

Private Public Partnerships in the tourism sector: Report 2:

An overview of typical tourism products that can be developed and operated by private parties acquiring rights to use institution property and an outline of how the relevant institutions can optimally plan, procure and manage these PPPs.

This is the second of four reports commissioned by National Treasury and overseen by a multi-institution Task Team, as the preliminary work (Stages 1-4) for the development of South Africa's *Tourism PPPs Toolkit*. Report 1 is an analytical review of tourism PPPs conducted in South Africa to date, and a scan of international trends in similar projects. Report 3 outlines a generic institutional system enabling institutions to manage a tourism PPP programme to the standards set by Treasury Regulation 16 to the Public Finance Management Act. The Toolkit will be drafted after the key findings and recommendations of these three reports have been reviewed at a national consultative workshop in December 2004, the outcome of which will constitute Report 4. The *Tourism PPPs Toolkit* will be issued in mid-2005 as a National Treasury PPP Practice Note in terms of S76(4)(g) of the Public Finance Management Act, applicable to national and provincial departments and schedule 3 public entities.

Fourth draft

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For comment only

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Definitions

The following terms and phrases are used regularly in this report. For ease of reference the following definitions shall apply where the particular term is used.

"Accounting officer" has the meaning attributed to it in terms of S36 of the PFMA.

"Active Equity" means in relation to any Black equity or in relation to any issued shares in the share capital of any subcontractor held by Black people and/or Black enterprises, in which such Black equity and/or Black enterprises who will participate directly in the day-to-day management and operations of the project.

"Broad-based Black Economic Empowerment (BBBEE)" has the meaning as defined in the Broad-based Black Economic Empowerment Act 2003.

"Black enterprise" means an enterprise that is at least 50.1% beneficially owned by Black people in which Black people have substantial management control. Such beneficial ownership may be

held directly or through other Black enterprises.

"Black equity"

means the voting equity in the private party held by Black shareholders from time to time.

"Black people"

means African, Coloured and Indian South African citizens.

"Black women"

means female African, Coloured and Indian South African citizens.

"consulting consortium"

the consortium of professional consultants consisting of Webber Wentzel Bowens, Phukubje Pierce Attorneys, Sangena Investments (Pty) Ltd, Vela VKE (Pty) Ltd, Upstart Business Strategies CC and Levinsohn & Associates (Pty) Ltd, appointed by National Treasury to draft the Toolkit.

"DEAT"

the Department of Environmental Affairs and Tourism.

"DFI"

Development Finance Institutions, specifically being the Development Bank of

Southern Africa (DBSA) and the Industrial Development Corporation (IDC).

"feasibility study"

has the meaning as given in Treasury Regulation 16.4 to the PFMA.

"MFMA"

the Municipal Finance Management Act 2003.

"institution"

means a department, a constitutional entity, a public entity listed, or required to be listed in Schedules 3A, 3B, 3C and 3D to the PFMA, or any subsidiary of such entity.

"PMFA"

the Public Finance Management Act 1999.

"PPP" or "PPPs"

a public private partnership between a public sector institution and a private party, in which the private party assumes substantial financial, technical and operational risk in the design, financing and operation of a project. There are two types of PPPs that are specifically defined in the PFMA. Firstly, where the private party performs an institutional function, and

secondly, where the private party acquires the use of institution property for its own commercial purposes. A PPP may also be a hybrid of the above 2 types. Payment in any scenario involves one of three mechanisms. Either, the institution pays the private party for the delivery of the service, the private party collects fees or charges from users or customers of a service provided to them, or a combination of both payment mechanisms are used.

"PPP agreement"

means a written contract recording the terms of the PPP concluded between an institution and a private party.

"private party"

means a party to a PPP agreement, other than an institution to which the PFMA applies, a municipality or municipal entity under the control of one or more municipalities, or the accounting officer, accounting authority or other person or body acting on behalf of an institution, municipality or

municipal entity referred to above.

"Project Officer"

means the person identified by the accounting officer or accounting authority of an institution, who is capable and appropriately qualified to manage a PPP to which that institution is party from its inception to its expiration or termination.

"SANParks"

the South African National Parks established in terms of the National Parks Act 1976.

"SMME"

means small, medium and micro enterprises, as defined in the Small Business Act, 1996.

"Task Team"

means the multi-institutional team established by National Treasury's PPP Unit to oversee and direct the production of the *Tourism PPPs Toolkit*, comprising the Departments of Environmental Affairs and Tourism, Trade & Industry, Public Works, Water Affairs and Forestry; South African National Parks; Greater St Lucia Wetlands Park Authority; South African Tourism; all

provincial treasuries, conservation agencies, investment agencies; the Development Bank of Southern Africa; the Industrial Development Corporation; the Tourism Business Council and the National Business Initiative.

"Terms of Reference"

the terms under which the Toolkit is being developed, dated August 2004.

"Toolkit"

the guide to institutions conducting tourism PPPs, to be issued in mid-2005 as a National Treasury PPP Practice Note in terms of S 76(4)(g) of the PFMA, applicable to national and provincial departments and schedule 3 public entities, which will be based on the four reports commissioned by National Treasury and compiled by the consulting consortium.

"transaction advisor"

means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and

experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement.

"Treasury"

means National Treasury or, depending on the context and whether authority has been delegated, Provincial Treasury.

"Treasury Regulation 16"

the Treasury regulation issued in terms of the PFMA applicable to PPPs.

SECTION 1

1.1 Introduction

The consulting consortium was appointed by National Treasury in September 2004 to develop a Toolkit for institutions that are planning to offer commercial opportunities to private party investors and operators on state property over which they have jurisdiction (such as national parks, protected areas, forests, dams and associated infrastructure).

This report constitutes the findings of the consulting consortium in respect of Stage 2 of the Terms of Reference, being a categorisation of products and outline of standard systems for these products. The aim of this report is to sketch the proposed categorisation and standard systems in outline only for purposes of consultation during the national workshop 1-2 December 2004. Detailed drafting of these standard systems will follow in Stage 5, as set out in the Terms of Reference.

Government's strategy to invigorate the tourism sector through PPPs builds on a sophisticated framework which is being applied in terms of the PFMA across a range of sectors by national and provincial government, and which is now expanding to municipal government in terms of the MFMA. Estimates are that the value of closed PPPs under this framework is approximately R8 billion to date. There are more than 50 further deals in the pipeline. Indications are that South Africa may have one of the most advanced programmes in the world for using PPPs as a tool for economic growth and reconstruction.

However, National Treasury recognises that it needs to further refine and streamline mechanisms to implement the regulated PPP process for particular sectors, making it relevant in this instance, to the peculiar characteristics of South Africa's tourism industry. A number of institutions have jurisdiction over an array of assets that are under-utilised and National Treasury's intention is to ensure that the Toolkit will contribute to government's growth strategy through enabling more, environmentally sensitive and socio-economically focused private sector developments on state land and assets.

The Toolkit intends to build the capacity of relevant institutions in planning, procuring and managing tourism PPPs, thereby promoting private sector confidence in a known and transparent process with consistent standards. The Toolkit will detail empowerment obligations required of private parties, as well as make recommendations about how BBEE should be promoted. It will give specific guidance on how institutions can appropriately and timeously galvanise those resources that are available from various other institutions or entities for driving BBEE and SMME development in tourism PPPs. It will be guided by the imperative of involving the rural poor as active participants in, and beneficiaries of, the tourism sector. Due cognisance will be taken of the provisions of the Tourism Black Economic Empowerment Charter currently being finalised and the Code of Good Practice for Black Economic Empowerment in PPPs.

The Task Team has been formed to oversee and contribute to the production of the Toolkit. Given the far-reaching implications for the tourism sector, National Treasury's PPP Unit and DEAT have combined efforts to host a consultative workshop involving public sector institutions, the private sector and communities to debate the proposed outline of the Toolkit in early December.

In preparation for this workshop, the consulting consortium reviewed the experiences and lessons learnt from PPP processes implemented to date by SANParks from 2000 onwards, the Limpopo Tourism and Parks Board in 1999 and 2004, the Department of Water Affairs and Forestry, the Gauteng Department of Agriculture Conservation and Environment at the Cradle of Humankind in 2000, North West Parks Board dating back to the early 1980's, the Western Cape Nature Conservation Board process followed in 2002 and the Greater St Lucia Wetland Park Authority since 2000. Information collected from these PPPs has been collated in the Stage one report.

Generally the tourism PPPs that have been planned and implemented in these areas have been guided by the following objectives:

- To increase net revenues that commercial activities contribute, so that they can in turn be reallocated towards conservation of both natural heritage and cultural heritage.
- To transfer the management and operation of commercial opportunities to the private sector, which is better qualified and equipped to run these facilities.
- To support tourism-led development while at the same time alleviating poverty and maximising opportunities for BBBEE and SMME development.

Generally, the strategies employed in these processes involved the following:

- Identifying and mobilising quality tourism investors and operators who can be relied on to pay concession fees to the relevant institution over an extended period of time, so that such revenues could be used for conservation efforts (both natural and cultural heritage).
- Re-focussing the activities of those responsible for the conservation of natural and cultural heritage to their core business (for instance managing biodiversity in protected areas).
- Providing the foundation and regulatory framework for tourism and recreation.
- Facilitating competitive procurement.
- Transferring the management of commercial operations, or aspects of commercial operations, to private parties.

The Stage one report found some major successes in this regard. The Madikwe Game Reserve in North West Province, for example, has become a premier Big Five destination in Africa because of a PPP programme implemented by the North West Parks and Tourism Board. It now has 25 active game lodges worth some R250-million that employ hundreds of people in what was once one of the most economically depressed areas of the country.

Similarly, SANParks' commercialisation programme has attracted more than R250-million worth of capital investment into a network of new game lodges in the Kruger National Park and other national parks. These partnerships between SANParks and private parties have created almost 700 new quality jobs and in the 2004 financial year alone, generated an annual income for SANParks of about R16-million.

The Greater St Lucia Wetlands Park Authority is currently concluding negotiations with preferred bidders, and estimates a private capital injection of more than R450-million to materialise in the Park, along with about 900 direct jobs. If these forecasts are correct, this will constitute the most extensive tourism PPP initiative in the country to date.

Many of the PPP processes reviewed have demonstrated the ability of PPPs to deliver substantial guaranteed revenue flows, empowerment opportunities (BBBEE and SMME), a substantial transfer of commercial risks to private parties, and the creation of substantial new employment opportunities and related affirmative action targets.

However, the review also identified a number of problem areas and received recommendations from the private sector, the institutions concerned and also some of the rural communities involved in the creation of partnerships about how the processes could be improved and streamlined in future. Some of the key lessons learnt are highlighted below:

- **Differentiated PPP processes:** Almost all the individuals interviewed from the institutions, the private sector and some community leaders, expressed the view that there is a need for the Toolkit to differentiate between assets of different strategic value. A priority in this regard is to develop standardised procedures that can reduce the complexity of feasibility and procurement processes (which impacts on costs and time spent by both the private and public sectors).
- **Reduce the costs of the bidding process:** Related to the above, the costs of participating in complex bidding processes are high for most participating private parties, and also for the institutions. This in turn impacts negatively on the ability to achieve BBBEE and SMME objectives and on boosting development momentum in less-developed or less-well-known destinations.
- **Reduce the complexity and relative weighting of the financial projections:** There is no doubt that the financial criteria in PPPs are a fundamental part of bid evaluation. However, there are concerns that the emphasis on financial forecasting is taking inappropriate priority relative to other key indicators of viability of the proposal, such as the use of performance bonds, proven operational ability and experience, proven marketing capacity and the bidders'

- existing client base. All of these are possibly more accurate indicators of long-term sustainability than are financial forecasts, which can be manipulated by bidders “to win bids”, or which can be easily miscalculated due to inherently high demand risk in the tourism sector.
- **Institution's PPP project management capacity needs to be strengthened:** While most of the institutions with flagship PPP projects have established in-house PPP capacity and have all benefited from using professional advisors, there is a strong view that all conservation institutions need to ensure that their officials tasked with overseeing commercial activities on institution land concerned need to be dedicated to the task, have a better understanding of the PPP process (planning, procurement and management), and have strong project management skills and experience. This is especially relevant where smaller commercial opportunities exist and the cost of transaction advisors might be prohibitive.
 - **Sufficient preparatory work must be done before a PPP process can be entered into:** PPP processes cannot be run by an institution without sufficient preparatory work being done. There is strong evidence that the better the quality of essential preparatory work done by the institution in the PPP's pre-feasibility and feasibility phases, the better and more cost-effective the PPP procurement and management phases will be. The institution's ability to address this is directly dependent on the quality of its officials' project management skills and experience.
 - **Reserve or site level institutional capacity for PPPs needs to be strengthened:** The tourism and commercial understanding and competency of middle and lower levels of institutional management, particularly at reserve or site level, is often weak. In cases where protected areas are the site of commercialisation programmes, the attitude of functionary level staff in reserves often appears to be in conflict with stated head-office policy (and national and provincial policy). This in turn impacts on investor confidence and interest in the particular PPP, as it translates into an increased business risk.
 - **Reducing prescriptiveness:** Significant concern was expressed about the inflexibility of many concessioning frameworks, particularly in terms of spatial development issues including concession area selection and detailed site planning. Respondents expressed a need for balance. Clearly in the case of

strategic national assets the public sector has a responsibility to safeguard the asset base in question, but where flexibility can be accommodated within the context of limited criteria, this needs to be considered. While the state has acknowledged the fact that the private sector is better equipped to develop and operate tourism related commercial enterprises, the same holds true in terms of selecting optimal use zones and development sites that are best suited to operating these tourism enterprises. Where possible (accepting that it may not always be possible) a collaborative approach (without foregoing EIA processes) should be implemented.

- **Consider extending contracts at the end of the project term:** A number of respondents from the private sector noted that it would be convenient for both the private and public partners to allow for an extension of the PPP agreement, rather than put these out to a new bid if the private party is performing well against the objectives of the PPP. They noted that this would encourage the private party to maintain the asset in good order toward the end of the PPP agreement, rather than allow it to run down which can happen in the case of finite project terms. From the institution's viewpoint, the use of a performance bond is designed to ensure that the private party maintains the asset in accordance with its contractual obligations. The institution will have to consider whether it is advisable to allow the PPP agreement to be extended and, if so, on what terms this extension should be granted (given that the private party should have recouped its capital investment by the end of the original period), as opposed to the possible better value that a new competitive bid may deliver for the institution.
- **Allow the private partner to benefit from the capital gain:** It has been proposed by a number of private investors that tourism PPP agreements should provide for some form of financial compensation to private parties at the end of the concession period, out of the proceeds received from the next investor. Although it is the case that private parties ought to have recouped their investment during the life of the PPP, provision for goodwill at the end of the PPP could attract a wider range of bidders into the process. A number of respondents from the private sector suggested that some major tourism companies had not been incentivised to bid because of the build-operate-transfer requirements of the bidding process in most of the cases under review. They noted it would help to attract investors if there were mechanisms in place for the private party to share

in the increased market value of the facilities at the end of the project term. However, these concerns are not that easy to resolve from a practical and legislative point of view. It must also be noted that the draft Revenue Laws Amendment Bill 2004 provides that improvements to state property that are funded by a private party in a PPP may be written off over the life of the PPP agreement, and that any residual value at the termination of the PPP agreement may also be written off. This amendment does present a significant tax benefit for a private party involved in a PPP. The Bill comes into effect in December 2004, and will hopefully alleviate some of these private party concerns.

- **Institutional mandate:** The nature of South Africa's institutional structures in the tourism and conservation sectors is such that various provincial, national and other institutions may be involved in a particular PPP. It is crucial to establish, at a very early stage in any PPP process, whether the particular institution has a legal mandate to conduct the particular PPP process proposed. Furthermore, in exceptional but appropriate cases, it may be necessary to create a specific dedicated institutional body to conduct and manage the PPP.
- **Complexity of the PPP agreements:** The PPP agreements used in the PPPs that were reviewed were in most cases legally sound and addressed all the key legal issues sufficiently. It was clear however that the relationship with private parties in "smaller" PPPs can adequately be regulated with less complex PPP agreements, by simplifying some of the clauses commonly used, and omitting other clauses which do not apply to such "smaller" PPPs.
- **Difficulties in financing projects:** The DFIs have developed a rule of thumb regarding the financing structure of tourism projects to which they are prepared to commit funding which suggests that the debt-equity ratio would ideally be 50:50. This is due to tourism projects having high risks, cyclical nature, long gestation periods. This rule of thumb is based on past assessments of projects funded. Only if the rest of the project's fundamentals are considered acceptable will deviations thus be considered. Factors considered which affect funding approval include commercial viability, realistic five-year projected forecasts, detailed market research, license approvals, operating experience and equity commitment. Finance from DFIs is often paired with technical-assistance measures. The quality of concession sites is often not attractive enough to support investment and results in delays in funding projects. A key element here

is to allow lenders, particularly the DFIs, access to market information concerning the sites at an early stage. The involvement of DFIs in the adjudication of bids would help prevent the selection of bidders that have un-bankable proposals with little operational, technical, and financial experience. A further issue in the financing of concessions arose from the nature of the security that lenders have been able to take, particularly the ability of the private party to cede its rights to lenders, especially where the PPP agreement did not make such provision.

- **Issues that affect Broad-based Black Economic Empowerment:** The case for increasing the capacity of BBBEE partners of preferred bidders during the bidding and negotiations is of key importance to ensure a balance in the negotiating positions of the parties. The provision of technical assistance via a dedicated fund or through the DFIs is a possibility. Enabling access to skills development programmes such as those offered by the Tourism Hospitality Education and Sports Training Authority (THETA) and some donors for BBBEE active equity partners as well as BBBEE procurement or subcontracting partners, may address the problems that concessionaires face with inexperienced BBBEE suppliers. The interest or appetite shown by BBBEE parties is largely a function of the quality of sites put out for concession and this needs to be considered if Government's BBBEE is to be achieved. BBBEE finance is an area that most concessions experience difficulties with and in attempting to address this problem a number of proposals need to be considered. These include maximising BBBEE participation during operations which allows BBBEE partners access to operational fees, which in turn improves their immediate cash flow and funding potential to lenders. This is premised on adequate skills development plans supported by the THETA. Funding mechanisms such as access to poverty alleviation funding, DFI grant and soft loan facilities, donor and other grant funding and institutions ceding a portion of their concession fees earmarked to fund BBBEE entry into PPPs have been demonstrated in some of the PPPs reviewed. A loan-for-equity facility has been established by the Development Bank of Southern Africa (DBSA) for project-finance-type PPPs. This has been coupled with the provision of financial and legal technical assistance for black enterprises. A similar type of scheme based on the risk profile of tourism PPPs which do not lend themselves to project finance solutions needs to be formulated with the DFIs, bearing in mind the above mentioned options for BBBEE finance.

Institutions would need to build a package of these support measures during the feasibility phase of their PPP planning work, to ensure that they meet their BBBEE objectives and targets in the PPP procurement phase. A series of memorandums of understanding need to be drafted that can assist in this regard.

- **Community participation:** When attempting to promote local community involvement in the PPP process, the inability of such groups to make any equity contribution needs to be borne in mind and, as such, the application of grant funding becomes even more critical to these processes. Improved targeting of poverty relief funds into PPPs need to be facilitated to provide for this. A balance needs to be maintained in defining BBBEE objectives to target solely neighbouring communities versus Black enterprises outside of the specific locale of the PPP project.

1.2 Rationale for this report and terms of reference

The main objective of this report is to identify a range of categories of tourism-related PPP products, sketch the phases of the PPP cycle appropriate for each product type, and outline a set of standardised steps to be followed in each stage.

The report draws on the findings and lessons learnt in the review referred to above in order to develop a template for the categorisation of tourism PPP products to determine the most appropriate procedures to be followed with regard to:

- **Feasibility studies:** Appropriate methods for conducting these in line with the PPP regulatory tests of affordability, value for money and risk transfer for each product type. The findings of the Stage One Report suggest that devising an appropriate feasibility study for the various types of tourism products undergoing commercialisation is one of the most important functions of the Toolkit.
- **BBBEE:** This report examines how BBBEE is anticipated and structured, and stresses the importance of job creation, skills transfer, capacity building, as well as structured equity arrangements with both community entities and Black enterprises. The intention is to create an appropriate balance between the positive poverty alleviation impacts of tourism PPPs and the opportunities for black business advancement.

- **Procurement strategies:** The report focuses on how to set these up, and stresses the need for rapid, easy to administer, flexible, open and transparent processes in line with legislative requirements for open and competitive institutional procurement.
- **PPP agreement:** Standardised PPP agreement terms are proposed that suitably allocate risk appropriate for the scale and type of each tourism PPP product, with possible alternate options for each product.
- **Institutional systems for managing PPPs:** This report, reflecting the findings of Report 3, outlines the generic institutional systems necessary for the management of tourism PPPs.

1.3 Scope of Toolkit's application

During the first inception meeting between the consulting consortium and the Task Team on 28 October 2004, it was agreed that, as the experience with PPPs in tourism so far has been mainly related to nature tourism, this focus be retained for the purposes of the Toolkit and that culture and heritage products should be included in the definition of nature tourism. However in the Task Team meeting on 18 November 2004, it was suggested that the Toolkit also include indications of how the standard systems for tourism PPPs could be applied to a range of other cases in which state assets are used for tourism-related commercial purposes – such as the use of state urban land for a hotel concession.

The Task Team confirmed that Treasury Regulation 16 applies to national and provincial government departments and Schedule 3 entities. Schedule 2 public entities and municipalities do not fall under the provisions of Regulation 16 and are therefore not part of the scope of the Toolkit. In some cases, institutions work with Schedule 2 entities and municipalities and some procedures to govern these collaborative ventures may need to be included in the Toolkit.

It was also agreed that joint ventures between private parties and community legal entities on communally owned land do not constitute PPPs. The general consensus was that tourism products on such land are strategically important and ways for establishing joint ventures between communities and private parties should be recommended in the

Toolkit, but that these would not be required to be followed in the same way as the standard procedures that are required in respect of state property.

It was reiterated that a PPP is a contract between a public sector institution and a private party, in which the private party assumes substantial financial, technical and operational risk in the design, financing and operation of a project.

1.4 Product types

The Task Team and the consulting consortium have agreed that the following categories of products are those that have primarily been offered to the market so far in terms of the tourism PPP processes already conducted. This report thus recommends how the phases of the PPP project cycle should be applied in respect of the following tourism product types:

- **Accommodation:** This includes hotels, lodges, self-catering resorts, camping and caravan accommodation, house boat accommodation, corporate lodges, share block based accommodation schemes, and health spas/healing centres. The categories used should follow those of the Tourism Grading Council.
- **Food, beverage and retail:** This includes restaurants, take-aways, supermarkets (in national and provincial formally protected areas), craft/curio outlets, catering businesses, and picnic sites. Both of the above may make use of under-utilised institution buildings such as museums, forts, military bases, hospitals etc.
- **Activity based tourism:** This includes open vehicle safaris, hiking trails, mountain bike trails, hot air ballooning, aerial walkways, 4X4 routes, elephant backed safaris, and activity based water transport (such as mokoro rides, white water rafting etc.) This category can include hunting and fishing and other “consumptive” tourism activities. It can also include airstrips in protected areas. However it excludes airports, harbours and other transport-related complexes.
- **Heritage and culture:** This includes museums, interpretation and exhibition centres, specialist cultural tour guiding operators active on institution property.

It was agreed that all discussion about product types would be conversant with and consistent with the definitions offered by the Tourism Grading Council. These are included in **appendix one** for this purpose.

1.5 Land incorporations

Land incorporations, involving the merger of state and private or communal land, have occurred in many protected areas and that these are strategically vital initiatives for promoting conservation, the expansion of biodiversity protection and also responsible forms of tourism, which are all key state objectives in and around protected areas.

There is some debate as to whether these constitute PPPs as defined by Treasury Regulation 16. The answer seems to lie in the specific nature and terms of the incorporations that take place. In some cases, the private sector clearly takes on some risk in that it often assumes obligations with regard to maintenance of assets, and gains certain benefits which include a greater game product and, occasionally, traversing rights. The institution also assumes risk in that its conservation function is extended and assets under its control (wildlife) can now traverse freely across land that is not owned by it. These arrangements have been conducted in a number of areas (such as Marakele National Park) and each have had its own particular goals, which impacted on the contractual arrangements between the parties.

In cases where an institution asset is being used by a private party, and there is a degree of risk transfer between the parties, it is submitted that land incorporation agreements do meet the broad definition of a PPP. However, the nature of such an incorporation is completely different to traditional PPPs and tourism PPPs. The new Protected Areas Act is designed to encourage these kind of incorporations involving institution, private and communal land.

As these land incorporations present considerable economic opportunities which should be taken advantage of, it has been agreed that the Toolkit will identify crucial issues and proposes guidelines for dealing with these matters. The following presents a provisional set of guidelines for this purpose.

Land incorporations offer very real potential benefits to biodiversity conservation and are taking place in a number of protected areas. They essentially involve negotiated agreements between the public institution and private or communal landowners with properties on the borders of the protected areas.

The Protected Areas Act provides that the managing authority of all protected areas must submit a management plan for the particular protected area. Such a management plan may, *inter alia*, deal with matters regarding the development of economic opportunities within and adjacent to the protected area.

The Act also provides that any commercial activity in a nature reserve, or any activity aimed at raising revenue, must be done subject to the management plan for the reserve.

The Toolkit therefore needs to include a summary of the provisions of the Act that are relevant with regard to the planning and implementation of land incorporations.¹

Park expansion can also be driven by adjacent land owners or communities with rights to land electing to be incorporated into the park, simply because of the perceived benefits to the land owner or relevant communities. These benefits may include:

- Different land use options (nature based tourism).
- Access to wildlife crossing boundaries, including rare and high value species (eg black rhino).
- Linking into an area with critical ecological mass sustaining species which require large areas (eg elephant, lion, wilddog).
- Branding (part of a national park).
- Access to management and scientific expertise.
- Typically these benefits translate into higher land values to the benefit of the owner, but there may be some associated benefits for the State conservation agency (other than just “bigger is better”).

¹ The Act notes: The Minister declaring an area a special nature reserve, nature reserve or protected environment; or should the land in question be privately owned land, the Minister may declare it a nature reserve, special nature reserve or protected area if the owner gives consent to the declaration by way of a written agreement with the Minister. With regards to protected areas, the Minister is fully entitled to declare an area of land a protected area, in order to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition. Either the Minister, the MEC or the owners of the land acting individually or collectively, may initiate the declaration of private land as a special nature reserve, nature reserve or protected environment. Once the land has been declared a special nature reserve or a nature reserve, the Minister must assign the management of the aforesaid land to a suitable person, organisation or organ of the state.

It is proposed that these are PPPs of a special type. Land incorporations are not suited to either the “high” or “low roads” discussed in sections 2 and 3 of this report, and would have to be negotiated between the institution concerned and the landowner according to a set of best-practice principles. It is thus proposed that land incorporations should not be regulated under the existing Treasury Regulation 16, but that the Toolkit should provide a detailed and clear set of guidelines about how these *sui generis* PPPs can best be implemented.

The consulting consortium suggests that for an institution to consider land incorporations there must be significant benefits to the institution in terms of securing the long-term conservation management of an area.

The incorporated land must be shown to have high biodiversity value and the benefits from improved conservation status must exceed the costs. This situation is made more complex when game is involved as the game will migrate over the land and some of the costs and benefits will accrue to the landowner. For such incorporations to be considered and perhaps certain rights conferred to an adjacent landowner, the following must be met:

- The neighbour must be the legal owner of the land.
- A formal agreement must be entered into detailing what rights and obligations each party has. Here the conservation body must ensure that any conservation benefits which it hopes to achieve are very clearly defined and spelt out in the agreement.
- Performance standards must be set and penalties for non-performance must be stated, along with a termination clause.
- To achieve this the conservation body must detail exactly what the benefits are, what standards they must be maintained in and what the costs of achieving this are to the organisation. The types of land management will probably form the basis of this.
- If game is involved, a mechanism must be found which ensures that there is an agreement on how it will be managed, particularly relating to stocking rates, species mixes, species composition and removals.

- If game is removed then there must be agreement on how the benefits will be shared between the parties.
- The land and game management may also need to be addressed in this agreement.

SECTION 2

2.1 Types of tourism products and what kind of PPP process to follow

This section of the report is an initial and provisional attempt to identify some of the main categories of products that emerge when institutions embark on offering commercial opportunities to private sector investors and operators on institution property. At this stage (Stage 2) the discussion is broad and attempts to outline key principles and phases for a set of PPP procedures that can best be applied to these different categories of products.

The main findings in the Stage one report summarised above, lead to two key issues that have been used to structure and shape this report:

- For many of the high-value institution assets that have been commercialised through tourism PPPs, the current regulations, PPP provisions and practices are basically sound and adequate. A number of refinements have been proposed during the consultation process. These will be included in the Toolkit. Some of these are referred to below.
- In many cases, especially where low-value assets are put out to tender, the application of the four phases of the PPP cycle (inception, feasibility, procurement and PPP agreement management) have been conducted in ways that have been complex, expensive and onerous. The cycle itself is sound and methods should be devised to reduce the complexity of the cycle to the scale of the commercial project under consideration.

There is consensus within the Task Team and the consulting consortium that with many of the common products in the tourism sector (such as short term and non-exclusive activity based concessions and some kinds of accommodation eg hiking huts or rondawels with a few beds in each), it is not cost-effective to apply the phases of the PPP cycle at the level of complexity that has been applied to tourism PPPs to date.

2.2 The “high” and the “low road”

Based on the Stage 1 findings, this report proposes that there are two main scenarios or categories of PPPs that emerge in the tourism sector. These two basic categories are

defined, by a number of factors including the amount of capital to be invested in the asset by the private party (and in some cases also by the institution), the length of the concession that will be offered, as well as a number of issues related to project-specific risks (such as financing, construction, operating and force majeure risk, plus sub-categories of these such as interest rate, inflation, site condition and environmental risks). Informed by the Stage 1 conclusions, the two main scenarios identified are:

- **The “high road”:** The “big” investments in accommodation, retail and restaurants (with associated activity based exclusive concessions linked to accommodation) of the type that have taken place in Kruger, Madikwe and Manyeleti, and are under way in St Lucia and the Cradle of Humankind (around institution land and heritage assets). Here it has been seen that the processes followed so far have generally been sound and appropriate, and that the Toolkit should provide for a “high road” process which will be similar to the processes followed, including the Treasury Approvals set out in Treasury Regulation 16, but with some modifications such as added support measures for BBBEE and other simplifications in line with lessons learnt from these cases. These lessons can be distilled from the Stage one report and the various meetings between the consulting consortium and the Task Team, as well as the workshop to be held in early December of 2004.

- **The “low road”:** The “low road” process will allow institutions to follow a simpler form of the same cycle prescribed for “high road” processes, and will remove the need for Treasury to approve every phase of the process. Here Treasury would approve the processes in advance, provided that the institution can show that it has the capacity to manage the process in accordance with the standards set out in Treasury Regulation 16, and will internally apply and monitor the requirements of affordability, value for money and risk transfer. The institution concerned will therefore essentially run an in-house process with a lesser form of monitoring from Treasury. Given the lower-risk nature of these smaller products and businesses, it is accepted that there should be room for experimentation and “learning by mistakes”. It was agreed that lessons can be taken from cases such as the Wild Coast, the conversion of the Bourke’s Luck Military Base into a centre for tourism-led local economic development, the Lekgophung lodge in the

Madikwe Game Reserve and the joint-venture lodge developments taking place in the Makuleke Region of the Kruger National Park. These are cases where relatively large amounts of investment (relative to the amounts spent on the PPP processes reviewed so far) were raised through inexpensive procurement procedures. Treasury Regulation 16.10, which currently enables Treasury to exempt an institution, or a project, from the Treasury Approval processes, will allow for the use of the "low road" process as discussed above.

2.3 The strategic objectives of each institution

Whatever the route finally followed by each institution, the process should always be grounded in its mission and strategic objectives, for example, the conservation, empowerment and development priorities of the institution, its mandate to ensure a range of types of accommodation for the public, the institution's need to take into account specific stakeholders, and particular types of ecosystems that need to be conserved etc. In applying its strategy, the institution will give effect to various BBBEE and environmental legislation and policies, and all other applicable legislation, including the new Protected Areas Act 2004. The Toolkit will contain short summaries of key pieces of legislation that need to be taken into account in the formulation and application of the institution's mission and strategy. The institution's commercialisation strategy must complement its overall strategy; there must be a logical fit between the two.

The objectives that inform the institution's commercialisation strategy could include job creation, poverty reduction, public infrastructure upgrade, biodiversity protection, making recreational facilities available for a broad part of the population and others. Later in the PPP cycle, these objectives could be included in the institution's assessment of value for money. Thus each institution should have a set of objectives against which it plans its commercialisation process.

The following are proposed as contents in an institution's strategic commercialisation plan:

- Institution's vision, mission, objectives, activities.
- Commercialisation policy (adopted by the relevant accounting authority and endorsed by the relevant executive authority).
- Personnel, budgetary and systems capacity for PPPs:

- Project Officer: job description, skills, experience specified, expertise of person appointed and support personnel in place;
- medium term expenditure framework and allocated budget;
- planning, procurement and management systems;
- the institution's approval processes for each phase of the PPP cycle.
- Legal capacity for PPPs (institution's rights to contract and to retain revenues).
- Conceptual strategic plan for each of the commercial opportunities identified:
 - is it a PPP by definition?;
 - is the legal mandate in place for a PPP on the site?;
 - is there any known private sector interest?;
 - is there a budget to implement?;
 - does the project have the support of reserve management?;
 - are there any human resource issues at stake?;
 - are there any major environmental issues at stake?
 - are there any special considerations (eg if it is a World Heritage Site, what conditions would apply?).
 - what are the likely value-for- money benchmarks?
- Identification of any external support required by the institution to implement its commercialisation strategy.

A critical finding of the Stage 1 review was that in many cases PPP processes were embarked on before the institution had either the internal capacity to manage such a process or the ability to manage a team of consultants or transaction advisors. One of the most significant conclusions reached is that the PPP process itself is not fundamentally flawed. Rather, the institutions implementing those processes are often negatively affected by institutional-capacity problems and thus have to hire transaction advisors to do work which, ideally, should be done in-house. Similarly, some of the negative experiences outlined by some in the private sector are related to institutional-capacity weaknesses, manifested in poor communication, slow and inconsistent institutional decision making, limited commercial insight, and generally poor project management.

Thus a critical step in the process proposed below is that, during the inception phase, before Treasury will register an institution's PPP it must be satisfied as to the capacity of the institution to undertake either the full ("high road") or simplified ("low road") PPP process. Accordingly, Treasury conditions (specifying exactly what criteria will have to be fulfilled) will be set for the registration of Tourism PPPs in terms of Treasury Regulation 16.3. An institution's PPP initiative will not be able to be registered as required by law (and therefore will not be able to proceed) unless it has fulfilled the conditions specified for project registration in the inception phase as set out in 3.3 below.

2.4 Criteria for deciding on whether to follow the "high" or "low" road

Products contained in each of the categories described in section 1.4 could fit into either of these "roads". For example, a 120-bed hotel with a capital expenditure of R40-million and a 4-bed rondawel in the Vrolijkheid Nature Reserve (a site that was subjected to a PPP by the Western Cape Nature Conservation Board) both fall into the category of tourism "accommodation". A small close corporation run by an entrepreneur from Mtubatuba with a two-year concession to take tourists on a turtle-watching expedition on the beach near St Lucia and a business that has a concession to operate four open-vehicle safaris for 20 years over a prime piece of the Kruger National Park are both "activities". Thus there is no simple fit between each of the categories of tourism products and the type of PPP process to follow.

The Toolkit will thus itemise the product types and then introduce an over-riding set of criteria for determining whether a particular product falls into the "high-big-major" or "low-small-minor" set of processes to be followed in the PPP cycle. The institution would either follow a rigorous and detailed PPP process (with Treasury approvals built in) or a more simplified in-house process by exemption from Treasury approvals (with equivalent institution, ie internal, approvals built in).

The proposed criteria for distinguishing between the "high road" and "low road" are:

Quantitative criteria: ie the total capital cost of the investment, the duration of the project and, possibly, whether the rights granted will be exclusive or not.

Qualitative assessments: These would be made in terms of assessing the risk allocation with regard to the financing of the enterprise, development of facilities, operation of facilities, marketing and reservations, compliance with the environmental regulatory framework and other risks relating to the environmental sensitivity of the site, stakeholder dynamics regarding the commercialisation of the particular assets concerned and relations with civil society and other organisations.

A system of scoring against each of these criteria and using the score to help decide which road to follow is suggested below.

Section 3 of this report thus sets out a schematic process that could be used to outline an appropriate set of standardised PPP procedures and contracts for a differentiated set of tourism products.

SECTION 3

3. The proposed tourism PPP project cycle

3.1. Introduction

The proposed tourism PPP project cycle and the methods to be applied in each phase have been devised to address the key needs distilled from the lessons identified in the Stage 1 Report. Specifically:

- **Differentiated PPP processes for assets of different strategic value:** In this regard, the proposed PPP project cycle (as described in this section) has been designed in a manner that specifically allows for the differentiation of lower-risk and higher-risk projects. Related to this, the requirements of the feasibility studies have been differentiated and the responsibility for approvals may rest within the institution itself.
- **Strengthening the institution's PPP project management capacity:** The Stage 3 report makes specific recommendations in support of institutional strengthening.
- **Sufficient preparatory work to be done by the institution before the PPP process begins:** In order to address this area of weakness, the proposed PPP project cycle specifically includes a list of conditions for project registration with Treasury, which describes crucial areas which must be considered by an institution in order to register its project with Treasury.
- **Building PPP understanding within the institutional middle, lower and reserve level management:** The appointed Project Officer is responsible to implement a communication strategy to inform staff on the PPP process and its requirements. In addition, selected staff on the PPP management committee should attend PPP training courses specified by Treasury. Please see the Stage 3 report for additional recommendations on developing this capacity.
- **Reducing the complexity and relative weighting of financial projections:** In order to offset the perceived excessive bias towards financial projections, a pre-feasibility scoring system has been developed (see proposed pre-feasibility scoring sheet below) which has identified a number of strategic risks that all need to be

considered as part of the process of motivating a project for a high or load road process.

▪ **Proactively packaging BBEE support measures early in the PPP cycle:** These measures will include the following:

Sourcing technical and legal support during the bidding and contracting phases from DFIs, DTI, DEAT etc.

- Building links with various technical and operational skills development programmes such as those funded via the THETA, institutions themselves and donor organisations.
- Ensuring that quality concession sites are offered which will attract BBEE interest and loan funding.
- Identifying possible donor, grant and poverty alleviation funding.
- Agreement by the institution to cede a portion of its concession fee to secure loans.
- Engaging with DFIs via a structured mechanism such as a memorandum of understanding on their involvement in the funding structures for these projects.
- Structuring concessions to allow BBEE recipients to raise equity through the sale of a portion of the concession (where appropriate).

▪ **Involving the DFI's early and in an ongoing way in the PPP cycle to ensure optimal financing mechanisms are available to private parties upfront:** The value of achieving this is that the DFIs consider tourism projects to be high risk with no stability of cash flows and no secured occupancy levels. An early assessment by DFIs of the market information regarding sites and development parameters allow the institution to do a reality check on the commercial viability of the assets (and in some cases specific sites) that form the subject of the PPP. It also assists private parties to access funding from DFIs and other funders. Financing is also facilitated by allowing DFIs to take security by way of "step-in" rights. This means that the process should allow for the DFIs to comment on draft PPP agreements, indicating how these "step in" rights should be structured.

▪ **Reducing bid time and costs for parties:** In this regard, and in order to reduce bid times and costs for less strategic project initiatives, the proposed differentiated PPP cycle has been designed in a manner which should reduce costs for both low and high risk-projects, as discussed above.

- **Allowing greater flexibility, within the necessary environmental protection parameters, in the private party's spatial planning on the site:** and
- **Addressing the term of the PPP agreements and mitigating the fact that the private party has no share in the benefits accruing from capital value of the assets achieved over the period:** This is a difficult issue to resolve without passing significant risk onto an institution. The inherent nature of a build-operate-transfer arrangement is that the fixed assets will revert to the institution on termination of the project. Essentially, the private party must be given a concession period which allows it to recoup the capital invested on developing the land. The Revenue Laws Amendment Bill grants a significant tax benefit to private parties investing in the improvement of state property in PPPs, which might mitigate this concern. This report also proposes a variety of mechanisms to renew PPP agreements which may help to address the problem.

This section outlines an overview of the proposed main phases of the PPP project cycle, consistent with Treasury Regulation 16, tailored to the needs of tourism PPPs in particular, together with a high level description of what will be entailed for the institution in implementing each phase.

3.2 The main phases

As is described in more detail below, the PPP management and approval processes that are proposed for the Tourism PPP Toolkit consists of five key phases:

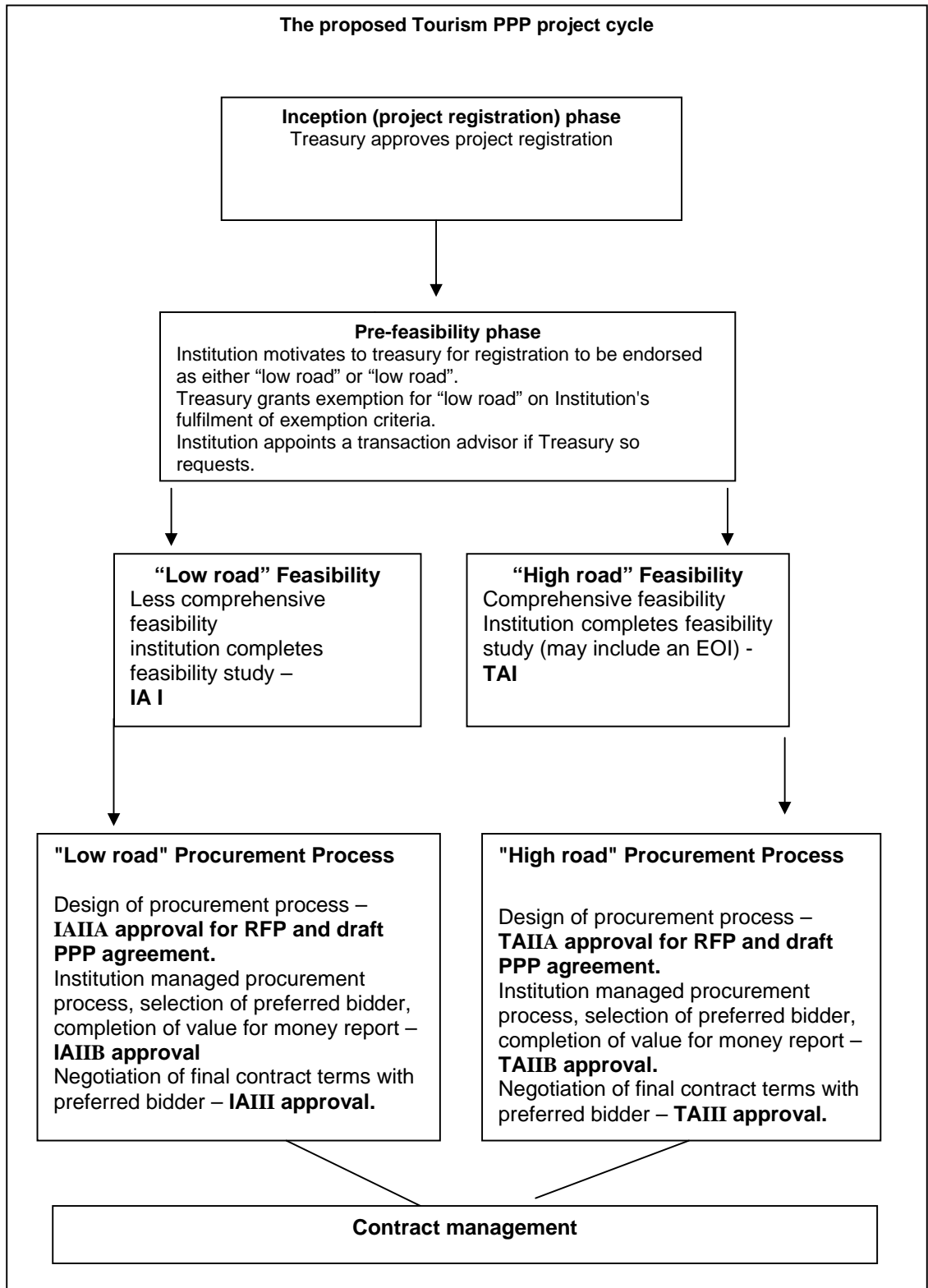
- **Inception (project registration) phase:** In order for Treasury to register the PPP, it will require the institution to satisfy it as to the following: the existence of a Strategic Plan for Commercialisation; the process informing the development of that Strategic Plan; how the proposed PPP fits into the Strategic Plan; how the Strategic Plan fits into the institution's broader strategy and vision; the expertise within that institution to proceed with a PPP; the appointment of a Project Officer from within or outside the institution; the appointment of a transaction advisor if Treasury so requests; the capacity within the institution to manage the transaction advisor.
- **Pre-feasibility phase:** In this phase the institution completes a pre-feasibility study; the institution motivates to Treasury for registration to be endorsed as either

"high road" or "low road"; Treasury grants exemption for "low road" (an can also do so for the "high road" on the institution's fulfilment of exemption criteria.

- **Feasibility phase:** (split into "high" and "low road" scenarios); In this phase the "low road" approvals are given by the institution itself; "high road" approvals will remain with Treasury (save in exceptional circumstances).
- **Procurement phase:** (split into "high" and "low road" scenarios); in this phase "low road" approvals are given by the institution; "high road" approvals will remain with Treasury (save in exceptional circumstances).
- **Contract management phase:** This is dealt with in detail in the stage 3 report

The sequencing of these phases with related Treasury and/or institutional approvals is illustrated in the diagram below, and the content of each of these phases is discussed in more detail below.²

² The numbering used in the flow chart for the approvals is consistent with the Treasury approvals in Treasury Regulation 16.



3.3 The inception (project registration) phase

Objective of the inception (project registration) phase: The objective of the inception phase is to complete the institution's Strategic Plan for Commercialisation, to ensure that a Project Officer is appointed, and for the accounting officer/authority to register the PPP with the relevant Treasury in terms of Treasury Regulation 16.3.

Decision making:

- If yes to PPP, and the conditions for registration are fulfilled (such as demonstration that the institution has the mandate and capacity), then the project is formally registered with Treasury in terms of Treasury Regulation 16.3.
- If yes to PPP and mandate, but institution does not have capacity, then conditional registration (provided capacity is put in place).
- If yes to PPP but no mandate, then no to registration and another institution should apply.
- If no to PPP then NO and the project cannot proceed.

3.4 Pre-feasibility phase

3.4.1 Introduction

The main output of the pre-feasibility study is to confirm the potential viability of the proposed project, and to identify specific issues that require detailed feasibility analysis. In addition, the pre-feasibility stage allows the institution to motivate to Treasury whether to route the project to the “low” or “high road”, with authorisations to be given per phase by either the institution (for “the low road”) or by Treasury (for the “high road”). The findings of the pre-feasibility (content discussed in 4.3 below), as well as the resultant scoring (defined in section 3.4.2 below) provides the main basis for Treasury to approve the routing of the project.

Content of the pre-feasibility studies should include:

- **Strategic planning context:** Describe how the project supports (or not) the prevailing provincial/national development priorities, and also contextualise the project within the relevant district Integrated Development Plans and Strategic Development Frameworks (where they exist).

- **Legal review:** Confirm tenure and rights to concession assets. Confirm that these rights are, for the purpose of the PPP agreement, vested in a single institution. Identify any specific issues requiring detailed feasibility study.
- **Indicative or preliminary market review:** Do a rapid demand-and-supply analysis. Key indicators for market review would include the following: Firstly, current occupancy rates and related trends. Secondly, trends in terms of tourism product types and utilisation. Thirdly investment patterns as per existing and proposed tourism product. Fourthly, where they exist, make use of existing secondary research and analysis, such as sub-regional, regional and national supply and demand analysis including data routinely collected and analysed by SA Tourism. Fifthly, the institution should at an early stage engage through an informal process in a “test-the-waters exercise” with the private sector, by appointing a suitable qualified third-party consultant to conduct interviews with prospective investors, and/or existing operators in the area to gauge investor interest, and to get private-sector advice. This intelligence at an early phase is intended to avoid costly wrong decisions and overcome the over-expectations that often exists within many institutions about the investment potential of the assets they control.
- **Environmental pre-scoping to screen for fatal flaws:** An environmental pre-scoping designed to screen for fatal flaws that would result from the likely impacts of the project and would thus either prevent the PPP from proceeding with the commercialisation process or require major mitigating interventions. This exercise will need to identify any specific environmental issues requiring further assessment in the detailed feasibility study.³
- **Stakeholder analysis:** Identify the main stakeholders (including adjacent communities), organisations (including reserve management staff), and interested and affected parties, and confirm whether or not these support the proposed project. Are any of these stakeholders likely to oppose the

³ This is a high-level exercise designed to identify fatal flaws of the following kinds of impacts (this is not an exhaustive list but provided to be **indicative** of the kind of fatal-flaw impacts the scope is designed to screen for: impacts on endemic species; impacts on red-data or endangered species; geological and hydrological features that will not tolerate human impacts such as waste, sewage, noise required by the project; and specific and valuable features of the landscape that could be adversely affected by the type of building proposed.

- commercialisation programme, and if yes, what are the options for resolving the disputes? Identify any specific issues requiring detailed feasibility study.
- **Personnel and human resources issues:** This issue is important in those instances where the implementation of the PPP could require staff upskilling, retraining or transfers. Identify any specific issues requiring detailed feasibility.
 - **Infrastructure assessment:** Confirm whether or not there are any strategic infrastructure weaknesses, such as access roads, bulk electricity, bulk sanitation, bulk water supply and communications, that due to their absence are likely to diminish the chances of securing quality investors. In particular, focus on elements of infrastructure that are likely to need to be provided by the institution or the state rather than elements of infrastructure provision that could be implemented by the private party. Identify any specific issues requiring detailed feasibility study.
 - **BBBEE and social development issues:** Draft a preliminary set of targets based on existing secondary research, preliminary value-for-money benchmarks set by the institution in its Strategic Plan for Commercialisation, and the Toolkit's applicable indicative BBBEE scorecard. Identify a preliminary package of external state support measures from DFIs, DTI, DEAT, THETA, and donors that will be targeted to achieve the intended BBBEE and social development outcomes. Indicate how these DFI, skills development and small business support agencies can be "tied into" support for the proposed PPP.
 - **Risk allocation:** Describe the inherent financing, development and operational risks, and then evaluate the allocation of these risks between the main stakeholders, being the institution, the private party and where applicable, local communities⁴. Identify the main risks with regard to:
 - Financing
 - Development of facilities
 - Development of strategic bulk infrastructure
 - Operation of facilities
 - Marketing and reservations
 - Environmental regulatory framework and compliance

⁴ It should be noted that risks can only be allocated between parties to a contract. If a risk-taker is outside of the principal parties to the agreement, there must be a back-to-back agreement that deals with these risks.

- Environmental impact assessment.
- **Results of scoring to motivate “high” or “low road”:** The proposed scorecard in 3.4.2 below illustrates the criteria and weighting which will be used to judge whether a PPP should go the “high” or “low road” route.
- **Conclusions:**
 - Confirm pre-feasibility of proposed tourism products based on current and projected trends and market intelligence.
 - Provide an initial affordability assessment for the institution.
 - Provide initial risk transfer assessment
 - Provide an initial indication of value for money assessment.
 - Identify the package of external state support measures that are targeted for the PPP's BBBEE and social development intentions.
 - Confirm institution's capacity to proceed with the PPP, and whether or not transaction advisor support is required, and in which respect.
 - Show the results of the scoring process set out in 3.4.2 below and motivation as to whether the high or “low road” should be followed
 - If the “low road” process is requested, a motivation for the exemption from Treasury approvals by showing institutional capacity to manage approvals and apply regulatory tests.

3.4.2 **A scoring method to determine whether tourism products follow the “high” or “low roads”**

Scoring the pre-feasibility assessment and the decision by Treasury in terms of routing the project to “low road” feasibility (authority for approval granted to the institution), or “low road” feasibility (subject to Treasury approval), is suggested below. A mechanism for determining the “low road” or “low road” routing will be based *inter alia* on the scoring of the pre-feasibility according to a limited number of strategic risks as defined in the proposed pre-feasibility scoring system in outlined in the box below. This scoring system needs to be subjected to far more rigorous reality tests.

Proposed pre-feasibility score sheet	
Product type: accommodation	
Quantitative criteria:	
Predicted Capex or size of the investment	
Up to R5 million (cost of a small lodge)	score 1
Over R5 million	score 2
Length of concession	
Up to 10 years	score 1
Over 10 years	score 2
Qualitative criteria	
Environmental pre-scoping	
Report shows no fatal flaws	score 1
Report indicates specific areas requiring detailed EIA	score 2
Risk allocation	
Financing	
Private sector capitalises project 100%	score 1
Public sector participation in project capitalisation is necessary	score 2
Development of facilities	
Private sector assumes all risks	score 1
Public sector support/participation is required	score 2
Operation of facilities	
Private sector assumes all risks	score 1
Public sector support/participation is required	score 2
Marketing and reservations	
Private sector assumes all risks	score 1
Public sector support/participation is required	score 2
Pre-conditional support for infrastructure capitalisation	
Private sector capitalises 90%	score 1
Public sector capitalises more than 10%	score 2
<p>If project scores 9 or less, the intention should be to go the “low road” route. If project scores 10-11, then further discussion with Treasury to lower strategic risks identified as a basis for using the low road or the project continues on the “low road”. If development scores 12-16, then project should go the “low road” approach.</p>	
<p>NOTE: THIS IS AN INDICATIVE SCORING SHEET FOR TRIAL PURPOSES ONLY. DIFFERENT SCORING SHEETS WILL BE PROVIDED IN THE TOOLKIT FOR DIFFERENT TYPES OF TOURISM PRODUCTS.</p>	

If the PPP is allocated to the “low road” and an exemption from Treasury approvals granted, then all subsequent approvals in the process are given by the institution.

If the PPP is allocated the “high road”, then all subsequent approvals remain with Treasury. However, it is possible (though unlikely in terms of current capacity constraints) that Treasury could, in the case of an institution having the necessary PPP

experience, technical capacity and financial resources, grant an exemption and allow the institution to give “high-road” approvals itself.

3.5 Feasibility phase

3.5.1 The “low road” feasibility study:

Rather than prescribing a standard list of issues, as well as generic feasibility specifications per issue, it is suggested that the content of the low road feasibility study be specific in nature, determined by the outcomes and proposals of the pre-feasibility study. The aim should be to ensure simplicity and avoid repeat research wherever possible. Thus the pre-feasibility should be conducted in such a way that it can, with no or minimal changes, be accepted by Treasury as a feasibility study. The pre-feasibility would thus need to be conducted in such a way that it could easily be converted into an acceptable feasibility.

In addition, at this phase, financing arrangements need to be interrogated to determine the possible funders such as DFIs, donors, grant funders, that can be accessed for the PPP process.

Technical and skills development institutions such as THETA should be tied into the process at this stage and placed on alert with agreements on long-term support for BEE partners put in place to access their services.

Small business support schemes linked to Government and donors need to be tied in and placed on alert that at this stage so that they are in a state of readiness to provide support to prospective Black enterprises and partners. Private sector institutions that provide this on a corporate social responsibility basis should also be accessed and readied at this stage.

It is proposed that memoranda of understanding be entered into between the institution and various state entities. These could be: DTI for its incentive scheme particularly the Business Supplier Development Scheme and other tax and competitiveness enhancing schemes; Ntsika and National Manufacturing Advisory Centre (NAMAC) for their technical advisory roles they offer small business, DEAT for incentives related to the

establishment of small tourism enterprises, THETA to ensure that funding is allocated for institutions training to areas where PPPs will be implemented, and other DFIs for funding and technical assistance as well as early engagement in the PPP cycle.

The terms of these memorandums of understanding should set out the responsibilities of the institution and the other party, the nature of the assistance required from the party, service level clauses which will determine the involvement of the party in the PPP process, resources it will commit, and an undertaking to expedite requests from the institution within reasonable time frames. The intention is for the Toolkit to set out draft template memoranda of understanding.

3.5.2 The “high road” feasibility study

This feasibility outline for the “high road” builds on the work completed in the pre-feasibility stage. In Treasury Regulation 16.4 (in Annexure 5) TAI is given after completion of the full feasibility study (see Treasury Regulation 16.4.3). Treasury Approval IIA is for the procurement documentation and Treasury IIB is for a value for money report on the preferred bidder (see Treasury Regulations 16.5.2 and 16.5.5).

The following feasibility stages are recommended for “high road” tourism PPPs:

- Options analysis (a maximum of 3 options are selected for further assessment).
- Due diligence on selected options.
- Select preferred option.
- Possible Expression of Interest.
- Value assessment on preferred option: affordability, risk, value for money.
- Memorandum of Understanding with DFIs and other support agencies
- Procurement plan.
- Submit compiled feasibility report for TAI.

These stages have been developed using the PPP Manual Module 4 stages as a basis. The PPP Manual Module 4 deals specifically with service delivery/ unitary payment/ project finance type PPPs while the tourism Toolkit addresses PPPs involving the use of state property by a private party for commercial purposes. The Module 4 stages can be adapted to suit tourism PPPs and the tourism PPP cycle proposed in this document.

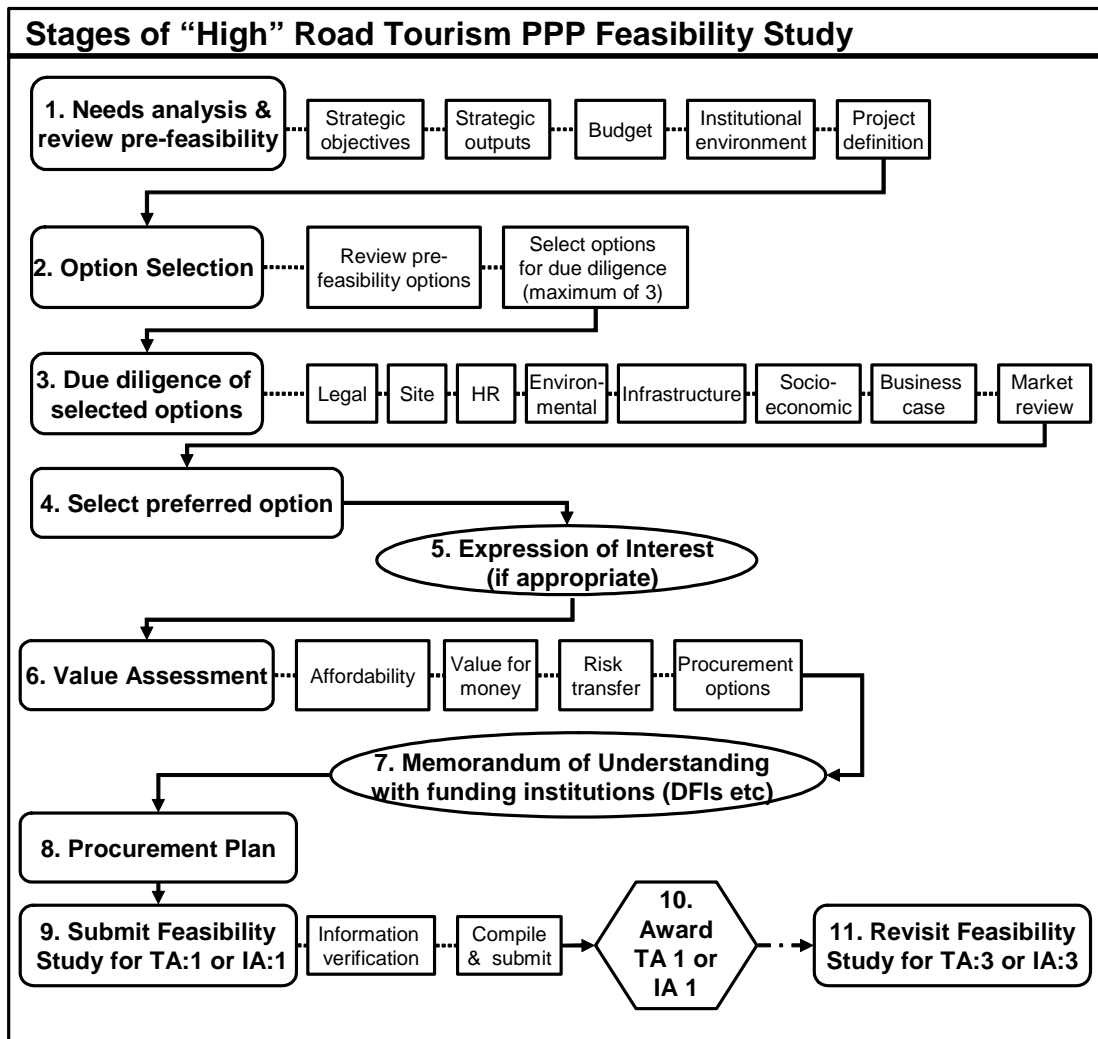
A typical work flow that is appropriate for a “high road” tourism feasibility study is illustrated in the diagram below. This flow diagram has been adapted from the PPP Manual. All of the key stages in the feasibility process described in the table below should be addressed in “high-road” projects to ensure that each project has been sufficiently evaluated and key areas have not been overlooked.

The process is generic and can be refined for each of the tourism products identified in this report. In the final Toolkit, the suitability of developing product specific feasibility processes will be assessed against the objectives of providing clear guidelines and not being too prescriptive.

The feasibility study will draw from the pre-feasibility work undertaken and use this as a basis to fully assess the viability of the project. In most cases, Treasury would evaluate the feasibility of the “high road” process (ie TAI) but some institutions may have sufficient institutional capacity to undertake the evaluation. Where such an institution has been granted exemption, then the institution itself would grant IAI.

Measures to achieve BBBEE objectives in the “highroad” feasibility include:

- The institution draws up a “high road” BBBEE scorecard for the project.
- The institution confirms what specific package of support measures and procurement terms will best achieve its intended BBBEE outcomes for the project.
- The institution enters into specific memoranda of understanding or service level agreements with DFIs, DTI, DEAT, THETA, depending on the most appropriate package of assistance to secure their specific interventions and resources at specific times in the procurement of the PPP, and during its development and operational phases.



3.6 Procurement process

Regardless of whether a “low road” or “high road” allocation was granted by Treasury, there are certain mandatory steps that will need to be complied with in terms of the design and implementation of the procurement process. The mandatory requirements for the “low road” and the “high road” are as follows.

3.6.1. “Low road” procurement process

The institution will be responsible for approving a procurement process (IAIIA) that has the following characteristics and stages:

- The bidding process will be competitive in nature.

- The bidding process will be marketed via public advertisement. The institution may decide on the strategy to be taken in accordance with their own commercialisation strategy and the quality of opportunity being offered to the private sector. For example, should it wish to maximise financial returns it could advertise in national newspapers in order to attract large bidders. Should local economic development be paramount and the opportunity relatively small, relevant local newspapers may be used instead. It is strongly suggested that the use of radio and internet-based marketing are also cost effective supplements to the newspaper-based marketing. The institution is free to supplement this marketing effort as it sees fit.
- It is recommended that this advertising campaign be run on a routine annual basis once an institution's systems are in place. This will enable private parties to have certainty as to timing and ensure that all parties are familiar with a known and transparent process for gaining access to commercial opportunities on a regular and ordered basis.

Stage 1: The formal bidding document will be a Request for Proposals. Minimum content would include:

- Background to project.
- Roles and responsibilities within the partnership.
- Institutional arrangements.
- Bid submission requirements: business case, environmental, BBBEE, concession fee offered.
- Submission of bids.
- Criteria for bid evaluation: business case, environmental, BBBEE, concession fee offered.
- Conditions of bidding.
- Draft PPP agreement (to be marked up by bidder and submitted).

Stage 2: Evaluation and selection of preferred bidder – IAIIIB.

Stage 3: Negotiation and finalisation of PPP agreement with preferred bidder – IAIII

A proposed “low road” BBEE scorecard: This could include the following specific features:

- Some small accommodation and activity based products may be owner-run and operated and hence targets relating to active black equity may not be appropriate. Strategic representation which refers to Board level participation is also inappropriate.
- The level of subcontracting and procurement is low for service-level-type activities and hence targets in this regard are not always appropriate. Where a “low road” project does procure, it should be assessed on local procurement efforts in line with the institutions social development objectives.
- Black management control would not be a feasible target if the venture is owner operated and has no management structure. Employment equity may not affect these concessions if they have less than 50 employees but the “low road” procurement phase would need to assess the proposals for employment equity between various bids received.
- The pre-feasibility phase allows the institution to set its own social development objectives and this would need to be considered in terms of local jobs generated as well as local empowerment.
- It is envisaged that the “low road” will not specify thresholds of BEE scores to be achieved and would not be a pass or fail criteria, though bidders with BEE will score higher in the overall assessment.

Proposed “low road” BEE scorecard⁵

PPP BEE element	Indicative PPP project target	Recommended bid evaluation weighting
A: Black Equity	26%	25%
B: Black Management		25%

⁵ The institution needs to make a policy decision regarding:

- Whether the weightings need to be adjusted for specific activities which may vary in various product categories.
- The nature of the activity would determine if passive equity can be an option for the scorecard or if only active equity is to be considered for scoring purposes.

If skills and funding programmes are secured then certain project activities will be able to achieve higher BEE equity levels and this can be reflected in the weighting allocated in the procurement process.

B1: Black management control	26%	
B2: Black women in mgt control	16%	
B3: skills development	1% of payroll (with 70% thereof on black people)	
C: Subcontracting and procurement		25%
C1: Black companies	30%	
D: Local socio-economic impact		25%
D1: Local employment	30%	
D2: Other CSI plans, health, heritage, community projects	0.5% of post tax profits	

Note: These are typically owner operated small investments, with a low level of procurement and subcontracting, generally employing < 50 employees. This scorecard is adapted mainly from draft Tourism Charter scorecard and Code of Good Practice for BEE in PPPs, with no minimum threshold pass or fail criteria but scoring to occur within the 10% weighting given for BEE in the overall scoring mechanism.

3.6.2. The “high road” procurement process

Treasury will be responsible for approving the design of a procurement process (TAIIA) that has the following characteristics and which will be done in the following stages:

- The bidding process will be competitive in nature
- The bidding process will be marketed via public advertisement in at least national newspapers, as well as relevant local newspapers. A range of other active marketing strategies could be pursued including the use of radio.

Stage 1: Request for Qualification.

The main purpose of this stage in the procurement process is to select a limited number of bidding consortia that are qualified and have sufficient experience and commitment to prepare proposals and to execute the project.

Supporting documentation would:

- Set out rules for participation and procurement.
- Disseminate information about the project.
- Give guidance as to expected kinds of participants in bidding consortia.
- Gather information about bidding consortia that is verifiable.

Stage 2: Request for Proposals

Minimum content would include:

- Background to project.
- Roles and responsibilities within the partnership.
- Institutional arrangements.
- Bid submission requirements: business case, environmental, BBEE, concession fee offered.
- Submission of bids.
- Criteria for bid evaluation: business case, environmental, BBEE, concession fee offered.
- Conditions of bidding.
- Draft PPP agreement (to be marked up by bidder and submitted).

Stage 4: Selection of preferred bidder

This is a key milestone that would require TAIB approving the value- for-money report on the preferred bidder.

Stage 5: Negotiation and finalisation of PPP agreement terms with preferred bidder

This is another key milestone that would require TAIB prior to conclusion of the PPP agreement with the preferred bidder.

Proposed “high road” scorecard

Key issues include:

- “High road” projects would require larger amounts of black equity and options for securing targets are dependent on mechanisms such as DFI attitude to the project viability, allowing the cession of shares to funders, the creation of a new Treasury PPP fund, bringing in DFIs at an early stage (pre-feasibility and feasibility phase to determine parameters and structure for funding projects), persuading sponsors to raise funding on the strength of their balance sheet or to donate shareholding on the basis of offsetting concession fees, ceding a portion of the concession fee by the institution to secure BEE loans, and allowing a cession by the BEE party holding a concession of a portion of its rights to raise equity.
- A “high road” project in tourism would typically have to comply with the major thrusts of the Code of Good Practice for BEE, with some modification peculiar to the tourism sector as proposed by the Tourism Sector Charter, such as the low level of BEE interest in tourism PPPs, the high perceived risk in the sector, and the need for strong operational experience.

A typical “highroad” Special Purpose Vehicle (SPV) in tourism would follow, to a large extent, the following structure. The lead private party concessionaire would subcontract the construction of the facility to a third party in the development phase of the PPP. The concessionaire may operate the facility or secure an operations company. The lead concessionaire will form either a joint venture and/or a company with the BEE equity partner. The operation of the PPP will result in the procurement from third parties of goods and services to effectively run the business.

Proposed “high road” BEE scorecard⁶

PPP BEE element	Indicative PPP project target	Recommended bid evaluation weighting
A: Private Party equity		25%
A1: Black Equity	40% with phasing in options over time	
A2: Active Black Equity	70% of A1	
A3: Timing of project cash flows to black shareholders	Early and ongoing	
B: Private party management & employment		25%
B1: Black management control	Commensurate with A2	
B2: Black women in management control	15% of B1	
B3: Employment equity	Compliant with law, if <50 staff, a plan for employment equity	
B4: Skills development	1% of payroll, with plans for staff and equity partners	
C: Sub-contracting and procurement		30%
C1: Black Enterprises	30%	
D: Local socio-economic impact	Sustainable, effective plan as determined in feasibility	20%

⁶ It is proposed that the “high road” scorecard should have the same 50% threshold suggested by the Code of Good Practice for BEE in PPPs as a pass/fail mechanism. Due cognisance must also be taken of the fact that the BEE weighting in the overall assessment would count for 10% according to the Preferential Procurement Policy Framework Act, 2000. The institution needs to make a policy decision on its procurement process regarding:

- Whether the weightings need to be adjusted for specific products being put out for PPP
- [
- The nature of the activity would determine if passive equity can be an option for the scorecard or if only active equity is to be considered for scoring purposes.
- If skills & funding programmes are secured by the institution then certain project activities will be able to achieve higher BEE equity levels and this can be reflected in the weighting allocated in the procurement process.

	phase of PPP	
D1: Local employment	30%	
D2: Other Corporate Social Initiative plans, health, heritage, community projects	0.5% of post tax profits	

3.8 Contract management phase

This is a key area of responsibility for the Project Officer or Contract Manager. Key functions in respect of PPP agreement management are dealt with in the phase 3 report and are only summarised here.

They include:

- Monitoring and reporting on adherence to rights and obligations (especially related to risk transfer/allocation).
- Monitoring and reporting on financial payments (concession fees).
- Monitoring adherence to project construction and operation.
- Monitoring compliance with agreed upon BEE and SMME targets, this can be done as an in-house function of the institution or be contracted out.
- Implementing penalties.

Section 4.

4.1. Institutions for managing tourism PPPs

The stage one report notes that institutional capacity is one of the major problems articulated by the private sector in terms of tourism PPPs. Institutional capacity is required for all the phases of a PPP.

The stage three report outlines a number of procedures that could be followed in order to create and set up the capacity within institutions to undertake effective tourism PPPs. These recommendations are presented only in highly summarised form below:

- A suitable structure with delegated powers from the accounting officer/authority must be used to manage the process, preferably an internal division or committee.
- A PPP Project Officer be appointed for each PPP project.
- A PPP project management committee be established within each institution with specific responsibilities for planning, implementing and monitoring the PPP.
- Transaction advisors be appointed (where necessary only) to assist with the pre-feasibility, feasibility and procurement phases of the PPP, and adequate institutional capacity and systems in place to monitor and manage the transaction advisors.
- Management and monitoring of the PPP agreements be conducted by Contract Managers within the institution concerned. If the institution is undertaking a number of PPPs, a capacitated unit should be developed. The contract manager should be able to source expert services when necessary to ensure the institution correctly monitors and implements the PPP agreement.

The stage 3 report assesses a number of entities or special purpose vehicles that have been set up by institutions to plan, implement and manage PPPs. The report presents a basic evaluation of the pros and cons of each approach and when specific structures are recommended. Guiding principles on the selection of the appropriate institutional structure have been developed and listed in the stage 3 report. These are summarised as follows:

- The structure must be appropriate to its function to maximise efficient and effective performance.
- The structure must be sufficiently flexible for the institution and the PPP Agreement.
- Good corporate governance and administrative justice must be applied (i.e. comply with the PFMA or MFMA).
- Comply with regulatory requirements (e.g. statutory body, legislated authority or department with mandated conservation functions).
- Only in exceptional circumstances should a new institution be formed. The default option is to manage the process internally as a mandated division or committee.
- Public institutions should not take equity positions in private companies. This is considered "anti-competitive and skews the risk profile of the project of government."

SECTION 5

5.1. Towards a set of standardised provisions for tourism PPPs

This section sets out a provisional outline with respect to “*key proposed contracting terms of each standard PPP agreement.*” This is not intended to provide an in-depth discussion and analysis of the proposed contracting terms, but rather is intended to facilitate discussion on each proposed contracting term and its suitability for each standard PPP agreement.

In accordance with the discussion in this report on the “low road” and “high road” processes, it is proposed that two types of standard PPP agreements be drafted which will govern each category of products identified earlier. The “high road” draft PPP agreements would essentially follow best practise identified in the Stage one report. The “low road” route would distil the key criteria applied in “high road” contracts, but attempt to deal with issues more simply and remove some of the contractual burdens on private parties that are justifiable in high-value long-term concessions but might be unnecessary in a “low road” context.

The PPP definition in Treasury Regulation 16 differentiates between two basic kinds of PPPs. One involving the performance of an “institutional function” and the other involving some form of “use of state property” by a private party for its own commercial purposes. It is envisaged that, due to the nature of the tourism industry, most tourism PPPs are likely to fall into the “use of state property” category. Accordingly, it will not always be necessary to incorporate all the contractual terms contained in the National Treasury’s Standardised PPP Provisions⁷. However, it is intended as far as possible to make use of similar terms and clauses where there is an appropriate overlap.

Although the legal review of PPPs conducted in stage one found that generally, best legal practice had been implemented during such projects, it is important to note that this legal best practice appears more appropriate for “high road” category projects than for “low road” category projects. It is therefore important to determine which of the Standardised PPP Provisions:

⁷ The Toolkit will address the legal relationship between the Standardised PPP Provisions, the Manual and the Toolkit.

- Are unnecessary for tourism PPPs.
- Are crucial for both “high road” and “low road” categories of PPPs.
- May be omitted from either the high road or “low road” categories.

The product categories for which PPP agreements will be developed are:

- accommodation – lodge, camping, house-boat.
- food, beverage and retail – restaurant, shops, picnic sites.
- activity based tourism – adventure. hunting and fishing concessions.
- transport.
- heritage and culture – guided walks, display centres.

5.2. “High Road”

General: During the course of legal review, and in particular the review of the tourism PPP agreements relating to the existing high profile PPPs, it became evident that a number of clauses were common for each of the tourism PPPs conducted to date.

Accommodation: Most of the process reviewed in Stage 1 dealt with greenfield lodge developments. As such, there is considerable documentation surrounding complex accommodation-type PPPs. These clauses include the scope and term of the concession together with the rights to which the parties are entitled; environmental considerations and regulations which may impact upon the project; the type of legal entity making up the private party; conflict considerations; limitations of indebtedness not within the ordinary course of the business; vesting of intellectual property rights; transfer of improvements to the institution at the end of the project term; maintaining the bid bond provided for as part of the bid documents submitted; undertakings by the institution; delivery of the assets to the private party; details relating to the construction to take place, the approval processes and limitations relating to these; suspensive conditions relating to obtaining permits, EIA approvals and the performance bond; details relating to concession fees and payment arrangements; clauses dealing with operations management and concession area management; empowerment undertakings by the private party; labour and employment undertakings made by the private party; indemnities by the private party in favour of the institution; comprehensive undertakings

by the private party relating to insurance; comprehensive reporting obligations by the private party; force majeure and material adverse governmental action (MAGA) clauses⁸; termination and breach clauses; a substitute entity clause; a change of control clause; a dispute resolution clause; confidentiality undertakings; indemnities and warranties by the private party and standard miscellaneous “boiler-plate” clauses such as severability, choice of law, domicilium and waiver clauses.

The PPP agreements can essentially be divided into two parts. The first deals with issues central to the granting of almost all types of concession rights common in tourism PPPs. The second is specific to the lodge development obligations. The clauses dealing with concession rights can be carried through as being applicable to the granting of concession rights in general. However, for accommodation projects which make use of existing structures instead of a totally new development, it may be necessary to incorporate the principles of a lease agreement and possibly a sale of business agreement, depending on the circumstances.

Retail: A retail PPP has a number of facets to it. Firstly there is a concession given to operate retail facilities. It is envisaged that the PPP agreement will be similar to the accommodation concession, specifically tailored for the rights associated with retail concessions. It will also differ from typical accommodation concessions with regard to environmental and construction requirements.

Secondly, retail concessions often relate to existing retail facilities, run by the institution. where the rights to operate these facilities are then granted to a private party. This may necessitate specific contractual arrangements for the letting of the existing facilities, as well as for the sale of the existing business to deal with the transfer of current assets and staff from the existing retail facility.

Some typical clauses relating to the lease of facilities will be the following:

- rental payable.
- all operating costs of the facility are transferred to the private party.

⁸ It is noted that the Standardised PPP Provisions do not incorporate the concept of MAGA. The Toolkit will make recommendations as to the inclusion of MAGA clauses, and those catering for “Unforseeable Conduct

- maintenance and repairs are the private party's responsibility.
- landlord inspection rights.
- suitable insurance.
- limits are placed on the private party's ability to alter the premises.

Some typical clauses relating to a sale of business will be the following:

- the sale of the business as a going concern.
- VAT and related tax issues.
- description of the sale assets and stock being transferred.
- transfer of employees.
- other typical standard legal clauses applicable to a contract of this nature.

Activity based concessions: The draft PPP agreement will contain similarities to the concession template discussed above, but will place specific emphasis on safety guidelines and insurance risk being properly handled by the private party. It will contain specific and detailed covenants relating to operational safety, as well as comprehensive indemnities from the private party.

Some typical clauses include the following:

- compliance with appropriate safety regulations.
- comprehensive public liability insurance obligations with the appropriate cover.
- comprehensive indemnities to the institutions for all claims and losses arising from the activities.
- operational safety guidelines and undertakings.

Transport: The concessioning out of transport activities needs to be considered in more detail before contractual terms can be identified. Most significant opportunities that may exist are governed by other legislation. For example, the concessioning of an airstrip could not occur without the approval of the Civil Aviation Authority. It may thus not be appropriate to deal with these in the Toolkit.

(as defined in the Standardised PPP Provisions)

Heritage and culture: The draft PPP agreement involves a concession and would thus be a specific form of the standard PPP agreement, adapted for the specific circumstances and in accordance with the legislative obligations relating to these products.

Conclusion

In so far as high road category projects are concerned, the consulting consortium believes that the legal best practice observed during the review of the six projects be retained. These terms will be incorporated and used in accordance with the Standardised PPP Provisions as far as possible.

5.3 “Low road”

General: As in the “high road” process, it is expected that boiler plate agreements will be developed for each product category in the “low road” process. However, the “low road” process would take into account that the developments are less complex and pose less risk to the institution. As such, all clauses would be simplified as far as possible and made less wordy and more accessible to those without legal background.

In “low road” category projects, certain of the Standardised PPP Provisions become unnecessary, cumbersome and redundant. In particular, the following clauses are either unnecessary, or could be included in a very trimmed down form: relief events and compensation events, unforeseeable discriminatory government conduct and variations; employment; step-in, information and audit access and refinancing.

Of the clauses listed as being common throughout the PPP agreements of the six projects which were reviewed, a number of clauses are unnecessary or could be trimmed down. These include conflict considerations; maintaining the bid bond provided for as part of the bid documents submitted; suspensive conditions relating to obtaining permits; and the performance bond, a substitute entity clause; and a change of control clause.

The exclusion of the clauses suggested above is intended to result in more streamlined and manageable PPP agreements, particularly as most “low road” category projects will

not place undue risk on the institution. The clauses suggested above will more often than not, be superfluous if incorporated into “low road” category projects.

Appendix one:**Tourism Grading Council categories and criteria**

- **Introduction**

Establishments will be assessed according to the type of accommodation they provide. There are currently 9 types of establishments:

- ***B&B***
- ***Guest House***
- ***Hotel***
- ***Lodge***
- ***Self-Catering***
- ***Backpacker and Hostelling***
- ***Caravan and Camping***
- ***Country House***
- ***Meeting, Exhibitions, Special Events (MESE)***

The same grading criteria will apply to the first 4 categories i.e. serviced accommodation, although the minimum criteria differ across all categories. Establishments providing various types of accommodation may wish to be graded under each applicable category.

Establishments should read the definitions, minimum requirements and the grading criteria for each category before applying for grading under a particular category.

In all instances only establishments that cater for transient guests (the travelling public) will qualify for grading.

- ***B&B***

- **Definition**

Bed and Breakfast accommodation is usually provided in a family (private)

home and the owner/manager lives in the house or on the property. Breakfast is usually served. Bathroom facilities may or may not be en-suite and/or private. In general, the guest shares the public areas with the host family.

- **Guest House**

- **Definition**

- A guest house is either a converted house, manor, etc adapted to accommodate overnight guests or it may be a purpose built facility. A guest house is run as a commercial operation and is often owner-managed. A guest house has public areas which are for the exclusive use of the guest. The owner/manager either lives off-site, or in a separate area within the property.

- **Hotel**

- **Definition**

- A hotel provides accommodation to the travelling public, has a reception area and offers at least a "breakfast room" or communal eating area. In general an hotel makes food and beverage services available to a guest, though these may be outsourced or provided by the hotel.

- **Lodge**

- **Definition**

- A lodge is an accommodation facility located in natural surroundings. The rates charged are usually inclusive of an experience offered at the lodge, viz game drives, battlefield tours, etc. In general, food and beverage services are provided for all meals. The accommodation grading process will only grade the hospitality aspects of Lodge operations and not the experience.

- **Self-Catering**

- **Definition**

- A house, cottage, chalet, bungalow, flat, studio, apartment, villa, houseboat, tents or similar accommodation where facilities and equipment are provided for guests to cater for themselves. The facilities should be adequate to cater for the maximum advertised number of residents the facility can accommodate.

- **Backpacker and Hostelling**

- **Definition**

- A Backpacker and/or Hostelling establishment is an accommodation facility that provides communal facilities, including dormitories yet may offer a range of alternative sleeping arrangements. Only establishments that cater for transient guests (travelling public) will qualify for grading.

- **Caravan and Camping**

- **Definition**

- A Caravan and Camping Park is a facility that provides ablution and toilet facilities and space for guests to provide for their own accommodation, such as a tent, motorhome and/or caravan. Only establishments that cater for transient guests (public travelling for recreational purposes) will qualify for grading.

- **Country House**

- **Definition**

- A Country House is a large Guest House, usually situated in natural, peaceful surroundings such as near a nature reserve, a forest, a lake etc. It offers all the services of a hotel, including dinner. Only establishments that cater for transient guests (travelling public) will qualify for grading.

- **Meetings, Exhibitions, Special Events (MESE)**

- **Definition**

- Meeting, Exhibition or Special Events Venue

- A meeting, exhibition and/or special events venue is a venue fit for the purpose of hosting a meeting, exhibition and/or special event.

- **Meeting Venue**

- A meeting venue is a specialised facility designed to meet the demands of groups of people convening for the purpose of a meeting or function. A meeting is an event designed to bring people together for the purpose of exchanging information or carrying out an activity. The term meeting includes various types of

events that differ in their size, subject matter and agenda, for example, training session, conference, symposium, forum, seminar, workshop, corporate meeting, association meeting, breakfast, lunch or dinner meeting, all-day meeting, multi-day meeting, etc. A function is a type of meeting. Functions are events designed to bring people together for the purpose of exchanging information or for a celebration, for example, cocktail party, banquet, product launch, wedding, etc. In general, functions (and meetings) are for invited delegates/guests/attendees only or for a select market segment. Functions are often part of a planned meeting.

Exhibition Venue

An exhibition venue is a facility designed or adapted to meet the needs of exhibition organisers and exhibitors. Exhibitions are events at which vendors display their products, promotional material or services to a contingent of potential clients and buyers for the purpose of public relations, sales and/or marketing. In general, the vendors pay a fee to set up their displays, usually based on the size of the area their displays require.

Special Event Venue

A special events venue is a purpose built or adapted facility that can accommodate a special event.

Appendix two:**Examples of existing contractual land arrangements in SANParks**

Park	Private Partner (PP)	Objective	Term	Principal terms
Marakele	Marakele (Pty) Ltd	Park development, income generation	30 yrs	<ul style="list-style-type: none"> - SANParks has call option on land at purchase price - Entrance fees to PP land split 50/50 - PP pays for all management costs - PP pays for fencing and other set-up costs - SANParks receives 4% of turnover - SANParks owns all game
Addo	Kuzuko	Park development Income generation	100 yrs	<ul style="list-style-type: none"> - SANParks receives 4% of turnover - Entrance fees to PP land shared 50/50 - PP pays all management costs - PP pays for fencing and other set up costs - SANParks partially restocked land - 50/50 sharing of hunting revenues
Addo	Langevlakte <i>Agreed in principle</i>	Park development	100 yrs	<ul style="list-style-type: none"> - Traversing confine to own land - SANParks partially restock area - SANParks receives 3.5% turnover - PP pays SANParks management fee for land - Hunting revenue shared.
Kruger	Association of Private Nature Reserves	Management convenience	-	<ul style="list-style-type: none"> - Common management plan - Carry own management costs - No commercial return

West Coast	Posberg Syndicate	Biological importance, strategic	30 yrs	<ul style="list-style-type: none"> - No commercial return to SANParks - Considerable management obligations on SANParks.
Richtersveld	Richtersveld Community	Entire national park under agreement	30 yrs	<ul style="list-style-type: none"> - SANParks pays rent to community - SANParks pays management expenses - SANParks receives commercial income
Addo	Nyati family <i>Under negotiation</i>	Management convenience, park integrity	30 yrs	<ul style="list-style-type: none"> - SANParks pays rental - SANParks pays for management expenses
Kruger	Makuleke	Land claim, biodiversity conservation, community empowerment	-	<ul style="list-style-type: none"> - PP enjoys full ownership and commercial rights - SANParks incurs management costs - SANParks received entrance fees

Appendix 3

Treasury Regulation 16.4 to the PFMA

16.4 Feasibility study – Treasury Approval: I

16.4.1 To determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that –

- (a) explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;
- (b) describes in specific terms –
 - (i) in the case of a PPP involving the performance of an institutional function, the nature of the institutional function concerned and the extent to which this institutional function, both legally and by nature, may be performed by a private party; and
 - (ii) in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;
- (c) in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;
- (d) sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;
- (e) demonstrates the anticipated value for money to be achieved by the PPP; and
- (f) explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP;

What are the tests for a PPP?

Whatever the PPP type, structure, payment mechanism, or sources of funding all South African PPPs governed by Treasury Regulation 16 are subjected to three strict tests:

- Can the institution afford the deal?
- Is it a value-for-money solution?
- Is substantial technical, operational and financial risk transferred to the private party?

16.4.2 An institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.

16.4.3 The treasury approval referred to in regulation 16.4.2 shall be regarded as Treasury Approval: I.

16.4.4 If any time after Treasury Approval: I has been granted in respect of the feasibility study of a PPP, but before the grant of Treasury Approval: III in respect of the PPP agreement recording that PPP, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the accounting officer or accounting authority of the institution must immediately –

- (a) provide the relevant treasury with details of the intended revision, including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and
- (b) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised Treasury Approval: I.