Project. The New Schools Project was a high profile project. It attracted considerable attention and a number of reports reviewing the processes and procedures have been prepared.

- The Audit Office (2003) Report of Factual Findings in Connection with the New Schools Privately Financed Project Summary of Contracts

The Working with Government Guidelines require a summary of the contracts to be tabled in Parliament within 120 days of the contract becoming effective. This Audit Office report provided an assessment of compliance of the summary contracts of May 2003 with the Guidelines.

This report found that the contract summary complied with requirements.

- Deloitte Touche Tohmatsu (2002) Probity Report – New Schools Privately Financed Project

Deloitte Touche Tohmatsu (Deloitte) was appointed as probity auditor to the New Schools project in September 2001. The report determined “whether the assessment process (was) conducted in a fair and equitable manner with due regard to probity”. The probity auditor drew on the Independent Commission Against Corruption’s (ICAC’s) probity guidance material. The report did not find any probity issues that would impugn the tender evaluation processes.

The report found that the Expression of Interest (EOI) stage evaluation processes were sound with no individual having a conflict of interest; with adherence to the evaluation criteria; that individual evaluation had occurred; and the highest ranked proposals proceeded to Request for Detailed Proposals (RDP).

The report found that at the RDP stage no individual involved in the assessment had a conflict of interest; that the evaluators were adequately briefed on the probity requirements; confirmed the adequacy of security arrangements; confirmed adherence to the evaluation criteria; and that individual evaluation occurred.

The report found that at the Best and Final Offer (BAFO) stage there had been adherence to the evaluation criteria; that no individual had a conflict of interest; and confirmed that no proponent appeared to have been provided with an unfair advantage during any meeting.

The probity auditor also confirmed at each stage that no proponent had any probity issues.

- Department of Education and Training Audit Directorate (2004) Private Sector Involvement in the Construction of New Schools

DET's internal audit division conducted a risk assessment of the New Schools PFP project. The report involved the identification and evaluation of risks associated with the project and the controls in place to mitigate those risks. The report focussed on the post-tender activities, including:

- | | |
|--|---|
| § School design | § Facility compliance |
| § School construction | § Hand-back at 2032 |
| § Commencement and continuity of school operations | § Meeting the expectations of staff and the local and wider community |

The report provided a detailed risk assessment and evaluation of each identified risk. The report was satisfied that all key risks have been appropriately managed and that any residual risks were so low that no mitigation activities were recommended.

- Deloitte Touche Tohmatsu (2002) Letter: review of PSC
Deloitte provided a high level review of the Public Sector Comparator (PSC) developed for the New Schools project. Whilst this report was constrained by tight deadlines, it did confirm that the processes undertaken in creating the PSC were thorough and consistent with the Guidelines.

4. PROJECT DEVELOPMENT

The Term of Reference was agreed to cover:

Project formulation

- 4.1 Expression of Interest Approval
- 4.2 The Expression of Interest Document

Project objectives and how these were accommodated in the process.

- 4.3 Project Objectives and Evaluation: EOI to BAFO
- 4.4 Policy Decisions

The Department of Education and Training advertised for Registrations of Interest (otherwise described as Expressions of Interest, EOI) from private sector parties in October 2001. The project generated a good deal of interest from the private sector and eleven EOIs were received. The EOIs were evaluated by a Project Evaluation Committee, supported by specialist advisory committees (see Section 4.3 Project Management for details). Four proponents were short-listed to proceed to Request for Detailed Proposals stage, these included:

- § The Axiom Education consortium (ABN AMRO, Hansen Yuncken, St Hilliers and Spotless)
- § The Community Education Partnership consortium (Bilfinger Berger, Baulderstone Hornibrook and Tempo Facility Services)
- § Livings Schools Ltd (John Holland, Jarvis and SG Australia)
- § The Schools First consortium (Theiss and Tempo Facility Services)

This section will explore the project development phase up to approval and release of Expressions of Interest. It will also include a discussion of the projects objectives and evaluation.

4.1 PROJECT FORMULATION – EXPRESSION OF INTEREST APPROVAL

This section of the report assesses the compliance of the New Schools Project with the Working with Government(WWG) Guidelines. The WWG Guidelines provide detailed guidance on seeking Budget Committee approval to issue an Expression of Interest (EOI). This includes the preparation of a number of reports and studies.

The new schools project was approved to proceed to EOI in August 2001 while the WWG Guidelines were under development. The final Guidelines were released in November 2001. As there was a three month gap between EOI approval and Guideline finalisation, some variance between the processes undertaken was to be expected.

Prior to receiving approval to proceed to EOI the new schools project had sought Budget Committee approval in March 2001 to conduct a feasibility study into the potential for public private partnership delivery of schools. Both the March and August 2001 Budget Committee decisions were informed by independent consultant reports. This review will consider the March and August 2001 Budget Committee decisions and their supporting documentation as both contributing to the project development requirements.

4.1.1 Strategic Planning

The WWG Guidelines require that the proposed PFP project be consistent with the agency's Capital Infrastructure Strategic Plan, the State Infrastructure Strategic Plan (SISP) and the cross-agency and environmental, social and economic contexts (WWG 2001:19). The proposed package of schools comprised projects already prioritised on DET's Asset Management Strategy/Plan. DET factors in projects forming the SISP and cross-agency projects when developing its forward capital programs. These standard procedures ensure consistency with the WWG Guidelines.

The proposed package of schools at EOI stage comprised:

| | |
|----------------------|----------------------|
| § Horsley PS | § Shell Cove PS |
| § Kellyville No 3 PS | § Hamlyn Terrace PS |
| § Vinegar Hill PS | § Glenwood HS |
| § Poole Rd SSP | § Horningsea Park HS |
| § Mungerie Park PS | |

4.1.2 Initial Project Development

The WWG Guidelines require that initial project development include:

- a) identification and evaluation of all feasible options on a whole of life basis, including environmental, social and economic factors;
- b) a value management assessment;
- c) an economic/financial appraisal;
- d) a preliminary assessment of Loan Council treatment;
- e) public interest evaluation, including proposed actions;
- f) a preliminary accounting treatment; and
- g) a preliminary statement of fiscal impacts.

a) Identification of all feasible options

The New Schools project was able to demonstrate, through work undertaken prior to both Budget Committee decisions, that a solid investigation and evaluation of the two key options, PFP or traditional delivery had been undertaken and costed on a whole of life basis.

Whole of life modelling was undertaken as part of the project feasibility studies, and was supplemented by economic appraisals which provided the required considerations of the social and economic factors, and also provided option analysis. Further comment is made on the appraisals below.

It should be noted that environmental factors are incorporated into DET's land purchasing procedures. Prior to purchase, sites are assessed for environmental sensitivities as well as heritage or Aboriginal historical significance. This is standard departmental practice that applies to all projects, not only PFP projects. These standard procedures provide consistency with the WWG Guidelines.

b) Value Management Assessment

A value management assessment was not conducted prior to approval to proceed to EOI. It should be noted however that DET and Treasury expanded the Steering Committee to include representatives from the Department of Commerce (then Department of Public Works and Services) prior to EOI approval. This expansion of the Committee rounded out its expertise and provided a formal voice for the key parties involved in school service delivery.

c) Economic appraisal

An economic appraisal was conducted on each proposed school prior to Budget Committee consideration. The focus of these appraisals was on demand through demographic changes (i.e. population growth) and the broader social, community and economic benefits brought by school education.

The appraisals conducted did not always document the capacity or availability of existing public schools to cater for demand. A generic reference is made to enrolment alleviation at existing schools, however often this is not quantified. This makes it difficult to assess whether or not the appraisals adequately considered demand management, non-construction strategies or opportunities to improve the performance of existing public school facilities.

The options analysis provided was not comprehensive. A brief written description was provided of the options, but the financial or economic costs and benefits associated with each were not provided.

During 2004 DET and Treasury have strengthened and improved the economic appraisals for all school projects, including assessing options using the “traditional” design and construction delivery process.

d) Loan Council Treatment

A preliminary assessment of Loan Council treatment was not conducted prior to approval to proceed to EOI, however it was flagged as an issue requiring further investigation. Loan Council Treatment is closely related to the Accounting Treatment, as on-balance sheet items fall within Loan Council limits whereas as off-balance sheet transactions are disclosed in a memo. The WWG Guidelines could provide more direction to agencies in this area.

e) Public Interest Evaluation

The WWG Guidelines require PFPs be tested against public interest criteria, including effectiveness; impact on key stakeholders; accountability and transparency; public access and equity; consumer rights; security and privacy (WWG 2001:10). A public interest evaluation was not conducted as part of the New Schools project. The Budget Committee received only general information on public interest criteria.

Despite the lack of a formal public interest evaluation, the project incorporated many of the public interest criteria into the project objectives, output specifications and general operation of the schools. For example, public access and equity was achieved by including community use of school facilities in all tender documentation; and consumer rights were guarded by detailed classroom and exam room availability times.

f) Preliminary Accounting Treatment

Consistent with the WWG Guidelines, accounting treatment was considered prior to EOI approval. Potential accounting and tax treatment was considered in feasibility studies for the project. It was noted in those studies that no single accounting standard applied to PFP style contracts and the various factors (e.g. ownership, risk allocation) that could influence any determination in this area.

Formal accounting advice was sought in June 2003 following new guidelines “Accounting for the Private Provision of Public Infrastructure (PPPI) by Public Sector Entities” adopted by the Heads of Treasury.

g) Preliminary Statement of Fiscal Impacts

The WWG Guidelines require a standard template be completed on the fiscal impacts of the project. This template was not produced for the New Schools Project, however fundamental work on the budget treatment of the project and by implication, all future social infrastructure PFPs was underway. PFP required new policy for budget treatment and was the subject of a detailed submission to the Treasury Executive Board, “Budgetary and Fiscal Implications of Private Financing of Social Infrastructure” (July 2001). The proposed budget treatment was endorsed by Budget Committee prior to EOI, and is discussed further in the Section 2.2.3 Budget and Accounting Treatment Determinations.

Additionally, both the March and August Budget Committee submissions indicated that the proposed project was “integral to DET’s service delivery needs as identified in its Asset Management Strategy” and that funding would be possible from within DET’s budget capacity.

4.1.3 Public Sector Comparator (PSC)

The WWG Guidelines require that prior to EOI, the PSC include:

- a) a reference project identifying the most efficient likely method of public sector delivery;
- b) identification of the risk adjusted, whole of life cost of the reference project; and
- c) identification of PSC information to be disclosed.

A PSC was developed in support of the Budget Committee approval to proceed to EOI. A reference project (traditional delivery) was identified and scoped. The Net Present Value (NPV) of both traditional and PFP delivery was provided on a risk adjusted basis.

The Budget Committee submission noted that due to the preliminary nature of the PSC, future consideration needed to be given to what aspects, if any were to be made public as part of the tendering process.

Although it was noted that the PSC would need further refinement as the project developed and the output specification finalised, the initial PSC was consistent with the WWG Guideline requirements. The PSC at EOI did include a reference project, identify the risk adjusted whole of life cost of the reference project and made preliminary comments on the disclosure of PSC information.

4.1.4 Procurement Plan

The WWG Guidelines outline a number of assessments or information to be included as part of the procurement plan (WWG 2001:19), including:

- a) all feasible options assessed and preferred option identified;
- b) identification of regulatory issues that may impose constraints on the private sector;
- c) preliminary assessment of opportunities for local participation;
- d) community relations plan;
- e) project management structure;
- f) reporting mechanisms;
- g) a probity plan; and
- h) preliminary risk management plan.

It should be noted that a single “procurement plan” encapsulating all these items does not exist. Whilst all components required by the WWG Guidelines were identified, they often existed as discrete studies or documents.

a) Feasible Options - procurement

As noted earlier a thorough investigation and evaluation of the two key options, PFP or traditional delivery was undertaken. However, a comprehensive study of other available options was not conducted. This probably reflects the fact that DET’s standard procurement methods have evolved, over a large number of schools projects, and under Department of Commerce management, to a reasonably standardised DD&C (design, development and construct) approach.

A risk analysis for the procurement process of the project was performed and a detailed procurement timetable was developed. Prior to EOI the procurement process did not envisage a third Best and Final Offer (BAFO) stage. The potential for a BAFO was envisaged in the Request for Detailed Proposals (RDP) instructions to bidders. This is discussed in more detail in Section 4.1 Project Delivery.

b) Regulatory Issues

The WWG Guidelines require the identification of regulatory issues that may impose constraints on the private sector. Regulatory issues were identified as part of the initial risk analysis work however analysis in this case focussed more on the allocation of possible future changes in the regulatory environment. For example, it was envisaged that the contractor should accept the risk of general legislative change in matters such as taxation, company law etc, but that DET should accept the risk of change to education specific legislation which affects how education is delivered. Occupational Health and Safety (OH&S) was identified as an area where there would be shared risk allocation.

c) Local Participation

A preliminary assessment for local participation was not included in the Budget Committee submission for EOI approval, or the supporting documents.

d) Community Relations & Industrial Relations

The Department of Education and Training (DET) conducts extensive community consultation, including community and local council interaction as a standard part of all facilities projects, not just PFP projects. DET confirmed this commitment to consultation with key stakeholder groups in its approval submissions. The Steering Committee formally agreed to the development of a communications strategy in October 2001, after Budget Committee approval to proceed to EOI (see Section : Stakeholder Management for details).

e) Project Management Structure

The project management structure was outlined in both the March and August 2001 Budget Committee submissions. The Project Management Structure established prior to the release of the EOI comprised senior representation from the Department of Education and Training, Treasury and the Department of Public Works and Services (now Department of Commerce) (see Section 4.3 Project Management for more detail).

f) Reporting Mechanisms

Reporting mechanisms and timeframes for deliverables were clearly outlined in both the March and August 2001 Budget Committee submissions. The reporting framework proposed was consistent with the approval procedures outlined in the Working with Government Guidelines (see Section 4.1.1 Approvals Process for more detail).

g) Probity Plan

A probity plan was prepared by DET prior to the issue of EOI but after the Budget Committee approval to proceed to EOI. The WWG Guidelines require a probity plan be prepared prior to approval to proceed to EOI.

A probity auditor was also appointed prior to the issue of the EOI. The probity auditor confirmed the probity of the PFP project in his formal advice of 12 December 2003.

h) Preliminary Risk Management Plan

Project feasibility studies provided an initial risk allocation framework and identification of risk factors. For example, the studies identified broad risk categories and indicative allocation, including strategic, design and construction, commissioning, operation and payment, usage, technology and financial, regulatory and legislative risk and proposed indicative risk allocation to government and private parties.

4.1.5 Draft EOI documentation

Draft EOI documentation was prepared prior to Budget Committee approval to proceed to EOI. The final EOI document provided evaluation process details including criteria, the role of the probity auditor, project management structure and the proposed time frame. The draft and final EOI were consistent with the WWG Guideline requirements (see Section 1.2 The Expression of Interest Document for more details on EOI documentation).

4.2 THE EXPRESSION OF INTEREST (EOI) DOCUMENT

The Working with Government Guidelines specify a range of issues that the EOI document must address. The adherence of the New Schools project to these items is summarised as follows:

Figure 1: WWG Guidelines - Compliance with EOI documentation requirements

| Working With Government: EOI document requirements | New Schools Project EOI document |
|--|---|
| Government reserves the right to withdraw at any time. | üThe EOI included this reservation. |
| Maximum scope for private sector innovation. | üAlthough the EOI envisaged innovation, the scope for design innovation had greatly reduced by RDP stage. |
| Decision-making process and timeframes outlined. | üThe EOI included this information. |
| Criteria for evaluation of the EOIs. All criteria must be published in the EOI. | üThe EOI included this information. |
| Limits on the size of EOI responses. | üThe EOI limited responses to 50 pages. |
| Identification of intellectual property. | üThe EOI included this information. |
| Environmental and land use planning studies and approval (if undertaken). | The EOI was silent on land ownership. Some sites were in government ownership at the time of the EOI and others had had studies undertaken. |
| Background material including preliminary market assessment. | The EOI provided background information, but did not provide a preliminary market assessment, which is probably not suited to a school project where enrolment risk remains with the State. |
| Local content considerations. | The EOI did not include this consideration. |
| The Government's preferred positions and requirements and key issues such as <ul style="list-style-type: none"> o Risk sharing o Pricing of service o Net community benefits o Government contribution o Other regulatory aspects | <ul style="list-style-type: none"> üIncluded üIncluded üCommunity interests included Silent on land ownership Silent on other regulatory aspects |

Key Finding:

The aim of the Working with Government Guidelines is “to provide a consistent, efficient, transparent and accountable set of processes and procedures needed to select, assess and implement Privately Financed Projects”. The transparency and efficiency of the Guidelines could be improved by streamlining the guidance material for seeking approval to proceed to Expression of Interest (EOI).

Recommendation:

That the following EOI guidance material be simplified:

- § EOI document requirements (WWG 2001:21)
- § EOI generic evaluation criteria requirements (WWG 2001: 22)
- § Table 3.1 and 3.2 (WWG 2001:16, 18)
- § Pre-EOI project definition requirements (WWG 2001:19)
- § Additional EOI document requirements (WWG 2001:20)

Other Specific Suggestions:

1. The need for agencies to prepare a probity plan prior to seeking approval to proceed to EOI should be reviewed. A probity plan should only be required after approval has been received and before the EOI is issued.
2. Requiring agencies to identify the Public Sector Comparator information to be disclosed before EOI is probably premature. The PSC is likely to evolve during the tender process to take account of any brief / project changes. It is for these reasons that agencies may not be able to definitively identify when and what parts of the PSC will be disclosed to the private sector.
3. Currently the Guidelines require an economic appraisal and a preliminary financial appraisal prior to receiving EOI approval. This should be amended to provision of an economic and/OR financial appraisal, depending on the nature of the project.

Action Taken/Proposed:

These recommendations will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

4.3 PROJECT OBJECTIVES: EXPRESSION OF INTEREST (EOI) TO BEST AND FINAL OFFER (BAFO)

The Working with Government (WWG) Guidelines state that the goal of PFP is “to deliver better services and maximise value for money by facilitating innovation, appropriately transferring risk and integrating whole-of-life management”. The New Schools project was a path finder project, not only in terms of the PFP delivery, but in the identification and incorporation of a wider range of objectives than for discrete service and/or construction contracts. This section will explore how the project objectives developed and changed throughout the New Schools project and will examine how the objectives were incorporated into the evaluation process and performance standards.

4.3.1 New Schools Project Objectives

The New Schools Project objectives evolved as the project progressed. Project feasibility studies indicated that DET was initially interested in exploring PFP delivery for the following reasons:

1. draws on recurrent rather than capital budget and helps smooth out funding requirements (this was an initial consideration that was subject to change);
2. allows a faster supply of schools instead of staging the developments;
3. may possibly generate cost savings;
4. provides the potential for innovation and more efficient use of resources; and
5. potentially simplified management due to opportunities for combining all services outside teaching and administration within a single entity.

The apparent financial interest in assessing the feasibility of PFPs had broadened by EOI stage to include clearer, firmer timeframes, but importantly also some educational and social objectives. The EOI document identifies the following objectives for the project:

1. construct nine new build schools;
2. open six schools by 1 January 2004 and three by 1 January 2005;
3. create a positive environment for teaching and learning in accordance with modern best practice;
4. procure the project at a cost and quality that delivers demonstrable value for money;
5. ensure that the project is consistent with the public interest in terms of effectiveness, accountability, probity, equity, employee issues, public access, consumer rights, security, privacy and public consultation;
6. satisfy DET technical requirements and performance standards with respect to design, construction, operation and maintenance;
7. ensure that the works are handed over to DET in the specified condition at the completion of the contract period;
8. ensure that the project meets defined environmental requirements and limits any adverse impacts to the environment while maximising the environmental benefits;
9. incorporate safety in the design and meet OHS requirements; and
10. ensure that all project participants uphold the NSW Government Code of Practice and Code of Tendering for the Construction Industry.

With the exception of specifics around school delivery times (objective 2) these project objectives remained unchanged from EOI through to Best and Final Offer (BAFO). This demonstrates a high degree of consistency throughout the project. The objectives were directly incorporated into the evaluation criteria and reflected in the performance targets.

The ten objectives listed above were expanded at RDP stage to include educational objectives. The educational objectives at RDP included:

1. the objectives of the project fully reflect the Government's priorities for education, improved school maintenance, the strategic direction for DET and best value for money; and
2. the key educational aims are to promote effective learning within quality learning environments, to provide a well rounded education that values and supports the intellectual, creative, physical, social and emotional development of each child and to promote lifelong learning. The individual learner is at the heart of the education process and empowering students to maximise their potential is vitally important.

It is a credit to the Project that the objectives have largely been met. Summarised as follows:

1. Nine new schools have been built, to budget and on-time.
2. Five schools were opened in January 2004 and four in January 2005. This opening varies slightly from the objective, which was to deliver six in 2004 and three in 2005. This change, which occurred at Best and Final Offer (BAFO) stage, did not materially effect the success of the Project.
3. The project has delivered a positive environment for teaching and learning. The schools were built to DET's facilities standards, and the management procedures adopted by the Contractor have reduced Principal time spent on managing facilities. This is discussed further in Section 3.1 Project Operations.
4. The Project was procured at a cost and quality that bettered the Public Sector Comparator (PSC).
5. The Project was delivered in manner that was consistent with the public interest. The PFP has protected community use of school facilities and also provided for complementary third party use. The Project is delivering services in an effective manner and undertook community consultation as part of the planning phase.
6. The Project meets or exceeds DET's technical requirements and performance standards. Evidence presented in Section 3.1.2 The Performance Mechanism and Abatement Regime suggests that non-performance has been minimal.
7. Hand Over Condition. Please see comment below.
8. The project met environmental requirements, as detailed in Section 3.6 Environmental Management
9. Adherence to the output specification ensured the incorporation of safety in design and the meeting of OHS requirements.
10. All participants upheld the NSW Government Code of Practice and Code of Tendering for the Construction Industry.

Objective 7, that the facilities are handed over to DET in the specified condition at the end of the concession term will only be assessed in 30 years, when the contract expires and the hand-over provisions are activated.

The educational objectives specified at RDP stage are more difficult to assess. From RDP onwards the New Schools Project used the same evaluation criteria, which were directly linked to the project objectives. The educational objectives are discussed below in the context of evaluation criteria.

4.3.2 Evaluation Criteria

At each stage the evaluation criteria were clearly outlined in the tender documents available to bidders. The Working with Government (WWG) Guidelines (2001:22) specify a set of generic criteria to be clearly stated in the call for EOI. As noted earlier during the introduction, the New Schools project commenced prior to the release of the WWG Guidelines and did not include each item specified in the WWG Guidelines, as summarised in the following table.

Figure 2: WWG Guideline- Compliance with Generic Evaluation Criteria

| Working With Government: Generic Evaluation Criteria | New Schools EOI |
|--|--|
| Experience in successfully designing, constructing, financing, maintaining and operating major infrastructure | ü Assessed at EOI |
| Experience and capacity to undertake the particular project and deliver the required services | ü Assessed at EOI |
| Experience and capacity to manage environmental and community relations matters | ✗ Assessed at RDP stage |
| Financial capacity to meet the likely contractual obligations associated with the project | ü Assessed at EOI |
| Design, construction, financing and operational resources available to the proponent | ü Assessed at EOI |
| The proposed approach and evidence of addressing all areas | ü Assessed at EOI |
| Innovative approach and satisfying specifications, technical feasibility and quality | ✗ Assessed at RDP stage |
| Net economic, social and environmental benefits and costs | ✗ Not assessed as an EOI evaluation criteria. Assessed during project development phase. |
| Viability, likely risk to be assumed by government and its probable contribution, if any | ü Assessed at EOI |
| Community and other benefits, including local industry participation, technology transfer and other government programs. | ✗ Aspects assessed at RDP stage |

The WWG Guidelines do not specify evaluation criteria for the RDP or BAFO stage, which would largely be project specific in many cases. The New Schools project RDP and BAFO used the same evaluation criteria, which were directly linked to the project objectives. The application of previously not tested social and educational criteria at these stages was seen as an improvement in the procurement of educational facilities and their management. However, when reflecting on the Project, a number of Post Implementation Review participants felt that these objectives needed to be more tangible and focussed to deliver a firm, measurable result.

The evaluation criteria and weightings were:

1. 15% Demonstrated Capacity to meet DET's educational objectives – including ability to achieve DET's project and educational objectives.
2. 30% Demonstrated Capacity to meet the financial requirements – including value for money of the proposal price, NPV of the payments due to the contractor through the contract term and the financial strength of the proponent.
3. 15% Demonstrated Capacity to meet the legal requirements – including compliance with contractual terms of the Draft Concession Deed and demonstration by the Proponents of establishment and compliance with arrangements directed at ensuring probity and competitiveness.
4. 15% Demonstrated Capacity to meet the technical requirements – including compliance with DET's requirements not only at the commencement but throughout the contract term, deliverability of the proponent's technical proposals within the proposed timescale, demonstration of flexibility to accommodate the future needs of DET in discharging its statutory responsibilities, design excellence and attention to quality and safety issues, and compliance with all relevant policies, codes and standards.
5. 25% Demonstrated Capacity to meet the facilities management requirements.

Subsequent PFP projects have moved to a different weighting methodology. Weightings are still attached to the non-financial evaluation criteria but the value for money or the financial requirements are designated as overriding criteria. This reinforces the importance of PFP projects delivering affordability and bettering the PSC on both a cost and service basis.

Key Finding:

The use of educational evaluation criteria tested new ground in the procurement process. Many consortia engaged educational consultants and provided creative solutions. Despite this, many Post Implementation Review participants felt the educational objectives and evaluation criteria needed to be more tangible to provide clear benefit.

4.4 POLICY DECISIONS

The Government announced five special requirements for the Project in March 2002. These formed part of the RDP and included:

1. DET's absolute right of access at any time. This established the hierarchy of school use as:
 - a. First, school use;
 - b. Second, community use; and
 - c. Third, third party use.
2. Right to cancel or vary the RDP process. This requirement reiterated the Government's prerogative to withdraw from PFP negotiations at any time.
3. That value for money would be inclusive of an improvement in service delivery.
4. Design would be at least equal to NSW school design standards and related policies.
5. The schools would be staffed in accordance with current provisions. This requirement made an important distinction between core and non-core services.

The announcement set precedents that will influence future PFP school projects.

Hierarchy of Use

The hierarchy of school use is embedded in the Concession Deed and established a clear framework for the private sector when developing third party use proposals. The schools project included permanent and quite separate third party child care centre operations located on the school site. This third party use does not impinge on the operations of the school or community use. Other third party use by the Contractor has been limited. Third party use provides for a general 50:50 revenue sharing between the Contractor and the school.

Principals are required to submit annual community use schedules to the Contractor, for example use of the school hall after hours by a sporting group. This limits school availability for third party use. This is not intended as a criticism of the system, rather that more creative ideas are required if the Government and schools wish to increase the use of school facilities outside of school hours and during school holidays.

School staffing

The Working with Government (WWG) Guidelines require that the division of core and non-core services are decided by Government and provided when EOIs are called. The announcement by the Minister at RDP confirmed all staff currently employed by DET as core. This included, all teaching staff and Principals positions, school administration assistants, teachers' aides and general assistants.

Of their own volition, the Contractor has included the position of an on-site manager at each school site. The on-site manager's duties have some overlap with the general assistants' duties. This is discussed in detail in Section 3.2 on Innovation.

5 FINANCE AND RISK CONSIDERATIONS

The Term of Reference was agreed to cover:

5.1 Risk management, and this section includes the findings of the Finance and Risk Workshop as follows:

- 5.1.1 Payment mechanism and abatement regime
- 5.1.2 Public Sector Comparator (PSC)
- 5.1.3 Non-quantifiable benefits

5.2 Other Finance and Risk issues, including:

- 5.2.1 WWG Guidelines compliance and release of the PSC
- 5.2.2 Budget performance
- 5.2.3 Budget and accounting treatment determinations
- 5.2.5 Financing changes

The Privately Financed Project (PFP) methodology introduced new disciplines and concepts to school facility procurement. This was the first time that a formal risk allocation, supported by risk workshops was prepared for school procurement. It was the first time that a whole of life output specification was produced and a Public Sector Comparator was produced that attempted to capture the life cycle costs of running a school facility. It was also the first time that procurement of schools was considered using private sector financing and therefore dealing with and assessing a special purpose vehicle and consortium of bidders.

This section provides an assessment and overview of some of the finance and risk issues faced by this Project.

A consultant was engaged to conduct a Finance and Risk Workshop and prepare an assessment report on the treatment of finance and risk issues for the Project. The findings of this report and Workshop feedback is summarised and incorporated in this report.

The Working with Government (WWG) Guidelines deal with Finance and Risk Issues over three chapters: Chapter 5 Risk Management, Chapter 6 Contractual Issues and Chapter 7 Public Sector Comparator. This section of the report will refer to these chapters, in addition to the specific items listed in the Terms of Reference and issues addressed by the consultant.

5.1 FINANCE AND RISK WORKSHOP AND REPORT

A Finance and Risk Workshop was held on 16 March 2005. The Workshop was conducted by KPMG (in their role as workshop convenor) and included representatives from the Departments of Commerce; the Department of Education and Training; NSW Treasury; and the Victorian Department of Treasury and Finance, as well as advisors to the New School Project including the financial advisor, legal advisor and technical advisor.

Areas for improvement / refinement to the Project were identified during the Workshop and included in KPMG's final report. These include:

5.1.1 Payment Mechanism & Abatement Regime

- The WWG Guidelines (2001:39) note that it is "important that payments are unitised, so that the overall payment can be reduced if services are not up to standard...or are not delivered". The schools project quarantines payments at the school level. This would potentially allow the Contractor to deliver differential service levels between schools, without risking overall payment for the whole nine schools.

Recommendation:

Any future schools projects should consider expanding the abatement to the whole package rather than quarantining payment at risk at the school level.

- The WWG Guidelines (2001:41) state that "...payment under the contract must depend on the services being available. The private party is not paid, or only paid at a reduced rate if the service is unavailable". The Project's availability deductions factor in the importance of the education space, size and length of unavailability in calculating deductions.

Key Finding:

The Schools Project payment mechanism was considered by Workshop participants to be complex - it contains many inputs, such as usable floor area, priority weightings, as well as minimum deductions, caps, ramp-ups, demountable, utilities and failure escalation criteria. A simple payment mechanism might allow finer pricing from the private sector and reduce costs associated with contract management.

Recommendation:

That any future Schools Projects seek to simplify the payment mechanism.

- The WWG Guidelines are silent on specific requirements for performance deductions. The project has adopted a feature of U.K. PFP projects and implemented a 25% cap on monthly performance deductions (availability deductions are not subject to a 25% cap). The performance deduction formula calculates for each performance failure and includes the cap as a multiplier. This has the effect of ensuring that performance deductions remain within the 25% monthly cap. However it also has the effect of increasing the number or severity of performance failures needed to reach the monthly cap.

Recommendation:

In relation to performance deduction caps, Treasury and service delivery agencies should consider whether or not a 25% cap is necessary; and whether or not they desire a cap applied monthly or a cap applied at each performance failure.

Action Taken/Proposed:

In undertaking the second New Schools PFP, the payment mechanism was reviewed and simplified, taking into account the lessons learnt from the first New Schools project.

5.1.2 Public Sector Comparator (PSC)

The development of the Raw PSC required an estimation of lifecycle maintenance and other operational costs at the school level over a 30 year period. This was the first time that maintenance and the other facilities managements inputs had been costed at the school level. It was also the first time that the school asset lifecycle had been projected over a 30 year period.

The process pursued during the New School Project was rigorous. Workshops were held and input received from the Technical Advisor, Milliken Berson Madden; the Department of Commerce; DET Properties Division and independent audit by Connell Wagner and Deloitte.

The WWG Guidelines (2001:45) note that it is “difficult, even for the most skilled experts, to make accurate estimates over such a long time frame”. The Finance and Risk Workshop and Post Implementation Review participant interviews indicated there is general agreement that the capital costs in the PSC were accurate.

Concerns remain as to the accuracy of recurrent costs, particularly for school maintenance costs. As noted during interviews, “the services costings were less precise and concise than the capital costings...the investigation and dissection of services costs was as rigorous as possible...and the outcome was pretty good, close to the actual cost”. Participants at the Workshop had divergent views on recurrent costs, with concern expressed that the recurrent costs were either on the high or low side. The general accuracy of the recurrent costs is supported somewhat by the fact that the private sector bids related closely to the PSC.

Concerns stem in part from the relationship between the PSC, PFP and traditional delivery. The PSC was based on a reference project that does not truly reflect traditional delivery i.e. traditional delivery does not budget at the school level, does not provide facilities management over a 30 year period and in addition, the PFP provides for a tighter repair turnaround than that of traditional arrangements.

5.1.3 Previously Unquantified Benefits

The PFP has delivered some unanticipated benefits. The Workshop identified these as the assurance of service provision and Principal time release. It would be difficult to place a dollar benefit on the greater assurances of service provided under PFP but it should be possible to quantify the Principal's time release and a notional dollar value calculated.

Site visits and formal submissions indicate Principal relief from day-to-day facilities management issues had allowed more time to be spent on issues such as staff development and educational matters.

Recommendation:

The additional time Principals are able to devote to educational matters should be quantified in terms of hours and a notional value attached. This should be incorporated into economic appraisals and procurement assessments undertaken prior to the Expression of Interest stage.

Action Taken/Proposed:

An estimate of the benefit of additional time Principals are able to devote to educational matters will be taken into account in assessing the procurement options for any future New Schools proposals.

5.2 OTHER FINANCE AND RISK ISSUES

This next part of the Finance and Risk Considerations section will deal with information gathered outside the Finance and Risk Workshop. This includes compliance checking with the Working with Government (WWG) Guidelines and consideration of information received through the submissions process, school site visits and participant interviews.

5.2.1 WWG Guideline Compliance and Release of the PSC

The WWG Guidelines (2001:46) state that for the PSC to maintain usefulness as a tool, the PSC will be:

| Working with Government | Comment |
|---|--|
| Accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement. | As noted earlier qualitative benefits for the Schools Project have emerged post-tender. Future projects should seek to recognise this benefit. |
| Subject to sensitivity testing and scenario analysis to determine the robustness of its underlying assumptions and their impact on the PSCs results. | These tests were performed on the PSC. Sensitivity testing produced a range of outcomes from Best Case NPV of \$134.3 to Worst Case NPV of \$152.6m. |
| “Sufficiently flexible to allow new information to be incorporated... enhancing the integrity of the PSC as a benchmark while maintaining the probity of the project development and tender assessment process” (WWG 2001: 46). | The PSC was updated at each stage of the tender process. |

The WWG Guidelines (2001:46) also state that the “Government is flexible about disclosing a summary of a PSC in tender documents”. The raw, non-risk adjusted PSC was released to the private sector during the RDP phase. The Schools Project was the first social infrastructure project in NSW to have a PSC prepared and issued during a tender process.

The release of the PSC did not seem to prevent some bid prices being well above the PSC. This may have been due to a lack of understanding as to the role of the PSC. Government processes may have contributed to this situation as probity concerns inhibited communication with the private sector. This is discussed in more detail in Section 3.2.1 Restrictions on Innovation. Subsequent PFP projects have sought to address this and related problems by pursuing a more comprehensive bidder engagement strategy.

5.2.2 Budget Performance

Tender Results

The Working with Government Guidelines require that a PFP project deliver better value for money than traditional delivery. The New Schools Project was able to deliver better value for money as tested against the Public Sector Comparator (PSC). The risk adjusted PSC produced a range of likely costs as follows:

| | | |
|----------------------|------------------------|-----------------------|
| PSC best case | PSC most likely | PSC worst case |
| \$134.3 million | \$141.8 million | \$152.6 million |

The risk adjusted cost of private sector delivery over the 30 year life of the Project was \$131.4 million. The Projects savings are measured against the most likely scenario for public sector delivery (\$141.8 million), producing an estimated saving of just over 7%. The savings achieved are returned to DET, thus freeing up capital funds for use on other education and training projects.

Bid Cost

The New Schools Project essentially trialled a new procurement methodology. The documents created, as well as the policies and procedures fed into the Working with Government Guidelines and subsequent social infrastructure projects. Significant tender costs were incurred by both the Government and private sector.

| Government | \$ |
|--|------------------|
| Financial advisor ³ | 860,000 |
| TCorp | 26,000 |
| Probity auditor | 96,000 |
| Technical advice | 300,000 |
| Legal advice | 1,000,000 |
| FM advice | 250,000 |
| Contract summary preparation | 29,000 |
| Contract administration manual preparation | 134,000 |
| Total | 2,695,000 |

The table above has sought to accurately capture all costs associated with the Project. An \$800,000 estimate for in-house resources should be noted. These in house resources arguably an opportunity cost as in-house resources were already available (i.e. the cost would have been incurred in the absence of this Project) and are used to deliver projects traditionally.

This project created templates, processes and procedures that have been used for subsequent PFP projects. The high transaction costs incurred by Government during this Project should not be repeated for future projects, particularly any future schools projects. Any future schools project will be able to update and revise the documents from this Project rather than create from scratch.

³ Includes costs borne by Treasury and DET for financial and accounting advice

Anecdotal evidence suggests the private sector incurred bid costs of \$2-3 million per bidder from Expression of Interest to Best and Final offer stage. Feedback indicates that time delays in the bid process substantially increased private sector costs as consortium groupings needed to be held together over a longer time. The time delays experienced by the project are addressed in Section 4.1.2 Project Timelines.

5.2.3 Budget & Accounting Treatment Determinations

Budget

The Budget Treatment for this Project was determined in August 2001. This decision has set the precedent for the budget treatment of subsequent PFPs.

- DET will be able to retain any capital savings and accelerate some school construction within a 7 year period.
- DET's capital budget will be reduced over seven years by an amount equal to PFP construction costs, but not exceeding the cost of public sector delivery.
- DET's future recurrent Budget will provide for PFP contractual payments / DET's recurrent allocations will be increased to meet the finance costs embedded in private sector availability and service charges.

The lengthy repayment period for the Schools Project extends beyond Treasury's forward estimates period. This means that only four years worth of capital adjustments can be input into FIS (Treasury's Financial Information System). The reduction of DET's and other agencies' capital programs is recorded in paper based files held within Treasury.

Key finding:

It is important that an accurate, non-paper based record of PFP capital adjustments be recorded by Treasury.

Recommendation:

That Treasury explore improving the FIS (financial information system) to allowing electronic footnoting of capital adjustments beyond the forward estimates period.

Action Taken/Proposed:

Treasury is currently implementing a Record Improvement Management System (RIMS) project which will improve document location and retrieval. Changes to the FIS system have not yet been addressed.

Accounting Treatment

As noted in Section 1.1.2 Initial Project Development, the accounting treatment determination was not made in the time frames required under the WWG Guidelines.

5.2.4 Financing changes

The private sector financed this project through a special purpose vehicle (SPV). The SPV issued debt (~95%) and equity (~5%) to support the New School Project. In December 2003 ABN-AMRO approached DET to advise it was divesting its equity holdings. The Development Australia Fund (DAF) purchased the \$6 million equity stake.

The sale of equity post financial close created a level of concern and lack of clarity regarding the States rights under the contract at the time. For example the Expression of Interest (EOI) and Detailed Proposals documents had required details from proponents regarding proposed financial structure, viability and ownership. This information was assessed as part of the evaluation process. The sale of equity during the concession term limited the ability of the Government to assess and determine the equity holder.

The Concession Deed specified that the Contractor could not change the ownership or structure of the project company. ABN-AMRO was able to sell equity by changing the parent company structure, which was not captured by the contract.

The Government moved to broaden the Concession Deed terms to prevent any future “change to the legal or beneficial ownership of the Contractor Group or any change to the Contractor Group Structure...without the prior written consent of the Project Director”.

This amendment is now standard for all subsequent projects.

Who is DAF?

DAF is an investment fund manager owned by four industry superannuation funds – the Australia Retirement Fund, Cbus, HESTA and STA (Superannuation Trust Australia). The sale of equity to DAF was part of a broader relationship, whereby ABN-AMRO packaged projects, including the Spencer St Station redevelopment, a Wyuna Water project and the New School Project for investment by DAF.

ABN-AMRO acts as an asset manager for DAF and, as such the change in equity investor has not affected the project. ABN-AMRO remains the point of contact under the Contract and continues to act as directors of Axiom Education Pty Ltd. Had ABN-AMRO simply sold the equity without continuing to act as the asset manager the result may have been quite different.

6 INFRASTRUCTURE PERFORMANCE

The Terms of Reference were agreed to cover:

- 6.1 Project operations, including service delivery.
- 6.2 Innovation.
- 6.3 Quality and design performance.
- 6.4 Brief Appropriateness
- 6.5 The functional competence of the infrastructure, including networking and interfacing.
- 6.6 Environmental management.

6.1 PROJECT OPERATIONS

6.1.1 PFP Service Delivery

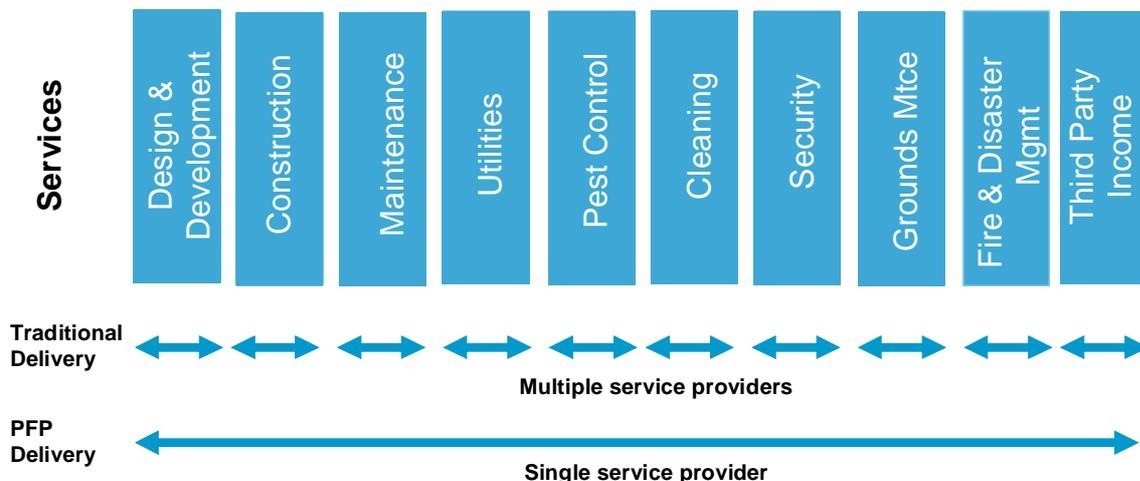
The Contract brings a high degree of transparency and rigour to the management of school facilities. The contractor has end to end responsibility for the smooth running of the school in terms of its facilities services. This is an improvement on traditional methods of delivery which tend to be fragmented, with management shared between schools, different government departments and different contractors.

Treasury's interview and submission process indicated that one of the key benefits of PFP was the Principal being released from dealing with day-to-day facilities management issues. The time savings appear to be achieved by having one central help desk for all facilities management issues plus a speedy response aided by having an on-site manager. Under a PFP contract Principals need to deal with a minimum number of parties (DET Strategic Projects Office and the Contractor). This should be compared to traditional delivery where liaison occurs with up to seven parties: the DET property office; the property officers' superior; the maintenance contractor; the maintenance contractor's sub-contractor; the sub-contractor's sub-sub contractor; the Treasury Managed Fund; and the Department of Commerce.

Figure 3 provides a diagrammatic of the differences between traditional and PFP facility provision and management.

Figure 3: Traditional and PFP school DDC&M

School facility construction and operation: traditional and PFP



Key Finding:

The single point of contact for schools has been a major benefit. Feedback indicates that the PFP has allowed Principals to devote more time to educational matters, such as staff and school development. DET may also wish to seek ways to incorporate the positive service delivery aspects of PFP into traditional contract arrangements.

6.1.2 The Performance Mechanism and Abatement Regime

The performance management regime, payment mechanism and abatement (deduction) regime provides the key link between the project objectives and the project outcomes/service delivery.

The New Schools PFP requires the Contractor to prepare a monthly “Performance and Payment Report”. For each school the contractor is required to monitor the performance of each service, maintain records and provide monthly reporting to the DET Project Director. The methods of monitoring specified under the Contract include, for example, time/temperature, inspection, response times and user feedback.

The reporting requirements shift the burden of reporting and compliance monitoring from the State onto the Contractor. This is a major departure from traditional contract management and payment procedures where monitoring falls to the state. Several participants nominated performance management, through the payment mechanism and abatement regime, as a key innovation and benefit of the PFP model.

PFP provides a clear abatement framework and allows DET to withhold payment for service failures. As part of the monthly reporting requirement the Contractor calculates deductions / abatements for failures and incorporates these into the monthly invoice. As listed below, the Contractor can also be abated for failing to report correctly.

Examples of deductions include:

- a) availability deductions for unavailability/unusability of school spaces;
- b) performance deductions for issues such as matters giving rise to an OH&S or safety risk, minor matters of a routine nature;
- c) repeated failure deduction for failure to meet the same availability or performance standard three or more times over a rolling three month period; and
- d) reporting failure deductions for failure to calculate the monthly net fee.

DET is currently preparing a Contract Administration Manual. During the course of preparing this manual, concerns have arisen regarding the adequacy of reporting from the Contractor. DET is seeking to more tightly enforce the reporting requirements under the Concession Deed. This is being pursued with a view to increasing transparency and ease of reconciliation of monthly invoices and the monthly Payment and Performance Report.

The reporting requirements under the second New Schools PFP have been tightened with the Contractor required to submit reports in a specified detailed framework.

6.1.3 Service Delivery Performance to Date

There has been a low rate of failure under the contract, with DET reporting that there have not been any performance or availability failures of note and the school administrators report the schools are operating well and the facilities manager (Spotless) is a responsive and efficient service provider.

DET will be exercising its rights under the Contract to audit the invoicing and payments from the Contractor's end, as well as internally. This is an important process and will provide DET with assurances and possibly areas for improvement at an early stage of the Contract.

During Treasury's school visits, a concern was raised around docket numbers and closing off jobs. The help desk and job numbers are central in the reporting and monitoring framework. It was reported that occasionally the Contractor would attempt to close off a job number when the job had not been completed to the Principals' satisfaction and then re-issue the job under a new number.

This is an important issue which has flow-on implications for the State's ability to levy deductions. It needs to be clear to both schools, in particular the Principals and school administration staff, to the Contractor, the circumstances under which jobs can be closed off, re-opened and / or re-issued under a new job number.

These issues are covered in the Operations Manual and DET has reconfirmed procedures with school Principals.

Key Finding:

Principals have broad responsibilities to their school and community. The role of the Principal under PFP differs from that of the Project Director. It appears in day-to-day operation that there is potential for cross over. It is important that Principals are kept up-to-date with the operation of the contract and understand their rights and responsibilities at a PFP school. This finding reinforces current practice in DET.

Recommendation:

That future schools projects seek to provide greater clarity around the role of the School Principal, if appropriate, in the Concession Deed.

Action Taken/Proposed:

The second New Schools Project has provided a clearer definition of the school Principal and their role in the Concession Deed and Contract documents.

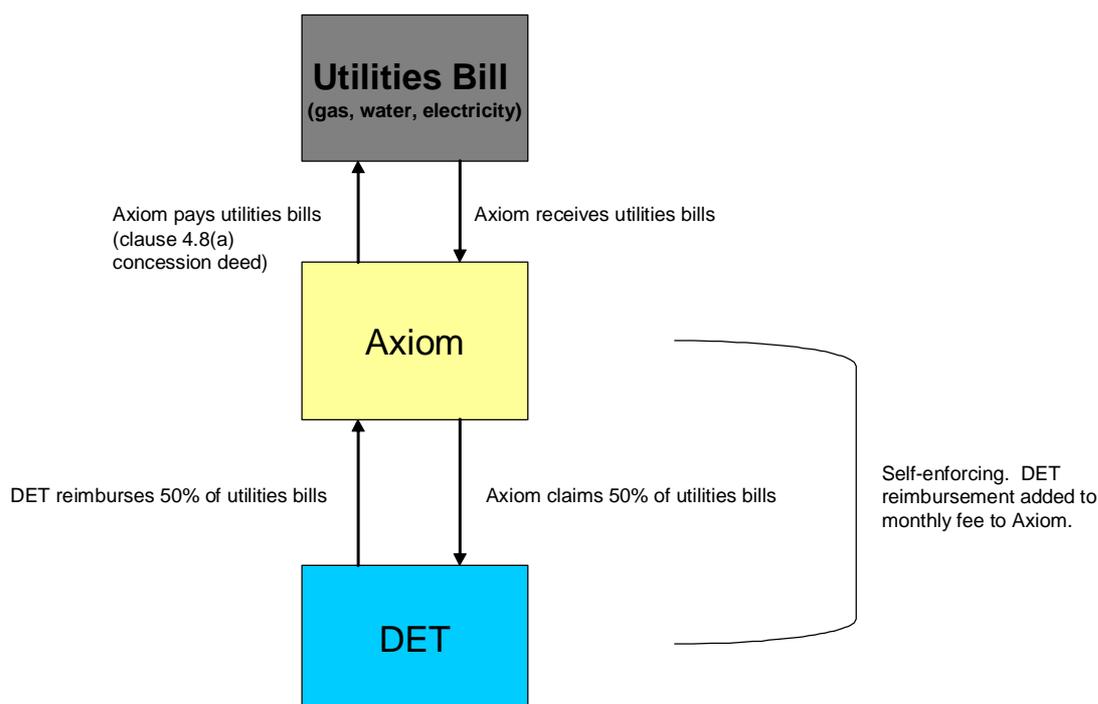
6.1.4 Service Changes

The PFP contract provided for shared risk on utilities and the provision of third party revenue through on-site childcare centres. The actual operations around these two items varies from the Contract and provides learning points for future projects.

Utilities

A relatively simple risk sharing and payment system was envisaged for utilities. Axiom was to pay the bills and seek reimbursement for 50% of the bill from DET (see Figure 4).

Figure 4: Utilities Payment- Envisaged



The arrangements were not able to work as planned for a combination of reasons, including:

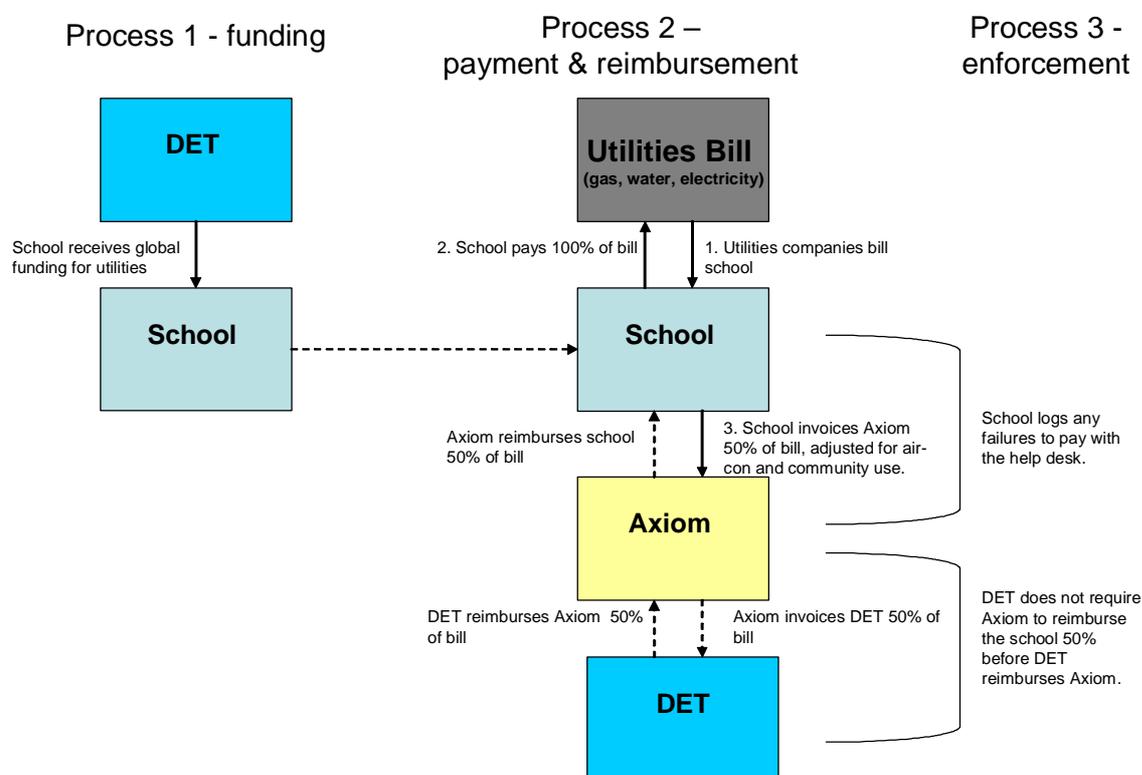
- § Post construction installation and use of air-conditioners changed the electricity usage profile. This was not part of the original contract and the cost of air-conditioning has been met by the school community.
- § Community use – as it is a school responsibility to recover the cost of community use, this means that the school needs a funding stream and an ability to contribute to the cost of utilities. This was not possible under the planned arrangements as the relationship existed between DET and the Contractor only, not the school.
- § Concerns regarding the legality or otherwise of on-selling utilities resulting in bills being issued directly to schools by the utilities providers.

DET is exploring electing Axiom as their nominee for billing with utilities companies. However until this arrangement is in place Figure 5 illustrates the actual payment of utilities.

- § Schools now have a direct relationship with the Contractor outside the help desk.
- § The risk profile has changed. Instead of Axiom paying the bill and waiting for a 50% reimbursement from DET, schools are now paying the bill and waiting for a 50% reimbursement from Axiom.
- § The 50% reimbursement is passing through several hands, from DET to the school, from the school to the utilities provider, from DET to Axiom and finally from Axiom to the school.

Schools have indicated that the system is complex and the Contractor can be slow to pay.

Figure 5: Utilities Payment - Actual



Recommendation:

For the current project:

- a. That the charging under the Contract for air-conditioning and community use be clarified and once clarified that guidance material be provided to the schools.
- b. To minimise risk of non-recovery, DET could seek to make reimbursement to Axiom of 50% of the bill dependent on Axiom producing proof of payment of their 50% to the school.

For future projects:

- c. That alternative risk allocation for utilities be explored, with a view to simplification of the billing arrangements.

Action Taken/Proposed:

Axiom is now responsible for the payment of utilities accounts, with DET reimbursing Axiom for 50% of the bill. This resolution reflects the intention of the Deed.

The second New Schools Project has allocated risk and payment of utilities to the proponent.

Childcare

The child care centres are considered to be a key innovation under the contract and a good example of complementary third party usage. There has also been some key learnings in the areas of utilities provision and cross-service provision.

The childcare centres were originally planned to have separate utilities services. Due to subdivision, site constraints and accessibility issues, some sites are using sub-metering arrangements. In some instances the schools and centres were operating before the sub-metering arrangements were in place, creating short term billing concerns at the affected schools.

The contract provided not only for an excised third party usage of a portion of the site, it also provided for Out of School Hours care (OOSH) services on the school grounds and / or within the child care centre grounds. OOSH is typically organised at the school level by the school Principal. Often a local, not for profit provider is used.

The inclusion of OOSH in the third party use agreement should have alleviated schools of organising and managing OOSH. Unfortunately the school communities were not satisfied with the standard of care provided by the operator.

The Contract provides DET with the right to terminate OOSH arrangements with six months notice prior to the calendar end of the year. In late 2004 DET approached Axiom to terminate the OOSH provisions under the contract. This was achieved and the schools are now arranging their own OOSH. This experience has highlighted:

- DET needed Axiom's agreement to terminate outside the six month notice period.
- Termination of the OOSH has forfeited revenue of \$350.00 per student per annum from Axiom.
- That school Principals received the parents' complaints about the OOSH service. By offering a service to the school community, the schools were subsequently held responsible for the quality of the service. The nature of this relationship was not reflected in the contract structure, which provided the schools, via DET, with only limited ability to change the OOSH service provider.
- The schools have now individually made their own OOSH arrangements.

Recommendation:

Future contracts should consider the nature of third party use whether or not the Government/DET:

- a) Is satisfied with an arms length service provision (i.e. the third party provider provides no services directly to the schools); or
- b) Considers it desirable for cross service provision and a contracting of service provision by the third party provider to the school community either:
 - i) As part of the PFP contract; or
 - ii) By allowing schools to develop their own relationship with the third party service provider.

Action Taken/Proposed:

The provision of third party revenue and use of the school site is considered to be a positive outcome of the first schools PFP. A relatively minor problem has arisen in the area of cross service provision of Out Of School Hours care (OOSH). DET is taking action to formally terminate and/or amend the Deed in relation to the provision of OOSH services on the school site. The issue of contracting third party services for the school, for use by school students, is a broader policy issue. Some service provision, such as OOSH may be best handled at the school level.

6.2 INNOVATION

The Working with Government Guidelines (2001:11) includes innovation as a value for money consideration. Innovation is defined as “wider opportunities and incentives for innovative solutions to deliver service requirements...(this) may include:

- bundled services, through a package deal for all non-core services; and
- included upgrades of associated and complementary infrastructure”

During interviews, project participants were asked to nominate what they thought were the innovative aspects of the PFP. The payment mechanism and abatement regime and the child care centres were nominated with the highest frequency. However under the definition of innovation provided in the WWG Guidelines, the bundling of the schools, the bundling of the non-core services and the life cycle focus also represent innovations delivered by the New Schools Project. These are discussed following.

6.2.1 Construction Bundling

The PFP model allowed DET to bundle the construction and operation of a group of new schools. This delivered service and construction innovation. Construction economies of scale were achieved, through reduced management fees. The nature of this bundling over a 30 year period also necessitated the interaction of builders, designers and operators. This interaction does not easily occur under traditional delivery.

Proposals received indicated a high degree of commitment to incorporating operational needs into the design and development considerations where possible. Documents indicate the Facilities Managers were involved in the procurement of finishes and the design and construction phases to ensure the ‘as built reflects the requirement for ongoing operation’.⁴

The benefit of this approach is supported by school reports of a smooth defects warranty period and swift repairs. School feedback has also indicated the Contractor provided dedicated landscaping resources to establish school gardens and a dedicated on-site tradesperson, in addition to the on-site manager, during the first few weeks of school operations.

6.2.2 Non-core Service Bundling

The PFP bundled a number of schools facilities management services for the first time. This is detailed in Section 3.1 Project Operations, but includes for example, maintenance, cleaning, pest control and furniture portage. These services are traditionally delivered by local school arrangements and/or contractors overseen by DET and/or Commerce. To manage the delivery of these services the Contractor was required to provide a help desk. In addition Axiom has chosen to provide a full-time on-site manager at each school.

The on-site manager performs a range of tasks, such as minor maintenance works, responding to security call-outs and grounds maintenance. Feedback on the responsiveness of the help desk and on-site manager was generally positive. At least one school has handed back to the District some of their core staff entitlement for a General Assistant.

⁴ Axiom BAFO 2002:39

The on-site manager was not required under the Output Specification and does not fully replace the duties of General Assistants but does perform some duties traditionally tasked to a General Assistant. The General Assistant (GA) Statement of Duties provides a list of tasks but notes that “it must not be expected that an individual will be able to perform all tasks listed in the Duties Statement”.

Twenty-one specific duties are listed in the duties statement. These include two catch-all duties of ‘Other duties as directed by the Principal’; and ‘Duties allocated by the Principal during school vacations’. Of the remaining nineteen tasks the following contain elements of cross-over with the PFP Contract:

1. furniture portage;
2. minor maintenance of audio visual aids and associated material⁵;
3. checking burglar alarm system;
4. maintenance of bench tops;
5. minor maintenance of buildings, plant and equipment;
6. mowing school lawns and playing fields;
7. oiling and cleaning of machines;
8. ensuring that fire fighting equipment is readily available;
9. preparation of ground for the planting of trees, shrubs, lawns etc., and planting and watering of same;
10. pruning shrubs, trimming hedges, light lopping and trimming of trees; and
11. maintaining gardening equipment in good working order and carrying out minor repairs and adjustments.

The Review sought feedback from the General Assistants representative union, The Public Service Association (PSA). The PSA’s submission to the Review notes that there is some potential duplication of tasks between the private provider and the General Assistants.

There may be scope in future Projects to define the role of an on-site manager / General Assistant in the Output Specification. This would need to carefully consider the division of core and non-core services and possible impacts at the school level. A full cost benefit analysis would also need to be undertaken – the provision of the on-site manager is currently provided as a bonus by the Contractor, any move to specify and mandate an on-site manager role may lead to increased costs for the PFP model.

Key Finding:

The Contractor is performing some duties performed by General Assistants at other schools, potentially leading to a “freeing up” of resources at PFP schools.

Recommendation:

A review of General Assistant duties at PFP schools is needed to avoid duplication.

Action Taken/Proposed:

Treasury will encourage a Review of the General Assistant duties.

⁵ Maintenance provided under contract if equipment purchased through the Contract.

6.2.3 Restrictions on Innovation

There are limits to innovation under PFP delivery. The EOI and early RDP submissions received by the Schools Project extended into the area of facility design innovation. This generated mixed feedback, with some participants seemingly frustrated that the private sector submitted proposals far in excess of requirements, whereas others were pleased that Government was exposed to new ideas but recognised the end need to deliver on DET's facility standards.

The failure of some bids to comply with RDP requirements and the innovative, but potentially inappropriate, early designs presented new challenges for Government in assessing bids, effectively communicating the Government's needs and meeting the affordability constraints. A combination of factors, as discussed below, contributed to standard schools being built. That is, the PFP schools do not noticeably vary in appearance or layout from traditional schools.

1. Affordability constraint

The PFP process creates an affordability constraint, in the form of the agreed costs, in the Public Sector Comparator. This means that while innovation is sought, bids must fit within the affordability cap and beat the Public Sector Comparator. Some bids provided a level of facilities innovation but were simply too expensive. One participant noted "the bids originally did include innovation (in facility design) but they were priced out of the equation – innovation was eliminated due to cost constraints".

2. Detailed Output Specifications limit innovation

DET and the Department of Commerce have developed quite detailed School Facility Standards. These have been compiled from many years of school construction, feedback from post occupancy evaluations and progressive curriculum changes. These standards have been developed to meet a range of regulatory requirements, such as OH&S and also provide accommodation that is suitable to teaching staff and school communities. The status quo is shown to work and there is a reluctance to embark on radical change without due process and consideration.

A number of participants, from a range of backgrounds commented that innovation was limited by the output specifications. A participant observed that "PFP is a way of procuring. If the project brief doesn't allow innovation, it will not be achieved". These sentiments are also reflected in the Axiom submission, which notes that "the use of and adherence to current NSW DET Schools Standards potentially limits innovation in design, with innovation restricted to efficiencies in construction delivery versus "design" of educational spaces".

Whilst DET is and has been prepared to consider design and facilities changes proposed by the private sector, DET remains responsible for educational outcomes. There is a need for balance between innovative building design and ensuring compatibility with core educational service delivery.

3. Lack of Market Knowledge

Until the PFP project, school design had been principally undertaken by Government. This potentially created a gap in market knowledge and a steep learning curve for the private sector in designing schools suitable in the New South Wales context.

Participants noted that some of the initial designs did not meet basic school needs. Examples of poor design cited included “west facing classrooms, no assembly areas and inadequate or inappropriate ramp access”. This also seems to have contributed to the desire to construct the standard school offering.

4. Probity

This was the first social infrastructure PFP in NSW. The ground rules for this type of infrastructure acquisition were being formed. The interpretation of probity needs and the desire to ensure probity at all times is thought to have impeded communication with bidders. A strict, restrictive approach was taken to bidder interaction. Whilst this did protect the integrity of the process it may also have contributed to a lack of clarity around the Project needs and unnecessarily protracted negotiations.

Feedback from the probity auditor indicates that subsequent PFP projects have better probity plans. These projects have provided for structured bidder engagement, including the use of workshops. Submissions received from bidders also support a workshop approach as a way of providing clarity and guidance.

Finding:

The Project was innovative in its packaging of the schools and in its bundling of service delivery arrangements. This was a fundamentally new and innovative way of procuring school facilities and ancillary services.

Innovation in facilities design was potentially limited by the interaction of concerns around probity, the desire to protect minimum facilities standards and affordability constraints.

Recommendation:

That future projects seek to achieve a better balance between achieving market understanding of government requirements and protection of probity. This may involve more extensive use of workshops, bidder engagement sessions and earlier and fuller release of the Public Sector Comparator.

That future projects seek to better reconcile ensuring minimum facilities standards without compromising innovation.

Action Taken/Proposed:

A bidder engagement strategy has been introduced in all PFPs during the Request for Detailed Proposals stage. This enables bidders to better understand government requirements without compromising probity. In addition, the second New Schools Project included a value engineering study. This process helped to identify any areas in the output specifications and corresponding DET facilities standards where “inputs” could be replaced or redefined at “outcomes or outputs” to provide more flexibility.

6.3 QUALITY AND DESIGN PERFORMANCE

There is a lack of hard data to assess the quality and design performance of the schools at this early stage in the project. As the schools have only been operating for one to one and a half years the opportunity to gauge the quality of facilities, say through a reduced repair level or superior design performance is limited. Commentary in this section will therefore be limited to the observations of participants in the tender process, anecdotal evidence from the users i.e. DET and the school Principals and views expressed in formal submissions.

On the Ground

The Principals and some participants felt that the schools were constructed to a higher quality than schools traditionally delivered. It is difficult to assess whether the schools have actually been constructed to a higher standard, or the single point of contact and seamless service delivery creates the perception of a higher standard of quality.

The process of stakeholder consultation also identified some areas of concern in facility design. The concerns reported are common to traditional and PFP schools. As mentioned earlier in the report, DET relies on a comprehensive process of post occupancy reviews and detailed analysis to adapt the Schools Facilities Standards to current curriculum needs and teaching practices. These suggestions represent a policy and planning issue for Government, irrespective of delivery (i.e. irrespective of PFP or traditional delivery). Below is a summary of comments identified for further consideration by DET:

- § Site layout concerns including:
 - too many areas that are difficult to supervise e.g. areas behind or in between buildings or elevated from view, resulting in large areas of the site being out-of-bounds;
 - possible difficulty for emergency vehicles to access elevated, open play sections of sloping sites;
 - desire for a bigger designated play area;
 - arrangement of buildings in a more circular lay-out, rather than long rows could provide easier staff coordination and communication; and
 - not enough or poorly located car parking.
- § Shade concerns at Primary Schools and a desire for bigger Covered Outdoor Learning Areas.
- § Inefficient/too wide corridors that could be replaced with more “usable” learning spaces.
- § Administration area concerns, such as the desire for a separate printing/photocopy room and an intercom system.
- § Lack of air conditioning.
- § Lack of rainwater tanks.

6.4 BRIEF APPROPRIATENESS

The project brief changed several times, during the tender process and post-financial close. A summary and discussion of these changes is provided. In addition, Axiom's submission to the Review makes some suggestions to improve the clarity of the brief.

6.4.1 Package of schools

The most visible change to the Project occurred in the make-up of the package. The New Schools Project allowed schools to be constructed some two years earlier, on average, than would be possible under traditional delivery. In addition to this two year acceleration, DET was required to project the future demand and location of schools four to five years in advance. The combination of these two factors moved the project beyond the usual four year forward estimate for Budget projections and presented new planning challenges for DET. Under traditional delivery DET has a greater degree of flexibility to fine tune school provision to accord with demographic changes and the yearly budget cycle.

The original package comprised schools located in the North West sector of Sydney.

| Package at EOI | Same | Final Package | School Name |
|--------------------|------|--------------------|---------------------|
| Horsley PS | ü | Horsley PS | Dapto PS |
| Vinegar Hill PS | ü | Perfection Ave PS | Kellyville Ridge PS |
| Kellyville No 3 PS | ü | Rosebery Rd PS | Sherwood Ridge PS |
| Poole Rd SSP | ü | Poole Rd SSP | Tallowood SSP |
| Mungerie Park PS | x | Withers Rd PS | Ironbark Ridge PS |
| Shell Cove PS | ü | Shell Cove PS | Shell Cove PS |
| Hamlyn Terrace PS | x | Mataram Rd PS | Woongarra PS |
| Glenwood HS | ü | Glenwood HS | Glenwood HS |
| Horningsea Park HS | ü | Horningsea Park HS | John Edmondson HS |

The final package of schools was confirmed at BAFO, including a change in target availability for John Edmondson HS from January 2004 to January 2005. Following financial close, Mungerie Park PS was relocated to a site approximately one kilometre away, in the Rouse Hill Regional Centre. This change was at the request of both Baulkham Hills Council and the Department of Infrastructure, Planning and Natural Resources.

DET has recognised the “locking-in” of schools under a PFP delivery as an area for improvement and is seeking to introduce more flexibility into future PFP projects. The PFP process highlighted that school provision is highly dependent on the speed of development and subsequent demographic demand. This requires a degree of flexibility, which although ultimately catered for in the New School Project, was not originally anticipated.

The second Schools PPP is identifying the location of schools within broad sectors only, for example North West and South West Sydney. Individual school locations will be released as specific locations are confirmed.

Key Finding:

The acceleration of delivery under PFP and the longer planning time frames highlighted the dependency of school provision on demographic demand and timely release of new housing developments. DET is already seeking ways to adapt the PFP process to cater for the need to adjust new school provision to align with areas of highest demand. However, this approach needs to be complemented with other measures as it is desirable for PFP projects to have a higher certainty of outcome than Design and Construction contracts.

Recommendation:

It is desirable to have a high degree of certainty of outcome when entering into a PFP contract. Improvements should be sought to improve school planning to cater for specific local demographic needs. Current planning processes should be adapted to provide this or alternatively new methods for capturing local risk factors should be developed. In addition, as far as possible, DET should seek to settle on school facility standards during the tender process to ensure that the facilities are procured in a competitive market.

Action Taken/Proposed:

Treasury will encourage DET to improve its planning processes, taking into account the PFP procurement process.

6.4.2 Facilities Changes and the Variation Mechanism

This section of the report will look at design and construction changes. Some of these changes were made during the BAFO, while others were made after the Contract had been finalised.

The WWG Guidelines (2001:41) observe that “Government ...requires a flexible contract with suitable mechanisms for achieving necessary operational variations in a transparent, cost-effective way”. The Schools Project has demonstrated that the Contract provides a high degree of flexibility. The Deed includes a minor changes provision and a variations mechanism for larger changes. In addition, DET also ran an “overs-and-unders”⁶ system during the design and construction phase. An “overs-and-unders” system was not originally envisaged in the Contract.

It is essential that contract flexibility be supported by robust, rigorous assessment and reporting procedures. The review has gathered information, received suggestions in this area and has formed key findings and recommendations. Details of some of the changes that occurred are listed below under “Examples of Changes” this should be read in conjunction with the following comments and Contractor feedback.

⁶ “overs-and-under” is a process used through the design and construct phase to offset potential cost increases against decreases.

- § With respect to the formal variation mechanism, Contractor feedback has indicated that the New Schools Project variation mechanism has worked “due to the co-operation of the parties concerned”, but that “it has the potential to become unwieldy and inefficient should parties be not as co-operative on future projects”. Contractor suggested improvements include:
- on the private sector side by - an RDP requirement for an underwritten dollar amount of additional financing to be provided and documented; and
 - on the government side by - a delegated authority to the DET Project Director to authorise changes up to a reasonable dollar limit.
- § The usage of an “overs-and-unders” system during the design and construction phase was not originally envisaged, and does not form part of the Contract. Contractor feedback has suggested that the post tender design delivery could be improved through the “implementation of a sign off/approval milestone arrangement...(which) would require both DET and the Contractor committing to a timetable in which design was refined and bedded down”. The Review considers a more prudent approach may be to couple this type of operational implementation arrangement with allowance and procedures for an “overs-and-unders” system in any future PFP contracts.

Key Findings:

The Project was able to cater for a number of changes in facilities provisions. The changes benefited school communities by providing for updated school facilities standards and responding to specific local needs. DET and schools value this flexibility.

The Contract did not envisage an “overs-and-unders” system during the design and construction phase.

Recommendation:

That future PFP contracts consider the need for an “overs-and-unders” system during the design and construction phase; and that this system be recognised in the Contract deeds. For changes running through an “overs-and-unders” system that an assessment and sign-off procedure be developed.

That a variation limit be agreed between Treasury and the agency. For traditional projects, agencies must return to Treasury for variations in capital of 10%. An appropriate level for privately financed projects should be determined.

For all post financial close contract changes or variations, that an assessment and sign-off procedure within Government be developed. The Working with Government Guidelines could be updated to provide agencies with guidance in this area.

Action Taken/Proposed:

These recommendations will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

Examples of Changes

School for Special Purposes

At Best and Final Offer (BAFO) stage changes were made to the School for Special Purposes specifications to reflect changes in DET's facilities standards and also in some instances to better serve local needs by the provision of additional facilities. These changes reflect the unique and less frequent provision of special schools and include changes as follows:

- hydrotherapy pool (policy);
- reverse cycle air conditioning (policy);
- a bus enclosure and extended driveway (legislative);
- an increase to the multipurpose space to 186sqm (community request);
- an access shower/toilet of 6sqm adjacent to the practical activity area (staff/union request);
- one practical activity area of 17sqm per home base (policy);
- the "Special Programs Room Type 2" was deleted and replaced by a "Special Programs Room Type 3" (policy);
- an additional 17sqm office (increased staffing entitlement);
- one Personal Effects Storage of 3 sqm per home base (staff request); and
- a kitchenette (policy).

BAFO Changes

There were minimal changes at BAFO to the Primary and Secondary schools. The BAFO changes included:

- an additional deputy principals office to be added for each high school (due to increased staffing entitlement); and
- an additional 17sqm office be added to each primary school (due to increased staffing entitlement).

Post-tender Changes

Changes after the Contract was executed included:

1. Provision of additional accommodation at Dapto PS due to the unanticipated relocation of the existing, older Dapto PS to the new PFP Dapto PS. This increased forecast long term enrolments, requiring additional classrooms. These extra facilities were provided through the Contract variation mechanism at an approximate cost of \$600,000.
2. Provision of special education accommodation at Glenwood HS, requested by the Blacktown District Superintendent to cater for students with special needs enrolled in feeder primary schools. Advice received indicates that DET's usual planning processes were truncated by PFP, preventing the usual process of a school facility briefing review. This additional accommodation was provided under the Contract variation mechanism at an approximate cost of \$1.6 million.

The post tender changes to facility provision are indicative of the unique planning pressures that PFP places on DET. In addition to adapting the PFP model to suit schools planning (refer "Package of Schools", 6.4.1, above) DET may also need to explore ways to adapt school planning to the early delivery available under PFP.

Recommendation:

It is desirable to have a high degree of certainty of outcome when entering into a PFP contract. Improvements should be sought to improve school planning to cater for specific local demographic needs. Current planning processes should be adapted to provide this or alternatively new methods for capturing local risk factors should be developed.

In addition, as far as possible, DET should seek to settle on school facility standards during the tender process to ensure that the facilities are procured in a competitive market.

Action Taken/Proposed:

Treasury will encourage DET to improve its planning processes, taking into account the PFP procurement process.

3. The school's establishment grant, used for the purchase of curriculum based furniture and equipment was adjusted for inflation and to include some computer equipment costs. This adjustment was approximately \$400,000.

Under traditional delivery the establishment grant is provided for Principals to procure curriculum based furniture and equipment, however Principals have discretion and may use some of the grant for items such as stationery or uniforms and purchase the remaining equipment later with other funds. Under the PFP a portion of the grant, roughly \$450,000 of \$800,000 for a secondary school, is placed with the Contractor. The Principal orders furniture and equipment from the Contractor, who then maintains and replaces the items for the remainder of the concession term.

Feedback has been mixed. The Secondary Principals Council submission supports the arrangement, noting likely ongoing "significant" maintenance and replacement savings and a reduction in "workload and stress" for the School Office Manager (who is usually charged with ordering and organising these items).

Primary Principals feedback during site visits was more variable and emphasised the reduced ability to use the establishment grant for general start-up funding, thereby reducing their ability to respond to the immediate needs of a new school. Similarly the Contractor submitted that there is a "need to further develop the means by which curriculum based furniture and equipment is integrated into...the project", noting a longer than expected expenditure profile and suggesting Principals have custody of the money over the medium term.

Key Finding:

The allocation of a portion of the establishment grant to the Contractor has generated mixed feedback.

Recommendation:

The benefit to the State in terms of having curriculum based furniture and equipment maintained and replaced over a 30 year period outweighs any short-term flexibility gains that may be achieved at the school level if Principals had discretion to procure outside the Contract.

DET should look to issue guidance to Principals on how to allocate the grant to best balance the short term set-up needs of the school against the longer term needs to curriculum based furniture and equipment.

Action Taken/Proposed:

Treasury will encourage DET to issue guidance to Principals on how to allocate the establishment grant.

4. An unanticipated benefit of the PFP was the reduced construction time. The PFP schools were constructed in roughly nine months compared to 12+ months under traditional delivery. The first four schools were originally forecast to open in March 2004, part way through term one. The nature of the contract and the early construction allowed DET to commence educational delivery in permanent facilities from the start of the 2004 school year at a relatively small cost of \$250,000.

Key Finding:

The flexibility to open schools early was beneficial. Students were able to start the school year in their new school.

6.5 FUNCTIONAL COMPETENCE OF INFRASTRUCTURE (INCLUDING NETWORKING AND INTERFACING)

The Working with Government (WWG) Guidelines require that the functional competence of the infrastructure, including networking and interfacing be considered in a post implementation review. In so far as DET can be considered to be operating a network of government schools, it appears that the Project complemented and enhanced the network. The Project provided new schools in urban growth areas, catering to demographic demand. The school at Dapto replaced the existing Dapto primary school, relocating the school to a growing area and away from the town centre.

Interface risk is defined in the WWG Guidelines as the risk that the contracted services will not be compatible with the delivery of core services and vice versa. There is no evidence of conflict between core service provision and contractor provided services at the PFP schools. Rather the PFP is credited with relieving and releasing Principal and school Office Manager time from dealing with facilities management issues (NSW Teachers Federation submission and Secondary Principals Council submission).

6.6 ENVIRONMENTAL MANAGEMENT

The WWG Guidelines require consideration of environmental management issues, including planning through to commissioning stage and the operational stage at the school level.

6.6.1 Planning

Environmental management was a consideration for the Project. The processes and procedures employed however do not vary a great deal from environmental management undertaken for traditional school provision. For example, DET engaged the Department of Commerce to undertake site inspections. The site reports detailed standard issues such as Aboriginal heritage, flora and fauna and contamination findings. These reports were provided to the Contractor.

The Concession Deed required the contractor to:

- § Ensure that construction did not commence without a construction certificate issued in accordance with the Environmental Planning and Assessment Act.
- § Conduct an Environmental Audit, prior to the issue of a Notice of Completion comprising:
 - a Final Contamination Assessment confirming either that the site does not present a harm and is suitable for use as a school or detailing remediation work required; and
 - a Final Audit Statement confirming that the site does not present a significant risk and is suitable for use as a school, with no qualifications or further monitoring required.

The Development Approval (DA) process was undertaken by the Contractor. Some environmental obligations emerged during the DA process, for example the preservation of a small wooded area on the Glenwood HS site.

6.6.2 School Operations

The Contractor is obliged to provide the PFP schools with Disaster, Fire and Safety Management programs. The Contractor ensures the school community is aware of the safety and environmental management features of the school and liaises with the local fire brigade and the police for traffic management and crisis management.

The Contractor also participates on the school Environment or OH&S Committees to track the school operations in terms of the impact on health and safety and the school environment.

7 PROJECT DELIVERY, PROCEDURES AND MANAGEMENT

The Terms of Reference was agreed to cover:

- 7.1 Project delivery, including the approvals process and project timelines;
- 7.2 WWG Project Delivery Compliance; and
- 7.3 Project management /procedures, including key staff management and changeover.

7.1 PROJECT DELIVERY

As noted earlier, eleven Expressions of Interest (EOI) were received from the private sector. A shortlist of four consortium was announced, and Request for Detailed Proposals (RDP) issued in March 2002. RDPs were received in May 2002. The proposals were evaluated by the Project Evaluation Committee, supported by external advisors and the specialist advisory committees. None of the proposals submitted were assessed as fully satisfying the requirements as specified in the Request for Detailed Proposals document.

Two proposals were assessed as offering potential to improve on public sector delivery and were invited to submit a Best and Final Offer (BAFO). The BAFO was not originally planned, but was indicated as a possibility at RDP stage. The BAFO process ran for two months, closing in early November 2002.

As part of the BAFO process each proponent was provided with a summary of issues requiring clarification and was advised of processes under which they could submit draft revised proposals for feedback on any remaining deficiencies, prior to the submission of the BAFO. Proponents were also asked to indicate their willingness to accept and execute revised drafts of the Contract documents within seven days should they be selected as the preferred proponent (DET Contract Summary 2003:3).

The preferred proponent, Axiom, was announced in December 2002.

The approvals timelines and project management structure are discussed in this section.

7.1.1 Approvals Process

Approvals required for the Schools PFP Project were more stringent than those required for conventional schools delivery. Traditionally, schools projects are constructed individually, with a lower individual value than an aggregated PFP package of schools. Facilities services, such as maintenance and cleaning, are procured under separate four to six year contracts. The aggregation of projects under PFP creates a higher single project capital value, which combined with the length of the contracts and the services procured under PFP, supports the need for a more rigorous approval process.

The WWG Guidelines require Budget Committee approval to proceed to EOI; under certain conditions to proceed to RDP (although this is not clear); to enter negotiations; and for significant variations to the project. A risk matrix is required to be submitted to Budget Committee with each approval sought. The Treasurer's approval is also required under the Public Authorities (Financial Arrangements) Act 1987 (PAFA) to enter into contract.

The WWG Guidelines are silent on the BAFO process and do not provide separate guidance on BAFO approval.

The New Schools PFP met all of the approvals requirements of the WWG Guidelines, except for the submission of a risk matrix. Although a risk matrix had been developed, it was not submitted to the Budget Committee at EOI or RDP approval stage. A risk assessment summary was provided that provided details on key risks, risk allocation and project risk management.

Figure 6: Approval Process

| <u>Approval sought</u> | <u>Authority*</u> |
|--|------------------------|
| Approval to conduct feasibility assessment | Budget Committee |
| Proceed to EOI | Budget Committee |
| Proceed to RDP | Treasurer and Minister |
| Selection of Preferred Proponent | Budget Committee |
| PAFA Approval | Treasurer |

Finding:

The Working with Government Guidelines are currently flexible as to whether or not Budget Committee approval is required to proceed to RDP.

§ Table 3.2 indicates that Budget Committee approval is required to proceed to RDP.

§ Section 3.5 indicates that Budget Committee approval is required to proceed to RDP.

§ Table 3.1 indicates that Budget Committee approval is only necessary to proceed to RDP for “very large projects, where there are a number of bidders, or where there are divergent proposals to consider”.

Recommendation:

That the Working with Government Guidelines be clarified regarding the approval requirements for proceeding to Request for Detailed Proposals.

Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

7.1.2 Project Timelines

The tender process for the New Schools project commenced in October 2001 with the issuing of an Expression of Interest (called Registration of Interest at the time) and ended in March 2003 at Financial Close. The tender process, from EOI to Financial Close lasted 18 months: seven months longer than originally envisaged.

Figure 7: Project Timeframes

| Activity | Proposed date at EOI | Actual date | Delay |
|---|----------------------|---------------|---|
| EOI issue | October 2001 | - | - |
| EOI close | November 2001 | November 2001 | - |
| Announcement of short listed proponents from EOI. | December 2001 | March 2002 | 3 months |
| RDP issue. | January 2002 | March 2002 | 2 months. |
| RDP close. | March 2002 | May 2002 | 2 months. |
| BAFO* | N/A at EOI | August 2002 | A BAFO was requested from two proponents. |
| BAFO close | November 2002 | November 2002 | - |
| Selection of preferred proponent | June 2002 | December 2002 | 6 months. |
| Financial close* | August 2002 | March 2003 | 7 months. |

* *The need for a BAFO was considered and included at RDP stage.*

The project delays were significant and caused some concern for the private sector. The project was also affected by a Cabinet reshuffle which consequentially impacted on the government briefing and approvals sequencing. As noted in Section 2.2.2 Budget Performance, the approximate cost of each private sector of bid was approximately \$2-3 million. This cost was probably increased by holding together the consortium over a lengthened tender period, for example during the delay to announce a shortlist for RDP, as all 11 proponents needed to maintain their bid team in case they were short listed to RDP.

File records indicate the delays caused market concern that the process may be terminated because it would no longer be feasible to deliver and open the schools according to the announced timelines. Bidder feedback received as part of this Review also indicates a sense of inequity. Bidders worked to tight timeframes, for example three weeks to submit an Expression of Interest, but it took some three months to evaluate and announce the shortlist, similarly while RDPs were due within a nine week time frame, the shortlist to BAFO took some three months.

It should be noted that at the RDP stage none of the proposals were assessed as fully satisfying the requirements as spelt out in the Request for Detailed Proposals document. This necessitated not only the careful consideration and evaluation of proposals but the inclusion of a BAFO process and the necessary, quality feedback required to run a successful BAFO.

As mentioned earlier it is not expected that these time delays will occur again, being partly attributable to the learning process of being a first for DET and social infrastructure.

7.2 WWG PROJECT DELIVERY COMPLIANCE

The Working with Government Guidelines (WWG) provide detailed procedural guidance for each tender stage, with the exception of Best And Final Offer (BAFO). The WWG Guidelines also lay down a set of 'ground rules'. A summary table of New Schools Project compliance with the ground rules is provided. The requirements for proceeding to EOI are dealt with in detail in Section 1: Project Formulation. The requirements for BAFO and contract execution discussed below.

7.2.1 BAFO and Contract Execution

The New Schools Project anticipated the need for a BAFO at the RDP stage. The BAFO process was not envisaged at EOI, nor was it built into the project timeframes. Similarly the WWG Guidelines do not include a BAFO process. The use of BAFO or extended evaluation processes can be a feature of PFP projects in NSW. It is important that guidance be available to ensure that any agency participating at these later stages of negotiation follow a sound, diligent and transparent process.

Recommendation:

The Working with Government Guidelines are silent on the Best and Final Offer (BAFO) process. An update to the Guidelines should be issued to provide guidance to agencies on the purpose, process and how to identify the need for a BAFO. The provision of guidance on BAFOs would assist users of the Guidelines better understand the possible full procurement process, associated timeframes and resources needed.

Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury's review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

The WWG Guidelines provide three key requirements at the contract execution stage:

1. A Treasury determination on the accounting treatment to be adopted must be obtained before the contract is executed.

The development of accounting advice reflects the new, path finding nature of the Project. NSW Treasury did not provide a final accounting treatment determination before the contract was executed. The final determination incorporated the advice and influence of the deliberations and input of the Heads of Treasury Working Group, the FRS5 (Financial Reporting Standard 5) UK standard, the Australian Accounting Standards and external advice.

2. The contract must detail cost and risk sharing relating to the attainment of, compliance with and delays resulting from any outstanding or amended environmental or planning approval.

The contract clearly specified the risk sharing arrangements and procedures for dealing with delays in development approval. The Contractor must apply for and satisfy the requirements for any required Planning Approvals, as well as provide a copy of the approval to the Project Director. The Contract provided for Target Development Approval consent dates for each site, target availability dates and longstop dates. The Project Director was able to vary these dates at his discretion. If the contractor had not obtained planning approval by the required date, the project contracts would have terminated automatically or the Contractor could have applied for an extension of time under the “Relief Event” provisions of the contract.

3. If there are significant variations from the RDP approved by Budget Committee and the negotiated agreement it should be referred back to Budget Committee.

There were no significant variations from the RDP to contract execution.

7.2.2 The Working with Government Ground Rules

The Working with Government(WWG) Guidelines provide a set of ‘ground rules’ for any PFP project. These ground rules cover many stages of the tender process and summarise and emphasise requirements that appear throughout the WWG Guidelines.

Figure 8: WWG Guideline - Compliance with the 'Ground Rules'

| Working with Government ‘ground rules’ | Procedures followed by the New Schools PFP project team |
|--|--|
| Government will maintain a competitive and transparent process. | There was a trade-off between probity and transparency. A better balance between bidder engagement and protection of probity can be achieved. Subsequent projects have used more engagement workshops to keep the market well informed without compromising probity. |
| No direct negotiations unless approved by Budget Committee. | Complied. Selection of preferred proponent endorsed by Budget Committee prior to direct negotiations |
| Government will not guarantee private sector borrowings and will not take an equity share-holding. | Complied. |
| The Government may contribute land, capital works or some form of revenue diversion. | Complied. Government retains ownership of the school land. |
| Compliance with: <ul style="list-style-type: none"> ○ the Premier’s Memoranda on the disclosure of private sector contracts. ○ The EP&A Act 1979 | <ul style="list-style-type: none"> ○ Complied. ○ Complied. |

| | |
|--|--|
| o National Competition Policy and the Competition Principles Agreement | o Complied. |
| Fair and equitable treatment of public employees who may transfer to a private employer. | Not applicable. No public employees were transferred to the private sector as a result of the New Schools Project. |
| Maximum Australian and NZ industry participation. | Not assessed. Local industry participation plans were not required from bidders. |
| Government may reimburse bidding costs if a project is terminated after RDP stage. | Not applicable. The project was not terminated. |
| Contract summaries to be tabled in parliament 120 days after the contract becomes effective. | Contract summaries were tabled. |

Recommendation:

That the WWG Guidelines be updated to provide greater clarity around the timing requirements for tabling of Contract Summaries. The current requirements for tabling 120 days after the contract becomes effective is open to interpretation, for example is tabling required 120 days after financial close, commercial close or when the operations phase of the contract commences?

Action Taken/Proposed:

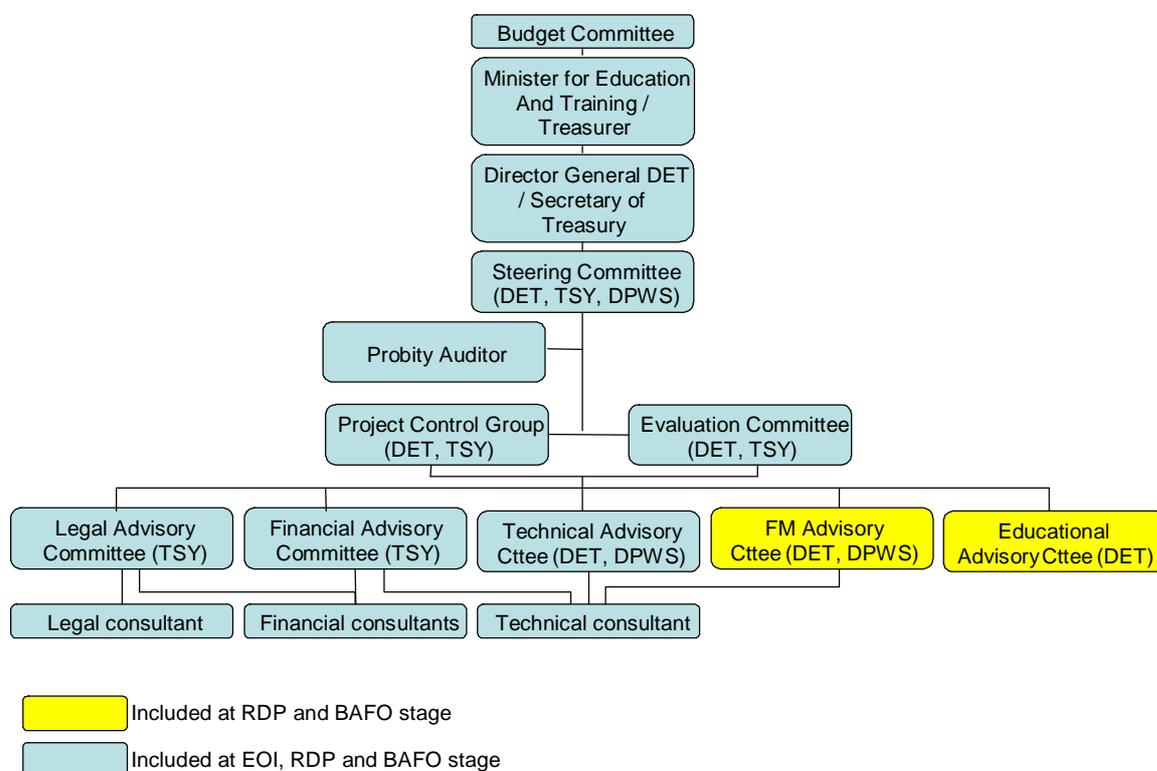
This recommendation will be taken into account in NSW Treasury's review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

7.3 PROJECT MANAGEMENT

The governance structure adopted by the New Schools comprised a Steering Committee, Project Control Group and various advisory committees. The governance structure for the project varied slightly at each stage, reflecting the differing skills and expertise required at each level of development and evaluation.

At feasibility study stage the project management group comprised officers from DET and Treasury. When approval to release the Expression of Interest (EOI) was sought, the committee expanded to include officers of the Department of Commerce (previously the Department of Public Works and Services (DPWS)) and support from consultants. At Request for Detailed Proposals (RDP) stage the structure also included a Facilities Management and Educational advisory committee. This is illustrated at Figure 9.

Figure 9: Project Management Structure



The Schools Project was overseen by a Project Steering Committee comprising officers of the Department of Commerce, DET and NSW Treasury. The Steering Committee was supported by a Project Control Group, a probity auditor and various Advisory Committees. An independent review of the probity auditor has found that the project management structure with respect to probity matters was appropriate and effective.

Some anecdotal evidence was presented to the Review that the large number of agencies and persons involved in the committees proved unwieldy in certain areas. To address this, subsequent PFP projects have refined and reduced the membership and structure of committees to provide a greater focus and concentration on the service delivery agency (as owner of the project) and Treasury’s supporting role.

The probity auditor’s submission has indicated that the project governance structure with respect to probity matters was appropriate and effective.

Staff Changeover

The Project was not affected by staff changeover. The participants remained quite stable throughout, with the exception of some illness and annual leave. Treasury’s Principal Advisor and DET’s Project Director were identified by a range of participants and the probity auditor as being key staff. These two participants were identified with a high degree of consistency and in the context of holding a pivotal role / being a key player. While the project benefited from the participation of these individuals, their key role perhaps indicates a potential risk should either of them have been unable to continue with the Project.

7.3.1 WWG Project Management Requirements

The Working with Government (WWG) Guidelines outline a number of requirements around project governance. Below is a summary of the Project’s compliance with the Guidelines.

Figure 10: Compliance with WWG Project Management Requirements

| Guideline Project Management Structure requirement (pp. 29-31) | Procedures followed by the New Schools PFP project team |
|--|---|
| The proposed management structure is submitted to Budget Committee. | ÜSubmitted at each stage. |
| A steering committee be formed comprising Treasury, Commerce, TCO*, ICU* and the delivery agency. | ÜA steering committee was formed comprising Treasury, Commerce and DET only. |
| A project manager from the delivery agency should also be a member of the Steering Committee. | ÜDET’s Project Director attended Steering Committee meetings. |
| A probity auditor should be appointed to monitor the bid process and provide advice to the project team, steering committee and the delivery agency CEO. | ÜDeloitte Touche Tohmatsu was appointed as the probity auditor prior to the issue of RDP and provided services until contract finalisation. |
| The project team be comprised of specialist knowledge required for the project. | ÜThe project team was comprised of individuals with subject expertise from each of the Departments of Education and Training, Commerce (DPWS) and Treasury. The team was further supported by the appointment of technical, legal and financial advisors. |

*TCO is The Cabinet Office; ICU is the Infrastructure Coordination Unit

The WWG Guidelines require The Cabinet Office and the Infrastructure Co-ordination Unit be represented on the Steering Committee. Participants in the Project did not feel that the project suffered due to the absence of these parties. Some participants felt that the project may have benefited from having access to development process and infrastructure planning and provision expertise.

Recommendation:

Any update of the Working with Government (WWG) Guidelines should consider the need for TCO and ICU representation on the Steering Committee of PFP projects. Agencies should be able to assess the skills and expertise required for their project and resource accordingly.

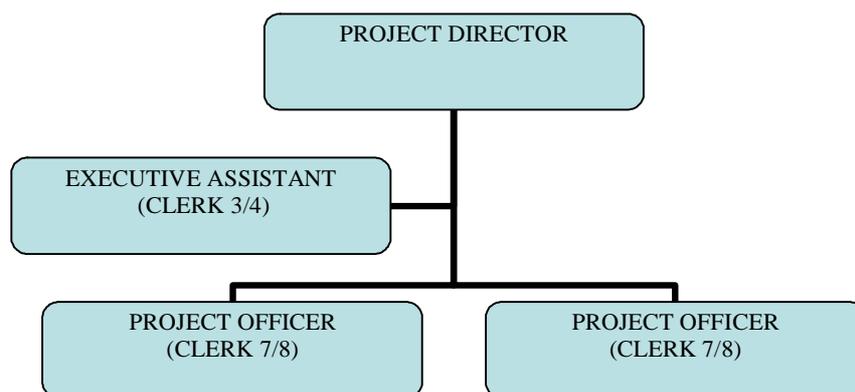
Action Taken/Proposed:

This recommendation will be taken into account in NSW Treasury’s review of the Working with Government Guidelines with a revised version expected to be released in the first half of 2006.

7.3.2 Project Management Structure During Implementation

The Working with Government (WWG) Guidelines (2001:28) notes that “after the contract becomes effective management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements”. In the case of the Schools Project, implementation was transferred to a dedicated team in DET. The team also provides ongoing day-to-day management of the Contract.

Figure 11: Project Management During Implementation



This team is responsible for the day-to-day management of the contract and liaison with the schools when necessary. The payment of monthly invoices is handled by the finance area in DET. The functions of these areas will be supported by a Contract Administration Manual which is currently being prepared.

As noted in earlier sections of this report, there have been a few, but fairly regular changes to the contract. These have included changes in the location of schools, change in equity

ownership, construction phase changes effected through the contracts variation mechanism and operational changes (e.g. childcare and utilities).

The contract has a 30 year concession term, with a 6 year trailing hand-over liability period. It is reasonable to expect future changes of both a minor and potentially major nature. Government needs to be well placed to deal with these changes. It is recommended that a cross-agency Project Management Steering Committee be formed. The purpose of this Committee would be to ensure that corporate knowledge of the contract is retained across a range of agencies.

Recommendation:

1. That Treasury give consideration to developing more comprehensive guidance and support for agencies during the implementation phase of a PFP contract as well as ongoing contract oversight support.
2. For the New Schools Project, that a Project Management Steering Committee be formed comprising officers of the Department of Education and Training and NSW Treasury. That the Project Management Steering Committee:
 - a) Meet quarterly initially, but no less than semi annually.
 - b) Monitor the financial and operational performance of the Contract.
 - c) Review / Approve contract variations or changes.
 - d) Commence the establishment of measures for the five yearly benchmarking process.

Action Taken/Proposed:

NSW Treasury has agreed with DET that an on-going contract management Steering Committee would be desirable.

8 STAKEHOLDER MANAGEMENT

The Terms of Reference was agreed to cover stakeholder management, including:

- 8.1 Industrial relations management.
- 8.2 Community relations.
- 8.3 Liaison with users such as Principals.

Development of the New Schools Project coincided with the release the Working with Government Green Paper and consultation process. This resulted in a fairly high degree of public and media interest in PFPs in NSW. The New Schools project was the first project of its nature in Australia and generated its own interest. Criticism of the project at the time included concerns that it represented an outsourcing or privatising of public education; that the Government would abrogate responsibility for teaching and student outcomes; that facilities standards would be less than under traditionally delivered schools and that the project financing would be more expensive than for traditional delivery (leading to reduced resources for education).

The Post Implementation Review received formal submissions from the New South Wales Teachers Federation, The Public Service Association and the Secondary Principals Council. Whilst these submissions do contain criticisms of the schools, mostly in the area of DET's design standards, they are positive regarding the operations of the Contract. The submissions indicate that that people are generally very happy with arrangements, that resources and personnel are provided to ensure functions are carried out properly and that "should the long term position be only cost neutral, then the other advantages of this model are such that it is still worthwhile to pursue into the future". This is a substantial shift from early concerns.

8.1 INDUSTRIAL RELATIONS MANAGEMENT

The Working with Government (WWG) Guidelines require that "where public sector employees are affected by a PFP and are offered employment with the new employer, the PFP contract should provide for those employees to receive employment benefits no less than those that would have applied had government employees performed the work". The NSW Industrial Relations Commission 'no net detriment' test is to apply".

The New Schools Project, by default, complies with WWG Guideline requirements as there were no 'transferred' employees. This is because the services included in the PFP, such as cleaning and maintenance are already procured from the private sector. This was supported by the Government decision to designate school staff, such as teachers and school support and administration staff as core employees.

The project also required that all bidders comply with the NSW Government Code of Practice for Construction. The successful bidder undertook to comply with:

- o NSW Government's code of practice for the construction industry 1996;
- o NSW Government's industrial relations management guidelines 1999;
- o The NSW Government white paper 'Securing Opportunities to Build a Better Construction Industry'; and
- o The NSW Government code of practice and the relevant award in conjunction with any existing enterprise agreements applying to contractors engaged on the site.

The Review has sought feedback from the NSW Teachers Federation (NSWTF) and the Public Service Association (PSA), both of whom have members working in the PFP schools. The industrial relations issues raised included the seeking of assurances that video security is not being used in any way that breaches workplace surveillance legislation; and that hygiene responsibilities be removed from the General Assistants' Statement of Duties. The NSWTF and PSA submissions also detail facilities design and provision issues, such as reliance on water conservation, site layout and air conditioning concerns. These are detailed in Section 3.2 Quality and Design Performance.

8.2 COMMUNITY RELATIONS

The Working with Government Guidelines require that the Government prepare a community relations plan prior to the issue of RDP DET undertakes community consultation as part of traditionally delivered schools. The community engagement process followed by DET for the PFP schools largely mirrored this process and included:

- § Community information meetings. These local meetings were attended by DET and Axiom and provided an overview of PFP, an update on design and construction progress, enrolment information and opportunities for questions and answers.
- § Production of informational flyers for each school
- § Meetings with and/or presentations to interested groups including:
 - NSW Teachers Federation
 - Liquor, Hospitality and Miscellaneous Workers Union
 - Parents and Citizens Committees
 - Public Service Association
 - DET Primary Principals Forum
 - DET Secondary Principals Forum
 - University of Western Sydney
- § Publication of an article "Australia's First PPP School Project" in PEB (Program on Educational Building) Exchange, an OECD Journal No52, 2004.

8.3 LIAISON WITH USERS

The Department of Education and Training (DET) schedules six monthly meetings with the Principals of the nine PFP schools. The schools are supported by the Strategic Projects Office in DET. This unit is described in Section 4.3.2 Project Management Structure During Implementation and provides ongoing contract management as well as support for the schools.

The Secondary Principals submission reports that the Contractor has established effective communication systems involving regular meetings with the Principals, visits and prompt follow-up.

Key finding:

Anecdotally, the PFP project seems to have employed effective community, industrial and ongoing liaison techniques. DET is to be commended for managing the process of community consultation through project formulation to project implementation in a competent, proactive manner.

GLOSSARY AND ACRONYMS

| | |
|------------------|--|
| Axiom | also Axiom Education Holdings Pty Ltd or “the Contractor”. The special purpose vehicle created to fund and manage the New Schools project. |
| BAFO | Best And Final Offer |
| Budget Committee | Cabinet Standing Committee on the Budget |
| Commerce | Department of Commerce, formerly Department of Public Works and Services |
| Contractor | Axiom |
| DDC | Design, develop and construct |
| DDC&M | Design, develop, construct and maintain |
| Deed | Concession contract deed between Axiom and DET which covers the terms of the PFP |
| DET | Department of Education and Training |
| EOI | Expression of Interest |
| FIS | Financial Information System, containing the detail of the public ledger of the NSW Government, and its forward estimates |
| HoTS | Heads of Treasuries, an interjurisdictional committee of Australian Treasury Secretaries |
| HS | High School |
| ICAC | Independent Commission Against Corruption |
| ICU | Infrastructure Co-ordination Unit. |
| IGG | Infrastructure Implementation Group |
| NSW | New South Wales |
| OH&S | Occupational Health and Safety |
| OIM | Office of Infrastructure Management within NSW Treasury |
| OOSH | Out of School Hours care is care that is provided by a private operator on the school premises. |
| Overs-and-unders | A process used through the design and construct phase to offset potential cost increases against decreases. |
| PAFA | Public Authorities (Financial Arrangements) Act 1987. |
| PFP | Privately Financed Project, may also called Public Private Partnership or PPP; and / or Private Finance Initiative or PFI. |
| PIR | Post Implementation Review |
| PS | Primary School |

| | |
|--------------------|--|
| PSC | Public Sector Comparator is the estimated net present cost of the Reference Project and includes estimates of transferred risks and competitive neutrality adjustments (eg tax). |
| RDP | Request for Detailed Proposals |
| Reference Project | The Reference Project is the most likely and efficient method of public sector delivery (as determined by the State Parties Project Team) of the contract Specifications (including construction, maintenance and other services). |
| Review | This PIR team or its report according to the context. |
| RIMS | Record Improvement Management System within the FIS to improve document retrieval |
| SISP | State Infrastructure Strategic Plan |
| SSP | School for Special Purposes |
| Steering Committee | The project Steering Committee established by DET, a standard part of the project management structure described in detail in Chapter 4 of the Guidelines for Privately Financed Projects. |
| TCO | The Cabinet Office |
| TCorp | NSW Treasury Corporation, the NSW Government central borrowing agency |
| TRP | Treasury Research and Information papers |
| WWG | Working With Government: Guidelines for Privately Financed Projects. Policy guidelines released by the NSW Government in November 2001 on the provision of privately financed public infrastructure projects. |

NEW SCHOOLS PFP POST IMPLEMENTATION REVIEW: TERMS OF REFERENCE

The post implementation review (PIR) will cover the New Schools PFP project from the approval to conduct a feasibility study (Budget Committee March 2001), through to the operation of the schools.

The objective of the PIR is to provide a factual, objective account of the development, tender and partial delivery of the schools PFP project. The aim of the PIR will be to identify areas of learning and improvement for future PFP projects and identify the procurement impact of using PFP rather than traditional delivery.

The PIR will consider the process undertaken in relation to the Working with Government: Guidelines for Privately Financed Projects policy document. The policy allows for a wider asset performance inclusive PIR but also recognises that periodical service delivery performance reviews should be conducted throughout the contract life. Consistent with this approach, the focus of this PIR is on the procurement processes and its effectiveness in meeting Government objectives and its compliance with Government guidelines.

Within the broad framework of the Working with Government Guidelines, the PIR will identify and consider changes to the project plan and where applicable assess the affect of PFP delivery on:

- § project formulation, including brief appropriateness and the process for developing the package of schools;
- § project objectives and how these were accommodated in the process;
- § project management / procedures including the approvals process, delays (see below) and total bid cost inclusive of all in-house and consulting resources;
- § risk management;
- § project delivery, including delivery time of the schools and any variances from the contract;
- § budget performance including accounting treatment and capital and recurrent budget treatment (as outlined below);
- § project management / procedures, including key staff management and changeover; and
- § stakeholder management, including industrial relations management, community relations and liaison with users such as principals.
- § functional competence of infrastructure, including networking and interfacing;
- § project operations including service delivery and financing;
- § environmental management;
- § quality; and
- § design performance.

The schools PFP provided some basic principles for other PFPs in NSW. Delays were caused by the resolution of some of these issues and will be included for consideration in the PIR.

This includes decisions regarding:

- § division services between core and non-core;
- § interpretation of the Public Works Act;
- § capital budget treatment of PFP;
- § potential to bring forward projects under PFP;
- § accounting treatment of PFP;
 - agency retention of savings compared to the PSC; and
 - recurrent funding is from within existing resources.

REVIEW METHODOLOGY

The post implementation review gathered information from file records, a Finance and Risk Workshop, participant interviews and site visits. It also sought submissions from stakeholder groups, Request for Detailed Proposals (RDP) proponents and the probity auditor.

The review focuses on assessing compliance with the Working with Government Guidelines and the effectiveness of the approach to procurement. In this regard the feedback received from participants, proponents and stakeholder groups has been invaluable.

NSW Treasury would like to extend a special thank you to those organisations who prepared written submissions, including NSW Teachers Federation, NSW Secondary Principals Council, The Public Service Association, Bilfinger Berger, Axiom Education and Deloitte Touche Tohmatsu.

Steering Committee Meetings

The Steering Committee Comprised: Danny Graham (Chair, NSW Treasury), Michelle Canny (Project Manager, NSW Treasury), Les Wielinga (RTA), Angela Woo (The Cabinet Office), Peter Ross (DET), John Deeble (DET) and Brian Cheney (NSW Treasury). Five meetings were held on:

- § 21 December 2004
- § 14 February 2005
- § 15 March 2005
- § 20 April 2005
- § 27 June 2005

Audit Office Meetings

Two meetings were held with Audit Office, one at the commencement of the Review to outline the Terms of Reference and proposed methodology and the other closer to end of formal consultations when preliminary findings were being formed. The meetings were held on:

- § 22 December 2004
- § 2 May 2005

Site Visits

One high school and two primary schools were visited. Interviews were conducted with the school Principal, and at one school the Deputy Principal also participated. Due to the small sample group, schools and Principals will not be individually identified in this report.

Submissions***Submissions were sought and received from:***

RDP bidder submissions

- § Axiom Education c/o – ABN AMRO Australia Ltd
- § Community Education Partnership c/o - Bilfinger Berger Concessions Pty Ltd
- § Living Schools c/o – John Holland Pty Ltd (this proponent provided verbal feedback rather than a written submission)

Probity auditor submission

- § Deloitte Touche Tohmatsu

Professional Associations, Trade Unions and Community group submissions:

- § NSW Teachers Federation
- § NSW Secondary Principals Council
- § The Public Service Association

Submissions were sought, but not received from:

RDP bidders

§ Schools First c/o – Theiss Pty Ltd

Professional Associations, Trade Unions and Community groups:

§ Federation of Parents and Citizens Organisations

§ NSW Primary Principals Association

Interviews

Interviews were conducted with members of the New Schools Project Steering Committee, Advisory Committees and the project control group. A total of nine participants were interviewed, including seven government representatives and two external advisors. This included:

Project Steering Committee

§ DET participant – Ken Dixon

§ DPWS participant – Arthur Megaloconomos (as an observer)

Project Control group:

§ DET participant – Peter Ross

§ Treasury participant – Tony Miller

Facilities Management Advisory Committee:

§ DPWS participant – Christine Wong

§ Technical advisor – John Milliken

Technical Advisory Committee:

§ DPWS participant – Jon Pyke

§ DPWS participant – John Zahn

§ Technical advisor – John Milliken

Financial Advisory Committee:

§ Treasury participant – Tony Miller

§ TCORP participant – Simon Wilson

Readers should note that due to the small number of participants in each of the Advisory Committees, comments or feedback in the Report is not attributed to specific individuals.

Finance and Risk Workshop

KPMG was engaged to conduct a Finance and Risk Workshop and provide an evaluative report, assessing the treatment of finance and risk issues in the Schools Project. Workshop attendees included the Project’s financial, legal and technical advisors, representatives from NSW Treasury, NSW Department of Education and Training and the Victorian Department of Treasury and Finance. The findings of KPMG’s report “Post Implementation Review Workshop: Treatment of Financial and Risk Issues” are incorporated in Section 2.1 Finance and Risk Workshop Report.