

Policy on partnership with the private sector



Policy on Partnerships with the Private Sector

Policy objective

To ensure that the Council acts wisely when it enters into business partnerships with the private sector, and to ensure that the Council's interests are protected and the desired outcomes are consistent with its strategic objectives.

Context

From time to time the Council has opportunities to work in partnership with private sector interests to deliver its strategic directions. These opportunities can be quite diverse in nature, and for this reason this policy is broadly based.

The Local Government Act 2002 (Sections 102(4)(d) and 107) requires that a policy be prepared on Public Private Sector Partnership (PPPs) and is adopted by the Council as part of its Long Term Council Community Plan (LTCCP).

Section 107 of the Act states that this policy applies to: "... any arrangement or agreement that is entered into between one or more local authorities and one or more persons engaged in business; but does not include: (a) any such arrangement or agreement to which the only parties are: (i) local authorities; or (ii) one or more local authorities and one or more Council organisations; or (b) a contract for the supply of any goods or services to, or on behalf of, a local authority."

All references to PPPs in this policy are made in the context of the above definition. The focus is on commercial relationships with entities engaged in trading activities undertaken for the purpose of making a profit. The nature of the entity's activities, rather than its legal form, is the relevant consideration in determining whether this is a partnership with "persons engaged in business". This could include charitable trusts.

The term engaged in business means "engaging in a commercial activity".

Circumstances in which the Council will enter into a PPP

The Council may consider entering into a PPP where:

- the PPP will contribute to the achievement of Community Outcomes identified in the Council's LTCCP; and
- it will promote the social, economic, cultural or environmental well-being of the city; and
- it is a prudent, efficient and effective use of the Council's resources.

Conditions

The Council will only enter into a PPP where:

- There is a partnership agreement which defines the objectives of the partnership and the obligations of all parties;
- The benefits to the community of the proposed partnership will exceed the costs;
- The proposed private sector partner has demonstrated the ability to meet the terms of a proposed agreement between it and the Council;
- The partnership and its proposed business are lawful;
- There are clear financial forecasts of the partnership arrangements;
- The Council's financial and resource obligations under the partnership are defined
- A clear exit/termination strategy is agreed;
- Roles, responsibilities and liabilities of each partner are clearly defined;
- Other conditions that the Council wishes to impose are clearly defined.

The Council **will not** enter into a PPP where:

- The activity is primarily speculative in nature;
- The cost or risk of the PPP is judged by the Council and its advisors to be greater to the community than the benefits that would accrue to the community.

Types of PPP participation

The Council can consider the following methods of participating in a PPP:

- Grants
- Loans
- Investments
- Guarantees

The form of contribution to a PPP will be determined based on the nature of the partnership project, the availability of resources and the assessed risks.

Process of approval

A PPP may only be entered into following a Council resolution or under a delegation from the Council to the Chief Executive. Where the issue is deemed to be significant in terms of the Council's Policy on Significance the Council shall not delegate the decision. Before making a decision to enter into a PPP, at any level of delegation, a comprehensive report which addresses the following issues must be considered:

- The specific strategic directions and Community Outcomes which the proposed partnership will contribute to;
- A full description of the Council's resources (physical and financial) which will be allocated to this partnership;
- An explanation of the nature of the transactions to be entered into, and key performance measures;
- Details of the financial projections of the PPP for a minimum of 5 years;
- An analysis of the financial implications for the Council (both capital and revenue) over the life of the PPP, including an independent assessment from the General Manager Corporate Services or delegated staff;
- An analysis of why the PPP structure is preferable to other service delivery options;
- An assessment of the risks and the Council's potential liabilities, and proposed

Policy on partnership with the private sector

procedures for mitigating these;

- An analysis of potential partners, and the reason for selecting the proposed partners;
- Details of the conditions and milestones that must be met before the Council commits funding or other resources to the PPP;
- The form of a Partnership agreement to be entered into which reflects the intentions and obligations of all parties;
- Details of the proposed monitoring regime of the PPP, including internal and external audit requirements;
- The degree of delegated authority to be given to the partnership arrangement to act on behalf of the Council;
- Details of how the PPP is to be administered and accounted for and the estimated resource requirements and cost to the Council (if any) for administration and accounting;
- An exit strategy and how and when this could be commenced;
- A summary of professional or other advice taken.

Form of consultation

Where practicable the Council will consult on PPPs through the Annual Plan or LTCCP process, or other formal plans.

Generally, where the Council decides to enter into a PPP in accordance with this policy and on matters which are provided for in the Council's LTCCP or Annual Plan, there will be no further requirement for the Council to consult.

However, further public consultation may be undertaken where it is appropriate in the context of the Council's "Policy on Significance".

The Council will undertake additional consultation where:

- A PPP is assessed as being greatly beneficial, but falls outside the conditions or circumstances identified in this policy;
- Financial provision has not been made in the Annual Plan and LTCCP;
- The partnership will result in significant changes in service levels not already reflected in the Annual Plan or LTCCP;
- Ownership or control of a significant asset is to be transferred away from the Council;
- There is expected to be considerable public interest in whether the PPP should proceed and the Council regards the proposal as being significant.

Policy on partnership with the private sector

Assessment and management of risks

An assessment of risks and their management is required before the Council enters into a PPP. This shall be included in a report to the Council or delegated decision-maker before any commitment to enter into the PPP is made.

Where the risks are considered to be significant, the assessment will weigh up the risks against the benefits and the risk management strategies which are proposed.

Risks to be assessed will fall into the following categories:

- Design and construction risk;
- Commissioning and operating risk;
- Service and under performance risk;
- Financial risk to the Council;
- Risk to the capacity of the Council to carry on its activities (whether associated with this partnership or not);
- Risk to the reputation of the Council and the city from failure;
- Counterparty risk.

Council staff charged with monitoring the Council's involvement in a PPP must specifically include and report on risk assessment and management in their monitoring process.

Monitoring and reporting provision of funding and other resources

Monitoring must be performed on an ongoing basis, with formal reports being brought to the appropriate portfolio group at regular intervals, depending on the significance of the Council's involvement in the PPP and the maturity of the partnership.

Formal monitoring reports will be at no less than 12-monthly intervals. However, monitoring and reporting requirements will vary depending on the level of resources the Council has committed to the PPP. The Council will determine the minimum level of monitoring, as part of the process of approval.

In the case of major business partnerships the Council may choose to delegate its monitoring role to Christchurch City Holdings Limited.

Assessing, Monitoring and Reporting Community Outcomes

The extent to which Community Outcomes will be enhanced by the proposed PPP will be assessed as part of the process of approval.

Regular monitoring of the partnership arrangements will be required to ensure that Community Outcomes are being achieved.

The following points shall be considered for inclusion in a monitoring regime to assess how Community Outcomes are being achieved by the PPP:

- Measurable and auditable performance outcomes and objectives should be included where appropriate in partnership documents and reported on as part of the regular monitoring reports to the Council or its delegated monitoring committee;
- Annual financial reports from the PPP must be produced and reported to the Council or portfolio group of the Council for the duration of the arrangement or period of perceived benefit;
- The performance of PPPs will be reported on in the Council's Annual Report where it is of significance.

Policy on partnership with the private sector



Exclusions from this policy

For the sake of clarity it should be noted that this policy does not apply to:

- Grants to community organisations;
- Investment of funds solely for the purpose of financial return. These are subject to the Council's adopted Investment Policy;
- Normal contractual arrangements for the supply of goods and services;
- Commercial arrangements made by Council controlled trading organisations and their subsidiaries;
- Capital contracts of less than \$1 million and operating contracts of less than \$500,000 in total over the period of the contract where officers have delegated authority from the Council and there has been a specific line item provision in the Annual Plan.