

## ***Policy on Partnerships with the Private Sector***

The purpose of this policy is to ensure that when the Council enters into partnerships of a business nature with the private sector that it acts prudently to ensure the Council's interests are protected and that desired outcomes are consistent with the Council's strategic objectives.

### **1. Context**

From time to time the Council has opportunities to work in partnership with private sector interests to deliver desired outcomes. 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)(e) and 107) requires that a policy be prepared on Public Private Sector Partnership (PPP's) and 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 1 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) 1 or more local authorities and 1 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 PPP's 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".

### **2. Circumstances in which the Council will enter into a PPP**

The Council may consider entering into a PPP where:

- (a) The PPP will contribute to the achievement of outcomes identified in the Council's LTCCP; and
- (b) It will promote the social, economic, cultural or environmental well-being of the district; and
- (c) It is a prudent, efficient and effective use of the Council's resources.

The type of participation in a PPP that the Council may consider includes but is not limited to:

- Grants
- Loans
- Investment
- Guarantees

The circumstances where Council may enter into a PPP includes but is not limited to:

- Where Council may be unwilling or unable to bear all of the risk (usually, though not always defined in terms of financial risks) of a particular project itself
- Where Council may believe a particular project is of significant community benefit, but Council may have legal restrictions on its power to participate fully in that project
- Where neither Council nor a private provider would otherwise provide the service or activity without the partnership
- Where there are identifiable advantages in the project or activity being undertaken as a public - private sector partnership rather than by either of the parties separately
- Where the benefits to the community are greater than the costs of the public - private sector partnership

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

### **3. Conditions**

Before deciding on any commitment to a PPP the Council shall ensure that:

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

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 from the PPP.

### **4. Process of Approval**

A PPP may only be entered into following a resolution of the Council 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 decision shall not be delegated by the Council. Before making a decision to enter into a PPP consideration must be given to a report that addresses the following issues:

- (a) The specific strategic objectives and community outcomes to which the proposed partnership will contribute;

- (b) An analysis of why the PPP structure is preferable to other service delivery options;
- (c) An explanation of the nature of the transactions to be entered into and key performance measures;
- (d) A full description of the Council's resources (physical and financial) which will be contributed to this partnership;
- (e) 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;
- (f) An analysis of potential partners, and the reason for selecting the proposed partners;
- (g) The form of agreement to be entered into which reflects the intentions and obligations of all parties;
- (h) Details of the conditions and milestones that must be met before the Council commits funding or other resources to the PPP;
- (i) The degree of delegated authority to be given to the partnership arrangement to act on behalf of the Council;
- (j) Details of the financial projections of the PPP for a minimum of 5 years;
- (k) 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 Finance Manager, delegated staff, or independent expert/consultant approved by the Council;
- (l) An assessment of the risks and the Council's potential liabilities, and proposed procedures for mitigating these;
- (m) Details of the proposed monitoring regime of the PPP. A PPP will be expected to use generally accepted accounting principles (GAAP) appropriate to their type of financial entity. Provision should be made to allow auditing of financial and non financial records as and when reasonably requested by the Council or representative appointed by the Council;
- (n) An exit strategy and how and when this could be commenced;
- (o) A summary of professional or other advice taken.

## **5. Assessment and Management of Risks**

An assessment of risks and their management is required before the Council will enter into a PPP. This shall be included in a report to the Council or delegated decision maker before any commitment is made to enter into the PPP. 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 may fall into one or more of the following categories:

- (a) Design and construction;
- (b) Commissioning and operating;
- (c) Service and under performance;
- (d) Financial to the Council;
- (e) The capacity of the Council to carry on its activities (whether associated with this partnership or not)
- (f) The reputation of the Council and the district from failure;
- (g) Any other risk identified by the Council or its agents

An appropriate risk management strategy will be put in place that may include insurance as required and financial and non financial audit requirements.

Staff charged with monitoring the Council's involvement in a PPP must specifically report on how risks are assessed and managed throughout the life of the partnership.

## **6. 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's Policy on Significance may require additional consultation to be undertaken where:

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

## **7. Monitoring and Reporting Provision of Funding and other Resources**

- Monitoring must be performed on an agreed basis, with formal reports being brought to the Council at regular intervals, depending on: the significance of the Council's involvement in the PPP, the maturity of the partnership and the minimum level of monitoring that has been determined by the Council as part of the process of approval;
- The need for transparency in the conduct of the partnership activity should be recognised when preparing monitoring reports whilst acknowledging the need to protect commercial confidentiality where appropriate;
- Formal monitoring reports to the designated committee of the Council will generally be required at no less than six monthly intervals. The report will include financial updates and progress on agreed outcomes and objectives;
- Where appropriate the performance of PPPs will be reported on in the Council's annual report.

## **8. Assessing Monitoring and Reporting of Community Outcomes**

- Before entering a PPP the Council should be satisfied that the arrangement will further the achievement of community outcomes in the LTCCP;
- The extent to which community outcomes will be achieved by the proposed PPP will be assessed as part of the process of approval;
- Measurable and auditable performance outcomes should be included in partnership documents;

- The Council will consider the extent to which community outcomes are furthered by the PPP as part of its community outcomes monitoring reports.

## **9. Exclusions**

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 such as bank deposits, bonds and shares. 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 companies and their subsidiaries.

## **10. Review**

This policy may be reviewed and if amended then by way of an amendment to the long-term council community plan.