
Guidance for AASB 1059 Service Concession Arrangements: Grantors Scoping

Disclaimer

This Guidance has been adapted from the NSW Treasury Guidance for State Agencies and Departments. The primary audience was not NSW Councils nor NSW Council related entities however, the NSW Office of Local Government (OLG) believe that the content could be a useful resource for NSW Councils.

Thank you to NSW Treasury for allowing OLG to utilise this guidance.

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Purpose of this document

This document will assist NSW councils in determining whether existing or new arrangements in place where private sector entities provide council services on behalf of council, are within the scope of AASB 1059.

Examples of arrangements which should be considered are:

- Childcare
- Aerodromes
- Aged care
- Social housing
- Sports centres
- Swimming pools
- Tips and other waste services.

Overview of the scope criteria of AASB 1059

Scope – who and what it applies to

AASB 1059 is relevant for those NSW Councils that are grantors in a service concession arrangement. AASB 1059 defines a service concession as an arrangement that involves an operator:

- (a) Providing public services related to a service concession asset on behalf of the grantor; and
- (b) Managing at least some of those public services at its [i.e. the operator's] own discretion, rather than at the direction of the grantor.¹

The control approach adopted by the Standard sets out how to account for service concession arrangements where the service concession asset (or assets) is (or are) controlled by the grantor, and not by the operator. An asset is controlled by the grantor where:

- (i) The grantor controls or regulates *what services* the operator must provide with the asset, *to whom* it must provide them, and *at what price*; and
- (ii) The grantor controls – through ownership, beneficial entitlement or otherwise – any significant residual interest in the asset at the end of the term of the arrangement; or

The asset will be used in the arrangement for the asset's entire economic life, such that any residual interest at the end of the term is insignificant (a whole-of-life asset).²

AASB 1059 is broad, and arrangements can be captured in the scope of this standard in circumstances even where:

- There is no construction element within the arrangement by the operator, e.g. where existing assets of the operator or grantor are used;
- The arrangement is between public sector agencies (otherwise known as public-to-public arrangements) – likely to be rare for Councils.

The purpose of this guidance

AASB 1059 contains many technical accounting concepts, and it can be challenging to understand how to apply these concepts in practice. To assist Councils, this paper:

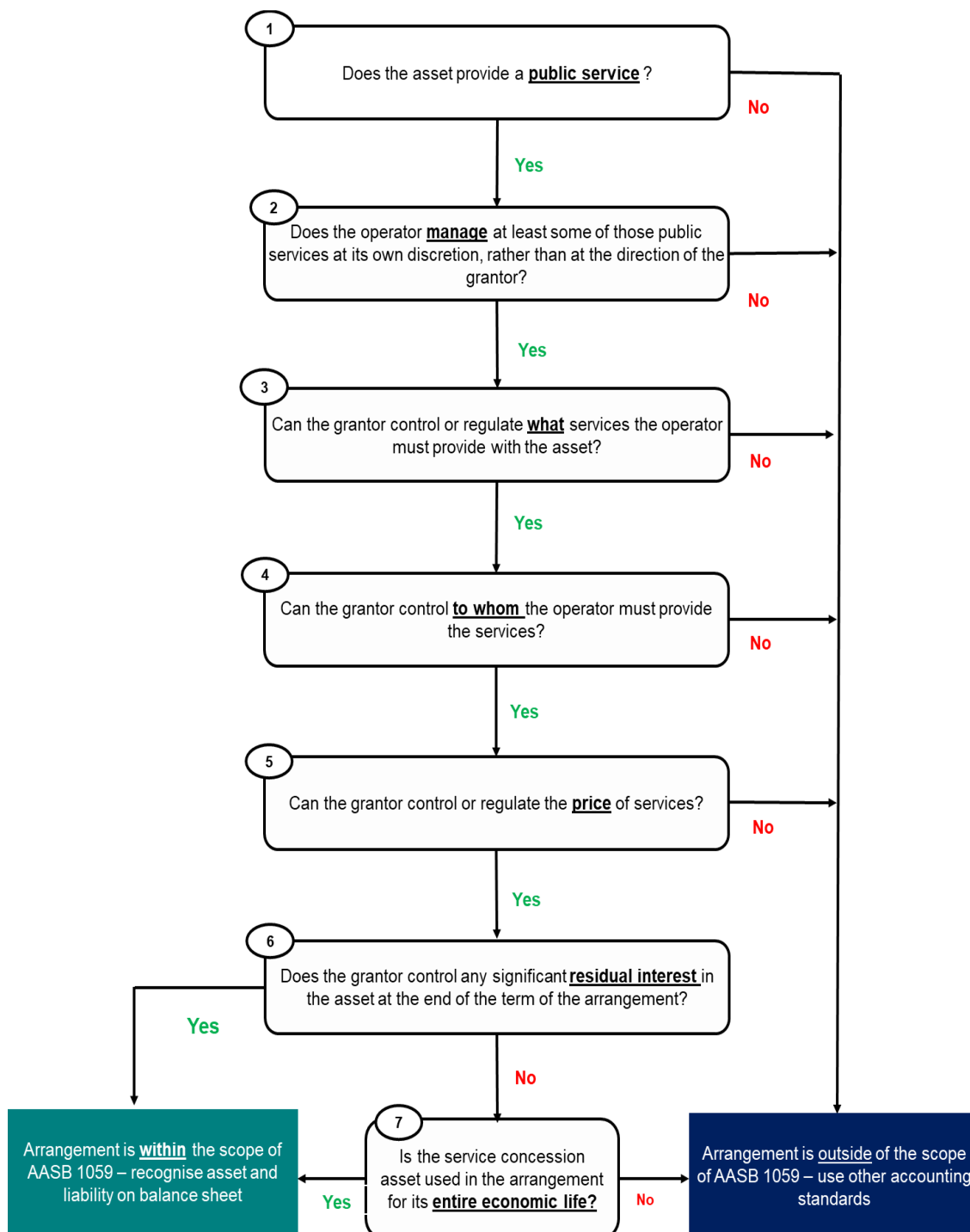
¹ AASB 1059.2

² AASB 1059.5-6, emphasis added

- identifies the concepts raised by the Standard,
- considers the guidance provided by the Standard, and
- builds on that guidance with guidance and relevant examples.

Assessments will often require Councils to apply a significant level of judgement to the unique facts of each arrangement. This paper is therefore, not designed to provide prescriptive advice, but to provide additional considerations in developing accounting positions to document decisions made by Council.

Figure 1 Decision tree to help navigate AASB 1059



How to navigate this document and apply the decision tree

Key area of judgement	Refer to:
1 Does the asset provide a public service?	Section 1
(a) Identify the service concession asset(s) <i>Consideration of whether the arrangement has more than one asset that needs to be assessed under AASB 1059 separately e.g. a car park as part of a business park development.</i>	Section 1.1
(b) Identify the services provided by the asset <i>This may require consideration of the various components of the asset and what services the components provide. e.g. administrative offices and childcare within the one community services building</i>	Section 1.2
(c) Identify whether the services provided are primary or ancillary services <i>e.g. the primary purpose of the building is to provide community services</i>	Section 1.3
(d) Identify whether the primary service is a public service(s) <i>Indicators of a public service include:</i> <ul style="list-style-type: none"> - <i>Where the service is necessary or essential to members of the public;</i> - <i>The service is expected to be provided by a public sector entity in accordance with government policy or regulation;</i> <i>It is important to note that the service can be provided directly or indirectly to the public and it can also be provided to a sub-group of the public, e.g. school children or pensioners</i>	Section 1.4
2 Does the operator provide at least some of the public service at its discretion?	Section 2
(a) Determine whether the operator is “managing at least some” of the public service. <i>Consider whether the services provided by the operator are a “significant” component of the public services provided by the asset? This takes into consideration the key activities that enable the asset to perform its public service. If the operator is providing only services that are insignificant to the overall public services provided by the asset, then the arrangement is likely not in the scope of AASB 1059.</i>	Section 2.1

Key area of judgement	Refer to:
<p>(b) Is the operator performing its services at its own discretion? <i>Where the grantor directs how the operator performs the service, e.g. through the approval of reasonably detailed management and operating plans, the operator is likely acting as an agent on behalf of the grantor rather than at its own discretion. In this scenario, the operator is not making any managerial decisions at its own discretion and the arrangement is likely not in the scope of AASB 1059.</i></p>	Section 2.2
<p>3 Does the grantor control or regulate <u>what services</u> the asset provides?</p>	Section 3.1
<p>(a) Does the grantor have explicit control over what services the asset can provide?</p>	Section 3.1.1
<p>(b) Are there any legislative or statutory restrictions over the use of the asset? <i>If the use of the asset is restricted by statute, the operator's ability to use the asset for other services (outside of the services agreed in the arrangement) is likely to be limited.</i></p>	Section 3.1.2
<p>(c) What unregulated services are or can be provided by the asset? <i>Where the operator has the legal ability to provide other services, the key consideration is then:</i></p> <ul style="list-style-type: none"> - <i>whether the operator can decide whether and how other services are provided (unregulated services); and</i> - <i>are those services 'significant'</i> 	Section 3.1.3
<p>4 Does the grantor control or regulate <u>to whom</u> the service is provided? <i>This is usually stated in the arrangement. For example: transportation services must be provided to all members of the public holding a valid ticket.</i></p>	Section 3.2
<p>5 Does the grantor control or regulate <u>the price</u> of the public service?</p>	Section 3.3
<p>(a) Does the grantor have explicit control over the price of the public service? <i>For example, is the price for the public service explicitly set out in the arrangement?</i></p>	Section 3.3.1
<p>(b) Does the grantor have implicit control (through regulation) over the price of the public service? <i>For example, is the price for the public service capped by the grantor or a regulatory body (regardless of whether the regulator is related to the grantor or not)?</i></p>	Section 3.3.2

Key area of judgement	Refer to:
(c) Are there any other indicators that would indicate the grantor having control over the price of the public service? <i>Further considerations would include whether the operator has the ability to set the price or determine the revenue it earns during the term of the arrangement?</i>	Section 3.3.3
6 Does the grantor control a significant residual interest in the asset at the end of the term?	Section 4
(a) Determining the significant residual interest	Section 4.1
(b) Does the contract require the asset to be returned to the grantor? <i>e.g. Is it mandatory that the operator returns / gives the asset back to the grantor?</i>	Section 4.2
(c) Does the contract contain options over the asset? <i>Consideration would need to be given to whether the option is held by the grantor or the operator or both? Is it for its fair value?</i>	Section 4.3
(d) Does the term of the arrangement represent majority of the economic life of the asset?	Section 4.4

Where the arrangement is not within the scope of AASB 1059, council will need to consider which other accounting standards may apply to the arrangement (e.g. AASB 116 *Property, Plant and Equipment* or AASB 16 *Leases*).

1 Does the asset provide a public service?

AASB 1059 is applicable to arrangements that involve an operator providing “public services related to a service concession asset”³. Appendix 1 defines these arrangements as where “the operator has the right of access to the service concession asset to provide public services on behalf of the grantor for a specified period of time”.

AASB 1059 does not specifically define public services and assessing whether the asset under the arrangement is providing a public service is a significant area of judgement. Councils should apply the guidance below to assist in their assessment of whether the asset provides a public service:

1. Identify the asset.
2. Identify the services provided by the asset.
3. Identify whether the services provided are primary or ancillary.
4. Assess whether the primary service is a public or non-public service.
5. If the asset, on a stand-alone basis, is providing non-public services, consider whether the asset is a ‘secondary’ asset.

1.1 Identify the service concession asset(s)

The assessment of whether a grantor should recognise a service concession asset is made on an asset by asset basis. As one arrangement may cover a number of assets it is important to first identify the assets to be assessed.

The body of AASB 1059 does not provide guidance to the identification of individual assets in the arrangement; however the application guidance⁴ states that grantors should separately assess assets under AASB 1059 that are:

- Physically separable;
- Capable of being operated independently; and
- Meet the definition of a cash-generating unit under AASB 136 *Impairment of Assets*. That is, capable of generating independent cash inflows.

It is implicit that individual assets can provide an independent service.

Illustrative example – separate assets

An operator constructs and operates a hospital with private and public wings. The two wings are located in separate buildings and have their own facilities. Each wing has its own staff and resources; patients are charged separately.

The public and private wings are likely to be considered two separate assets as they are physically distinct (being in two separate buildings) and are operating independently of each other.

The grantor would need to assess each asset under AASB 1059 separately.

It is important to note that assets not previously recognised on the balance sheet of the grantor can also be service concession assets and recognised as such where the arrangement falls within the scope of

³ AASB 1059.2

⁴ AASB 1059.B25

AASB 1059⁵. This includes internally generated intangibles that the grantor would not have previously been able to recognise under AASB 138 *Intangible Assets*. For example, an existing registry containing a database of information. As the database of information is internally generated, council would not have been able to recognise the database on its balance sheet under AASB 138. However, where the database is part of a service concession arrangement, AASB 1059 would allow the grantor to recognise the value of the database as a service concession asset.

Practical considerations

Councils should consider the following to assist in the identification of separate assets within the arrangement:

- Does each asset have their own allocation of resources, e.g. equipment, staff or funding which would indicate whether the asset can generate independent cash inflows and therefore be considered its own cash-generating unit.
- Are the grantor's rights over the assets different at the end of the term, e.g. the operator may only be required to hand back a public wing to the grantor in an arrangement with public and private wings of a hospital.
- Can they be traded separately, e.g. where the operator runs both a public and private hospital, can the operator sell the private hospital to a third party without needing to also sell the public hospital?

1.2 Identify the services provided by the asset

Once each asset in the arrangement is identified, the next step is to consider the services it provides. For single-purpose assets, this may be straightforward. However, AASB 1059⁶ acknowledges that service concession assets are likely to be more complex assets, and those assets could provide a range of services.

AASB 1059 suggests that considering individual components of the assets might help to identify the services the asset is used to provide and uses the example of a courthouse building (the asset) that includes both law courts and administrative offices (the components). Both components provide different services – the law courts provide “court services” and the administrative offices provide “administrative services”.

A further example could be a hospital (the asset) that contains operating theatres, wards and shops (the components); in this case, the components provide medical services and retail services respectively. But all these services are provided by the asset as a whole.

The introduction of the concept of components of assets within AASB 1059 is intended as guidance only. It is necessary to identify the service or services that an asset is used to provide. It is not necessary to identify the components of an asset, however, doing so can be helpful when identifying the service or services that a complex asset as a whole is used to provide

1.3 Identify whether the services provided are primary or ancillary

In assessing whether each asset is providing a public service, councils should consider which of the identified services in 1.2 are primary services, and which are ancillary, for each identified asset. This is because only the primary services are assessed under AASB 1059 as to whether they are a public service or not. Ancillary services are excluded from the public service assessment.

⁵ AASB 1059.B38

⁶ AASB 1059.B6

Ancillary services are services, in respect of a specific asset, that are insignificant to the arrangement as a whole⁷.

In the example in AASB 1059, the primary purpose of the courthouse building asset is to provide court services⁸ – in other words, court services are definitively a primary service. Whether the administrative services are primary or ancillary in nature, will depend on further analysis.

If the administrative services are insignificant to the entire arrangement, they will be ancillary in nature and will not form part of the public service assessment.

However, if the administrative services provided by the operator through the administration offices *are determined to be significant* in relation to the contractual arrangement between grantor and operator as a whole, it will also be necessary to assess whether these services were providing a public service. It is possible, in this way, for there to be more than one primary service.

When are services significant?

AASB 1059 does not provide a “bright-line” in determining whether a service is significant. Factors to consider, individually or in combination, in determining whether a service is significant include but are not limited to:

- Compensation to the operator for the service compared to other services provided under the arrangement;
- Resource requirements (e.g. direct labour, service costs etc.) for the provision of the service relative to others provided under the arrangement;
- Impact on agreed outcomes, performance and/or KPIs under the arrangement;
- Senior management time and resources committed to the service relative to others provided under the arrangement
- Physical apportionment of the asset between different services

Determining whether a service is significant will require significant judgement. Councils should take into consideration the factors that are most relevant to each specific arrangement.

Illustrative examples - Primary vs ancillary services		
	Example	Commentary
A	<p>A courthouse building provides multiple services, such as courts, administrative offices and associated services.</p> <p>The primary purpose of the building is to provide court services, which are considered to be public services.</p> <p>The services provided by the administrative offices are:</p> <ul style="list-style-type: none"> a) unrelated to the court services; and b) insignificant to the arrangement as a whole. 	<p>The primary purpose of the building is to provide court services, which are deemed to be public services.</p> <p>The admin services are insignificant to the arrangement as a whole. Therefore, the admin services are ancillary and are not considered in determining whether the asset is providing public services.</p> <p>Conclusion: The asset is considered to provide a public service</p>

⁷ AASB 1059.BC18

⁸ AASB 1059.B6

Illustrative examples - Primary vs ancillary services		
	Example	Commentary
B	<p>As (A) above, except that the services provided by the administrative offices are:</p> <ul style="list-style-type: none"> a) unrelated to the court services; and b) significant to the arrangement as a whole. 	<p>The court services continue to be assessed as a primary service and are deemed to be public services.</p> <p>But the building also provides unrelated administrative services which are significant to the arrangement as a whole.</p> <p>Conclusion: the administrative services require further assessment as to whether they are:</p> <ul style="list-style-type: none"> a) also providing public services (in which case the asset as a whole will be assessed as such); or b) not providing public services, in which case we recommend you consult with OLG.
C	<p>As (A) above, except that the services provided by the administrative offices are:</p> <ul style="list-style-type: none"> a) wholly related to the court services; and b) significant to the arrangement as a whole. 	<p>The admin services are wholly related to the court services. Therefore, the assessment of public service is based on both the direct court services and the indirect related services.</p> <p>Conclusion: The asset is considered to provide a public service</p>

OLG guidance

Primary services are those services which are:

- identified as being provided by the asset, and
- which are significant to the arrangement as a whole

Ancillary services are those services which are:

- identified as being provided by the asset, and
- which are insignificant to the arrangement as a whole

Primary services will need to be assessed as to whether they are a public service. Ancillary services are ignored for the public service assessment.

If the primary services are considered to be public service in nature, the asset as a whole is considered to be providing public services.

If an asset has more than one primary service, and these present a mix of public service(s) and non-public service(s), further analysis and consultation with OLG is advised.

1.4 Identify whether the primary service(s) is a public service

As discussed above, AASB 1059 does not define 'public service', although provides some indicators of a public service as⁹:

(a) necessary or essential to the general public

The service need only be necessary or essential to a subset of the public, e.g. for a school, the services would only be relevant to school aged children. This would not preclude the service from being a public service.

Principle: "public" includes subsets of the public

Members of the public may not have direct access to the asset or the services. For example, health services and court services are provided directly to the public where people have physical access to the asset and the services. This contrasts with defence services where neither the public (nor a subset of the public) would have physical access to the defence base, but would benefit from increased security provided by defence assets.

Principle: The public is not required to have physical access to the asset. Physical access is not a critical determinant in assessing whether a service is a public service.

(b) expected to be provided by a public sector entity in accordance with government policy or regulation

Principle: Public services should be provided under government policy or regulation as they are in the best interests of the public. If there were no alternative providers, a public sector entity (not necessarily the entity currently assessing the arrangement) would be expected to provide this service.

Further examples of assets that AASB 1059 identifies¹⁰ as potential service concession assets (and therefore can be seen as a guide to assets providing public services) include:

• Roads (and land under roads)	• Bridges	• Tunnels	• Prisons	• Hospitals
• Airports	• Water distribution facilities	• Energy supplies	• Permanent military installations	• Registries and databases

OLG guidance

Public services are:

- necessary or essential to the general public **and**
- generally expected to be provided by a public sector entity in accordance with government policy or regulation

Public services can change over time as public needs evolve and government policy and regulation changes over time.

⁹ AASB 1059.B6, 1059.B9

¹⁰ AASB 1059.B5

Illustrative examples - Identifying public services

Example	Commentary
<p>A grantor enters into an arrangement with an operator to undertake the construction and maintenance of a hospital.</p> <p>The hospital will include physically separable public and private wings i.e. they are separate assets.</p> <p>The public wing will provide health services, is accessible to the general public, and no costs will be incurred by the patients.</p> <p>The private wing of the hospital provides health services to private patients, who will pay the operator directly.</p>	<p>The purpose of this example is to illustrate that each asset must be assessed separately. As the public and private wings are separable and have different purposes, each asset is assessed separately.</p> <p><i>Step 1: Identify the asset(s)</i> Both wings are separable and can be operated separately.</p> <p><i>Step 2: Identify the services (for each asset)</i> Both wings provide health services.</p> <p><i>Step 3: Are the services primary or ancillary</i> Both wings have a single primary service.</p> <p><i>Step 4: Assess whether the primary services are public or non-public</i></p> <p>The provision of public health services is deemed necessary and essential to the general public and, in addition, public health services are provided in accordance with government legislation or policy.</p> <p>While there may be alternative private sector health providers, it would be reasonable to expect that public sector entities would provide such services in the absence of the private sector (and indeed continue to do so for members of the public without private health cover).</p> <p>Conclusion: both wings are providing public services (albeit under different models). As both assets are providing public services, it is not necessary to consider whether one asset is a 'secondary asset' under AASB 1059.</p> <p>Note: this does not assess whether these assets are service concession assets – only whether they are providing public services.</p>
<p>The operator constructs and operates a school which provides education services which is considered a public service.</p> <p>The operator also operates a school canteen, which is a necessary function of the operation of the school. The canteen is within the building and not separable.</p>	<p>The purpose of this example is to illustrate ancillary services.</p> <p><i>Step 1: Identify the asset(s)</i> The school is the single asset. The canteen is not separable.</p> <p><i>Step 2: Identify the services (for each asset)</i></p>

	The school building (the asset) is providing multiple services, being education and canteen services.
	<i>Step 3: Are the services primary or ancillary</i>
	The primary purpose of the asset is to provide education services.
	The canteen services are insignificant to the overall arrangement and not directly related to the primary (education) services, and are therefore an ancillary service.
	<i>Step 4: Assess whether the primary services are public or non-public</i>
	Education services are clearly a public service.
	Conclusion: The canteen services are considered ancillary and therefore ignored without affecting the assessment that the asset as a whole is deemed to be providing a public service.

Services consumed wholly by council – internal services

In certain circumstances, a public sector entity may contract with a third party provider (whether public sector or private sector) to provide services it then wholly consumes in the process of providing services to the public. For example, a public sector entity might contract a third party to provide payroll services in relation to its employees; or for the provision of a wireless communication network for emergency services. Such services are unlikely to be service concession arrangements, but rather accounted for as an outsourcing arrangement or a lease¹¹.

Using these examples, it can be inferred that:

- In an outsourcing or lease arrangement, council is consuming the benefits of the services itself (in the process of providing services to the public).
- In a service concession, the benefit of the service is consumed by the public (directly (e.g. a hospital) or indirectly (e.g. a defence facility)).

Factors that are relevant in determining whether an arrangement is an outsourcing arrangement include:

- the amount council pays is dependent on the level of services consumed by them rather than dependent on the services consumed by the public e.g. staff hours on internal IT projects.
- the significance of the service performed by the operator relative to the service the asset is used to provide (e.g. cleaning of prison cells is relatively insignificant to the overall service provided by the prison).

¹¹ AASB 1059.B8

Illustrative examples – Service concession vs outsourcing	
Example	Commentary
<p>1. The operator provides IT support services to a council to provide emergency services to the public.</p> <p>The council can call upon the services as required and the operator charges based on a cost-plus margin. The operator provides services predominately using its staff.</p>	<p>This is likely to be an outsourcing contract rather than a service concession arrangement.</p> <p>The services provided by the operator are consumed by the council in their day-to-day operations rather than consumed by the public.</p>
<p>2. The operator provides cleaning services to a public hospital. The hospital provides health services to the public (public service criteria is met).</p> <p>The operator does not provide other services aside from cleaning, e.g. does not schedule staff.</p> <p>The operator's activities are labour, not capital intensive.</p> <p>The operator is compensated for the services by the hospital (public sector entity).</p>	<p>The arrangement does involve an asset that provides a public service (the hospital providing health services).</p> <p>However, the provision of cleaning at the hospital is not seen as a key activity in the provision of this service.</p> <p>This is likely to be accounted for as an outsourcing arrangement.</p>

Practical considerations

Council can consider the following to assist in the assessment of whether the primary service provided by the asset is a public service:

- Does the contract require the operator to provide any form of service that is publicly articulated to be one of council's service(s) to be delivered to taxpayers?

Reference support may include:

- *References to applicable legislation that determine the functions of the council.*
- *The service is listed as part of council's objectives or functions in its enabling legislation.*

- Does the contract explicitly state that the Operator's service is provided directly to the public (e.g. physically accessible by the public)?

Reference support may include:

- *The contractual documentation explicitly referencing the public or a subset of the public.*

- Does the operator require a licence or accreditation from the government to use the asset?

Reference support may include:

- *As part of the contractual documentation there is a grant of a licence to operate.*
- *The operator is required to be registered with a regulatory or government body, e.g. for rail track assets the operator is required to be registered as the rail infrastructure manager.*

- *The operator has to adhere to legislative operating requirements under the contractual documentation.*

- Was enabling legislation required to allow the operator to provide the services under this contract?

For example:

- *In order to legally allow the operator to provide (transport) services, legislation is passed by the government allowing the operator to enter into a contract to provide the services under the contract.*

- Does the arrangement require the assets to be branded with Council's logo?

If the arrangement requires the assets to be branded, this could indicate that the asset is being used to provide services the public expects to be provided by council, and therefore is indicative of a public service.

1.5 Primary vs secondary assets

Relevance of secondary assets

Section 1.1 explains that identification of public services is applied on an asset-by-asset basis. However, AASB 1059 contains the concept of *secondary assets*. Secondary assets are deemed to be providing a public service where they are mainly used to complement another asset, the primary asset, that provides public services¹².

Therefore, once you have made the assessment in section 1.4, that an asset within an arrangement is not providing a public service on a stand-alone basis, you also need to consider whether that asset is a *secondary asset*. Where the asset is a secondary asset, it is deemed to provide public services under the arrangement and can fall within the scope of AASB 1059.

Identifying a secondary asset

Contractual arrangements often involve more than one asset: potentially a primary asset (which is used to provide a public service) and a secondary asset (which is mainly used to provide services that complement the primary asset).

AASB 1059.B7 provides examples on whether a secondary asset would be considered to be providing a public service where it is used or mainly used to complement the primary asset.

¹² AASB 1059.B7

Illustrative examples - Secondary assets

Example	Commentary
An operator constructs student accommodation for a public university, with limited alternative uses (contractually or otherwise).	<p>AASB 1059 implies that a public university is an asset that provides public services.</p> <p>The student accommodation primarily provides accommodation services for students who attend the public university.</p> <p>As such, the student accommodation asset complements the public university asset and supports the delivery of public services provided by the university.</p> <p>Therefore, the student accommodation asset is also considered as providing public services.</p>
A hospital car park is constructed by an operator as part of the arrangement to construct a hospital that largely provides public services.	<p>The hospital provides a public service in the delivery of health services.</p> <p>The car park built by the operator is a secondary asset to the hospital, being the primary asset. The hospital car park is considered part of the hospital service concession arrangement.</p> <p>The car park may provide limited ancillary services without affecting the assessment that the car park is used to provide public services.</p>
A hospital car park is constructed separately to a hospital service concession arrangement, e.g. subsequent to the construction of the hospital or with a different party, and is largely of a commercial nature e.g. car parking is available to the general public, including hospital patrons) the car park would be regarded as an asset that does not provide public services.	<p>The hospital car park is not considered part of the hospital service concession arrangement.</p> <p>As the car park is largely of a commercial nature e.g. charging market rates and open to the general public rather than being exclusive to hospital patrons, the car park is not providing public services.</p>

OLG guidance

A **secondary asset** is an asset that is used or mainly used to complement a primary asset.

Secondary assets which complement a primary asset that provides a public service are also assessed as providing a public service.

Secondary assets are separate assets in their own right and should be distinguished from components of a primary asset.

2 Does the operator manage at least some of the public service at its discretion?

For an arrangement to fall within the scope of AASB 1059, not only does the asset have to provide a public service, but the operator must be “managing at least some of [the public] service under its own discretion”¹³.

This criterion can be broken down into the following limbs:

1. The operator is “**managing at least some**” of the public service; and
2. The service is provided under the **operator’s discretion**.

2.1 Determining whether the operator is “managing at least some” of the public service(s)

The inclusion of the wording “at least some” infers that the operator does not need to perform all the activities that are required for the public service. Rather, the operator could meet this criterion where it performs only a portion of the activities required. AASB 1059 has not defined the term “at least some” and therefore judgement is required in determining whether this criterion is met.

However, the Standard does indicate that the services that the operator is managing should be managerial in nature and “significant” in relation to the public service provided by the asset¹⁴. In other words, the Standard is looking for the operator to be managing “at least some” of the more “significant activities” that contribute to the public service being provided by the asset. However, the term ‘significant’ is frequently used in AASB 1059 with no definition provided and therefore judgement is needed in the circumstances.

Agencies should consider the characteristics of the public service being provided by the asset, and should not apply a one size fits all approach. For example, maintenance for e.g. a hospital may not be significant or managerial, but maintenance on e.g. a toll road will be.

Illustrative examples – Managing ‘at least some’	
Example ¹⁵	Commentary
<p>1. Under the arrangement, the operator will construct and provide general maintenance and security services for a public hospital.</p> <p>The operator will not perform any other services.</p>	<p>The health services provided using the hospital building are identified as the public service and the service concession asset. The provision of health services is assumed to meet the public service criteria in this example.</p> <p>In applying the above guidance, the characteristics of the service and asset would need to be considered. To enable the hospital to provide health services, the following activities would need to be performed (non-exclusive list):</p> <ol style="list-style-type: none"> 1. Scheduling of staff including, but not limited to doctors, nurses and specialists; 2. Allocation of resources including, but not limited to medical scanners such as MRI machines and beds to patients; 3. Employment of staff; and

¹³ AASB 1059.2(b)

¹⁴ AASB 1059.B10

¹⁵ Examples are from AASB 1059.B10 and IG examples 1 and 2(a)

Illustrative examples – Managing ‘at least some’

Example ¹⁵	Commentary
	<p>4. Scheduling of services</p> <p>Without the above, the hospital would not be able to treat any patients.</p> <p>Note: this list of activities is not restricted to activities covered by the arrangement. Councils should consult with project teams to understand key activities.</p> <p>As the operator is only providing general maintenance and security services, it is unlikely that the operator is “managing at least some” of the public service. While these services are important, they are relatively insignificant to the other services required (e.g. scheduling of staff) which enable the hospital to provide health services. These services are also unlikely to be managerial in nature in the context of providing health services.</p>
<p>2. Under the arrangement the operator will construct and provide general maintenance and security services for a public hospital.</p> <p>The operator will also be responsible for the scheduling of staff and resources.</p>	<p>As above, but since the operator is also responsible for the scheduling of staff and resources in addition to general maintenance and security, the operator would be seen to be managing at least some of the activities that are critical and significant to the provision of the public service.</p>
<p>3. Under the arrangement, the operator will construct and maintain a toll road.</p> <p>The operator will not perform any other services.</p>	<p>The public service and service concession asset are identified as the provision of transport infrastructure and the toll road respectively. The provision of transport infrastructure is assumed to meet the public service criteria in this example.</p> <p>In applying the above guidance, to enable the toll road to provide the public service, the following key activities would need to be performed (non-exclusive list):</p> <ol style="list-style-type: none"> 1. Maintenance of the infrastructure (critical to the provision of the public service) 2. Collection of tolls (on behalf of the grantor) <p>As the operator is providing a service that is a significant component of the public service, the operator is “managing at least some” of the public service.</p>
<p>4. A grantor enters into an arrangement that involves an operator constructing a school that will provide education services to the general public.</p>	<p>The education services and the school are identified as the public service and service concession asset respectively. The provision of education services is assumed to meet the public service criteria in this example.</p>

Illustrative examples – Managing ‘at least some’

Example ¹⁵	Commentary
<p>The operator is responsible for the cleaning and security services for the school post construction.</p> <p>The grantor is responsible for the services relating to the delivery of education and other operational activities such as recruitment and maintenance.</p>	<p>To enable the school to provide education services the key activities would likely include, but are not limited to:</p> <ul style="list-style-type: none"> • Recruitment of teachers and administration of staff; • Development of the curriculum; and • Development of school materials <p>Cleaning and security services would not be considered managerial services in the context of providing education services. Therefore, the operator would not be seen to be providing a service that is a significant component of the public service and this arrangement would not meet the scope criteria under AASB 1059.</p> <p><i>What if the operator also provides maintenance services?</i></p> <p>Even if the operator provides maintenance services, maintenance services in this context would not represent a significant component of the public services of the school. This is because maintenance services are not critical to the provision of education services. This contrasts with the toll road example where maintenance of the asset is critical to enable the public to use the asset. Therefore, this arrangement would still not meet the scope criteria under AASB 1059.</p>

OLG guidance

OLG guidance for assessing whether the operator is “managing at least some” of the public service:

- This criterion is only met where the service(s) provided by the operator contribute significantly to the public service provided by the asset.
- Whether a service is significant, varies and is a matter of judgement. Agencies need to assess the criteria, taking into account the type of service provided (e.g. health, access to transportation infrastructure, court services etc.) to understand the key activities that are required to enable the asset to perform the public service.*

Practical considerations

Councils should consider the following to assist in determining whether the operator is “managing at least some” of the public service:

- What are the key managerial activities that enable the asset to provide the public service?
- Relevant sources include:*
- *Discussions with the project team – the finance / accounting team is unlikely to have experience in operating a similar asset and therefore may not have the information to identify the key activities. Therefore, the finance / accounting team should consult with the project team to leverage their knowledge.*

- *The Service Level Agreement outlining the contracted services, key deliverables and service indicators between Council and the operator.*
- *Operating manuals may also provide insight as to how the asset is operated to provide the public service.*

2.2 Is the Operator performing its services at its own discretion

Under a service concession arrangement, the operator needs to be managing at least some of the services provided at its own discretion¹⁶. This is to distinguish these service concession arrangements from outsourcing (or other) arrangements where the operator is merely acting as an agent for the grantor - that is, where the grantor would direct the operator in all aspects of what and how services are to be rendered.

The operator should be able to make decisions freely in satisfying its key service obligations (i.e. those significant services identified in section 2.1). While the body of AASB 1059 does not provide in-depth guidance as to what would constitute discretion, the examples provide some guidance.

The example in AASB 1059 uses the following scenario¹⁷:

A grantor enters into an arrangement that involves an operator constructing a school that will provide education services to the general public. The operator is responsible for the upgrades and maintenance of the school. The operator is also responsible for certain operational services such as:

- Determining how many staff are required;
- Organising classes, teachers and administrative staff.

The Standard considers the operator has discretion in the above example as it has the ability to decide when and how these significant activities are carried out. AASB 1059 expands on this further by stating that the manner in which the operator manages the asset cannot be predetermined¹⁸. In other words, the operator must have substantive/wide managerial discretion.

As AASB 1059 is based on a controls principle which was initially introduced under AASB 10 *Consolidated Financial Statements (AASB 10)*, it is possible to look to that standard to understand the characteristics of a substantive right. Under AASB 10, a substantive right is one under which the holder must have the practical ability to exercise that right. This can be challenging in a service concession arrangement, as the grantor will commonly retain a number of rights over the asset.

Councils need to consider whether there are any barriers to the operator's decision making over how and when its services are performed. These can include, but are not limited to:

- Terms and conditions that make it unlikely that the rights would be exercised;
- The requirement that the grantor must approve the decision (e.g. whether the grantor has 'right of veto'); or
- Legal or regulatory requirements that would prevent the operator from unilaterally making decisions.

Principle: For the operator to have discretion over its services, it must have the substantive ability to decide when and how the services are performed.

¹⁶ AASB 1059.2(b)

¹⁷ AASB 1059.IG8-9

¹⁸ AASB 1059.IG13

Illustrative examples – Operator discretion	
Example ¹⁹	Commentary
<p>The grantor enters into an arrangement with the operator where the operator will construct and operate a public hospital.</p> <p>The operator will be responsible for the employment of the doctors, nurses and administration staff and scheduling of various services. The operator will also be responsible for facility maintenance and upgrades.</p> <p>The grantor is responsible for the delivery of medical services and operational services including setting KPIs, which are not overly prescriptive.</p>	<p>While the grantor is responsible for setting KPIs, the operator can, without the approval of the grantor, decide when and how maintenance and upgrade services are performed. It is up to the operator as to how the KPIs are met.</p> <p>Therefore, the operator has discretion over how its services are performed.</p> <p>Note: if the KPIs are so prescriptive as to effectively determine how the operator performs its duties, the conclusion would change. Care should therefore be taken in assessing the level of grantor control over KPIs.</p>
<p>The same facts as the above, but the maintenance and upgrade facilities are required to be performed in accordance with the maintenance plans subject to the approval of the grantor.</p>	<p>Whether the operator has discretion over its services will depend on the level of detail in the maintenance plans and whether the approval right held by the grantor is a substantive right.</p> <p>Where the maintenance plans are high-level, the approval right is likely to be protective in nature, rather than substantive – and the operator is likely to still have discretion over its services. For example, the hospital must be maintained to meet the health and safety regulations of NSW, and the grantor can only reject the maintenance plan where it is likely to cause the asset to breach health and safety regulations.</p> <p>However, where the maintenance plans are:</p> <ul style="list-style-type: none"> • Exceptionally granular, e.g. the plans specify what maintenance activities must be undertaken on a daily, weekly and annual basis as well as the materials and resourcing used; and • Subject to the approval of the grantor at their absolute discretion, e.g. the grantor can reject or amend the plan for any reason as and when it sees fit. <p>then the operator is unlikely to have discretion over the services.</p> <p><i>Note: this assessment does not factor in whether or not the grantor will exercise this right. It is sufficient that the grantor can exercise it when they want.</i></p>

¹⁹ Examples are from AASB 1059.IG16

OLG guidance

OLG guidance for assessing whether the operator has discretion over its services:

- To be deemed “managing under its own discretion”, the operator must have the substantive ability to decide **when and how** it performs its service.
- Care should be taken that the operator’s discretion is not restricted or overridden by the grantor’s approval rights over management plans or operating schedules.

Practical considerations

Councils should consider the following in assessing whether the operator has discretion as to when and how it performs the services:

- Does the operator have the ability to freely make decisions?
 - *Where the contract requires the operator to meet certain service KPIs, consider whether this includes KPIs on how the services are to be carried out that would leave the operator with no decisions over how it achieves them.*
- Is the operator required to draft and submit management plans for the grantor’s approval at its absolute discretion?
 - *This is usually explicitly stated in the arrangement;*
 - *Councils will need to understand how granular the plans are;*
 - *Where the grantor’s approval rights are “at its absolute discretion” this generally indicates a substantive approval right held by the grantor.*
- Are any aspects of the services provided by the operator predetermined by regulations, the arrangement (e.g. contract) or other grantor policies and procedures?
 - *The operator is unlikely to have discretion where the arrangement sets out detailed schedules specifying how the service is to be performed and it has no ability to amend these schedules.*
- Are any aspects of the service dictated by decisions of the grantor?
 - *Where the operator’s services must be performed in accordance with a timetable or manual managed by the grantor, the operator may have a restricted ability to decide how the services are performed.*

3 Control and Recognition of Service Concession Assets

AASB 1059 applies a control-based approach that focuses on the Grantor's control over the service potential of the service concession asset. The control-based approach is consistent with AASB Interpretation 12 and therefore aims to achieve consistency in the accounting for service concession assets between Grantors and Operators.

A Grantor controls and therefore recognises a service concession asset if, and only if, **all** of the following criteria are met:

The Grantor controls or regulates:²⁰

• What services the asset is providing	Section 3.1
• To whom the services are provided (i.e. recipients)	Section 3.2
• What price the services are provided at	Section 3.3
The Grantor controls any significant residual interest in the asset at the end of the term of the arrangement ²¹ or the asset will be used in a service concession arrangement for its entire economic life . ²²	Section 4

The fundamental principles of the control-based approach in AASB 1059 are:

- The ability to exclude or regulate the access to the benefits of an asset is an essential element of control that distinguishes an entity's assets from public goods that all entities can access and benefit from²³.
- If the Grantor has both the degree of control outlined above and significant residual interest in the asset, then the Operator is only managing the asset on the Grantors behalf²⁴.
- Through control of the asset during the term of the service concession arrangement (control of services/recipient/pricing) and control of any significant residual interest in the asset at the end of the arrangement, the Grantor effectively establishes control of the asset over its entire economic life.

The Standard's emphasis on "the asset" requires councils to perform the control assessment on an asset by asset basis. Therefore, prior to performing this assessment it is critical that council identifies the asset or assets within the arrangement (refer to section 1.1 for detailed guidance).

Implicit control through regulation

Under AASB 1059, the grantor may have explicit control through rights held under the contractual arrangement or the grantor may have implicit control through regulation. It is not essential for the contract to specify the Grantor's control. Explicit or implicit control over the asset would result in the arrangement falling within the scope of AASB 1059 (provided all criteria are met).

A Grantor can achieve implicit control through regulation if the regulation removes the ability of the Operator to determine the services or recipient or price of services provided using the asset. This links

²⁰ AASB 1059.5(a)

²¹ AASB 1059.5(b)

²² AASB 1059.6

²³ AASB 1059.B16

²⁴ AASB 1059.B17

back to the fundamental principle under the control approach where the ability to exclude or regulate access of others to the benefits of an asset is an essential element of control.

To achieve control of an asset through regulation under AASB 1059:

- **Contract does not need to specify regulation**

The contract does not need to specifically refer to the regulation²⁵, unless the arrangement does not clearly fall within an existing regulatory framework e.g. where there is more than one possible source of regulation²⁶. In that circumstance, the contract will need to specify the regulatory framework that stipulates the services, the users and/or pricing to be charged for the services²⁷.

- **Regulator can be a third party**

The Grantor does not need to control or direct the activities of or be related to the regulator i.e. the regulator can be a third party, for example an independent Commonwealth regulator²⁸. It is also noted that the regulator does not necessarily need to be in the same tier of government as the grantor.

The regulatory powers over the asset held by independent regulators such as IPART would need to be considered in this assessment.

- **Contract does not need to refer to the regulator**

It is not necessary for the contract to refer to the regulator, the Grantor may rely on the regulator exercising its powers within the parameters applicable to the regulator at the inception of the contract²⁹.

- **Regulation must be substantive**

To establish control through regulation, the regulation must be substantive. For example, if an Operator is free to set prices but is required to return excess profits to the Grantor, the Operator's return is capped, and the price element of the control test is met. However, if the price cap applies only in remote circumstances, the regulation is considered non-substantive and hence ignored³⁰.

- **Broad regulatory powers do not constitute control**

Governments often have the power to regulate the behaviour of entities operating in certain sectors of the economy, either directly or through specifically created agencies. Where these powers are broad, these powers alone do not constitute control³¹.

Broad regulatory powers do not constitute control without a specific arrangement or contract in place³². The term "regulate" in AASB 1059 is intended to be applied only in the context of the terms and conditions of the service concession arrangement³³ i.e. the regulation needs to be applicable to the service concession arrangement to constitute control.

²⁵ AASB 1059.B19

²⁶ AASB 1059.B23

²⁷ AASB 1059.B23

²⁸ AASB 1059.B21

²⁹ AASB 1059.B21

³⁰ AASB 1059.B24

³¹ AASB 1059.B22

³² AASB 1059.BC29(c)

³³ AASB 1059.B22

Illustrative example - Third-Party Regulation	
Example ³⁴	Commentary
<p>A regulator of rail services may determine rates that apply to the rail industry as a whole.</p> <p>Depending on the legal framework in a jurisdiction, such rates may be implicit in the contract governing a service concession arrangement involving the provision of railway transportation, or they may be specifically referred to therein.</p> <p>However, in both cases, the control of the pricing of the service concession asset is derived from either the contract or the specific regulation applicable to rail services, without considering whether the Grantor is related to the regulator of rail services.</p>	<p>The regulator is able to determine rates applicable to the rail industry as a whole.</p> <p>The Grantor is able to establish price control in this service concession arrangement through regulation by a third party because the regulation is applicable to the specific rail services in this arrangement.</p> <p>Whether or not the contract specifies the regulation is irrelevant.</p>

Reassessment triggers

If there are changes to the regulation or terms in the contractual arrangement that could indicate a change in the Grantor's control of the asset, then contracts will need to be reassessed under AASB 1059³⁵.

For example, if there are changes to the proportion of regulated versus unregulated activities using a partly regulated asset (see section 3.4 Partly Regulated Assets) that could indicate a change in the grantors control of the asset, and the arrangement will need to be reassessed under AASB 1059.

3.1 Does the grantor control or regulate what services the asset provides

To establish control over the service concession asset, the grantor must control what services the asset provides. This can be through explicit control or implicit control through regulation.

Where the grantor does not have explicit control over what services can be provided by the asset, agencies will need to consider whether the grantor has implicit control and whether the asset is capable of providing non-regulated services.

As ancillary services are not considered under this assessment³⁶, it is important to identify whether these unregulated services are primary services and understand there can be more than one primary service provided by the asset. Councils also need to apply judgement to determine whether enough of the service is regulated or controlled by the grantor to establish control over the asset (refer to section 3.4 for detailed guidance on partly regulated assets).

³⁴ Example based on AASB 1059.B22

³⁵ AASB 1059.B30-B31

³⁶ AASB 1059.B25(b)

OLG guidance

Steps to determine Grantor control of the services provided by service concession asset:

- 1 Identify the primary services provided by the asset (refer to section 1).
- 2 Determine if the contract specifies that the Grantor controls or regulates the primary services provided by the asset i.e. explicit control.
- 3 If no to question 2 above, consider if there is another regulatory body who can determine the services. Can the Grantor establish implicit control through regulation (when considered together with the contractual terms)?
- 4 If no to question 2 and 3 above, consider if the asset is capable of providing unregulated services.

3.1.1 Does the grantor have explicit control over what services are provided using the asset?

A grantor can establish explicit control of the services to be provided by an asset through rights held under the contractual arrangement. The rights must be substantive i.e. the grantor must have the practical ability to exercise those rights, rather than protective (refer to section 2.2 for further guidance on substantive rights).

Examples of explicit control through the contractual arrangement include where the contract terms explicitly state:

- The grantor will be responsible for and have control over the services to be provided.
- The asset cannot be used for any other services other than those stipulated in the contract. In this case the grantor would have control over what services are provided.
- Any new services must be approved by the grantor. However, consideration should be given to whether that approval or veto right is substantive. Only if the right is substantive, would the grantor be considered to have explicit control over what services are provided. If the contract does legally allow the operator to provide other services, council will need to determine what other services the asset can provide (e.g. what is technically feasible).

Further guidance is provided in the examples below.

Illustrative examples - Grantor control of services	
Example	Commentary
1. An operator has been engaged to operate a school to provide education services for children living in parts of the jurisdiction. It is stated in the contract that the school facilities are not to be used for any other use unless approval has been obtained from the Council.	The contract explicitly states that the asset cannot be used for any other services, besides those stipulated in the contract, without the grantors consent. The grantor has explicit control of the services to be provided by the asset through the contract.
2. An operator operates a sports hall that is to be used for specific sporting activities and events. When there are no scheduled	While the contract states approval from the grantor must be obtained to use the asset for services other than those stipulated in the

Illustrative examples - Grantor control of services	
Example	Commentary
<p>sporting events, the operator may seek approval from Council to use the sports hall for other social or community events. The contract states that the State cannot unreasonably withhold the approval to hold other events at the sports hall.</p>	<p>contract, the grantor's rights to withhold approval in this arrangement would only apply in limited circumstances. The grantor therefore does not have a substantive right to restrict the services to those stipulated in the contract. The grantor does not have explicit control of the services to be provided by the asset through the contract.</p>
<p>3. The facts are the same as the example above. There is a long waiting list of sports clubs applying to use the sports hall. Management forecasts show that the sports hall is expected to be used for sporting events 7 days a week between 8am and 10pm for the remaining duration of the contract. Historical data supports the forecasted usage.</p>	<p>As above, the grantor does not have a substantive right to restrict the services provided by the asset to those stipulated in the contract. However, it is not practically feasible for the operator to use the asset for any other purpose. In this case, the grantor has explicit control of the services to be provided by the asset through the contract.</p>
Illustrative example - Operator control of services	
Example	Commentary
<p>AASB 1059 Implementation Guidance Examples 5(a) and 5(b), relate to the sale and privatisation of an electricity distribution business:</p> <p>(a) The Operator controls the operating activities of an electricity distribution business, including decisions to expand or modify the distribution network or to continue providing electricity services, subject to protective rights of the Grantor to ensure electricity supply in certain circumstances. If the Operator decides to discontinue providing electricity services, the Grantor has an option to buy back the business from the Operator at fair value.</p> <p>(b) The Operator can expand the distribution network beyond the network existing at the time of entering the contract without requiring the Grantor's approval.</p>	<p>In this example, the Operator rather than the Grantor controls both the services to be provided and to whom they are provided to. This is because the Operator can freely expand or modify the services provided by the distribution network beyond the network existing at the time of entering the contract without the Grantors consent.</p> <p>The Grantor's protective rights and option to buy back the business from the Operator, in the event the Operator decides to discontinue the provision of electricity services, do not prevent the Operator from determining the services to be provided³⁷.</p>

³⁷ AASB 1059.IG26(b)

3.1.2 Does the grantor have implicit control over what services are provided using the asset, through regulation?

If a service concession contract by itself does not result in the grantor having explicit control over the services, the grantor might still have control as a result of regulation by a State body or a third party regulator.³⁸ Refer to section 3 above for detailed guidance on third party regulation.

Examples of implicit control of the services provided by an asset through regulation include where the contract terms:

- Refer to a regulatory body or regulation that controls the services to be provided by the relevant industry.
- Do not refer to a specific regulatory body or regulation, however there is a specific regulation in place that governs the services to be provided by the asset.

Illustrative example – Implicit control	
Example	Commentary
An Operator has been engaged by a council to provide transport using the Council's assets. The contract specifically refers to the regulatory body in the rail services industry to identify the types of transportation services (i.e. no commercial rail transportation services allowed) that can be provided by the Operator. All service types are regulated and determined by the regulator in the rail industry.	<p>A third-party regulator controls what services can be provided by the operator using the rail assets. The grantor has implicit control of the services to be provided through the regulation stipulated in the contract.</p> <p>It is noted that even if the regulator or regulation was not stipulated in the contract, the grantor would still have implicit control of the services to be provided through the specific regulation. It is only where there is more than one possible source of regulation that the contract must make a specific reference to regulation.</p>

3.1.3 Identify what unregulated services are or can be provided by the asset

Once it has been established that the operator has the contractual (legal) ability to provide unregulated services, councils should consider whether the asset can provide unregulated services (i.e. technical capability) and whether those services are primary services.

If the asset is only technically capable of providing regulated services (those subject to the approval or control of the grantor), the grantor would control what services the asset can provide. This is because despite the contract legally giving the right to the operator to propose new services, the operator does not have the substantive ability to provide those unregulated services.

Further guidance is provided in the example below.

Illustrative example – Unregulated services	
Example	Commentary
The grantor enters into an arrangement where the operator will construct and operate an accommodation building. The	In this example, the operator has the ability under the contract to provide unregulated services (e.g. housing to non-students). Where it is anticipated that there are a significant number of excess rooms and that these

³⁸ AASB 1059.B19

<p>building will be used to provide accommodation to students of a nearby university.</p> <p>The contract specifies that students must be given priority when allocating out rooms, however it allows the Operator, at their discretion, to rent out excess rooms.</p>	<p>unregulated services are primary services, the grantor would not have control over what services the asset provides. This is because the operator can provide other services without the approval of the grantor and has the technical and legal capability to provide those services.</p> <p><i>What if student demand is forecasted to be significantly higher than supply (no excess rooms during the term of the arrangement)?</i></p> <p>However, where the demand significantly exceeds supply, judgement is required to determine whether the asset is practically able to provide unregulated services. If the unregulated services are expected to be nil or minimal, they are likely be considered ancillary services and not factored into this assessment. As such, it is likely that the grantor would be considered to have control over the services that the asset provides.</p> <p>Given the significant amount of judgement required, councils may need to revisit the assessment at each reporting period.</p>
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3.1.4 Final considerations

Practical considerations

As a final test, councils should also consider the following, in determining whether the grantor has explicit or implicit control over what service(s) are provided by the asset:

- Does the contract allow the Operator to use the asset to perform services other than those specified in the contract, i.e. introduce new services?
- Can the operator freely expand or modify the services that are provided under the arrangement?
- Does the operator need to seek approval from the grantor before providing other services?

Councils will need to consider whether the right to reject any request is substantive. This may be indicated by words such as “at the grantor’s absolute discretion”. Where the grantor can only reject a request where it negatively impacts on the provision of the public service, this right may not be considered substantive.

- Is the asset practically, physically, technically and legally able to provide services other than those prescribed by the contract?

While the contract may legally allow the operator to use the asset to provide other services, the asset itself may not be capable of doing so or be restricted from doing so by other legislation and regulations. In that case it is likely that the service provided by the asset is regulated/controlled by the grantor.

3.2 Does the grantor control or regulate to whom the service is provided?

To establish control over the service concession asset, the grantor must also control to whom the services are provided by an asset i.e. the recipients. Again, this can be through explicit control or implicit control through regulation.

Again, as part of this assessment, it is important to identify what primary services are provided by the asset and understand that there can be more than one primary service provided by the asset. Councils will need to apply judgement to determine whether enough of the asset is regulated or controlled by the grantor to establish control over the asset (refer to section 3.4 for more detailed guidance on partly regulated assets).

OLG guidance

Steps to establish Grantor control over to whom the service concession asset services are provided:

- 1 Identify the primary services provided by the asset (refer to section 1).
- 2 Determine if the contract specifies that the Grantor controls or regulates to whom the primary services are provided to i.e. explicit control.
- 3 If no to question 2 above, consider if there is another regulatory body who can determine the recipient of the services. Can the Grantor establish implicit control through regulation (when considered together with the contractual terms)?

3.2.1 Does the grantor have explicit control over to whom the services are provided using the asset?

A grantor can establish explicit control over who receives the services provided by an asset through rights in the contractual arrangement. The rights must be substantive i.e. the grantor must have the practical ability to exercise those rights, rather than protective (refer to section 2.2 for further guidance on substantive rights).

Examples of explicit control through the contractual arrangements include where the contract terms state:

- The services must be provided to the general public.
- The services must be provided to a particular subset of the community, e.g. public schools are open to children of school age residing in the relevant catchment area.
- Do not explicitly refer to recipients of the services, however the nature of the asset means the recipients of the services are predetermined e.g. a public road is accessible by the public.

3.2.2 Does the grantor have implicit control over whom the services are provided to?

If a service concession contract by itself does not result in the grantor having explicit control over the recipient of the services, the grantor might still have control as a result of regulation by a third party.³⁹ Refer to section 3 above for detailed guidance on third party regulation.

Examples of implicit control of the recipient of the services provided by an asset through regulation include instances where:

³⁹ AASB 1059.B19

- The contract refers to a regulatory body or regulation that requires the services to be provided to the general public or to certain subsets of the community.
- The contract does not refer to a specific regulatory body or regulation, however there is a specific regulation in place that governs the recipients of services to be provided by the asset.

For example, Government regulation requires that public hospitals provide services to the general public. It is not necessary for the contract to refer to the regulation. Refer to section 3 above for further information on regulation.

3.2.3 Final considerations

Practical considerations

As a final test, councils should also consider the following in determining whether the grantor has explicit or implicit control over whom the services are provided to:

- Is the Operator allowed to exclude certain customers from receiving the services?
- Is the Operator allowed to expand or modify the customer base without the grantor's approval? If so, is it technically and practically feasible for the customer base to be expanded or modified?

3.3 Does the grantor control or regulate the price of the services?

To establish control over the service concession asset, the grantor must also control to the price of the services provided by an asset. This can be through explicit control or implicit control through regulation.

The Standard does not require the grantor to explicitly set the price, but rather the grantor may be deemed to control the price where regulation removes the ability of the operator to determine the price⁴⁰.

Other key considerations in determining price control are explained below.

Specified Price

A regulated price includes a specified price (which may be zero) that the Operator can charge for the services of the asset⁴¹. For example, a Grantor controls the pricing of the services of the public wing of a hospital by requiring the Operator to provide health services at no cost to patients.

However, where a specified price is market price, judgement will be required to determine if there is genuine price control.

Illustrative example – Market Price	
Example	Commentary
A grantor enters into an arrangement with an Operator whereby the operator will provide tenancy and property management services on behalf of the Grantor to social housing tenants. Social housing is considered a public service and the tenancy and property management services are a significant component of the public services.	In this example, the Grantor does not control the price of services even though the Grantor has specified in the contract that the Operator must charge market rents. By definition, the market price is the current price at which

⁴⁰ AASB 1059.B20

⁴¹ AASB 1059.B20

The contract specifies that the Operator must charge the social housing tenant market rent. The social housing tenant will then apply for a rent subsidy from the Government, this process is also managed by the Operator. To establish the market rent, the Operator must use rent data relevant to the type and location of the property, published quarterly in a report produced by the Grantor. This is public information. Where the Operator determines that the actual market rent in a location differs markedly and is lower than the market rent established from the Grantor's property data, and where tenants paying market rent would be adversely affected, the Operator can vary the market rent to take local conditions into account. In varying market rents Operators must have appropriate documented evidence to support their decision.

an asset or service can be bought or sold. Furthermore, the Operator is able to vary the market rent provided they document evidence to support that decision.

Complete price control not necessary

The Grantor does not require complete control of the price. It is enough for the price to be regulated by the Grantor, or by a third-party regulator (e.g. by a capping mechanism)⁴².

For example, if an arrangement appears to give the Operator freedom to set prices, but any excess profit is returned to the grantor, the Operator's return is capped, and the price element of the control test is met⁴³.

Such price regulation constitutes control as it removes the ability of the Operator to determine the price. The pricing is considered to be implicitly set by the Grantor as the contract between the Grantor and Operator effectively incorporates the price regulation. The reasoning is that, in some cases the Grantor could have specified an alternative pricing regime but has chosen not to do so, effectively asserting 'passive' control of the pricing⁴⁴.

OLG guidance

Steps to establish Grantor control of the pricing of services provided by service concession asset

1. Identify the primary services provided by the asset (refer to section 1).
2. Determine if the contract explicitly specifies that the Grantor controls or regulates the pricing of the primary services provided by the asset.
3. If no to question 2 above, consider if there is another regulatory body that can determine the pricing of the services. Can the Grantor establish implicit control through regulation (when considered together with the contractual terms)?

3.3.1 Does the grantor have explicit control over the pricing of services provided using the asset?

A grantor can establish explicit control of the pricing of services through rights in a contractual arrangement. The rights must be substantive i.e. the grantor must have the practical ability to exercise those rights, rather than protective (refer to section 2.2 for further guidance on substantive rights).

Examples of explicit control through the contractual arrangement include where the contract terms:

⁴² AASB 1059.B20

⁴³ AASB 1059.B24

⁴⁴ AASB 1059.B20

- Specify the price or pricing mechanism.
- Specify the pricing is to be determined by the grantor.
- Specify the operator can determine the pricing, however it is subject to the grantor's approval (the grantor's approval rights must be substantive).

3.3.2 Does the grantor have implicit control over the pricing of services provided using the asset?

If a service concession contract by itself does not result in the grantor having explicit control over the pricing of the services, the grantor might still have control as a result of regulation by a third party.⁴⁵ Refer to section 3 above for detailed guidance on third party regulation.

Examples of implicit control of the pricing of the services provided by an asset through regulation include:

- Where the contract refers to a regulatory body or regulation that determines the pricing of the services
- Where the contract does not refer to a specific regulatory body or regulation, however there is a specific regulation in place that governs the pricing of services to be provided by the asset.

Illustrative example – Implicit price control	
Example	Commentary
<p>The operator runs an electricity distribution business, where it controls the operating activities.</p> <p>The operator may change the price of the service subject to approval from the regulator (e.g. AER).</p>	<p>As the regulator's approval over pricing changes is exercised at the regulator's absolute discretion, the approval right would be substantive. The grantor would be assessed as having price control.</p>

3.3.3 Final considerations

Practical considerations

Councils should consider the following in their assessment of whether the grantor has control over the price that the service is provided:

- Is there is a cap on the revenue the Operator will receive even if the Operator may determine which price to charge the public for the public service?
- If the Operator requires Grantor or Regulator approval to modify the prices, can the Grantor or Regulator only deny the request under exceptional circumstances i.e. protective rather than substantive rights?

⁴⁵ AASB 1059.B19

3.4 Partly regulated assets

Where an operator has the ability to determine what services are provided by an asset, or the price of those services or to whom services are provided, councils should consider whether the asset being considered is partly regulated i.e. where the services/recipient/prices are partly controlled by the grantor and partly not controlled by the grantor.

For assets that are partly regulated but not physically separable and therefore not assessed as a separate asset, judgement is required as to the relative significance of the regulated versus unregulated activities in order to determine whether the grantor has control of the asset⁴⁶. When purely ancillary activities are unregulated, the control tests shall be applied as if those services did not exist i.e. ancillary services are ignored⁴⁷.

For example, a hospital where there is no separate private wing, but where there is a mixture of both public and private patients. In this example, if admissions are expected to comprise substantially public patients, then the admission of private patients would be considered as ancillary (unregulated) and the hospital considered to be used wholly for regulated purposes⁴⁸.

It is a matter of judgement to determine whether enough of the services provided by an asset are regulated in order to demonstrate that the grantor has control of the asset.⁴⁹

⁴⁶ AASB 1059.IG23

⁴⁷ AASB 1059.B25(b)

⁴⁸ AASB 1059. IG23

⁴⁹ AASB 1059.B26

4 Significant residual interest and whole-of life assets

Overview

The final criteria under AASB 1059, is that for an arrangement to be considered a service concession arrangement, the grantor is required to control the significant residual interest in the asset.

AASB 1059 considers the grantor to have control over the significant residual interest where:

- (i) the grantor controls – through ownership, beneficial entitlement or otherwise – any *significant residual interest* in the asset at the end of the term of the arrangement; or
- (ii) the asset will be used in the arrangement for its entire economic life, such that any residual interest at the end of the term is insignificant (a *whole-of-life asset*).⁵⁰

This section considers how to assess whether the grantor controls any significant residual interest in the asset at the end of the term of the arrangement, or whether the service concession asset used in the arrangement for its entire economic life.

OLG guidance

- For the grantor to have a significant residual interest in the asset, it will need a substantive (rather than a protective) right to prevent an operator from selling or pledging an asset during or at the end of an arrangement.
- Where a grantor only has a right to prevent an operator from selling or pledging an asset in limited circumstances and for protective reasons only, it is unlikely that the grantor has control over a significant residual interest in the asset.
- It is a matter of judgement for the individual entity whether a public sector entity has substantive or protective rights to prevent an operator from selling or pledging an asset.
- Where the residual interest is determined to not be of a significant value, the asset will need to be assessed as to whether it is a 'whole-of-life' asset under the criteria of AASB 1059.6

4.1 Determining the significant residual interest

The residual interest in the asset is:

*"...the estimated fair value (current replacement cost) of the asset, determined at the inception of the arrangement, as if it were already of the age and in the condition expected at the end of the arrangement"*⁵¹

Where components of the asset are replaced during the term of the arrangement by the operator, e.g. a toll road is resurfaced, the determination of residual interest would consider the asset as a whole. That is, the replaced component and the remainder of the asset would be considered as one.

AASB 1059 does not define what should be considered 'significant'. In developing the Standard, the AASB does note that the term also arises in numerous other standards without being specifically defined, and further notes that what constitutes 'significant' varies from one entity to another and is a matter of judgement based on substance rather than form. It is not the case that any residual interest is necessarily a significant residual interest⁵².

⁵⁰ AASB 1059.5-6

⁵¹ AASB 1059.B34

⁵² AASB 1059.BC34

Generally, the grantor is more likely to have a significant residual interest in the service concession asset where the concession term is short relative to the economic life of the asset. In other words, the residual interest is likely to be significant if the term of the arrangement is not at least most of the economic life of the service concession asset⁵³. For example, where an arrangement with a term of 40 years includes a toll road which has an economic life of 99 years, the grantor is likely to have a significant residual interest at the end of the arrangement because the term of the arrangement is not for a majority of the economic life of the toll road asset.

Practical considerations

Councils should consider the following when determining the residual interest of the asset:

- Condition of the asset at the end of the term

Some contracts will specify that the asset must be handed back to the grantor with [x] useful life remaining. Where the asset is expected to be in a condition that can be used for a reasonable time after the arrangement ceases, it is likely that the residual interest in the asset would be significant at the end of the arrangement.

- Remaining useful life of the asset

As discussed above, useful life of the asset is a good indicator of the residual interest of the asset.

- Using similar assets as a benchmark

Councils are generally required to carry their non-current assets at fair value for financial reporting purposes. These assets are usually valued by a specialist at regular intervals. Therefore, data for similar assets may be available to use as a benchmark for the asset under the arrangement.

While the Standard does not define “significant residual interest”, the guidance in AASB 1059 clarifies that a grantor could control significant residual interest where it restricts the operator’s ability to pledge or sell the asset at the end of the arrangement⁵⁴.

In practice, one way that this can happen is where the contract specifies that the asset is to be returned to the grantor at the end of the term at nil cost or nominal consideration.

When councils are assessing whether the grantor has control over the significant residual interest of the asset, they should only consider the substantive rights held by the grantor. That is rights that the grantor can exercise when required (refer to section 2.2 for factors relating to substantive rights).

4.2 Does the contract require the asset to be returned to the grantor?

The grantor may have explicit control over the significant residual interest of the asset where the asset is either required to be handed-back to the grantor at the end of the term, or to another party as directed by the grantor.

This method of the grantor obtaining control over the residual interest can be demonstrated in the following examples. Note that these examples have been assumed to meet the other scoping

⁵³ AASB 1059.BC36

⁵⁴ AASB 1059.B33

requirement under AASB 1059 as discussed in the preceding sections of this this paper (refer sections 1 to 4).

Illustrative examples – Handover clauses	
Example	Commentary
<p>1. The grantor enters into an arrangement with the operator where the operator will construct and operate a public hospital. The operator is responsible for at least some of the management of the hospital services including employment of staff and scheduling of services.</p> <p>At the end of the arrangement legal title of the hospital will automatically transfer to the grantor at nil cost.</p> <p>The economic life of the hospital is 70 years based on other similar assets. The term of the arrangement is 40 years.</p>	<p>As the arrangement represents 40 out of 70 years in the economic life of the asset, it is likely that the asset would have significant residual interest at the end of the term i.e. 30 years remain.</p> <p>As title to the hospital will transfer to the grantor at the end of the arrangement, as predetermined in the arrangement, the grantor would have control over the significant residual interest.</p> <p>Therefore, the arrangement would be in the scope of AASB 1059.</p>
<p>2. The grantor enters into an arrangement where the operator will construct and operate apartments for the provision of social housing. The operator is responsible for the management of how the service is provided subject to some industry guidelines.</p> <p>At the end of the arrangement, the legal title of the apartments will remain with the operator. The operator intends on repurposing the apartments to provide non-social housing.</p> <p>It is assumed that there is significant residual interest at the end of the arrangement as the term is 30 years and apartments have an economic life of 99 years.</p>	<p>The asset is likely to have significant residual interest as the operator intends on using the asset for their own purposes for the subsequent 69 years.</p> <p>As the operator will have the legal title and rights to use the asset at their discretion (to provide [general] housing), the grantor would not have control over the significant residual interest.</p> <p>Therefore, the arrangement would not be in the scope of AASB 1059.</p>
<p>3. The grantor enters into an arrangement where the operator will provide transportation services using assets provided by the grantor. The operator is responsible for how the services are provided including maintenance, scheduling of staff and allocation of assets to routes.</p> <p>At the end of the arrangement, the operator is required to transfer the assets to the grantor, or another third-party operator as directed by the grantor, at nil cost.</p> <p>It is assumed that there is significant residual interest at the end of the arrangement.</p>	<p>As the grantor has the ability to direct to whom the assets are transferred at the end of the term (either themselves or another third-party operator), the grantor would have control over the significant residual interest.</p>

<p>4. The grantor has an arrangement with the operator where the operator will provide public services using a distribution network.</p> <p>At the end of the arrangement, the operator is required to transfer the arrangement to another third-party operator nominated by the operator. The grantor must approve the new operator, but can only reject the nomination where the new operator does not have the technical or financial capability to undertake the services under the arrangement (i.e. this is only a protective right). It is assumed that there is significant residual interest at the end of the arrangement.</p>	<p>While the grantor has the right to approve or veto the appointment of a new operator at the end of the term, the grantor is unlikely to have control over the significant residual interest.</p> <p>As the grantor can only exercise their approval (or rejection) right where the new operator is not technically or financial capable, this approval right is not seen to be substantive.</p>
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Practical considerations

Councils should consider the following to assist in determining whether the contract requires the asset to be returned to the grantor:

- Does the contract require the operator to do something with the asset at the end of the term?
 - *This may be a requirement to “hand back” the asset – commonly referred to as a handover clause.*
 - *The contract may require the operator to transfer the asset to another operator as directed by the grantor.*
 - *The contract may require the operator to seek approval from the grantor to sell the asset to a third party.*

4.3 Does the contract contain options over the asset at the end of the arrangement?

The contract may not always specify that the asset must be handed back to the grantor at the end of the term, nor that it should be provided to a third party at the grantor’s direction. Some arrangements may have options over the residual interest of the asset, exercisable by either party. These can include:

- Put option – an option exercisable by the operator which, when exercised, requires the grantor to buy back the asset at a certain price.
- Call option – an option exercisable by the grantor which, when exercised, forces the operator to sell back the asset to the grantor at a certain price.

Assessing whether the presence of these options in the arrangement would give the grantor control over the significant residual interest is complex and requires consideration of:

1. Is the right a substantive right of the holder (e.g. the grantor in the case of a call option); and
2. What are the terms and conditions associated with the option?

The Standard uses the following example to illustrate how an option may be considered.

Illustrative example – Call option	
Example ⁵⁵	Commentary
<p>The grantor will sell the operator an electricity distribution business. The operator will operate the business subject to AEMO (Australian Electricity Market Operator) regulation and protective rights held by the grantor.</p> <p>If the operator decides to discontinue providing electricity supply, the grantor has an option to buy-back the business.</p>	<p>The Standard would not consider there to be a residual interest in this scenario as the asset can be used by the operator for as long as they choose to (i.e. it is up to the operator as to when it discontinues its services).</p> <p><i>What happens if there was a residual interest?</i> Consideration needs to be given to whether or not the grantor's option to buy-back the business gives the grantor control over the residual interest.</p> <p>Applying the guidance above in section 6.3, council will first need to consider whether the grantor's right is substantive. The scenario presented states that in order for the option to be exercisable by the grantor, the operator must first decide to discontinue providing electricity.</p> <p>For the option to be substantive, the grantor must have the practical ability to exercise it. If the operator never decides to discontinue services, the grantor would not be able to exercise its option. The grantor's option is therefore not substantive, and the grantor is unlikely to have control over the residual interest in the asset.</p>

As demonstrated in the above example, the key consideration in evaluating a buy-back options is whether or not a substantive right is held by the grantor i.e. there are no barriers to the grantor exercising the right at its discretion. Where an option must be 'triggered' and those triggers are not controlled by the grantor e.g. are controlled by the operator or by an unrelated third party, or are as a result of an Act of God/Force Majeure, the grantor would not be considered to have control over the residual interest in the asset.

Practical considerations

Councils should consider the following to assist in determining if an option provides the grantor with significant residual interest:

- Does the council have any mechanism (such as a call option) to prevent the operator from selling or pledging an asset?
- Is the mechanism held by the council substantive?

Councils should consider whether there are any barriers to exercising their right, e.g. can it only be exercised to protect public interest or does the operator need to make a decision / action to trigger the grantor's right.

4.4 Term of the arrangement represents the majority of the economic life of the asset

Where an asset is used in an arrangement for majority of its economic life i.e. a 'whole-of-life' asset, the significant residual interest criteria of AASB 1059.5b is deemed irrelevant⁵⁶. The grantor should recognise

⁵⁵ Examples are from AASB 1059.IG24

⁵⁶ AASB 1059.6

a whole-of-life asset as a service concession asset if the conditions of AASB 1059.5(a) are met, i.e. grantor controls or regulates what services the operator must provide with the asset, to whom it must provide them and at what price.

The economic life of an asset is the period over which future economic benefits are expected from all possible users of the asset and may be the entire physical life of the asset. This contrasts with the term useful life which is defined by AASB 116 as the period over which an asset is expected to be available for use by an entity.

An example of this would be an Operator operating a ferry service for a period of 15 years, which is determined to be its *useful* life to a particular entity. However, the *economic* life of the ferry is determined to be more than 25 years as the asset can be subsequently sold to another operator for another 10 years use. As such, the asset is not used by the Operator for the major part of its economic life.

It is a matter of judgement for the individual entity whether an asset is deemed to be used in an arrangement for either the entirety or a major part of its economic life.

Practical considerations

Councils should consider the following when comparing the term of the arrangement to the asset's economic life:

- What is the economic life of the asset?

Using other similar assets and arrangements as a benchmark

- What is the term of the arrangement?

Councils should also consider whether the likely exercise of any extension options could result in the asset being a "whole-of-life" asset

- Valuations of the assets used may also help determine the economic life of the asset.
- Consider whether the contract sets out that the operator will operate the asset for a period that is the entire or major part of the asset's economic life.

Appendix 1: Key definitions from AASB 1059 (Appendix A)

Term:	Definition per AASB 1059	Illustrative example(s)
“contract”	An agreement between two or more parties that creates enforceable rights and obligations.	<ul style="list-style-type: none"> • A council has a legal contract with an operator • A council has an agreement or MOU with a private or public sector operator
“grantor”	The entity that grants the right to access the service concession asset to the operator	<ul style="list-style-type: none"> • A council - By definition, a grantor will always be a public sector entity as it grants access to an asset to another party for the purpose of providing public services.
“operator”	The entity that has a right of access to the service concession asset to provide public services	<ul style="list-style-type: none"> • A private or public sector builder and/or operator of buildings / infrastructure / systems / transport vehicles etc.
“service concession arrangement”	<p>A contract between a grantor and an operator in which:</p> <ol style="list-style-type: none"> a. the operator has <u>the right of access</u> to the service concession asset to provide public services on behalf of the grantor for a specified period of time; b. the operator is responsible for at least some of the management of the public services provided through the asset and does not act merely as an agent on behalf of the grantor; and c. the operator is compensated for its services over the period of the service concession arrangement. 	<ul style="list-style-type: none"> • An arrangement whereby the operator constructs and manages dwellings for social housing. The operator is responsible for the maintenance and allocation of people into the housing. The operator is compensated by the grantor for each day a dwelling is made available for social housing. • A contract between council and the operator for the provision of titling and registry services which enable the public to register their interests in land and property. The operator is compensated for these services through the grant of a right to charge third party users for the services.
“service concession asset”	<p>An asset (other than goodwill) to which the operator has <u>the right of access</u> to provide public services on behalf of the grantor in a service concession arrangement that:</p> <ol style="list-style-type: none"> a. the operator constructs, develops, upgrades or replaces major components, or acquires from a third party or is an existing asset of the operator; or b. is an existing asset of the grantor, including previously unrecognised identifiable intangible asset and land under roads, or an upgrade to or replacement of a major component of an existing asset of the grantor. 	<ul style="list-style-type: none"> • A prison is constructed, maintained and operated by an operator. The operator will hold legal title to the asset during the term of the arrangement; at the end legal title will revert to the grantor at no cost. • Customer lists developed and owned by a grantor and used by an operator providing public services related to a business, on behalf of the grantor • A land titling database developed and owned by a grantor and used by an operator for the provision of titling and registry services.