The role of PPPs in Urban Regeneration

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Public Private Partnerships

CONSIDERING PPPS FOR URBAN DEVELOPMENT

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Background on PPPs for urban infrastructure

- A Public-Private Partnership (PPP) is a method of procurement by public entities, including municipalities for services and infrastructure to be provided by the private sector
- A PPP is a contract between a public sector entity and a private sector service provider whereby –
  - The private party provides a public sector *function*
  - OR
  - *USES STATE PROPERTY FOR ITS OWN COMMERCIAL PURPOSES*

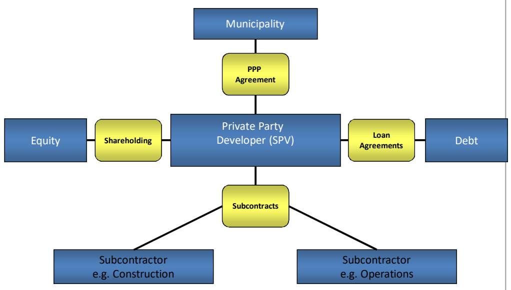
Background on PPPs for urban infrastructure

- Cutting out the extraneous language in the statutes and regulations, and focusing on the use of municipal land for private sector commercial purposes –
  - A municipal PPP is a commercial transaction between a municipality and a private party in terms of which the private party acquires the management or use of municipal property for its own commercial purposes and assumes substantial financial, technical and operational risks in connection with the management or use of the municipal property and receives a benefit from such use of municipal property by way of charges or fees to be collected by the private party from users or customers of the private party

Background on PPPs for Urban Infrastructure

- Virtually all of South Africa lies within a municipality
- A great deal of municipal land lies fallow
- In times of economic stress as currently being experienced in South Africa, all assets must be exploited to their maximum potential
- The fact that private sector use of public land qualifies as a PPP is, in many instances either unknown or ignored
- The requirement of a feasibility study in any PPP provides a basis for financial institution participation
- South Africa is unique in offering this type of PPP

Typical PPP Structure



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NATIONAL TREASURY

PPP unit

Similar to the now familiar PPP project cycle for national and provincial government, the Municipal Finance Management Act's PPP regulations, promulgated on 01 April 2005, provide a clear PPP path for municipalities to follow.

But instead of 'Treasury approvals' as required under the Public Finance Management Act, the MFMA requires Treasury 'views and recommendations' on the feasibility study, the procurement documentation and the terms of the negotiated PPP agreements prior to signature.

Here are the regulated steps which the municipality must follow

MUNICIPAL PPP PROJECT CYCLE

PROJECT PREPARATION PERIOD

INCEPTION

- Review and decide on mechanism to provide a municipal service
- Assess service provision through an internal mechanism
- Decide to explore external mechanism
- Appoint a Project Officer

FEASIBILITY STUDY

- Notify National Treasury and relevant provincial treasury
- [Treasury may request appointment of Transaction Advisor]
- Notify local community
- Assess the different options
- Conduct a feasibility study
- Set meeting date where Council to take "in principle" decision
- 60 days prior to meeting, make public particulars of feasibility study and invite comment
- Solicit views and recommendations of National Treasury, DPLG, sectoral department
- Decide "in principle"

PROCUREMENT

- Prepare fair, equitable, transparent, competitive procurement per Chapter 11 of the MFMA
- Solicit views of National Treasury and relevant provincial treasury on bid documents, including draft PPP agreement, 30 days before bids are issued
- Issue requests for proposals with draft PPP agreement
- Receive bids
- Compare bids with feasibility study and each other
- 30 days before award, solicit views of National Treasury and the relevant provincial treasury on the bid evaluation and preferred bidder
- Negotiate with the preferred bidder
- Finalise PPP agreement
- 60 days before signing, make draft PPP agreement public, and invite public comment
- Before signing, solicit National Treasury's views and recommendations on proposed terms and conditions, contract management plan and preferred bidders competency and capacity
- Before signing, solicit views and recommendations of relevant provincial treasury, DPLG and any prescribed sectoral department
- Municipal Council passes resolution authorising execution of PPP Agreement
- Accounting officer of Municipality signs the PPP agreement

PROJECT TERM

PPP AGREEMENT MANAGEMENT

- Accounting officer responsible for PPP agreement management

Municipal PPP Requirements

- Legislative framework – MFMA Chapter 11 §120 – feasibility study requirements
- MFMA §33 – contracts longer than 3 years
- MFMA Municipal PPP Regulations
- Municipal Systems Act, part 2 of Chapter 8, provision of services
- *Municipal Service Delivery and PPP Guidelines*, providing guidance on all of the above.

- In contrast to National and Provincial PPPs, National Treasury only provides *"views and recommendations"* and NOT approvals

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Safeguarding the public interests while allowing private returns

- First, undertake a Feasibility Study per the Municipal PPP Regulations & *Guidelines*

Purpose: to determine whether the proposed development PPP is in the best interests of the municipality from a financial, legal and socio-economic perspective

- Key elements
  - Needs Analysis
    - Municipality's strategic Objectives
    - Integrated Development Plan
    - Socio-economic goals
    - Asset Management plan
    - Budget – to defray municipality's obligations
    - Capacity, resources to procure and manage the project

Safeguarding public interests while allowing private returns

- Processes:
  - Identify immovable property (asset register, IDP)
    - Property NOT required for a basic municipal service
  - Pre-feasibility assessment
    - Ownership of site
    - Current use of site
    - Town planning/zoning requirements
    - Social Economic Development considerations
    - Land Claims
    - Environmental/Heritage Act considerations
    - Costs to municipality to pursue further assessment

Feasibility Study

- Value assessment
  - Property valuation -- various scenarios including mixed use
  - Highest and best use
  - Business models – best and worst case models for
    - Revenues to be paid to municipality by private party
    - Costs to municipality to manage the PPP
    - BEE/Socio-economic costs
  - Affordability assessment
  - Initial value for money assessment
  - Information verification

Feasibility Study ... continued

- Expression of Interest (EOI)
  - After value assessment, publish EOI to determine market interest in the development project
  - Contents of EOI
    - Brief description of project, including mixed use potential
    - Invitation for private parties to describe their:
      - Mixed use property development capabilities
      - Ability to raise funding
      - BEE qualifications
      - Commitment to municipality's socio-economic goals
      - ONLY AN EOI – Not a TENDER

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Safeguarding public interests while allowing private returns

- EOI, continued
  - Evaluate responses to determine public interest protection and range of private returns suggested.
  - Prepare a Procurement Plan, per the Guidelines
- Feasibility Study Report
  - Needs analysis
  - Due diligence
  - Value Assessment
  - EOI processes
  - Procurement Plan
- **Publish Feasibility report per MSA §21A**
- Provide copy to National & Provincial Treasury, COGTA for "views and recommendations" – via "Views and Recommendations"
- Incorporate public comments and views and recommendations
- If safeguards and private interest demonstrated, take to Council

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Reconciling and aligning interests to incentivise both parties in the long term of the project

- The interests and incentives for a municipality to consider a PPP for private sector use of municipal land for commercial purposes include:
  - The potential for revenue generation from un-or-underused municipal land
  - The domino effect that such development have on adjacent lands which may not be optimally developed
  - The increase in the value of the land over the term of any PPP Agreement
  - The additional utilities revenue that will be generated by the users of the land
  - The realisation of substantial B-BBEE and SED objectives by the municipality

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Reconciling and aligning interests to incentivize both parties in the long term of the project

- The interests of the private party market include –
  - Obtaining possession of high-market value lands without paying market value
  - The ability to focus financial undertakings on the design, construction, maintenance and operation of a commercial enterprise, including, a mixed-use development
  - The provision of bulk infrastructure to the site by the municipality
  - A PPP Agreement term that is of sufficient duration to allow the private party to recoup its infrastructure investment plus earn a decent return
  - An opportunity to achieve a higher B-BBEE status

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Reconciling and aligning interests to incentivize both parties in the long term of the project

- Another incentive for both parties is the fact that once the private party's infrastructure has been constructed and put into revenue-generating operation, the private party may be able to refinance the debt incurred to a much lower rate, which provides, to the private party, a greater return on its investment, and to the municipality, the opportunity to earn more in terms of the " rent" or concession fee from the private party.
- This sharing of differences between the costs of debt pre-construction and post-construction can be negotiated in the PPP Agreement

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Why some PPPs work and others don't

- The key to a successful PPP for private sector use of government lands for commercial purposes is the nature of the commercial activity which is proposed to be undertaken on the government land.
  - It is my observation that any commercial activity that relies on *tourism* requires great scrutiny.
    - Tourism can be affected by a host of different matters not apparent at the time that the PPP Agreement was signed
      - An example is the requirement for certified birth certificates by Home Affairs

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Why some PPPs work and others don't

- In real estate, there is a phrase – "location, location, location" as being the three main considerations when purchasing real estate
- The same considerations should be in play when a municipality considers the potential for a private party use of municipal land PPP
- SANPARKS provides good examples. They have a number of private party use of state lands PPPs located in Kruger Park and they all are doing quite well
- Other major SANPARKS locations have had mixed results, with some doing better than others
- Provinces and district municipalities have had little luck

Conclusion

- The attractiveness of a government PPP for private party use of state lands – whether it be by a municipality or a provincial or national department – depends upon a host of factors, not all of which have been conclusively identified and quantified at this time
- However, we believe that enough experience has been gained by both the public and private sectors in terms of the assessments that have taken place to date, to warrant a serious examination of this alternative mechanism to unlock the value of un-or-poorly used government lands.

Examples of Projects

- Health Care, including medical equipment installation, operation and maintenance, hospital co-location, provision of renal dialysis services and hospital refurbishment, maintenance and operation
- Finance, design, construct, maintain and operate government head office accommodation – 7 completed
- Chapman Peak toll road in the Western Cape
- Transversal fleet management for numerous national departments
- Cradle of Humankind World Heritage Site
- Vaccine distribution, nationwide
- Gautrain Rapid Rail -- one of the largest PPPs on the Continent

THANK YOU!

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