

# Project Summary

New Schools Public Private  
Partnership (PPP) Project



**Published by the  
Department of Education and Training**

Prepared in conjunction with the Department of Treasury and Finance  
Melbourne February 2016

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## Foreword

On 28<sup>th</sup> October 2015 the State Government of Victoria entered into a Public Private Partnership (PPP) contract with Learning Communities Victoria (LCV) to finance, design, construct and maintain 15 schools in some of Victoria's key growth areas. The Project has a capital value of \$291 million and includes a 25 year operating term throughout which LCV will maintain the school facilities.

This Project Summary provides information about the New Schools PPP Project (Project) and is divided into two parts. The first part is an overview of the Project, including the Project background and objectives and the rationale for undertaking it under the Partnerships Victoria framework. It summarises the tender process, the value-for-money calculation, and the public interest considerations for the Project. The second part details the key commercial features of the Project, including the main parties and their general obligations, the broad allocation of risk between the public and private sectors and the treatment of various key Project issues.

Partnerships Victoria forms part of the Victorian Government's strategy for providing better services to all Victorians by expanding and improving Victoria's public infrastructure and service delivery. The Partnerships Victoria framework uses private sector expertise to design, finance, build, operate and maintain infrastructure projects. The framework consists of the National Public Private Partnership Policy and Guidelines and the Partnerships Victoria Requirements. Further information on the Partnerships Victoria framework is available at [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au).

This summary should not be relied upon to completely describe the rights and obligations of the parties in respect of the Project, which are governed by the Project Agreement and ancillary documents. The Project Agreement and ancillary documents are available online at [www.tenders.vic.gov.au](http://www.tenders.vic.gov.au).

This document may be updated from time to time. Please check the Partnerships Victoria website at [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au) for the current edition.





# Contents

<b>1. Project Overview</b>	<b>1</b>
1.1 <i>Partnerships Victoria: Public Private Partnerships</i>	1
1.2 The New Schools PPP Project	1
1.3 The PPP Schools	5
1.4 Procurement Process	8
1.5 Learning Communities Victoria	10
1.6 Value for Money	13
1.7 Public Interest Test	16
<b>2. Key Commercial Features</b>	<b>17</b>
2.1 Project Documents	17
2.2 Parties to the Project Agreement and ancillary contracts	17
2.3 Project contractual relationships	18
2.4 Risk Transfer	18
2.5 General obligations of LCV	23
2.6 General obligations of the State	24
2.7 Payment mechanism and performance regime	25
2.8 Default, termination and step-in regimes	27
2.9 Finance	28
2.10 State rights at expiry of contract	28
2.11 Learn to Swim Pool	29
2.12 Audit and inspection rights of the State	29
2.13 Lessons learned from previous projects	29
2.14 ELC Development Deed and ancillary contracts	30
<b>Appendix 1 Glossary</b>	<b>33</b>
<b>Appendix 2 Useful references</b>	<b>35</b>
<b>Appendix 3 Key contact details</b>	<b>36</b>

<b>Appendix 4 Evaluation Criteria</b>	<b>37</b>
1 Design and Technical Solution	37
2 Services Solution	37
3 Commercial and Financial Solution	37
4 Value and Risk Proposition	38
<b>Appendix 5 Public Interest Test</b>	<b>39</b>

# 1. Project Overview

The New Schools Public Private Partnership (PPP) Project has a capital value of \$291 million and involves the financing, design, construction and 25 year maintenance of 15 new schools in some of Victoria's fastest – growing communities.

The schools will open across the 2017 and 2018 school years and will have a focus on exemplary educational design, the development of innovative community hubs, and the support of inclusive education for all learners, regardless of ability.

The whole of life asset management approach of the PPP will free up the time of principals and school leaders, enabling educators to focus on learners rather than the maintenance of their schools.

## 1.1 *Partnerships Victoria: Public Private Partnerships*

The New Schools Public Private Partnership (PPP) Project is a public private partnership delivered under the Victorian Government's *Partnerships Victoria* framework. The *Partnerships Victoria* model seeks to achieve better value for money by capturing the expertise and efficiencies of the private sector in designing, financing, building and maintaining infrastructure projects and providing services on a whole-of-life basis.

The *Partnerships Victoria* framework requires that projects comply with the:

- National PPP Policy and Guidelines (National PPP Guidance) that apply across all state, territory and Commonwealth arrangements;
- requirements specific to Victoria as detailed in the Partnerships Victoria Requirements (updated in May 2013).

Details of the National PPP Guidance and the Partnerships Victoria Requirements are available at [www.infrastructureaustralia.gov.au](http://www.infrastructureaustralia.gov.au) and [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au) respectively.

## 1.2 The New Schools PPP Project

### **Project background**

The Victorian Government has identified education as its number one priority, recognising that education is both the bedrock of social justice and cohesion in society and an essential component in growing the economy. Access to high quality education is central to giving every Victorian child the best start in life.

The Government also recognises that flexible and high quality education services must be integrated with the delivery of other community services such as early years, child care, and maternal and child health services. In order to provide accessible and seamless support to families, schools should operate as community hubs, providing a range of services in centrally located positions.

The intense level of population growth in many metropolitan and regional communities necessitates a large number of new facilities that provide community services, including primary, secondary, and special education services. Many existing schools in growth areas face unsustainable enrolment growth and have large numbers of students accommodated within relocatable units. Some schools are struggling to accommodate more than double the enrolments they were designed and built for.

### **PPP delivery model**

A range of options and procurement models were considered for responding to challenges of intense population growth and enrolment demand in a number of metropolitan and regional growth areas.

Alternate investment options were considered to address these challenges as part of the broader school

capital investment program, including:

- individual procurement of new schools utilising traditional Departmental procurement – with construction tendered by the Department individually and schools responsible for ongoing maintenance via recurrent funding;
- bundling and delivering a package of greenfield new schools via a PPP procurement model, including the financing, design, construction and long-term asset management of the facilities; and
- investment in capacity at existing government schools in growth areas through a combination of capital works and further utilisation of relocatable classrooms.

The level of enrolment pressure being experienced in growth areas and the critical importance of schools as centres of communities reinforced the need for a large number of new schools to open across 2017 and 2018.

After a detailed assessment of the various delivery models in the Project business case, the State approved the delivery of a package of 11 new schools under the PPP model as the preferred option. The key strengths of PPP delivery model were assessed as being the:

- ability to address intense demand pressures through the delivery of a large package of new schools through a consolidated tender process;
- opportunity to support improved Whole-of-Life management of school assets by integrating design, construction and Facilities Management (FM) and locking in high standards of asset quality over 25 years. This model supported a response to variable asset management outcomes across the government school system and was also considered important in freeing up principals and teachers to focus on education delivery rather than asset management;
- potential to leverage economies of scale and value for money through the integrated delivery of a large package of new schools and to generate added value for school communities; and
- potential to generate competition amongst experienced consortia and benefit from innovative design, service and partnership outcomes.

Subsequent to the initial Project approval in the 2014-15 Budget, additional funds were approved by Government for further Greenfield new school projects. This saw the Project scope increase from 11 to 15 new schools across 12 sites.

## Project scope

The approved Project scope comprised a range of school types in order to meet the specific needs of the Local Government Authority (LGA) areas, as outlined in Table 1 below.

**Table 1: PPP schools**

School and School Type	LGA	Opening Year
Casey Central East Primary School	Casey	2017
Heather Grove Primary School		
Cranbourne South West Primary School		
Pakenham South West Primary School	Cardinia	
Epping North Primary School	Whittlesea	
Mernda Central Prep-12: <ul style="list-style-type: none"> <li>• primary school component</li> <li>• secondary school component</li> </ul>		

School and School Type	LGA	Opening Year
Mernda South Primary School		
Point Cook South Prep-9	Wyndham	
Armstrong Creek Education Precinct <ul style="list-style-type: none"> <li>primary school component</li> <li>special school component</li> </ul>	Greater Geelong	2018
North Geelong Special Developmental School		
Bannockburn Prep-12: <ul style="list-style-type: none"> <li>primary school component</li> <li>secondary school component</li> </ul>	Golden Plains	
Torquay North Primary School	Surf Coast	

The Project includes the relocation of Bannockburn Primary School in Golden Plains Shire, which will be transferred to a larger site in Bannockburn and expanded to include the provision of Years 7 –12.

The permanent school facilities are designed to support, and in some instances exceed, the Department’s standard enrolment projections for the respective school types.

Fluctuations in enrolment numbers are managed by DET through the use of relocatable units. Masterplanning for each PPP site will accommodate enrolment fluctuations by incorporating relocatable units in the masterplanning process, ensuring positive design outcomes for each school irrespective of enrolment numbers.

**Figure 1: New Schools map**



## Project Objectives

The Project sought to build on the success and experience of the PPP model utilised for the *Partnerships Victoria* in Schools Project that delivered 12 schools across Victoria in 2010 and 2011 and drive further reform to support the Victorian Government's educational framework.

Table 2 outlines the four Project Objectives and the way the Project Objectives will be realised through the PPP model.

**Table 2: Project objectives**

Project objectives	PPP delivery method
<p>Provide improved access to and greater choice of quality school services in growing communities by delivering new school Schools that are exemplary with respect to design and quality.</p> <p>This includes providing flexible, evidence-based learning environments and enhancing the educational opportunities available for all students, regardless of learning needs</p>	<p>The schools will be delivered in some of Victoria's key growth areas to meet educational demand and provides students and their families, including students with disabilities, with increased options in education.</p> <p>The private sector must design the facilities in accordance with the requirements of the Output Specification which includes detailed functional and operational requirements that the school designs must satisfy.</p>
<p>Improve maintenance of schools and grounds and free up time for teachers and principals to focus on improving student outcomes</p>	<p>The State will retain responsibility for the delivery of all education services while the private sector will be responsible for the ongoing maintenance of the facilities.</p> <p>The contract enables principals and school leaders to focus on the provision of education and supporting learners and teachers.</p>
<p>Facilitate community use of school infrastructure and the co-location of additional community facilities and services wherever possible</p>	<p>Schools will be designed as community hubs and support the provision of a range of community services.</p> <p>The design must provide community members with safe and easy access to facilities that will be used for community use and neighbourhood events.</p>
<p>Deliver the Project within the specified timeframe and in a manner that maximises value for money to the State, including through designing environmentally and ecologically sustainable Schools that reduce whole of life costs</p>	<p>The private sector must deliver the 15 schools in accordance with an agreed schedule that will see some schools open in time for the 2017 school year and the remainder open in time for the 2018 school year.</p> <p>The design must meet the Environmentally Sustainable Design (ESD) requirements outlined in the <i>Output Specification</i>, including maximising passive ESD design and reducing facility lifecycle costs.</p>

The Project also aims to deliver on Government's objectives with the design of the 15 new schools supporting inclusion and maximising opportunities for students with a disability through the design of inclusive, accessible and flexible schools to meet the needs of all learners, regardless of ability.

The Project includes the delivery of two schools to provide education to students with disabilities:

- **North Geelong Special Developmental School (SDS)**  
North Geelong SDS will provide specialist facilities for students aged 5 to 18 years with moderate to profound intellectual and/or physical disabilities. The SDS should relieve enrolment pressure being experienced at Barwon Valley SDS, located in the southern catchment area of Geelong;
- **Armstrong Creek Special School**  
Armstrong Creek Special School will be integrated with the mainstream primary school at the Armstrong Creek Education Precinct. The special school will provide education to students aged 5 to 18 years with low to moderate intellectual and/or physical disabilities.  
The special school will relieve enrolment pressure being experienced at Nelson Park Special School which is located in the northern catchment area of Geelong.

The Armstrong Creek Education Precinct will be an innovative and highly inclusive environment in which mainstream and special education provision can occur in shared and integrated facilities and grounds.

### Project Timelines

The Government required the schools to open across two tranches in time for the 2017 and 2018 school years. Whilst a number of high priority schools in the Project were required to open in 2017, the PPP bidders were allowed to propose the opening years for the remaining schools based on their construction programs and the ability to achieve savings through economies of scale.

Table 3 provides the high level project timelines.

**Table 3: Project timelines**

Project milestone	Date
Award PPP contract	October 2015
Commencement of construction	November 2015
Commercial Acceptance – Tranche 1 Schools	1 January 2017
Commercial Acceptance – Tranche 2 Schools	1 January 2018
End of contract term	1 January 2043

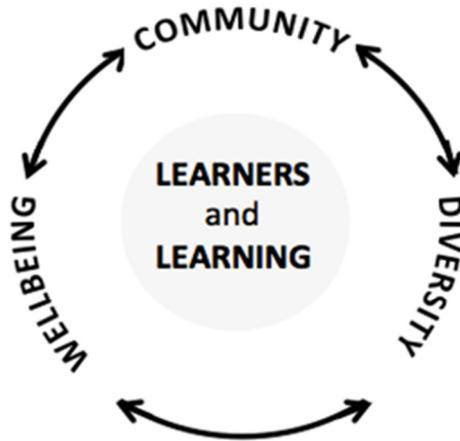
## 1.3 The PPP Schools

### 21st Century Learning Design

The schools being delivered through the Project represent the most recent advancements in ‘21<sup>st</sup> Century Learning Design’. The school design is predicated on the seven principles of universal design, including the principle of ‘Equitable Use’ that ensures that design is useful and marketable to people with diverse abilities.

The schools have been designed around four key Education Principles which capture the Department of Education and Training’s vision and values. Learners and learning are central to the principles of modern educational design:

**Figure 2: Four key Educational Principles capture the Department’s vision and values**



The Educational Principles flow through to Educational Design Principles, which were developed specifically for the PPP schools by three DET reference groups, including a reference group comprising principals and leaders of schools that provide education to students with disabilities.

The Education Design Principles aim to support the development of responsive designs by:

- focusing on removing all barriers to inclusion (by adopting Universal Design principles);
- enabling individual school communities to implement their own learning and teaching approach e.g. ensure the Facilities can adapt to a range of organisational models to be developed by the school leaders, staff and community;
- enabling school - based decisions concerning specialisation;
- embedding the potential for adaptability for varied current uses; and
- being future focussed and able to be reconfigured to accommodate changing needs resulting from new learning technologies, curriculum changes and changing demands for use that might occur over the long term.

The final set of principles that guide the design of school facilities are the Educational Facilities Design Principles:

- create contemporary learning environments that facilitate a learning and learning-centred approach;
- support collaborative learning and teaching for professionals;
- support a sense of community and belonging within the Facility and within the wider community;
- promote and support enhanced inclusion, access and choice for all learners; and
- design Facilities that are aesthetically pleasing and welcoming and support the physical, emotional and social wellbeing of the students and staff.

### **Environmentally Sustainable Design**

DET is committed to designing and delivering new schools and early childhood facilities in an environmentally and ecologically sustainable manner. DET recognises that energy conscious buildings lead to improved facilities operation, better staff and student performance, reduced operating costs, and lower greenhouse gas emissions.

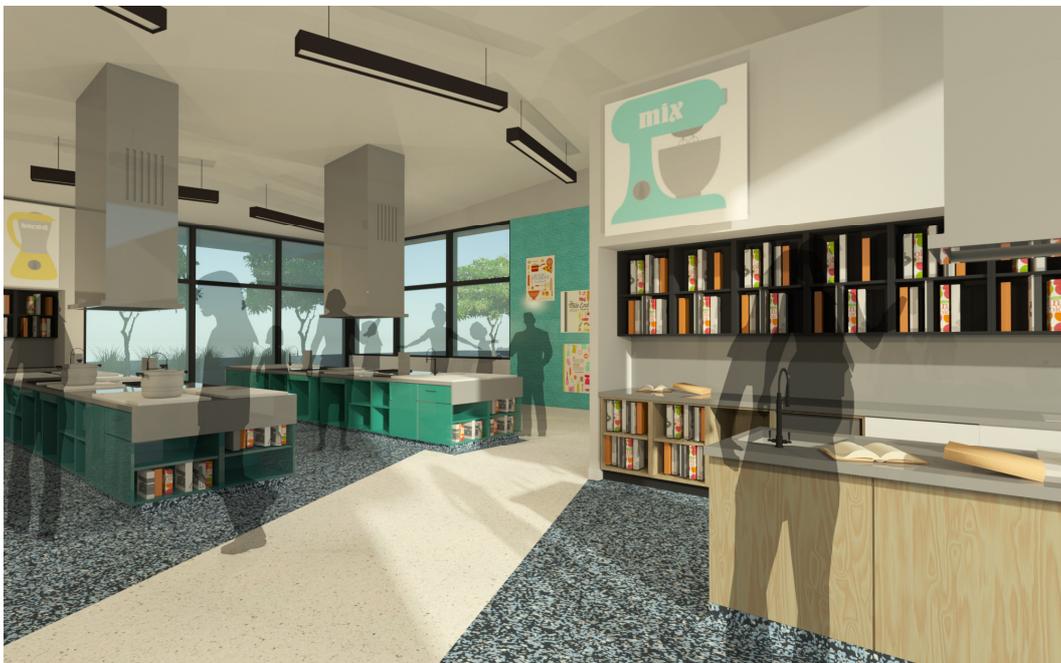
The Project set a challenge to the bidding consortia to meet ESD requirements that would reduce whole of life costs, maximise value for money, provide schools with the opportunity to increase awareness of sustainability, and provide data that supports teaching of science and technology.

A wide range of ESD strategies can be implemented in school design. PPP bidders were required to demonstrate passive design elements such as the orientation of buildings and extension of eaves, which can reduce glare and heat (and which do not add capital costs).

Where bidders proposed to supplement passive design with active systems such as mechanical cooling to meet mandated thermal comfort performance standards, the demonstration of measures to minimise the use of such systems was required.

The PPP tender also called for alignment between the building design and the teaching of science and technology. This can be done in a range of ways, for example, a facility's Building Management System (BMS) can produce sustainability data that can be used by teachers in classes. Likewise, water retention systems such as wetlands can be used in the teaching of ecology and wildlife biology.

The Department also recognises that ESD is achieved through utilities management and by developing services packages based on the principles of reliability and sustainable development. Bidders were required to demonstrate efficient use of the facilities by developing and meeting annual energy performance targets, to be agreed with the State, and developing maintenance strategies that ensure that energy and water costs are minimised across the operating term.



## Local Government Authority Engagement

The Department collaborated closely with the 7 Local Government Authorities (LGA) relevant to the new schools. LGAs were provided with the opportunity to contribute funds to deliver additional community facilities integrated with the school sites.

The Department has prioritised collaborative precinct planning in growth areas in recent years and has sought to provide further opportunities for local government to deliver additional community facilities through the PPP process. The need for councils to fund local government facilities through the Project was mitigated by the fact that many of the school sites were already co-located with council owned early childhood centres.

Engagement with the City of Whittlesea resulted in the delivery of 2 local government funded facilities:

- an integrated Early Learning Centre at Mernda South Primary School which will support the provision of both Council and DET early years services; and
- a shared oval located across the Epping North Primary School site and the adjacent Council – owned passive open space reserve. The facilities being delivered by Council at the oval include an amphitheatre and outdoor stage which the primary school can use.

The Department also collaborated closely with LGAs regarding the 10 school sites where schools will be co-located with existing or planned ELCs. The Project aimed to help meet local service gaps and ensure complementary, not competing services were delivered.

Additionally 8 sites are co-located with council sporting and recreation reserves and in conjunction with the schools will create centrally located sporting precincts. The model is particularly effective in the City of Casey, where the Council funds soccer facilities whilst the PPP schools will support Australian Football League (AFL) and netball.

Councils also provided input into the masterplanning considerations for each site to ensure the schools integrate seamlessly into local road networks and precinct – wide cycling and pedestrian networks.

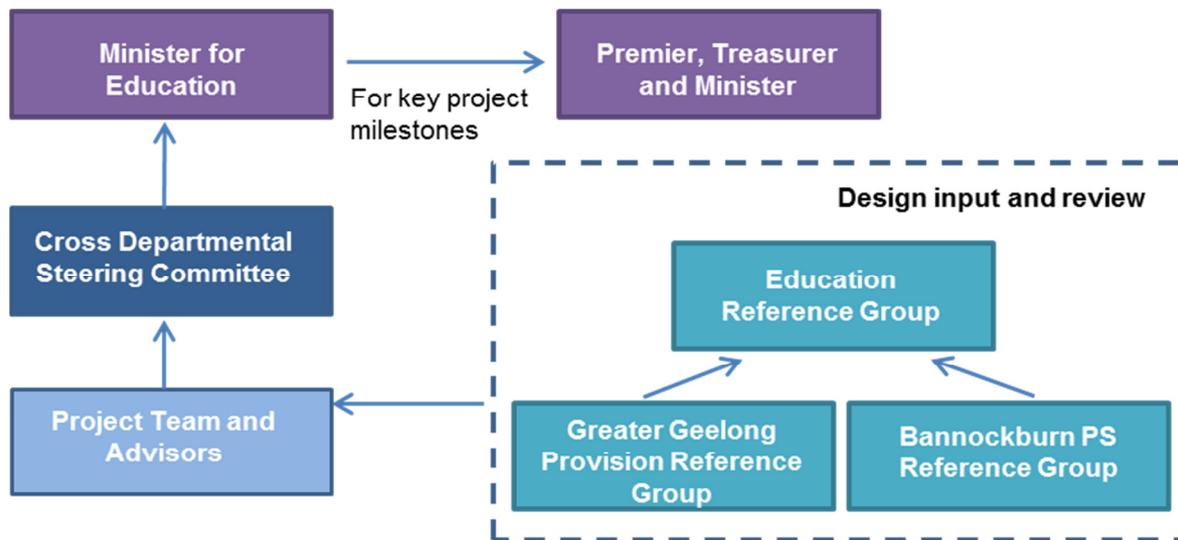
## 1.4 Procurement Process

The State conducted a competitive tender process to identify the private sector party who would deliver the Project. The process commenced in October 2014 with the release of the Expression of Interest (EOI) and concluded in October 2015 when the PPP contract was awarded.

### Governance Structure

The State instituted a formal project governance structure to oversee the procurement process, including the evaluation of the detailed responses to the Request for Proposal (RFP). The governance structure is represented in Figure 3.

**Figure 3: Governance Structure**



### Tender phases and key dates

The procurement process was implemented in accordance with the Partnerships Victoria framework to ensure that the State achieved the best value-for-money outcome. The procurement process involved

three stages:

1. EOI Phase, involving an Invitation for EOI from the market, receipt and evaluation of EOI submissions and the shortlisting of Respondents to proceed to the RFP Phase.
2. RFP Phase, involving the issue of a RFP to shortlisted Respondents, an interactive tender process, submission of proposals, and a clarification and evaluation phase.
3. Negotiation and Completion Phase, involving a negotiation period, the appointment of a Preferred Respondent, final negotiations, followed by the execution of the Project documents and Financial Close.

Table 4 sets out the key dates in the procurement process.

**Table 4: Project procurement – key dates**

Procurement Process	Date
<b>EOI Phase</b>	
Invitation for EOI issued	15 October 2014
EOIs submitted	13 November 2014
Shortlist of Respondents to proceed announced	5 February 2015
<b>RFP Phase</b>	
RFP issued	25 February 2015
RFP proposals received	18 June 2015
<b>Negotiation and Completion Phase</b>	
Preferred Respondent announced	2 September 2015
Contractual Close	28 October 2015
Financial Close	29 October 2015

Four interested consortia submitted EOIs and two were shortlisted to proceed to the RFP Phase. The RFP was issued to the two shortlisted consortia on 25 February 2015. The State conducted a comprehensive interactive tender process, involving numerous workshops with each consortium. The consortia submitted their RFP proposals on 18 June 2015.

### Evaluation Panel

An Evaluation Panel supported by three discipline-based evaluation sub-panels conducted the EOI and RFP evaluations. The sub-panels were:

- Commercial and Legal Sub-panel;
- Services Sub-panel;
- Design and Technical Sub-panel.

The State selected Evaluation Panel and sub-panel members based on government stakeholder representation (including the Department of Treasury and Finance) and requirements for appropriate and relevant skills and experience. Department of Education and Training staff and the specialist appointed project advisers supported the sub-panels as required. The Evaluation Criteria applied to the assessment of proposals are presented in Appendix 4.

The Evaluation Panel reported to an Interdepartmental Steering Committee, which included senior representatives of the Department of Education and Training, the Department of Treasury and Finance and

the Department of Premier and Cabinet.

### **Procurement outcome**

Following the extensive RFP evaluation process, the State entered into negotiations with LCV in September 2015. Upon completion of this negotiation period, the State announced LCV as the Preferred Respondent. Subsequently the parties negotiated the final form of the Project documents and executed the Project Agreement and ancillary contracts that govern the Project.

### **Probity**

The tender process was undertaken within a robust probity framework, endorsed by the Project's probity adviser and based on the following probity principles:

- fairness and impartiality;
- use of a competitive process;
- consistency and transparency;
- security and confidentiality;
- identification and resolution of conflicts of interest;
- compliance with government policies as they apply to tendering.

At the completion of the tender process, the probity adviser confirmed that the process had been conducted in accordance with the applicable requirements.



## **1.5 Learning Communities Victoria**

The contract was awarded to Learning Communities Victoria (LCV). LCV brings together significant expertise and PPP experience from the sponsor whilst representing strong value for money for the State. LCV's exemplary school a design are supplemented by a wide range of community facilities and services it will deliver through the Project.

### **The Consortium**

The LCV consortium members are IPP Australia (equity investor), Watpac (builder), ClarkeHopkinsClarke (architect), Spotless (facilities management provider), Arena (ELC developer), the YMCA (ELC and community services provider) and Brookfield (financial adviser). These consortium members have significant expertise in PPP projects, the delivery and maintenance of schools and the development and operation of ELC and community programs.

## The Offer

LCV's offer provides significant value and scope ladder affordability within the PSC. The Project is on track for completion within the approved timeframes and the schools will open in two tranches, commencing operations in January 2017 and 2018.

## Community Use Facilities

LCV's community services offering will deliver a wide range of services complementary to the school curriculum which provide additional amenity for the community, including:

- Six Early Learning Centres which will be located adjacent to the school sites, offering Long Day Care services for children aged 6 weeks to school age (6.30am to 6.30pm weekdays). Co-located ELCs will enable opportunities for more effective transition from early years to primary school and offer convenience and greater engagement for parents and families. In addition to long day care and vacation care services, the YMCA will offer an integrated 4 year old kinder program and also provide a range of parenting/family support/education services to the families within the program (typically, information seminars, support, and social groups to connect the families and the community);
- Eleven Community Hubs across the twelve sites which provide additional area above the standard school area entitlement. The Community Hub is a flexible, multi-purpose space integrated into the school design that schools have exclusive use of during school hours. Outside of school hours the Community Hub will be used by the YMCA to run community programs and Outside School Hours Care (operating from 7-9am and 3.30-6pm) for families;
- Four Commercial Kitchens will be provided across the Project, including the provision of a stainless steel bench top, higher quality ovens and exhaust fans that enable the delivery of VET courses within the food technology space;
- One Learn to Swim Pool at the Mernda Central P-12 site will provide swimming lessons to the community. The pool includes change rooms and other amenities that will allow the pool to operate as a standalone facility;
- One hydrotherapy pool at North Geelong SDS. The pool will enable the SDS to provide a holistic and comprehensive educational offering to students with disabilities, including aquatic – based physical therapy support; and
- Eleven Netball Australia and Netball Victoria compliant gymnasiums that will support competition – grade netball. The gymnasiums include additional run-off area for referees and higher ceilings and will help to address a gender imbalance in the provision of local sporting facilities.

The community facilities provided by LCV at each school campus are set out in Table 5 below. In addition, school spaces including gyms, ovals and kitchens will be available for use by community groups for a range of activities outside school hours. The YMCA will have a dedicated co-ordinator at each school to manage community use of the various Schools.

The schools will also have dedicated entrances for community members to promote after hours use whilst ensuring security of the school.

**Table 5 – Community Use Facilities provided by LCV and partners**

Council	School Campus	Early Learning Centre	Community Hub	Out of School Hours Care	Commercial Kitchen	Pool
Casey	Casey Central East Primary School	✓	✓	✓	-	-
Casey	Heather Grove	✓	✓	✓	-	-

	Primary School					
Casey	Cranbourne South West Primary School	-	✓	✓	-	-
Cardinia	Pakenham South West Primary School	✓	✓	✓	-	-
Geelong	Armstrong Creek Primary School and Special School	-	✓	✓	✓	-
Geelong	North Geelong SDS	-	-	-	-	✓*
Golden Plains	Bannockburn Prep-Year 12	-	✓	✓	✓	-
Surf Coast	Torquay North PS	✓	✓	✓	-	-
Whittlesea	Epping North PS	✓	✓	✓	-	-
Whittlesea	Mernda Central Prep-Year 12	-	✓	✓	✓	✓**
Whittlesea	Mernda South PS	✓	✓	✓	-	-
Wyndham	Point Cook South Prep-Year 9	-	✓	✓	✓	-

\* Hydrotherapy pool

\*\* Learn to Swim Pool

### **Educational Resource program**

LCV has a partnership with the Centre for Education and Research in Environmental Strategies (CERES), a community business that provides environmental programs to schools and a range of community groups. CERES collaborated with architect ClarkeHopkinsClarke, builder Watpac, and facilities management provider Spotless to ensure sustainability is embedded in all aspects of the schools, from the design of the facilities, selection of building materials such as the fabric and finishes used, through to the maintenance strategy over the operating period.

CERES will deliver the ResourceSmart School program for the first 5 years of operation of 11 of the 12 sites. The program will help the schools to embed a 'whole of school' approach to sustainability by providing activities such as the monitoring of energy, water and waste management use.

Students will learn about biodiversity and how their school can contribute towards sustainable living and financial savings. ResourceSmart will assist school leaders and teachers by providing professional development and resources to help embed sustainability in the school curriculum.

CERES will also develop a School Environment Management Plan that is tailored for each school's particular design and environment to ensure that the focus on sustainability is maintained throughout LCV's full operating period.

### **Facilities Management Services**

LCV will undertake a range of facilities management services through its Consortium member, Spotless, throughout the Operating Phase (to 31 December 2042). This comprehensive support service for principals and teachers includes a 24/7 help desk, maintenance, cleaning and other services.

An experienced school officer will be located at each school to undertake handyman type maintenance tasks, co-ordinate trades subcontractors, manage access to the schools and ensure general tidiness of the school grounds.

## 1.6 Value for Money

The Partnerships Victoria framework seeks to identify and implement the most efficient form of infrastructure and service delivery. The concept of value for money goes beyond the selection of the cheapest solution, focusing on the value of each delivery option. This involves an in-depth analysis of each proposal received from the private sector and comparison against a State-managed delivery option. The analysis considered quantifiable elements (for example, items that can be quantified in monetary terms or as a quantity of volume or throughput) as well as qualitative considerations.

### Public Sector Comparator

The Public Sector Comparator (PSC) is an estimate of the hypothetical, risk-adjusted, whole-of-life cost of the Project if delivered by the State. The PSC is developed in accordance with the Output Specification, Services Specification and risk allocation included in the RFP, and is based on the most likely and efficient form of conventional (that is, non-PPP) delivery by the State.

The PSC is expressed in terms of the Net Present Cost to the State, calculated using a discounted cash flow method and taking full account of the costs and risks that would arise through conventional delivery by the State. The PSC includes amounts for the design and construction of the schools, and for the lifecycle and facilities management costs during the Operating Phase of the Project.

The PSC is made up of a number of elements, as indicated in Table 6.

**Table 6: Components of the Public Sector Comparator**

Components of the PSC	Net Present Cost (\$m)
Capital costs	232
Lifecycle and asset service costs	74
Operating costs (maintenance over 25 years)	170
<b>Raw PSC</b>	<b>476</b>
Transferred risks	45
<b>PSC (excluding retained risk)</b>	<b>521</b>

**Note 1:** All values are expressed in net present values as at 29 October 2015 and discounted at a nominal discount rate of 2.85% per annum in accordance with the Infrastructure Australia guidance that applies under the Partnerships Victoria framework.

**Note 2:** The transferred risk totalling \$45 million Net Present Cost refers only to those capital, lifecycle and operating risks transferred to the private sector under the Partnerships Victoria arrangements (i.e. those risks that the State would otherwise assume) and excludes the State's estimates of the cost of retained risks.

### Scope ladder

Consistent with Partnerships Victoria Requirement, an affordability benchmark was approved including a scope ladder. The purpose of the scope ladder is to identify any scope items that Respondents can either remove or add should bids be over or under the PSC. Government sought to maximise the Project scope by using the PSC as an upper limit for total cost, or an affordability benchmark.

The scope ladder sought the following items as 'up scope':

- additional permanent built capacity to accommodate higher enrolments at Heather Grove and Cranbourne Primary Schools;
- a hydrotherapy pool at North Geelong SDS; and
- expanded gyms to netball competition standards at all schools except North Geelong SDS.

### Net Present Cost of LCV's proposal

The cost of LCV's proposal consists of:

- quarterly service payments payable during the 25-year Operating Phase of the Project; and

- a one-off payment for the Learn to Swim pool payable upon completion, followed by a rental stream payable to the State for the term of pool lease.

Table 7 sets out the Net Present Cost of LCV’s proposal and compares this cost against the PSC.

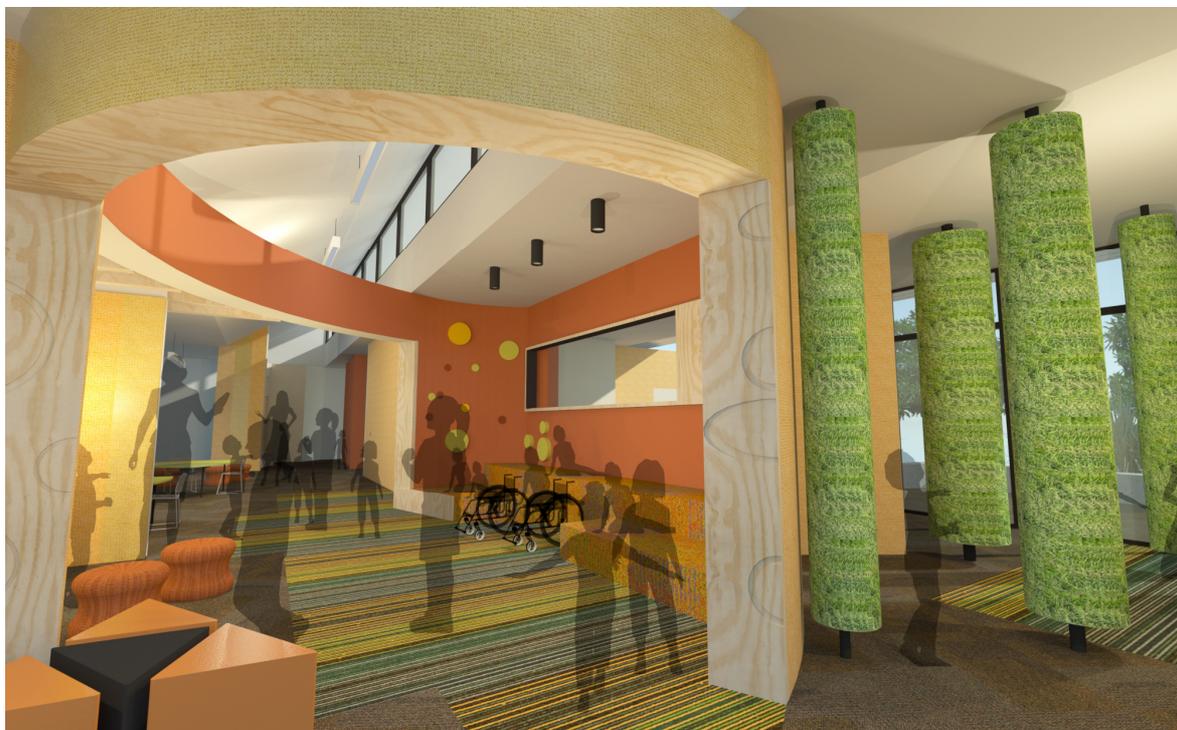
**Table 7: Comparison of the cost of LCV Consortium’s proposal against the PSC**

Net Present Cost of LCV’s final proposal (\$m)		PSC (\$m)	Savings (\$m)	Savings (%)
Base scope – excluding Scope Ladder items and Community Facilities	490	521	31	6.0%
Total Project scope - including Scope Ladder items and Community Facilities	497	521 (Note 1)	24	4.6%

**Note 1:** The PSC represents an affordability benchmark for the Project calculated on the base scope. It does not include cost estimates for the additional value add items offered by LCV.

**Note 2:** All values are expressed in net present values as at 29 October 2015. In accordance with the Infrastructure Australia guidance that applies under the Partnerships Victoria framework, and as set out in the RFP, the PSC has been discounted at a nominal discount rate of 2.85% per annum, and LCV’s proposal has been discounted at a nominal discount rate of 5.05% per annum. The Net Present Cost represents the cost of the Project to the State in today’s dollars, taking into account the time value of money (using the discount rates above). This is accepted as the most financially robust and appropriate method for comparing costs of long-term projects.

The undiscounted cost of construction and operations for the total Project is \$987m in nominal dollars.



## Additional value-for-money benefits of LCV's proposal

In addition to delivering the full scope ladder within the PSC, LCV's proposal provides the following value-for-money benefits:

- the construction program exceeds expectations and enables levels P-9 of Mernda Central to open for the 2017 academic year;
- includes Community Hubs at 11 of the 12 school sites. These multi-purpose rooms will be utilised by the YMCA to bring community groups into the schools after hours and, during school hours will offer an additional space to benefit the students;
- development of ELCs at six schools by Arena at zero cost to the Project;
- a learn to swim pool at Mernda Central; and
- a partnership with CERES to run environmental sustainability programs at the schools, supporting ESD outcomes and delivering important curriculum benefits.

The Project is a strategic project under the Victorian Industry Participation Policy (VIIP) guidelines. LCV has met the requirements for the 90 per cent target for local content set under the VIIP guidelines over the term of the contract.

LCV has also committed to meet the government's apprentice employment target such that a minimum of 10 percent of the total labour of the total labour hours across the development and operating phases of major projects be made up of those contributed by registered apprentices and trainees.

### Other costs

In addition to the costs of LCV's proposal, the State will meet the following costs totalling \$24.4 million (nominal dollars) in relation to the Project.

**Table 8: State costs**

State Costs	Description
<b>Road construction for Heather Grove Primary School</b>	The Heather Grove Primary School site is currently accessed via a single dead-end road. Additional road access / street frontage for the site is not required to be constructed by the developer of the surrounding future housing estate until 2026. The road is being delivered by DET in 2016 under a construction contract outside the scope of the PPP Project.
<b>ICT Equipment</b>	Purchase of State-delivered ICT requirements for the 15 schools (separate to ICT to be provided by Project Co). This includes 'back of house' ICT including school servers and switches and connection to departmental networks; student learning devices (computers, tablets, cameras, etc.); support devices including multi-function printers, etc.
<b>ICT project management</b>	Costs of procuring, testing and project managing the installation of ICT across the schools over the two construction tranches.
<b>Site Establishment Grants</b>	Grants disbursed across the local school principals in the lead up to school openings. These grants enable establishment of initial staffing and the purchase of library and consumable items.
<b>Project Management Costs</b>	Costs of the project team and advisors; site condition assessments and other administration costs
<b>Relocatable Removal</b>	Costs of movement and re-establishment of relocatable classrooms from the current Bannockburn Primary School site to the new P-12 site once Schools are constructed. This includes a purpose built eco-centre classroom which remains in good condition and serves a specific curriculum purpose for the

	school.
<b>Loose FFE Items</b>	Funding distributed across the local school principals to enable purchase of specified loose Furniture, Fittings and Equipment outside the scope of the PPP according to local needs, including science, gym and music equipment.
<b>Retained Risk</b>	This allowance relates to those risks which remain with the State under the PPP risk allocation such as contamination, cultural heritage and scope changes.

### 1.7 Public Interest Test

At various stages throughout the development of the Project, the State made an assessment of the extent to which the Project was in the public interest. The analysis was undertaken in accordance with the Partnerships Victoria guidance on how to evaluate whether a project meets the public interest.

At all stages the State considered that, on balance, the public interest was being protected. Appendix 5 contains a summary of the Public Interest Test.



## 2. Key Commercial Features

### 2.1 Project Documents

On 28 October 2015, the Minister for Education, on behalf of the State, executed the Project Agreement and ancillary documents with LCV and its consortium partners to design, construct and finance the Project, and to provide facilities management services to the Schools over the Project term.

In accordance with government policy, the executed Project Agreement and ancillary documents are publicly disclosed and available at [www.tenders.vic.gov.au](http://www.tenders.vic.gov.au).

Concurrently with entering into the Project Agreement, the Minister for Education entered into the ELC Development Deed and ancillary documents with LCV's ELC partners, Arena and the YMCA, for the development and operation of early learning centres at 6 of the school sites at no cost to the Project. The key commercial features of this contract are set out in Section 2.14.

### 2.2 Parties to the Project Agreement and ancillary contracts

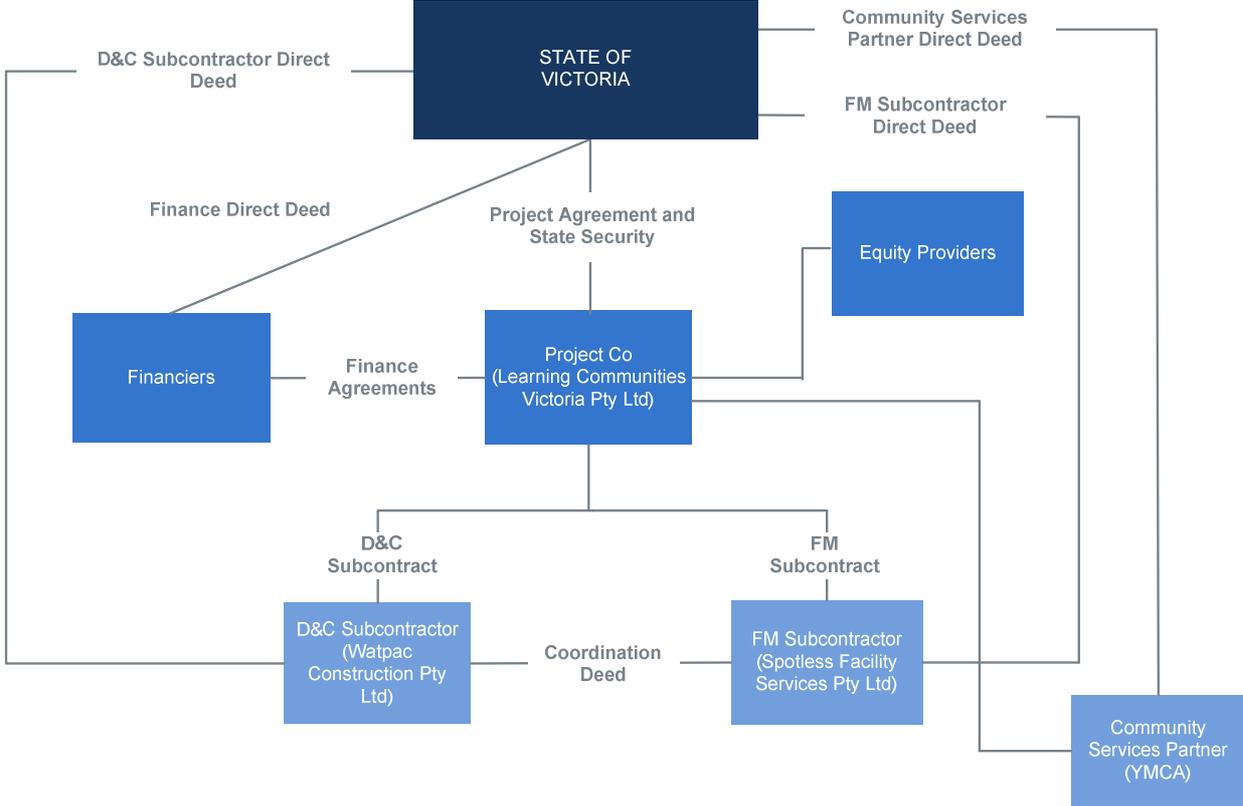
The relevant parties under the Project contractual arrangements are:

- **The State:** The State is a signatory to the Project Agreement and other ancillary Project documents. The Minister for Education is the person empowered to execute these contracts on behalf of the State.
- **Project Co:** Learning Communities Victoria Pty Ltd in its personal capacity and as trustee for the LCV Project Trust is the counterparty to the Project Agreement, and is the primary contracting entity with the State. Learning Communities Victoria Pty Ltd, in turn, has entered into a range of contracts with its consortium partners to deliver elements of the Project. Notwithstanding this, Learning Communities Victoria Pty Ltd will be the organisation ultimately responsible for the delivery of the Project.
- **Equity Provider:** IPP (Australia) Limited has committed to provide the total equity required by Project Co.
- **Financiers:** CIBC and Natixis are the initial lenders providing the total debt required by Project Co. The debt is drawn progressively from Financial Close.
- **Builder:** Learning Communities Victoria Pty Ltd has engaged Watpac Construction Pty Ltd to undertake the design and construction of the schools. Watpac Construction Pty Ltd in turn has engaged Clarke Hopkins Clarke to design the schools.
- **Facilities Management Subcontractor:** Learning Communities Victoria Pty Ltd has engaged Spotless Facility Services Pty Ltd to deliver facilities management services.
- **Community Services Provider:** Learning Communities Victoria Pty Ltd has engaged the YMCA to deliver community use programs and services.

### 2.3 Project contractual relationships

The relationship between the State, Project Co and other related parties is detailed in the Project Agreement and ancillary documents. Figure 4 outlines the structure and principal agreements required for implementing the Project.

**Figure 4: Project contractual relationships**



### 2.4 Risk Transfer

The risk allocation in the Project Agreement is consistent with the Partnerships Victoria framework. In Partnerships Victoria projects, the State seeks to achieve best value for money by allocating risks to the party best able to manage them. This process results in various risks being:

- retained by the State
- transferred to the private sector; or
- shared between the parties.

The Project Agreement and ancillary documents establish the obligations of each party in managing these risks.

Table 9 provides a high-level outline of the risk allocation for the Project. Where a risk is allocated to both parties, the parties may not share that allocation equally. All risks are addressed in detail in the Project Agreement and ancillary documents.

**Table 9: Risk allocation**

Risk category	Description or comment	State	Project Co
<b>Planning risk</b>			
Obtaining planning approvals	Risk that planning permits for the use of the site will be refused or be granted with onerous conditions.	✓ under Section 16 of the <i>Planning and Environment Act 1987</i> planning schemes are not binding on the use and development of land carried out by or on behalf of the Minister for Education.	
<b>Site risks</b>			
Pre-existing contamination	Cost relating to the management and removal of pre-existing contamination on any site	✓ only in relation to the cost of removal of contamination at the Epping North site	✓ all sites other than Epping North
All other contamination	Cost relating to the management and removal of all other contamination on any site	✓ only where the State or certain of the State's contractors causes the contamination; or where the contamination has migrated from an adjoining site	✓
Artefacts and heritage claims	Risk that the site has archaeological or cultural significance (above or below ground).	✓ only for <ul style="list-style-type: none"> <li>delays following a directed suspension at Mernda Central and Point Cook sites; and</li> <li>continued delay after the first 10 days following a directed suspension at all other sites</li> </ul>	✓
Native title	Risk that the site is the subject of a native title claim.	✓ only for <ul style="list-style-type: none"> <li>delays following a directed suspension at Mernda Central and Point Cook sites; and</li> <li>continued delay after the first 10 days following a directed suspension at all other sites</li> </ul>	✓

Risk category	Description or comment	State	Project Co
External works	Costs relating to provision of external infrastructure to the sites (utilities, roads, footpaths, transport facilities)	✓ Only for : <ul style="list-style-type: none"> <li>Electrical infrastructure</li> <li>Road adjacent to Heather Grove primary school</li> </ul>	✓
Council rates	Payment of Council rates for the Project (if applicable).	✓ In respect of the school sites*	
<b>Design, construction and commissioning risks</b>			
Design risk	Risk that the design development process cannot be completed on time or to budget, or that the design does not meet the Output Specification.		✓
Construction risk	Risk that construction cannot be completed on time or to budget.	✓ only where delays are caused by State breach or specified relief events	✓
Defects risk	Risk that defects are discovered after construction is completed.		✓
Equipment	Responsibility for the selection, procurement and maintenance of equipment.	✓ limited ICT equipment, science, musical instruments and sporting equipment	✓
Fitness for purpose (at completion)	Risk that the Schools are not fit for purpose at completion (including to the standards specified in the Output Specification, and for the performance of the Services in accordance with the Services Specification)		✓
State-initiated modifications	If the State elects to implement a significant variation to the Schools or Services to be provided by Project Co.	✓ other than pricing of margins and preliminaries for modifications which are pre-set in the Project Agreement	
Commissioning	Risk that the Schools cannot be commissioned in accordance with the agreed		✓

Risk category	Description or comment	State	Project Co
	criteria.		
<b>Operational risks</b>			
Fitness for purpose (during the Operating Phase)	Risk that the Schools are not fit for purpose during the term (including to the standards specified in the Output Specification, and for the performance of the Services in accordance with the Services Specification)		✓
Services costs (Reviewable Services)	Risk that costs of service provision exceed Project Co's budgeted costs over the Operating Phase.	✓ State bears repricing risk each time the Reviewable Services are reviewed subject to certain constraints on repricing (including margins )	✓ Project Co bears all risk during each Reviewable Services Term.
Services costs (Non-Reviewable Services)	Risk that the costs of service provision exceed Project Co's budgeted costs over the Operating Phase.		✓
Lifecycle costs	Risks associated with the maintenance, replacement and refurbishment of the Schools.		✓
Capacity risk	Risk of additional costs where <ul style="list-style-type: none"> <li>relocatable units are located on the school sites;</li> <li>enrolments exceed specified peak enrolments</li> </ul>	✓ other than pricing of services to relocatables and margins which are pre-set in the Project Agreement	
Utility price and volume risk	Risk of change in the price of the utilities required at the Schools, and energy demand risk.	✓ State bears risk in Operating Phase	✓ Project Co bears risk during Development Phase
Handback condition	Risk that on expiry of the term, the condition of the Schools do not meet the required standard.		✓
<b>Changes in law or policy</b>			
Changes in law and	Risk that a change in	✓	✓

Risk category	Description or comment	State	Project Co
policy (general)	legislation applying generally or a change in education policy or education services will affect the Services or the design or construction of the Schools.	State bears the risk of general changes in law during the Operating Phase and changes in education policy for the term	Project Co bears risk during the Development Phase for general changes in law
Changes in law and policy (project-specific)	Risk that a change in legislation applying exclusively to the Project or Partnerships Victoria projects generally will affect the Services or the design or construction of the Schools.	✓	
Tax risk	Risk of changes in income tax, GST or the law relating to taxes generally.		✓
<b>Force majeure</b>			
Force majeure	Risk of a defined 'force majeure' event affecting construction or the provision of the Services.	✓ Only to the extent that the State must make payments for uninsurable risks, in relation to debt service and for specific ongoing costs of service provision to the extent applicable	✓
<b>Finance risk</b>			
Interest rate risk from Financial Close to the first refinancing	Risk of movements in interest rates.		✓
Interest rate risk from the first refinancing over the balance of the term of the Project Agreement	Risk of movements in interest rates.	✓ The State takes the risk of base interest rate movements from the first refinancing and shares 50% of the benefit of any reduction in interest margins	✓ Project Co takes the risk of any increase in interest margins from the first refinancing and shares 50% of the benefit of any reduction in interest margins
Insurance risk	Risk that insurance cannot be obtained or that	✓ State takes risk on Operating	✓ Project Co takes

Risk category	Description or comment	State	Project Co
	premiums increase significantly.	Phase insurances other than workers compensation and motor vehicles insurance	risk on workers compensation and motor vehicles insurance in the Operating Phase

\* It is not standard practice for the State to bear the cost of Council rates for early learning facilities.

## 2.5 General obligations of LCV

### Development Phase

Project Co is required to design, construct, and commission and finance 15 schools at 12 sites. The schools are to be opened in two stages, referred to as Tranche 1 Schools (opening for the 2017 academic year) and Tranche 2 Schools (opening for the 2018 academic year). In parallel with the construction activities, Project Co is required to undertake FM mobilisation activities to ensure that Service provision commences on time to facilitate DET in its provision of education services from the commencement of the relevant academic year.

### Operating Phase

Project Co is required to provide a full range of Services to the schools, including maintenance, help desk, school officer, cleaning, grounds and gardens, waste management and other facilities management services. The Services are to be provided throughout the Operating Phase in accordance with the standards set out in the Services Specification.

Project Co must also maintain relocatable units located at the school sites from time to time and liaise with the Department's relocatable unit contractor as to the positioning, installation, connection of services and removal of relocatable units.

Project Co is responsible for lifecycle works and will take whole-of-life asset condition risk in relation to the schools. In addition, Project Co is required to work with the schools in the implementation and maintenance of minor works throughout the term; such works may be undertaken by Project Co or other contractors depending on the nature of the works.

The Schools are required to be made available within school hours for the provision of education services; and outside school hours for both school and community use. Project Co will co-ordinate out of hours use via the YMCA. Details of the out of hours use regime are set out in the Project Agreement.

Table 10 summarises the Services which Project Co will provide. Full details of the Services and the applicable key performance indicators are contained in the Project Agreement.

**Table 10: Summary of Services to be provided by Project Co**

Services	Includes
General Services	Performance monitoring and reporting
Help Desk Services	24/7 help desk service

School Officer Services	<p>Access control</p> <p>Co-ordination of subcontractors</p> <p>Litter collection, emergency cleaning, general tidiness</p> <p>Day to day minor maintenance and repairs</p> <p>Traffic management</p>
Building Management Services	<p>Planned, preventative and reactive maintenance of school buildings, FF&amp;E and relocatable units</p> <p>Monitoring of building management systems</p>
Utilities Management Services	<p>Management and maintenance of utilities infrastructure and connections (electricity, communication systems, renewable energy, gas, water, drainage and sewerage)</p> <p>Develop annual energy performance targets</p>
Waste Management Services	<p>Manage waste collection and disposal</p>
Grounds and Gardens Maintenance Services	<p>Planned and reactive maintenance of external structures and surfaces</p> <p>Planned and ad-hoc horticultural services</p>
Pest Control Services	<p>Scheduled and reactive pest control management</p>
Cleaning Services	<p>Scheduled, ad-hoc and emergency cleaning</p>
Security Services	<p>Maintenance of security management systems</p> <p>Management of security during school hours</p> <p>Liaison with DET Security Services Unit outside school hours concerning alarm activations and required actions (maintenance or damage rectification)</p>

## 2.6 General obligations of the State

Under the Project Agreement, the State's obligations include the following:

- The State must provide Project Co with the necessary site access to allow it to perform its obligations;
- The State may review and comment on design documentation, construction plans, operating manuals and other material that will be submitted by Project Co in accordance with the Project Agreement;
- The State must pay the Quarterly Service Payment (QSP) to Project Co during the Operating Phase subject to reductions that may apply under the performance regime if services are not delivered to the required standard.

## 2.7 Payment mechanism and performance regime

Payments to Project Co commence from Commercial Acceptance of each School (that is, when the School is completed and commissioned).

Where Commercial Acceptance is delayed beyond the start of the relevant academic year, the State may declare the date of Commercial Acceptance for a School to be the first day of the next academic year or the first day of a school term within the current academic year.

### Quarterly Service Payment

Payment for the delivery of the Services is made by the State over the Operating Phase in the form of the Quarterly Service Payment (QSP), which is paid quarterly in arrears. The formula for calculating the QSP is detailed in a schedule to the Project Agreement. Each School is linked to a specific payment stream.

Payments are subject to reduction where the availability of school accommodation and facilities management services are not provided to the required standards. Table 11 summarises the components of the payment mechanism.

**Table 11: Overview of the payment mechanism**

Payment mechanism component	Description
<b>Base components</b>	
'Capital' component	Fee element relating to the capital investment in the schools including financing costs.
'Services' component	Fee element in two components, being for Reviewable Services and Non-Reviewable Services. The Project Agreement includes a mechanism for the cost of Reviewable Services to be reviewed at 5 yearly intervals throughout the Operating Phase of the Project.
Lifecycle component	Fee element relating to lifecycle costs for each of the schools.
School initiated works	Payment of an allowance for minor works adjusted annually for the cost of actual works undertaken
Operating phase insurances	Payment of operating phase insurances premiums (excluding workers compensation and motor vehicles)
<b>Potential payment adjustments</b>	
Abatement	<p>Payment reductions will apply where:</p> <ul style="list-style-type: none"> <li>• areas of the schools do not meet specified availability criteria; and</li> <li>• quality failure or failure events occur as defined in the Services Specification</li> </ul> <p>and these events are not rectified within the specified rectification time.</p>
Non Use Rebate	Payment reduction where the State determines that specific areas of the schools are not used.

Out of Hours Use	Payment for use by schools of specified areas outside school hours as set out in the Out of Hours Use Regime
Relocatable Units	Payment for systems connection, inspection and testing, maintenance, provision of FF&E and lifecycle costs (if applicable) for relocatable units located at the schools from time to time
Floating Rate Component	The State assumes base interest rate risk from the date of the first refinancing for the balance of the Project term. As a consequence, the payments will be adjusted as required to neutralise the impact on Project Co of movements in base interest rates over each quarter.

## Modifications

The State may, at its sole discretion, request Project Co to implement modifications (to the Schools or the Services) provided the State adequately compensates Project Co. This includes an ability to remove works or services from the Project scope. Under the modifications regime, Project Co must provide an estimate of the cost or savings impact of any modification proposed by the State in a manner which complies with the requirements of the Project Agreement. All costs or savings must be provided on an open book basis. To provide greater transparency and certainty around modification costs, the Project Agreement specifies a range of pre agreed margins and other on-costs Project Co can claim in such circumstances.

The State may pay for the modification either by way of a lump sum, milestone payments, or an adjustment to the QSP (where the modification is financed by Project Co, or relates to savings or changes to the Services) or by a combination of such methods.

## Change in law

In addition to State-initiated modifications, the State bears the risk of cost increases or savings arising from certain changes in law and policy.

## Other changes in costs

Subject to certain conditions, Project Co may be entitled to performance relief under the Project Agreement and to payment by the State of certain additional costs and expenses incurred by it as a result of the following events:

- during the Project term:
  - breach by the State of any Project documents
  - industrial action which directly affects the Project and which Project Co can demonstrate is a direct result of an act or omission of the State or a State-related party at the Schools other than any act or omission which is authorised or permitted under any Project document
  - suspension of works or the provision of Services due to a native title claim or the discovery of artefacts (where the State takes this risk)
- during the Development Phase:
  - any act or omission of the State (in its contracting capacity) or its Associates, other than any act or omission which is authorised or permitted under the Project Agreement or is an exercise of a government authority's statutory powers, and which causes delay
  - remediation of contamination (where the State takes this risk), including delays resulting from remediation of pre-existing contamination at the Epping North site
  - step-in by the State as a result of an Emergency or under a statutory power (excluding step-in

- in circumstances related to a force majeure event or Project Co default)
  - a legal challenge to, or the modification, withdrawal, revocation, suspension, invalidation or replacement of the planning exemption provided to the Minister for Education
- during the Operating Phase, a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates acting in connection with the Project

## 2.8 Default, termination and step-in regimes

### Default

A default by Project Co under the contractual arrangements will entitle the State to various remedies. Where a default has occurred, the State will, in most circumstances, be required to give Project Co an opportunity to cure the default. If the default is not cured by Project Co within the required cure period, it will escalate to a major default.

The Project Agreement also elevates a number of events to be immediately classified in the major default category (such as late completion of construction of a School, or when service failures occur above specific thresholds).

In respect of major defaults, Project Co will be given the opportunity to agree a cure plan (if the default is capable of cure) or to develop a remediation plan to prevent the default from recurring (in circumstances where the default is not capable of cure). Where Project Co fails to cure the major default within the required cure period or to comply with an agreed remediation plan (as applicable), this will generally, subject to financier step-in rights, give rise to the State's right to terminate the Project Agreement.

Certain events of default are so severe that they are not subject to a cure regime. They give rise to a State termination right immediately upon their occurrence (for example, insolvency of Project Co, fraud or dishonest conduct by Project Co, a failure to conduct probity checks which result in unsuitable parties attending a school site unescorted). These events are called default termination events.

### Step-in

In addition to triggering termination rights (or potential termination rights), events of major default and default termination events may trigger additional State rights and remedies including the right to step-in to remedy the situation (that is, the right to assume control and management of the Project).

Step-in rights for the State, as specified in the Project Agreement, can be triggered when:

- a major default has occurred and Project Co is not complying with its cure plan or remediation plan;
- a default termination event has occurred;
- a cure notice is issued by the D&C subcontractor or the FM subcontractor;
- there is an emergency;
- a law entitles the State to a statutory right of step-in.

The default-related step-in right is subject to any step-in rights the financiers may have. During any step-in associated with a default, the QSP will be abated to the extent that the services are not being provided.

### Termination

Where the Project Agreement is fully or partly terminated before the natural expiry of the Operating Phase, Project Co may be entitled to a termination payment. The Project Agreement can be fully terminated with respect to all the schools, or partly terminated with respect to one or more of the schools, as a result of the following:

- certain events of default;
- a force majeure termination event;
- major damage whether or not attributable to a default event, force majeure or other event;
- voluntarily by the State.

The State generally has the discretion to partly or fully terminate the Project other than where the termination event relates to major damage at a particular site (and such damage was not caused by a malicious, fraudulent or unlawful act of Project Co) in which case partial termination will apply.

The basis for the calculation of the termination payment will be determined by the reason for the termination as summarised in Table 12. In the event that the termination payment is a negative amount, Project Co must pay that amount to the State.

**Table 12: Calculation of termination payments**

Event	Trigger (full or partial as relevant)	Termination Payments (full or partial as relevant)
Default Termination Event	The State may terminate the Project Agreement if certain events of default have occurred and not been remediated in accordance with the Project Agreement.	The Project's fair market value determined by tendering or an independent valuer. An independent valuer must be used in certain circumstances, including where there is no liquid market.
Termination for Force Majeure	The occurrence of a force majeure termination event (including an uninsurable event for which the State does not act as the insurer of last resort).	The outstanding debt as at the termination date plus other agreed costs.
Voluntary Termination	The State may at any time, for reasons of its own choosing, unilaterally elect to terminate the Project Agreement for convenience.	The outstanding debt as at termination date plus the fair market value of the equity as assessed by an independent expert together with other reasonable costs.

The termination payment in the event of major damage will fall into one of the above categories dependent on the cause of such damage.

## 2.9 Finance

Project Co is responsible for the provision of debt and equity finance for the Project. Its funding structure comprises senior debt drawn progressively from Financial Close and equity committed at Financial Close by way of an equity letter of credit, with the equity funding drawn down as a lump sum during construction.

The debt is for an initial period of 5 years from Financial Close. Debt will then be refinanced at regular intervals over the remainder of the Project term. The State will not share in any refinancing losses, but will be entitled to 50 per cent of the benefit of any refinancing gain, after allowing Project Co to recoup any prior refinancing losses.

## 2.10 State rights at expiry of contract

The Project Agreement requires Project Co to hand back the Schools to the State at the expiry of the Operating Phase for nil consideration and in a condition that meets the requirements of the Project Agreement. The State will then resume full control of the sites.

The Schools will be independently inspected on a six-monthly basis in the 2 years leading to the expiry of the Operating Phase to ensure that all lifecycle and maintenance works have been completed and

that the Schools will meet the handback condition. The handback provisions are described in the Project Agreement.

If Project Co fails to maintain the Schools to the standards required to satisfy the handback requirements, the State will be entitled to withhold a portion of the QSP to cover the expense of any shortfall.

## 2.11 Learn to Swim Pool

LCV is required to design and construct a Learn to Swim Pool at the Mernda Central site. Upon its completion the State will make a one-off construction payment to LCV and enter directly into a lease with the YMCA for operation of the pool.

Terms of the lease with the YMCA are pre-agreed and include:

- an initial period of 15 years with an option to extend to 31 December 2042
- a commercial rent
- revenue sharing with the State where annual enrolments in the learn to swim program exceed specified levels

## 2.12 Audit and inspection rights of the State

The Project Agreement includes contractual rights for the State to be given access to information and data, including to:

- inspect, observe or test any part of the works, infrastructure or Project activities;
- examine and make copies of the accounts and other records, reports and all documents reasonably requested of LCV or any of its key subcontractors in connection with the Project;
- The State has the ability to disclose information in connection with the Project to satisfy the disclosure requirements of the Victorian Auditor-General or to satisfy the requirements of Parliamentary accountability.

## 2.13 Lessons learned from previous projects

### Partnerships Victoria

Lessons learned from previous Partnerships Victoria projects have been adopted for the Project as appropriate. For example:

- The State may raise any performance concerns directly with Project Co's financiers.
- Subcontractors with valid claims during the Development Phase are protected such that they receive priority payment ahead of financiers in certain circumstances.
- The circumstances in which unanimous bank group decisions are required in the case of insolvency of the Builder or any its parent guarantor, or in a project abandonment scenario, is limited to prevent a bank with only a minor debt interest impeding decision-making.
- If the Project Agreement is terminated and the termination payment calculation results in a negative amount, Project Co must pay that amount to the State.
- The payment of any termination payment amount owing by Project Co to the State must be given priority over repayment of Project Co's financiers.
- The State is given certainty of the maximum remedy periods for achieving construction completion.
- The risk allocation for intervening events and force majeure events has been clarified to ensure that the State is not liable for insured risks.

It is also a feature of PPP contracts that the Independent Reviewer has the ability to undertake 'look forward' tests during the construction phase of the Project to determine whether LCV will achieve construction completion for a school on time. If the Independent Reviewer forms an opinion 4 months prior to the scheduled completion date that construction completion of a school will be late, LCV is required to

develop and implement a cure plan to rectify the situation and achieve completion as expeditiously as possible.

## **PVIS**

The previous *Partnerships Victoria in Schools (PVIS)* project successfully delivered 12 new schools under a PPP model in 2010 and 2011. The Project contracts address lessons learned from that project, including:

- External works – the conduct of extensive due diligence on the sites enabled transfer of price risk to LCV for pre-existing contamination for all sites except Epping North, and for all external infrastructure except power infrastructure, limiting the extent of the provisional sum approach utilised on PVIS;
- FM mobilisation - the conduct of FM mobilisation activities is a condition of Commercial Acceptance to ensure that Services are fully mobilised upon school opening;
- School Initiated Works – a further development of the minor modifications regime is incorporated which enables schools to directly fund non-structural works (garden beds, shade sails etc.) and utilise pre-approved suppliers;
- Enrolments and Relocatables – the regime for positioning and servicing of relocatables on site and associated cost compensation has been more clearly defined. Capacity risk is clearly expressed and the State takes cost risk where enrolments exceed the defined peak enrolment;
- Loose FF&E Modifications – a limit for Loose FF&E is set which provides flexibility for the State to change its selections – with a corresponding adjustment if it exceeds the specified expenditure limit. This addresses issues of principals wishing to amend the equipment selections after contract close. A simplified approach to the associated lifecycle cost adjustment is incorporated. In addition, funding is held outside the PPP for principals to purchase music, science and gym equipment to meet local needs;
- School Officer – this was a positive value-add of the PVIS project which has now been mandated. Additional emphasis is placed on the quality and capability of officers. A major default can be triggered where performance is not in accordance with the Service Specifications (where agreed remediation plans have not been met);
- Community access to facilities – available hours have been expanded to 6.30am-6.00pm and to 10.00pm on weekdays for community hubs, gyms, ovals and kitchens to support community use. Weekend and vacation use of various these areas is also allowed for. The obligations on Project Co to provide community use programs and co-ordinate community use and the commercial drivers for Project Co to actively promote such use have been significantly increased. In addition, unlike PVIS, Project Co and not the State is taking the contracting and performance risk on the YMCA as the community services provider (other than in respect of the Learn to Swim Pool where the State has entered directly into a lease with the YMCA);
- Consolidating KPIs – KPIs have been fully reviewed and updated to support more effective and efficient contract management;
- Grounds and gardens – standards have been updated to improve quality of care;
- Security – after hours security response is to be provided by the specialist DET security unit rather than Project Co to improve value for money.

## **2.14 ELC Development Deed and ancillary contracts**

### **Overview**

Concurrently with entering into the Project Agreement, the Minister for Education entered into the ELC Development Deed and ancillary documents with LCV's ELC partners, Arena and the YMCA, for the development and operation of early learning centres at 6 of the school sites at no cost to the Project as set out in Section 1.6.

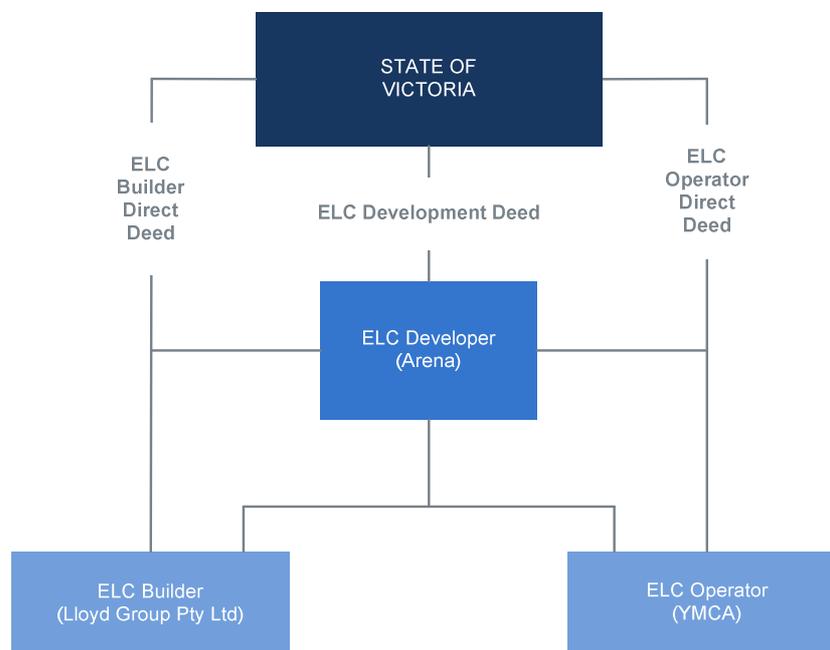
The ELC Development Deed includes the agreed form of lease which the State and Arena will enter into for the duration of the project term upon completion of the ELCs. Upon expiration of the Project the ELCs will revert to the State at no cost.

## Contractual Arrangements

The relevant parties under the ELC contractual arrangements are:

- **The State:** The State is a signatory to the ELC Development Deed and other ancillary documents. The Minister for Education is the person empowered to execute these contracts on behalf of the State.
- **ELC Developer:** Arena REIT Management Limited (as responsible entity for the Arena REIT No 1 ARSN) is the counterparty to the ELC Development Deed, and is the primary contracting entity with the State
- **Builder:** Arena REIT Management Limited has engaged Lloyd Group Pty Ltd to construct the ELCs and Lloyd Group Pty Ltd have in turn engaged Clarke Hopkins Clarke to design the ELCs. .
- **ELC Operator:** Arena REIT Management Limited has engaged the YMCA to operate the ELCs.

**Figure 5: Early Learning Centres contractual relationships**



## Risk Allocation

The risks, costs and benefits associated with the ELCs rest primarily with Arena. In return for the State granting the development rights for the ELC Sites, Arena will construct, lease and operate the ELCs for the Project term at no cost to the Project. Arena has appointed the YMCA as the ELC Operator.

Under the terms of the ELC Development Deed and attached lease, the risks retained by the State generally comprise:

- Planning risk: under Section 16 of the *Planning and Environment Act 1987* planning schemes are not binding on the use and development of land carried out by or on behalf of the Minister for Education and the State is relying on the exemption;
- Provision of site access;
- Costs incurred in the remediation of pre-existing contamination at the Epping North site;
- Breach of the ELC Development Deed by the State;
- Fraudulent, reckless, unlawful or malicious acts of the State in respect of an ELC
- Obligation to enforce rights against Project Co to procure access by Arena to, and ensure maintenance of, utilities services on the adjoining school sites;

- Making of termination payments if the Project Agreement is terminated (where the State has a discretionary right of termination).

## Appendix 1 Glossary

Terms used in this Project Summary have the meaning given to them in the Project Agreement unless otherwise defined in this Glossary or elsewhere in this document.

Term	Meaning
Commercial Acceptance	The date on which, following completion of all design, construction and FM mobilisation activities, Project Co meets the requirements of the Project Agreement for a School to enable the commencement of education services by the State.
Contractual Close	The date on which the State and Project Co entered into the Project Agreement. This occurred on 28 October 2015.
DET	Department of Education and Training
Development Phase	The period from Financial Close to Commercial Acceptance for a School.
ELC	Early Learning Centre
EOI	Expressions of Interest
FF&E	Furniture, fittings and equipment
Financial Close	The date on which Project Co satisfied all of the conditions to be met in order for its financiers to make funds available to it. This occurred on 29 October 2015.
FM	Facilities management
KPI	Key Performance Indicator
LCV	Learning Communities Victoria Pty Ltd
Net Present Cost	The discounted value of project cash flows
Non Reviewable Services	All services which are not Reviewable Services.
Operating Phase	The period from Commercial Acceptance for a School to the expiry of the Project Agreement on 1 January 2043.
Output Specification	Schedule 27 of the Project Agreement which sets out the detailed masterplanning, architectural, design, functional, and technical requirements for the Project.
PPP	public private partnership
Partnerships Requirements	Victoria The set of specific guidance applicable to Victoria that is to be read in conjunction with the National PPP Guidelines and is available at <a href="http://www.dtf.vic.gov.au">www.dtf.vic.gov.au</a> via the 'Policy and Guidelines' link.

Preferred Respondent	A Respondent who has been selected, following the RFP Phase, as preferred to proceed to the Negotiation and Completion Phase.
Project	New Schools PPP Project
Project Agreement	The Project Agreement entered into between Project Co and the State on 28 October 2015.
Project Co	Learning Communities Victoria Pty Ltd in its personal capacity and as trustee of the LCV Project Trust, the counterparty to the Project Agreement and the main contracting entity with the State.
PSC	The Public Sector Comparator for the Project, being the risk-adjusted cost of the most likely efficient form of public sector service delivery that could be employed to satisfy all elements of the Output Specification and Services Specification.
PVIS	The Partnerships Victoria in Schools Project 2008
QSP	Quarterly Service Payment
Respondent	A person, legal entity or body corporate invited to submit a proposal.
Reviewable Services	Services that are repriced and/or retendered at predetermined times during the Operating Phase. These are waste management, grounds and gardens, pest control, cleaning and school officer services.
RFP	Request for Proposal
Schools	Each of the new schools to be delivered by the Project
Services	As described in the Project Agreement and Services Specification including : <ul style="list-style-type: none"> <li>(a) the General Services;</li> <li>(b) the Help Desk Services;</li> <li>(c) the School Officer Services;</li> <li>(d) the Building Management Services;</li> <li>(e) the Utilities Management Services;</li> <li>(f) the Waste Management Services;</li> <li>(g) the Grounds and Gardens Maintenance Services;</li> <li>(h) the Pest Control Services;</li> <li>(i) the Cleaning Services; and</li> <li>(j) the Security Services.</li> </ul>
Services Specification	Schedule 28 of the Project Agreement which sets out the detailed description of the Services, standards and key performance indicators.
VIPP	Victorian Industry Participation Policy

## Appendix 2 Useful references

Project documentation, including the Project Agreement, is available at:

[www.tenders.vic.gov.au](http://www.tenders.vic.gov.au)

Partnerships Victoria policy guidance and Project information is available at:

[www.dtf.vic.gov.au](http://www.dtf.vic.gov.au)

Department of Education & Training website:

[www.education.vic.gov.au](http://www.education.vic.gov.au)

## Appendix 3 Key contact details

### **Department of Education and Training**

Website: [www.education.vic.gov.au](http://www.education.vic.gov.au)

2 Treasury Place

East Melbourne VIC 3002

Phone: (03) 9637 2000

### **Partnerships Victoria**

Website: [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au)

Department of Treasury and Finance

1 Treasury Place

East Melbourne VIC 3002

Phone: (03) 9651 5111

## Appendix 4 Evaluation Criteria

The State evaluated each proposal against detailed evaluation criteria.

### 1 Design and Technical Solution

The State evaluated the following aspects of each Respondent's Design and Technical Solution and their effectiveness in meeting the requirements of the Output Specification:

- Masterplan – the appropriateness of the masterplan for each site including the extent to which the Respondent considered local settings and community contexts; existing adjoining buildings and estate; planning and infrastructure issues (car and pedestrian access, car parking, traffic); positioning of relocatable units and proposed community Schools.
- Design – functional and operational efficiency of design in meeting the education design principles; architectural design; interior design; landscape and outdoor areas; community Schools design.
- Technical solution – engineering and associated services including utilities and ICT; ESD and energy efficiency
- FF&E - the quality, durability and suitability of proposed FF&E, including requirements for the special school and SDS
- Construction Management – project management and construction management across all of the sites during the development phase; design development process; construction program and approach to staging; construction methodology; process for commercial acceptance
- Output Specification Departures – the nature and extent of proposed departures from the requirements of the Output Specification, and the impact of those departures on the design, operability and functionality of the Schools.

### 2 Services Solution

The State evaluated the following aspects of each Respondent's Services Solution and their effectiveness in meeting the requirements of the Services Specification:

- FM Mobilisation – the robustness of the proposed FM Mobilisation Plan for the implementation of the Services at the Schools including a demonstrated understanding of key mobilisation activities and milestones, timing and extent of commitment of resources, interfaces with the State and other Consortium members.
- Management of services delivery – project management and FM management across each of the Schools throughout the operations phase; reporting structures; resourcing and shifts; recruitment processes; communications plans
- Services Specific Solutions – method statements to provide each of the Services.
- Services Specification Departures – the nature and extent of proposed departures from the requirements of the Services Specification and the impact of those departures on delivery of the Services.

### 3 Commercial and Financial Solution

The State evaluated the following aspects of each Respondent's Commercial and Financial Solution and their effectiveness in delivering the Project.

- consortium structure and risk allocation
- ownership, management structures and equity commitments
- level and appropriateness of financial support and security packages

- contract departures – the nature, extent and value for money impact of proposed departures from the draft State Project Documents.
- degree of execution risk and risk of delay in achieving Contract Close and Financial Close
- Financing Structure
- the appropriateness, competitiveness and flexibility of the financing structure.
- the deliverability and certainty of finance
- the appropriateness of the proposed payment structure .
- Financial Assumptions – the robustness of financial assumptions
- Community Schools
- the synergistic and/or complementary nature of proposed Community Schools;
- legal and commercial relationships
- net costs or net revenues; proposed sharing of net revenue with the State;
- desirability of the proposed Community Facility as compared with Scope Ladder items; and
- affect on the deliverability of the rest of the Project, delivery of Education Services and the Services.

## 4 Value and Risk Proposition

The State evaluated the following aspects of each Respondent's value and risk proposition:

- The net present cost of the Proposal (including Scope Ladder items and Community Facility proposals) – the whole-of-life, risk-adjusted cost of each Proposal, taking into account its financial and risk consequences.
- other risks – any other risks, costs or benefits to the State associated with the proposal.
- VFM enhancements – any alternative offers submitted for consideration by the State that would provide a value-for-money enhancement.
- innovation – extent of innovation incorporated within the Proposal
- commitment to Victorian Industry Participation Policy (VIPPP) – as detailed in the submitted Local Industry Development Plan (LIDP), recognising the Project's strategic significance with regard to VIPPP
- commitment to the Back to Work policy – commitment to the apprentice employment target of 10% of total labour hours

## Appendix 5 Public Interest Test

In line with the Partnerships Victoria Requirements, the New Schools PPP Project's Public Interest Test was updated prior to contract execution. The Project continues to satisfy the public interest assessment that covers criteria such as equity and transparency.

Public Interest Elements	Standards, Relevant Policies and Strategies	Assessment
<p><b>Effectiveness</b></p> <p>Is the project effective in meeting Government objectives?</p>	<p>Victorian Labor Platform 2014</p> <p>Strategic Plan 2013-2017</p> <p>Education and Training Reform Act 2006</p> <p>The Compact: Roles and responsibilities in Victorian government school education</p> <p>AusVELS (Victorian Essential Learning Standards) and Educational Principles</p> <p>Abilities Based Learning and Education Support</p> <p>Victorian Early Years Learning and Development Framework</p> <p>Special Needs Plan</p>	<p>Government is committed to delivering the Education State and providing first class education starts with investment in school infrastructure. The PPP Project aligns strongly with the Victorian Government's policy which identifies the need for every Victorian school to have "attractive, solid, technologically advanced and environmentally efficient buildings that can be adapted for community use and changed purposes, with shaded, attractive grounds." It also aligns with the State's objectives and policies of improving educational outcomes through ensuring access to quality education options for families and co-location of school Schools and other social infrastructure to enhance the range of services available to communities. In addition, the Project delivers improved maintenance of school Schools enabling freeing up of education professionals allowing them to dedicate their time to education. The schools design will also support inclusion and maximise opportunities for all students including those with a disability.</p>
<p><b>Accountability and Transparency</b></p> <p>Do the proposed procurement arrangements ensure that:</p> <ul style="list-style-type: none"> <li>The community can be well-informed about the obligations of Government and the private sector partner (Project Co); and</li> <li>They can be overseen by the Auditor General</li> </ul>	<p>Freedom of Information Act 1982</p> <p>Victorian Government Purchasing Board Probity Policy</p> <p>Best Practice Probity Advice Guidelines</p> <p>Victorian Auditor-General</p>	<p>The Project governance offers accountability and transparency to the relevant school communities, through the development of a communication plan and consultation with each relevant community and local council throughout the Project.</p> <p>Appropriate confidentiality measures are required to be implemented and observed throughout the procurement process. In addition, the contractual arrangements are transparent and ensure that the community can be well informed about the responsibilities of the parties.</p> <p>In particular, Victorian Government</p>

Public Interest Elements	Standards, Relevant Policies and Strategies	Assessment
		<p>Purchasing Board Probity Policy and Best Practice Probity Advice guidelines are required to be followed, including the appointment of a probity auditor to oversee probity arrangements implemented for the Project.</p> <p>Within three months of financial close, a Project summary, the Project agreement and related documentation will be published, subject to the confidentiality provisions of the <i>Freedom of Information Act</i>. In addition, the Auditor-General will have full access to any information relating to the Project.</p> <p>The level of accountability offered by a PPP transaction is in line with the Government's policy of providing greater level of autonomy to school leaders to make decisions and pursue goals that are in the best interest of students.</p>
<p><b>Affected Individuals and Communities</b></p> <p>Have those affected been able to contribute effectively at the planning stages, and are their rights protected through fair appeals processes and other conflict resolution mechanisms?</p>		<p>The Project's contractual arrangements allow for the same individual and community rights and policy requirements as other DET projects.</p> <p>Community stakeholder consultation will be managed through the Education Reference Group, Local Reference Groups and Local School Reference Groups (interim school councils). These groups will review and inform design and service requirements throughout the tender process and construction phase and inform decisions regarding the individual schools including curriculum development and school culture. There will also be extensive engagement with local councils to ensure that local service provision needs are taken into consideration so the new schools will complement existing and future planned community Schools.</p>
<p><b>Equity</b></p> <p>Are there adequate arrangements to ensure that disadvantaged</p>	<p>Racial Discrimination Act 1975</p> <p>Sex Discrimination Act 1974</p> <p>Commonwealth Disability</p>	<p>The Project will comply with the relevant equity laws and regulations. The ongoing provision of services by both the public and private sectors recognise the requirements</p>

Public Interest Elements	Standards, Relevant Policies and Strategies	Assessment
<p>groups can effectively use the infrastructure or access the related service?</p>	<p>Discrimination Act 1992</p> <p>Equal Opportunities Act 1995</p> <p>Disability Standards for Education 2005</p>	<p>of disadvantaged groups. In particular Disability Discrimination Act requirements will be incorporated into the Project.</p> <p>A number of the schools are being built in areas of lower socio-economic standards, and the Project Objectives reflect the need to improve educational outcomes for all students, particularly in areas of disadvantage.</p> <p>The Project aligns with Government's Special Needs Plan with the schools' design supporting new options for students with a disability including the inclusive Education Precinct at Armstrong Creek and a special developmental school in North Geelong. Supporting inclusion is a key Project Objective and the new schools will enhance educational opportunities available for all students, regardless of learning needs.</p>
<p><b>Public Access</b></p> <p>Are there safeguards that ensure ongoing public access to essential infrastructure?</p>	<p>Appropriate contractual arrangements in place</p>	<p>Contractual arrangements allow the State access to provide core education services. The contracts also give the State the right to step in and take over operations if the private party fails to deliver the required services including providing public access. All schools will include contractual provisions that facilitate the use of school Schools by the community.</p>
<p><b>Consumer Rights</b></p> <p>Does the project provide sufficient safeguards for service recipients, particularly those for whom Government has a high level of duty of care, and/or the most vulnerable?</p>	<p>State's duty of care to the public</p> <p>Standards and legislation prescribed by Consumer Affairs Victoria</p>	<p>Government has a duty of care to the consumer; hence safeguards are illustrated through the standards and legislation prescribed by Consumer Affairs Victoria. The contractual arrangements require the contractor to comply with all laws, and enable the State to ensure that user rights are protected. It is not proposed that any particular legislation be enacted in respect of the Project.</p>
<p><b>Security</b></p> <p>Does the project provide assurance that community health</p>	<p>State's duty of care to the public</p> <p>Relevant laws and regulations covering OH&amp;S requirements</p>	<p>Victorian legislation, enforced by WorkSafe Victoria, in conjunction with policy guidelines ensure that community and employee health and safety will be secured. Any contractors selected to</p>

Public Interest Elements	Standards, Relevant Policies and Strategies	Assessment
and safety will be secured?	Schools Policy Advisory Guide	participate in the Project will be required to demonstrate compliance with all laws, rules and guidelines, and industry best practice protecting against risks to community health and safety. Contractors will be required to ensure a duty of care is undertaken, in particular in terms of student care, as set out in the School Policy Advisory Guide and at law. Particular attention will be placed on the standard safety and duty of care obligations to ensure schools are safe and secure for community users of Schools.
<p><b>Privacy</b></p> <p>Does the project provide adequate protection of users' rights to privacy?</p>	<p>Freedom of information Act 1982</p> <p>Federal Privacy Act 1982</p> <p>Information Privacy Act 2000</p>	<p>The Project does not alter the existing privacy arrangements. Legal rights and policy requirements are the same as for traditional build DET projects, with protection of user's rights to privacy through adherence with the <i>Freedom of Information</i> and <i>Information Privacy Acts</i>. Strong precedents exist for the arrangements through the <i>Partnerships Victoria</i> in Schools project.</p>