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Alternative Models and Capacity Reality Checks

PPPs Without Private Finance?



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Can the benefits of Public-Private Partnerships be obtained without the costs of private finance? That is the key question raised in four important postings which the leading Australian PPP lawyer, Owen Hayford, placed on his *InfraLegal* website[1] in July 2026.

In an article which I prepared for the December 2025 edition of the *WAPPP Magazine,*[2] I responded to an earlier Owen Hayford posting, discussing the differences between the PPP environments in Australia and those found in most emerging markets. In this article, I am continuing that dialogue, dealing with the PPP finance question raised in Owen's four new July postings.

I will start by summarizing Owen's four postings.

Owen Hayford's 12 July Posting: Putting Operations First

The initial posting in the series[3] outlines what Owen Hayford calls the 'O&M First Model'. This posting begins by separating the benefits of integrated procurement from its financing. Owen argues that many PPP benefits – including output specifications, performance-based payments, deductions for service failures, lifecycle planning and handback obligations – are related to the proper integration of operational requirements with decisions about design and construction, and he asserts that this integration does not require a privately financed Special Purpose Vehicle (SPV) PPP company.

In a Traditional Infrastructure Procurement (TIP) (or 'public works' procurement) project, the government often appoints the Operations and Maintenance (O&M) contractor after important design choices have been settled. Equipment, access arrangements and replacement strategies may then reflect construction priorities rather than long-term efficiency. Owen proposes changing the normal TIP approach by reversing the sequence: appoint the long-term O&M contractor first, then develop the performance requirements jointly with the government contracting authority before procuring the Design and Construction (D&C) contractor.

How can an O&M contractor price an asset not yet designed? Owen observes that operators already do this in PPP bids, by making assumptions about the characteristics necessary for efficient operation. Under the O&M First TIP Model, these assumptions can become explicit requirements. The O&M contractor reviews the developing design against those requirements, potentially through a development phase before construction pricing is finalised.

The O&M First TIP Model could preserve many familiar PPP incentives and whole-of-life benefits. Owen does, however, acknowledge what it would omit: private capital, lender oversight and intervention rights, financial protection against contractor failure and, where applicable, demand-risk transfer. The proposal separates operational integration from financing; it does not establish that finance contributes nothing.

Owen Hayford's 16 July Posting: Managing the Construction-Operations Interface

Owen Hayford's second posting[4] proposes another TIP approach: the 'Tripartite DBOM Model', with a single design-build-operate-maintain contract between the government, the D&C contractor and the O&M contractor. A PPP SPV normally integrates the contractors' obligations and assumes interface risk.

Owen asks whether that responsibility can instead be assigned directly, without a privately financed intermediary.

The proposed Tripartite DBOM contract would distinguish responsibilities allocated exclusively to one contractor from shared responsibilities. Design defects would generally belong to the D&C contractor; inadequate maintenance to the O&M contractor. Outcomes such as availability, energy performance or asset condition could depend on both parties, and would require shared accountability.

The principal innovation in this TIP model is that it documents assumptions that are often left implicit in a PPP contract. For each major design package, a Design Performance Statement would explain compliance with the performance requirements and identify the operational and lifecycle dependencies. These requirements would include maintenance activities and future renewals necessary for the design to continue delivering the required outcomes. The D&C contractor would certify performance conditional on those dependencies being satisfied.

The O&M contractor would review the package and certify that the dependencies are consistent with its obligations, and that it knows of no material reason why the design could not perform accordingly. This is, expressly, not a warranty of the D&C contractor's design. Instead, it creates an agreed record linking design decisions, maintenance requirements and long-term performance.

For shared failures, the Tripartite DBOM contract would specify investigation, mitigation, presumptive responsibility and dispute-resolution arrangements. The contractors would restore service before settling ultimate liability. Owen's proposal therefore seeks to preserve interface accountability through explicit contractual obligations, avoiding the financing costs and the complexity of a PPP SPV. It is presented as an alternative requiring development, rather than a universal substitute for PPPs.

"Demonstrating that PPPs provide benefits does not settle which elements produce those benefits."

— Mark Moseley

Owen Hayford's 24 July Posting: Testing the Value of Financial Scrutiny

Owen Hayford's third posting[5] addresses a central justification for private finance: namely that lenders and investors put capital at risk and therefore impose discipline that owners cannot readily reproduce. Owen accepts the intuitive force of this argument – but he seeks to identify what financiers actually examine in contemporary Australian PPPs, and whether that scrutiny justifies the cost of private finance.

In a typical Availability-Payment PPP, the SPV passes construction and operating risks to contractors, while the government retains demand risk and specified relief or compensation risks. Owen suggests that financiers consequently focus heavily on whether the contractual and financial structure protects the SPV when problems arise. Some concerns, including mismatches between contractual obligations and subcontractor liabilities, are associated with the intermediary structure itself. Removing that structure may remove some of the problems being scrutinized. Lenders' technical advisers certainly review projects. However, Owen questions whether lending decisions primarily rest on confidence in the technical solution or on the strength of the contractors undertaking the obligations. He argues that sophisticated government contracting authorities can themselves assess contractor capability, balance sheets, parent-company support, security, insurance and risk allocation. These skills are not exclusive to project finance. Crucially, this proposition is expressed in terms of what a capable government contracting authority can do.

Owen also distinguishes correcting optimism bias from protecting the borrower against its consequences. Drawing on three decades of transactions, he says he cannot recall a lender requiring a construction contractor to increase a price considered unrealistically low. Lenders may instead demand contingencies, reserves or stronger security. Such measures can improve financial resilience without correcting the underlying assumptions.

End-User Payment PPPs, where the SPV is accepting demand risk, are a significant exception. Where repayment depends on tolls or other user charges, financiers have a direct interest in testing demand and revenue forecasts.

Owen accepts that this can add genuine value, while observing that such transactions have become less common in Australia. His argument therefore bears most directly on Availability-Payment projects, where government normally retains the demand exposure. Owen was also cautions against attributing evidence of better PPP construction performance automatically to finance. Tighter contractual rules on extensions of time and compensation may explain greater price and programme certainty.

Owen's conclusions in his third posting remain qualified. He recognizes that private finance can provide a buffer against contractor failure, with additional monitoring, restrictions on further drawdowns and lender step-in rights all helping to address serious performance problems. These benefits are real. The issue is whether their additional value exceeds the extra costs of private finance. Demonstrating that PPPs provide benefits does not settle which elements produce those benefits.

Owen Hayford's 30 July Posting: The Sponsor's Contribution Beyond Capital

Owen's final posting in the series[6] responds to comments made by various Australian PPP practitioners who considered the arguments made in his first three July postings. In many instances, those practitioners felt that Owen had understated the benefits provided by privately financed SPVs.

In his response, Owen distinguishes the SPV, a legal vehicle, from the sponsors behind it—typically the proposed equity investors. Their experience, judgement and leadership may explain benefits that are not adequately captured by a discussion of financing or financial-model scrutiny alone.

A PPP consortium's apparently unified bid can conceal conflicting priorities. Construction contractors seek efficient delivery, manageable risks and lower capital costs. Operators seek reliability, maintainability and adequate provision for future renewals. Both positions are commercially rational, but they will not necessarily produce the best overall outcome without someone resolving the trade-offs. The mere existence of the O&M contractor in a PPP consortium is, by itself, insufficient – unless it gives the O&M contractor effective influence. Owen identifies various reasons why D&C contractors often have a disproportionately high level of control in the bidding consortium. These reasons include the D&C contractor's greater size and immediate role as the first provider of services, and the weightings used in evaluation practices.

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Accordingly, contractual integration may be stronger in theory than in the way bids are actually developed. However, experienced sponsors can act as an intelligent owner within the consortium. They can reconcile competing interests, challenge excessive risk transfer from either government or contractors, examine whether designs support service outcomes, and protect lifecycle considerations from short-term pressures. This integration function may be largely invisible to the government contracting authority, yet materially affect what it ultimately receives.

Could these integration services be obtained without a privately financed SPV? Owen identifies possible alternatives: stronger integration capability within the government contracting authority, O&M-first procurement, tripartite DBOM contracts and long-term alliance-style governance. However, someone must still balance competing interests, resolve disagreements and maintain the project's long-term objectives. Eliminating the SPV does not eliminate those responsibilities.

The difficult question is whether SPVs succeed through expertise alone, or through the combination of expertise, decision-making power, commercial influence and capital at risk. A sophisticated owner might build or procure the necessary technical capability, yet fail to reproduce a sponsor's effectiveness if the replacement lacks authority over design and operating trade-offs or accountability for their consequences. Hiring a coordinator does not necessarily recreate that commercial role.

Owen Hayford leaves this important question open. Integration may be conceptually separable from finance, but the capital and accountability arrangements could help make it effective in practice. His fourth posting qualifies his earlier arguments by recognizing the difficulty of replicating the full sponsor function without an SPV.

Overall, Owen's series of postings offers a serious challenge to automatic claims for private finance, while stopping short of demonstrating that all its benefits can be reproduced equally well without it.

Commentary: The Implications for Emerging Market PPPs

In my December 2025 WAPPP Magazine article, I argued that financing conditions, potential demand-risk transfer and public-sector capacity could give emerging markets stronger reasons to use privately financed PPPs than would be the case in Australia. Those distinctions remain relevant. Owen's July series, particularly his final posting, allows the capacity argument to be taken further.

Owen Hayford's references to a "capable" and a "sophisticated" government contracting authority deserve particular attention. These qualifications are integral to his reasoning. In many emerging markets, contracting authorities may not yet possess the institutional resources needed to perform the role which Owen envisages for government contracting authorities in Australia. This is not a criticism of individual government officials in emerging markets, many of whom work effectively under difficult conditions. It concerns the availability of specialist skills, continuity, budgets and authority to make timely decisions. The practical comparison must therefore be with the contracting authority that actually exists in a given country. A ministry's ability to purchase technical advice does not establish its ability to act on that advice, resolve competing commercial interests or defend long-term maintenance expenditures. A consultant may recommend a decision without having the power to implement it. Reproducing the SPV's contribution may consequently require changes in government decision-making and accountability, as well as additional expertise.

This strengthens the case for treating private sponsors and financiers as potential complements to constrained public capacity. Their contribution may be especially valuable where the alternative would place demanding additional responsibilities on an already stretched contracting authority. However, that value must be demonstrated in each particular transaction. It cannot be assumed from the PPP label, and a lender's concern for repayment should not be confused with government's broader responsibility for public value.

It should also be emphasized that emerging markets differ substantially, both between countries and between agencies in the same country.

An experienced national infrastructure agency may be equipped to adopt Owen Hayford's alternatives; a local authority undertaking its first major project may require substantial support under either approach. The assessment should therefore compare complete, implementable arrangements. Any savings from public financing should be considered alongside the cost of building and sustaining the necessary management capacity, the risks retained by government and the availability of funding. Conversely, a PPP appraisal should establish what sponsors and financiers will actually contribute, rather than crediting finance with every benefit of good procurement.

For emerging markets, Owen Hayford's question becomes: Can the required capability, authority and accountability be secured more effectively and affordably without private finance? His series shows why that question should be asked. It does not establish that the answer will be 'Yes' where contracting authorities lack the capacity his alternatives require. In those circumstances, a well-structured, privately financed PPP may still offer a compelling proposition.

Notes

1. Owen Hayford, Infralegal. https://www.infralegal.com.au/public- private-partnerships.
2. Mark Moseley, "Are Emerging Markets a Better Place to do Public- Private Partnerships?", WAPPP Magazine, Issue 4, December 2025, pp. 9– 11. https://wappp.net/wp-content/uploads/2025/12/WAPPP-MAGAZINE- ISSUE-4.pdf#page=9 .
3. Owen Hayford, 12 July 2026, Infralegal. https://www.infralegal.com.au/public-private-partnerships/the-oampm- first-model-capturing-ppp-value-without-private-finance.
4. Owen Hayford, 16 July 2026, Infralegal. https://www.infralegal.com.au/public-private-partnerships/the-tripartite- dbom-model .
5. Owen Hayford, 24 July 2026, Infralegal. https://www.infralegal.com.au/public-private-partnerships/how-much- additional-rigour-does-private-finance-actually-provide
6. Owen Hayford, 30 July 2026, Infralegal. https://www.infralegal.com.au/public-private-partnerships/beyond- finance-the-hidden-value-of-ppp-sponsors.