

Investment facilitation process for exclusive transactions

Guidelines – October 2021

The Department of State Development, Infrastructure, Local Government and Planning connects industries, businesses, communities and government (at all levels) to leverage regions' strengths to generate sustainable and enduring economic growth that supports well-planned, inclusive and resilient communities.

Copyright

This publication is protected by the *Copyright Act 1968*.

Licence



This work, except as identified below, is licensed by the Department of State Development, Infrastructure, Local Government and Planning under a Creative Commons Attribution-NonCommercial-No Derivative Works (CC BY-NC-ND) 4.0 Australia licence. To view a copy of this licence, visit: <http://creativecommons.org.au/>

You are free to copy and communicate this publication, as long as you attribute it as follows:

© State of Queensland, Department of State Development, Infrastructure, Local Government and Planning, October 2021.

Third party material that is not licensed under a Creative Commons licence is referenced within this document. All content not licensed under a Creative Commons licence is all rights reserved. Please contact the Department of State Development, Infrastructure, Local Government and Planning, the copyright owner, if you wish to use this material.



The Queensland Government is committed to providing accessible services to Queenslanders of all cultural and linguistic backgrounds. If you have difficulty understanding this publication and need a translator, please call the Translating and Interpreting Service (TIS National) on 13 14 50 and ask them to contact the Queensland Department of State Development, Infrastructure, Local Government and Planning on 07 3328 4811.

Disclaimer

While every care has been taken in preparing this publication, to the extent permitted by law, the State of Queensland accepts no responsibility and disclaims all liability (including without limitation, liability in negligence) for all expenses, losses (including direct and indirect loss), damages and costs incurred as a result of decisions or actions taken as a result of any data, information, statement or advice, expressed or implied, contained within. To the best of our knowledge, the content was correct at the time of publishing.

Copies of this publication are available on our website at www.statedevelopment.qld.gov.au.

Department of State Development, Infrastructure, Local Government and Planning
PO Box 15009 City East, Queensland 4002.

1 William Street Brisbane Qld 4000 (Australia)

Phone: 13 QGOV (13 7468)

Email: info@dsdilgp.qld.gov.au

Web: www.statedevelopment.qld.gov.au

Contents

1.0	Introduction.....	3
2.0	Transactions requiring exclusivity.....	4
3.0	Assessment criteria	5
3.1	Investment alignment.....	5
3.2	Exclusive dealing	6
3.3	Value for money	7
3.4	Investment ready.....	7
4.0	Submission and assessment process.....	8
4.1	Assessment governance	8
4.2	Enquiry assessment	9
4.2.1	Outcomes of this phase.....	9
4.2.2	Roles and responsibilities	10
4.3	Concept assessment	10
4.3.1	Outcomes of this phase.....	11
4.3.2	Roles and responsibilities	11
4.4	Detailed assessment	12
4.4.1	Outcomes of this phase.....	12
4.4.2	Government's assessment and documentation costs.....	12
4.4.3	Roles and responsibilities	13
4.5	Transaction management.....	13
4.5.1	Outcomes of this phase.....	13
4.5.2	Roles and responsibilities	14
4.6	Intellectual property	14
4.7	Complaints.....	14



1.0 Introduction

The Queensland Government is committed to creating jobs in a strong economy and growing private sector investment in Queensland industry. Creating meaningful employment is only possible with the combined efforts of government and business. Higher levels of investment drive increased productivity and enhanced competitiveness, thereby increasing output, exports and jobs and helping communities thrive.

In Queensland, 86 per cent of jobs are provided by the private sector. The Queensland Government recognises that the best way to achieve strong jobs growth and sustainable economic development is to support and encourage increased private sector investment into the economy.

To assist with this, the Queensland Government has consolidated various functions to focus on investment facilitation and developing partnerships with industry. The Queensland Government is engaging with industry to attract and enable investment in Queensland, and to ensure a coordinated approach to managing stakeholders.

The Commercial and Investment group (CI) provides tailored support for investment ideas and business propositions that align with the Queensland Government priorities and demonstrate a strong potential of being delivered. The assistance provided to the private sector to attract and enable investment in Queensland may include:

- **Coordination** – coordination and delivery of major investment opportunities for Queensland
- **Facilitation** – working with private sector investors to ease their pathway to project implementation
- **Industry assistance** – including the Queensland Government's major incentive programs
- **Exclusive transactions** – providing a pathway for complex commercial proposals initiated by the private sector, which require negotiations across departments and an exclusive mandate with the Queensland Government
- **Statutory processes** – through the Coordinator-General or Economic Development Queensland
- **Referral** – to a single government agency if the proposal is best managed by that agency.

These guidelines focus on investment proposals from the private sector that seek an exclusive transaction with government.

The Exclusive Transactions team can be contacted on telephone +61 7 3035 3344 and email investmenttransactions@treasury.qld.gov.au



2.0 Transactions requiring exclusivity

Complex private sector commercial proposals may seek an exclusive transaction with government.

These transactions offer a service or infrastructure that align with the Queensland Government objectives set out below and demonstrate a strong potential of being delivered.

Such transactions include a role for government and are expected to provide additional benefits to government and/or the Queensland community. They represent value for money for Queensland and must present a clear case for an exclusive transaction as opposed to standard procurement principles outlined in the Queensland Government Procurement Policy.

Commercial proposals of economic or social significance, such as those that support job creation or those that generate significant economic activity beyond the project's inception, are highly regarded.

These guidelines set out the process and criteria to facilitate a proposal requiring an exclusive transaction. It clarifies what investors can expect from government during the process and outlines the roles and responsibilities of the parties.



3.0 Assessment criteria

Investors should consider if their proposal meets the following assessment criteria, in order to be considered for an exclusive transaction with government.

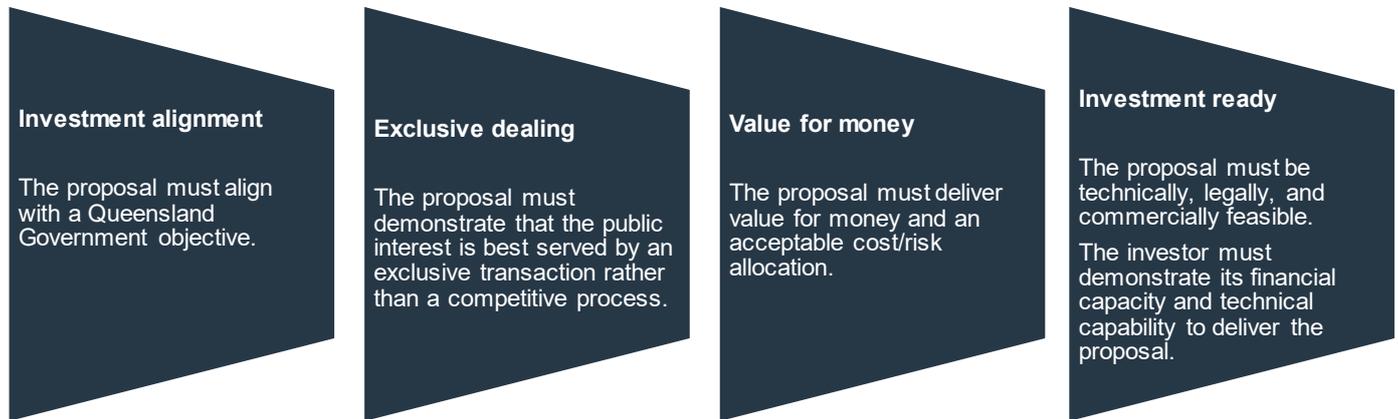


Figure 1 - Assessment criteria

3.1 Investment alignment

The Queensland Government's *COVID-19 Economic Recovery Plan*¹ sets out government's plan for the long-term future of Queensland in response to the COVID-19 pandemic.

Government's objectives for the community² are built around this plan and include:

- **Safeguarding our health:** Safeguard people's health and jobs by keeping Queensland pandemic-ready.
- **Supporting jobs:** Support increased jobs in more industries to diversify the Queensland economy and build on existing strengths in agriculture, resources and tourism.
- **Backing small business:** Help small business, the backbone of the state's economy, thrive in a changing environment.
- **Making it for Queensland:** Grow manufacturing across traditional and new industries, making new products in new ways and creating new jobs.
- **Building Queensland:** Drive investment in the infrastructure that supports our recovery, resilience and future prosperity.
- **Growing our regions:** Help Queensland's regions grow by attracting people, talent and investment, and driving sustainable economic prosperity.
- **Investing in skills:** Ensure Queenslanders have the skills they need to find meaningful jobs and set up pathways for the future.
- **Backing our frontline services:** Deliver world-class frontline services in key areas such as health, education and community safety.
- **Protecting the environment:** Protect and enhance our natural environment and heritage for future generations and achieve a 50 per cent renewable energy target by 2030.

¹ https://budget.qld.gov.au/files/Budget_2021-22_Covid_Economic_Recovery_Plan.pdf

² <https://www.qld.gov.au/about/how-government-works/objectives-for-the-community>

Investment facilitation process for exclusive transactions

Investment proposals are expected to demonstrate a strong alignment with the Queensland Government's objectives, with proposals that contribute directly to the achievement of these objectives being highly regarded.

Further information can be found at [**Our Priorities - Queensland Government objectives for the community**](#)

Queensland Government departments' priorities can be located on their respective websites. For example:

- [Advance Queensland](#) – the Queensland Government's innovation initiative with a vision to fostering innovation to create jobs and build a strong and diverse Queensland economy.
- [Infrastructure pipelines](#) – there are a number of public and private sector infrastructure pipelines providing industry, potential investors and all levels of government with information about infrastructure projects currently underway.
- [Trade and Investment Queensland](#) – Trade and Investment Queensland (TIQ) is a dedicated global business agency, with a charter to help potential investors find and take advantage of opportunities Queensland has to offer.
- [Priority industries](#) – including, aerospace, biofutures, biomedical, defence, hydrogen, resource recovery, superyachts and mining equipment, technology and services (METS). Further information on the priority industries is available at www.statedevelopment.qld.gov.au/industry/priority-industries
- [State Infrastructure Strategy and Regional Infrastructure Plans](#) – the State Infrastructure Strategy (SIS) reflects the State's changing infrastructure needs arising from population growth, changing demographics and the impact of COVID-19. The SIS will be supported by seven Regional Infrastructure Plans (RIPs), which set state-wide and regional priorities and will be delivered progressively from late 2021 into 2022. The draft SIS was released on 9 September 2021 for consultation ahead of the final version being released later in 2021. The SIS replaces the former State Infrastructure Plan Part A.
- [Queensland Government Infrastructure Pipeline](#) – the Queensland Government Infrastructure Pipeline (QGIP) (formerly State Infrastructure Plan Part B) outlines the Queensland Government's strategic direction for the planning, investment and delivery of infrastructure. The four-year infrastructure investment program will be updated annually.

Other means by which government priorities can be delivered can include:

- [Coordinator-General](#) – the Coordinator-General has unique powers to facilitate delivery of strategic projects and industrial developments and works closely with government agencies to fast track and streamline development opportunities.
- [Economic Development Queensland](#) – Economic Development Queensland is a specialist land use planning and property development unit that engages with state and local government, the development industry and the public to identify, plan, facilitate and deliver infrastructure projects through Priority Development Areas.

Further information on the Queensland Government can be found at [**About Queensland and its government**](#).

Further information on individual departments can be found at [**Queensland Government Departments**](#).

3.2 Exclusive dealing

Generally, all purchases of goods and services and dealing with government assets need to meet the requirements of the Queensland Government Procurement Policy and the Queensland Government Land Transaction Policy (QGLTP). When purchasing goods or services or making government assets available, the government usually engages in a competitive process to assess the offer. QGLTP also makes provision to deal exclusively with a land-owning agency, subject to certain criteria.

Exclusive transactions provide an opportunity to contract directly with government rather than through a competitive process, and a justification for direct negotiation must be established.

Potential justification for **direct negotiation** can include:

- an existing right and/or intellectual property that means that the investor is the only one who can feasibly deliver the proposal or

Investment facilitation process for exclusive transactions

- the proposed outcomes can be provided within a timeframe that other competitors could not (at similar cost), and there is value to the government in progressing the proposal in the short term or
- benefits that other competitors cannot offer, such as market reach or an exclusive arrangement with key stakeholders.

The government will also need to be satisfied that no other proposal addressing the same need, or proposing a similar outcome, is under active consideration by government.

3.3 Value for money

Any proposal seeking to deal exclusively with government must deliver strong value for money outcomes. Value for money is achieved when what government receives (benefits) exceeds what is being sought from government (costs and risks).

In the absence of a competitive process (such as an open market sale or tender) there is a range of ways to demonstrate the value of a proposal, including:

- contributes significantly to the achievement of a government priority
- delivers demonstrated significant and ongoing social and community benefit
- an offering exceeds an independent valuation of a right or asset if sold on the open market
- demonstrated evidence of savings to government or forecast reduced future demand for services
- an open book process where the investor provides detailed information to the government about the business model, demonstrating a value for money outcome that is likely to meet or exceed that of a 'next best alternative' investment proposal and/or
- competitively tendering elements of the transaction.

All transactions are expected to have an acceptable cost/risk allocation for government. An investment proposal which seeks to attribute project risk, or cost, to government will generally be required to demonstrate significant benefits to Queensland, in proportion to the level of risk and cost proposed.

3.4 Investment ready

An investor must demonstrate that they have the financial, technical and operational capability to deliver the proposal successfully. In evaluating this criterion, government will focus on the following:

- an investor's financial capacity to deliver and support the proposal, including the financial capacity of their prospective contractors and equity and debt providers to meet likely project financial obligations
- demonstrating capability, capacity and experience in delivering and, if relevant, operating the proposed infrastructure or services
- testing the robustness and reasonableness of financial assumptions and project risks and
- the technical, legal and commercial feasibility of the proposal.



4.0 Submission and assessment process

The assessment of proposals is an interactive process, allowing investors to align their effort with the level of government interest and commitment in their proposal.

A proposal seeking an exclusive transaction will be managed in the following phases:

1. Enquiry assessment
2. Concept assessment
3. Detailed assessment
4. Transaction management.

The process is illustrated below.

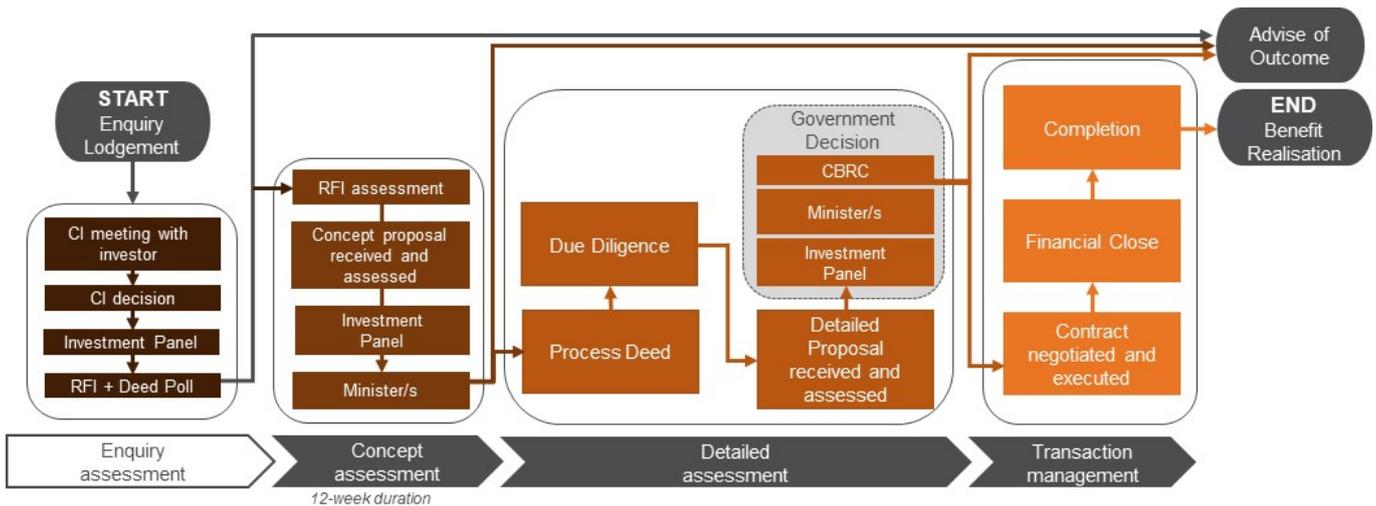


Figure 2 - Submission and assessment process

The assessment process is graduated through the phases, with investors required to provide increasing levels of information and assurance at each stage.

4.1 Assessment governance

An Investment Panel (the panel), comprised of cross-government senior executives and co-chaired by the Department of the Premier and Cabinet (DPC) and Queensland Treasury, has been established to ensure that a consistent whole-of-government approach is taken. The panel is an advisory body overseeing the assessment of proposals seeking to invest in Queensland through an exclusive transaction.

The proposal will be assigned to a CI Case Manager who will work with the investor and other government departments, as required, to facilitate the submission and assessment of the proposal for government's consideration.



4.2 Enquiry assessment

The CI Case Manager will conduct a facilitation and enquiry validation process prior to issuing information requests for proposals that are seeking an exclusive mandate.

The pathway for proposals is illustrated below.

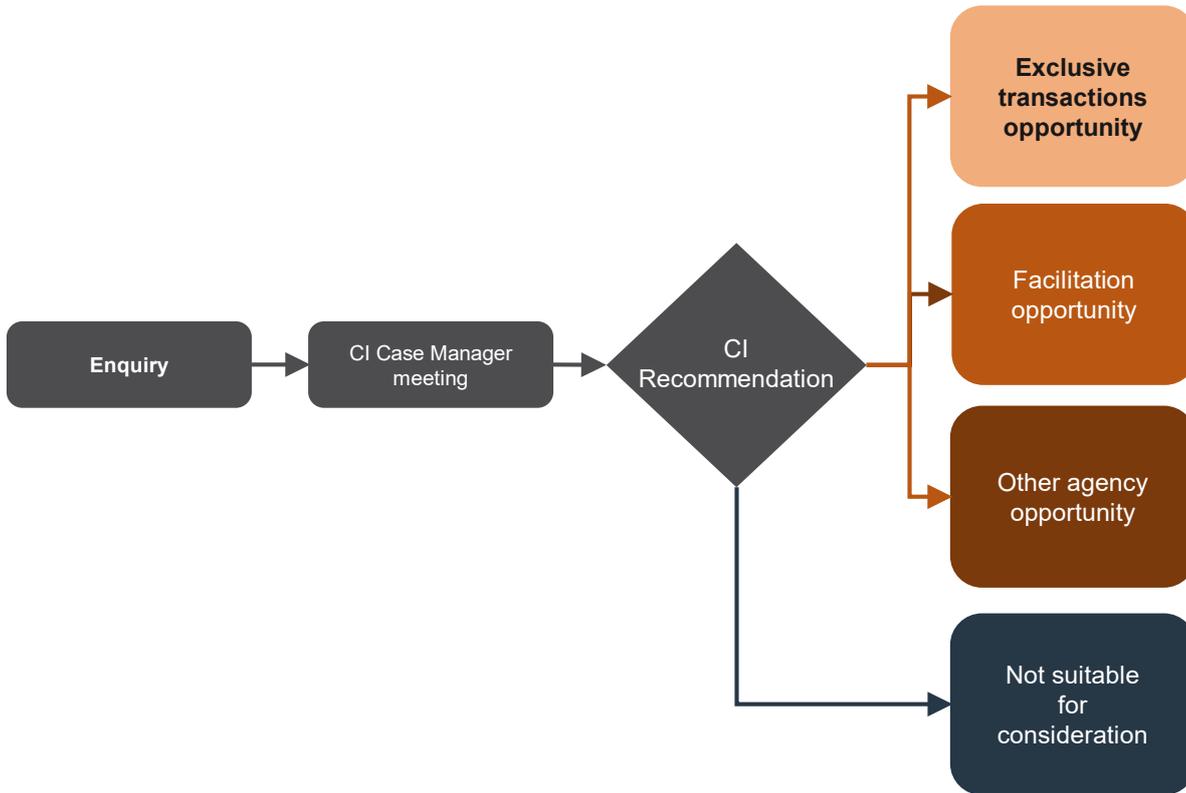


Figure 3 – Enquiry assessment

The enquiry assessment phase allows the investor and government to explore the investor’s idea and consider the most appropriate investment facilitation pathway. To progress to the concept assessment phase the enquiry must demonstrate it has the potential to meet the four assessment criteria.

The CI Case Manager will consult with relevant government departments to assess the enquiry’s suitability to meet the exclusive transaction criteria. The CI Case Manager will prepare a Request for Decision and seek approval of the decision.

The panel will consider and, if appropriate, endorse the Request for Decision on the enquiry’s suitability to progress as an exclusive transaction, or exit the process.

4.2.1 Outcomes of this phase

Possible outcomes at the end of this phase could be that the proposal is deemed:

- to meet or has the potential to meet the criteria and is suitable to progress to the next phase (concept assessment) for further consideration or
- not suitable to progress further at this time as an exclusive transaction but is considered to have merit and may suit an alternative investment facilitation approach or a competitive tender process by government or
- to be a single agency opportunity or
- not suitable for further consideration.

If approved to proceed to the concept assessment phase, the investor is issued with a deed poll in which the investor:

- acknowledges it is engaging in the process at its own cost and risk
- acknowledges it will reimburse the government for its reasonable external investigation costs including any professional advice if required
- acknowledges government may decide to proceed with the proposed project through another process including a competitive tendering process
- gives confidentiality undertakings including agreed timing and processes for public announcement
- warrants the accuracy of the information it provides.

Once the deed poll is executed, the CI Case Manager will provide a Request for Information providing the investor with detail on the information required to be submitted for the concept assessment phase. Following the receipt of all required information, the proposal will enter the concept assessment phase.

4.2.2 Roles and responsibilities

Roles and responsibilities of each party at the enquiry assessment phase are outlined in the table below.

Enquiry assessment phase - roles and responsibilities	
Investor	<p>Provide initial information as required, respond to information request document within a reasonable period of time, participate in meetings or workshops, and respond to any requests for clarification as requested by government to assist in the assessment of the preliminary submission.</p> <p>If approved to proceed to the next phase, sign a deed poll and provide a response to the Request for Information.</p>
Government	<ul style="list-style-type: none"> • Resolve intra-government issues in a timely manner and keep investors updated of the process and expected timeframe. • Advise on the proposal's suitability to progress as an exclusive transaction with the government. • If unsuitable, advise outcome as soon as possible. If appropriate, suggest alternative pathways. <p>Provide a written summary of findings and where required, discuss assessment findings with investors.</p>

4.3 Concept assessment

The concept assessment phase allows the investor and government to explore the proposal, prior to investors committing considerable resources to develop a detailed proposal. This will help identify if the proposal aligns to the assessment criteria (or is better suited to another current government program) and provide guidance through this phase.

Following the execution of a deed poll and the investor responses to the Request for Information, government assesses the proposal to determine if it has the potential to meet the four assessment criteria and warrants progression. The concept proposal is assessed within this phase.

To progress to detailed assessment a proposal must demonstrate that it meets both the investment alignment and exclusive dealing criteria. It must also demonstrate that it has the potential to meet the remaining criteria.

Investment facilitation process for exclusive transactions

Consideration of a proposal in concept assessment does not change the requirement for an investor to provide evidence demonstrating its suitability against each of the criteria of the detailed assessment phase.

The CI Case Manager will prepare a concept assessment report, outlining the suitability of the proposal to continue as an exclusive transaction. The panel will consider the report and determine if the proposal is recommended to proceed to detailed assessment.

The concept proposal assessment will progress for consideration of the panel and the relevant Minister/s, within 12 weeks of receipt of all required information.

The Minister for State Development, Infrastructure, Local Government and Planning will review the panel's recommendations and decide if the proposal proceeds to detailed assessment.

When deciding if the proposal should continue to be considered for an exclusive transaction the government will generally need to be satisfied that:

- the proposal is best delivered through an exclusive transaction and not another government initiative (for example, an industry incentive)
- no other proposal addressing the same need, or proposing a similar outcome, is under consideration by government
- the proposal is a genuine commercial proposition requiring the support of government
- the proposal meets investment alignment and exclusive dealing criteria and
- has the potential to meet, the value for money and investment ready assessment criteria.

4.3.1 Outcomes of this phase

Possible outcomes at the end of this phase could be that government considers that the proposal:

- meets or has the potential to meet the criteria and is suitable to progress to the next phase (the detailed assessment) for further consideration or
- is not suitable to progress further at this time as an exclusive transaction but is considered to have merit and may suit an alternative investment facilitation approach or a competitive tender process by government or
- is not suitable for further consideration.

4.3.2 Roles and responsibilities

Roles and responsibilities of each party at the concept assessment phase are outlined in the table below.

Concept assessment phase - roles and responsibilities	
Investor	Provide required information within a reasonable period, participate in meetings or workshops, and respond to any requests for clarification as requested by government to assist in the assessment of the preliminary submission.
Government	<ul style="list-style-type: none">• Resolve intra-government issues in a timely manner and keep investors updated of the process and expected timeframe.• Advise on the proposal's suitability to progress as an exclusive transaction with the government.• If unsuitable, advise outcome as soon as possible. If appropriate, suggest alternative pathways.• Provide a written summary of findings and where required, discuss assessment findings with investors.

4.4 Detailed assessment

In the detailed assessment phase, the investor is provided an exclusive mandate to submit a detailed proposal demonstrating, by providing supporting information, how the proposal satisfies each of the assessment criteria.

This phase is an interactive process where the investor and government agree (via a process deed) on the exclusive mandate granted to the investor, the milestones and the deliverables for inclusion in the detailed investment proposal.

The process deed sets out:

- the process to prepare a detailed investment proposal
- the government's mandatory requirements
- key milestones for the investor to meet in the development of a detailed investment proposal
- the period of the exclusive mandate
- agreement by the investor to reimburse the government's reasonable assessment costs and
- protocols to ensure the process is transparent.

Various key project matters including technical, legal and commercial feasibility studies will be undertaken by the investor at this stage. These studies, key commercial principles for the proposed transaction and a benefits management plan will form part of the detailed investment proposal.

A project board, with representatives from DPC, Queensland Treasury and other agencies as required, is established to oversee the detailed proposal process. The CI Case Manager will prepare a detailed proposal assessment report for the project board's consideration and progression to the panel.

The panel will consider the assessment report and recommend to government if the proposal should or should not proceed to the transaction management phase.

4.4.1 Outcomes of this phase

Possible outcomes at the end of this phase could be that government:

- approves that the proposal progresses to the transaction management phase or
- considers that the detailed investment proposal is not suitable for progression as an exclusive transaction but is considered to have merit and may be progressed by government in another way. Options could include:
 - proceed with the proposed project through a competitive tender process or
 - invite the investor to discuss or consider other opportunities or
- considers that the detailed investment proposal is not suitable for further consideration and conclude the investment facilitation process with the investor.

4.4.2 Government's assessment and documentation costs

The investor will be required to reimburse government's reasonable external costs associated with the development, assessment and documentation of a detailed investment proposal. For example, these include costs associated with external advisors such as probity, financial, commercial, property and legal advisors, quantity surveyors and engineers. In general, the government will not seek to recover its internal assessment costs.

Prior to incurring any costs, the government will provide the investor with details of the proposed scope of work for each advisor and any inputs required, as well as an upfront estimate for the reasonably anticipated total assessment and documentation costs.



4.4.3 Roles and responsibilities

Roles and responsibilities of each party at the detailed assessment phase are outlined in the table below.

Detailed assessment phase - roles and responsibilities	
Investor	<ul style="list-style-type: none"> • Enter into a process deed with government. • Develop and submit a detailed investment proposal (based on the process deed milestones and deliverables) that provides sufficient information for government to assess if the proposal meets the assessment criteria. • Develop and agree key commercial principles for the proposed transaction and a benefit management plan to be included in the detailed investment proposal. • Actively participate in the due diligence process with the government’s team. • Provide additional information to assist government with its assessment. • Identify the development and other approvals needed for the proposal. • Participate in the contract negotiation process in good faith. <p>Reimburse government for its reasonable external costs associated with assessment and documentation of a detailed investment proposal.</p>

Detailed assessment phase - roles and responsibilities	
Government	<ul style="list-style-type: none"> • Lead further interactions with the investor, assess the detailed investment proposal and provide recommendations to government. • Commits appropriately qualified resources to assess the detailed investment proposal, including legal, financial and technical advice where appropriate. • Advise the investor of the processes, protocols and elements for negotiation throughout the process. • Lead an interactive process to facilitate the investor’s development of a detailed investment proposal. • Assess the detailed investment proposal against the assessment criteria. • Advise the investor about the government’s decision and provide a written summary of assessment findings. • Coordinate input from relevant government agencies to expedite thorough consideration of the proposal.

4.5 Transaction management

At the transaction management phase, the investor and government will negotiate all outstanding matters and, if agreed, enter into a binding contract and progress the delivery of the project.

4.5.1 Outcomes of this phase

This phase includes execution of a binding agreement, financial close and completion of the project.

The binding agreement will include all the investor’s commitments from its detailed investment proposal (for example risk allocation, mitigation strategies, cost, value for money and benefits) to deliver the envisaged outcome of the proposal.



As part of the binding agreement, investors are required to formally agree to a benefits management plan (BMP).

The BMP will include key benefits to Queensland and how they are measured, the consequences of non-achievement and details of benefits monitoring, tracking and reporting processes and obligations.

4.5.2 Roles and responsibilities

Roles and responsibilities of each party at the transaction management phase are outlined in the table below.

Transaction management phase - roles and responsibilities	
Investor	<ul style="list-style-type: none">• Enter into a binding agreement.• Achieve all the project and financing commitments.• Obtain and comply with all development and other approvals required for the project.• Meet any other outstanding conditions for project implementation to start.• Comply with the transaction documentation. Ensure that the project benefits as agreed in the BMP for Queensland are realised.
Government	<ul style="list-style-type: none">• Enter into a binding agreement.• Oversee the delivery of the project to ensure compliance with the transaction documentation.• Support the investor with a whole-of-government approach, if required, to facilitate the realisation of project benefits.• Monitor and document the project benefits.

4.6 Intellectual property

It is intended that any intellectual property held by the investor in connection with its proposal will remain the property of the investor. Any intellectual property rights asserted by an investor, and any confidential information, should be clearly identified in the proposal and any other information provided to government.

Government will require a licence to use any intellectual property for the purposes of assessing the proposal and this will be reflected in the process deed.

4.7 Complaints

For information on the DSDILGP complaints process, the complaints management policy can be reviewed at <https://www.statedevelopment.qld.gov.au/about-us/contact-us/feedback-compliments-and-complaints>.

Complaints to the Crime and Corruption Commission (CCC) can be made at any stage of the process by anyone with information about corrupt conduct by any party involved in the process. Relevant Directors-General are obligated under the *Crime and Corruption Act 2001* to refer to the CCC any matter that involves a reasonable suspicion of corrupt conduct.



Department of State Development,
Infrastructure, Local Government and Planning
PO Box 15009 City East Qld 4002 Australia
tel 13 QGOV (13 74 68)
info@dsdilgp.qld.gov.au
www.statedevelopment.qld.gov.au

