

# Policy

## PARTNERSHIPS WITH THE PRIVATE SECTOR

<b>TEAM:</b>	Strategy & Policy
<b>RESPONSIBILITY:</b>	Group Manager – Business Support
<b>ADOPTED:</b>	15 August 2019
<b>REVIEW:</b>	Every 5 years
<b>CONSULTATION:</b>	Not required
<b>RELATED DOCUMENTS:</b>	Local Government Act 2002, Ashburton District Council Long-Term Plan, Significance & Engagement Policy, Procurement Policy, Risk Management Policy.

### Policy Objective

The purpose of this policy is to provide criteria for Ashburton District Council to consider when assessing if a public private partnership (PPP) is the most appropriate procurement model. This policy requires Council to act prudently when considering partnerships of a business nature with the private sector to ensure Council's interests are protected. Specifically, this policy aims to:

- Enable Council to enter into partnerships with the private sector where there is a clear benefit to Council and the community
- Promote transparency in Council's expectations of public private partnerships
- Provide a framework for common understanding of Council's practices for potential partners.

### Definitions

**Council** means Ashburton District Council.

**Public private partnership (PPP)** is a service contract between the public and private sector where the private sector is paid to deliver an infrastructure asset or facility and provide services associated with the asset in the long term. This policy does not apply to partnerships Council has with community groups or organisations.

**Public value** means the best available result for Ashburton District for the money spent. It includes using resources effectively, economically and responsibly, and taking into account the PPP's contribution to the desired result, for current and future generations, including:

- Council's strategic priorities and community outcomes
- The four well-beings of social, economic, environmental and cultural significance
- The total costs and benefits of the PPP (i.e. total cost of ownership).

**Significant partnerships** are partnerships involving one or more private partners related to large scale projects. The significance of a partnership and the scale of a project will be assessed on a case-by-case basis by the Council (see section 2 of this policy).

## Policy Statement

### 1. Background

Council's are no longer required under the Local Government Act 2002 to adopt a policy on public private partnerships. However, such a policy can provide guidance to ensure any arrangements with the private sector are transparent and consider the wellbeing of Ashburton District residents.

PPPs are a non-traditional procurement model which involve private sector involvement in the provision of both infrastructure and services. For large, complex or innovative projects, better value and project outcomes may be achieved by utilising a non-traditional procurement model. The main argument for private sector involvement in service delivery and operation is that significant efficiencies can be driven by the profit motive, integration of the whole of life responsibility, and exposure to competition. A further benefit of a PPP is the ability to mitigate risk through a shared arrangement.

From time to time, the Council has opportunities to work in partnership with the private sector to deliver desired outcomes. These opportunities can be quite diverse in nature and for this reason this policy takes a high level approach. It is acknowledged that additional criteria beyond what is included in section 3 of this policy is likely to be required when assessing if the PPP model is the appropriate procurement method. This criteria will be determined on the unique requirements of each individual partnership, but will be guided by the high-level criteria in this policy.

This policy should be read alongside the Ashburton District Council's Procurement Policy.

### 2. Scope

This policy applies to significant partnerships only as determined by Council's Significance and Engagement Policy, and therefore excludes the majority of ongoing relationships or partnerships Council has with community organisations and other public sector entities. The focus of this policy is on large scale projects for which PPP procurement is being considered.

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 Investment Policy
- Normal contractual arrangements for the supply of goods and services
- Commercial arrangements made by Council-controlled trading companies and their subsidiaries.

### 3. PPP criteria

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.

The Council may consider entering into a PPP where the PPP meets any of these high-level criteria:

1. **Provides a prudent use of resources** – where Council determines an efficient and effective use of resources, and the partnership provides a higher quality and more cost effective solution than alternative procurement.
2. **Produces a community benefit** - where Council believe a particular project would produce a significant community benefit (i.e. the benefits to the community are greater than the cost to the public).
3. **Contributes to achieving public value and promoting sustainability<sup>1</sup>** – where Council determines a PPP arrangement would benefit the overall wellbeing of Ashburton District residents, and contribute to the achievement of Council’s community outcomes and strategic priorities.
4. **Enables opportunity** - where neither Council nor a private provider would otherwise provide the service or activity without the partnership.
5. **Enables risk-sharing** - 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
6. **Promotes economic development** – where Council determines a partnership would contribute to meeting any of the ‘seven pillars’ identified by the Council's Economic Development Strategy. These are (1) signaling Council is open for business, (2) ‘placemaking’ and branding’, (3) unlocking latent potential, (4) agriculture and technology, (5) natural resource management, (6) start-ups, small and medium sized enterprises, and business support, and (7) connecting and supporting infrastructure.

The Council is not obliged to enter into a partnership with the private sector even if one or more of these criteria are met. These criteria are a high-level guide only.

#### 4. Conditions

Before deciding on any commitment to a PPP the Council shall ensure that appropriate advice has been obtained from external providers. This advice will assist Council to ensure:

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

Council shall ensure the potential for a PPP is assessed against Council’s Significance and Engagement Policy. Appropriate engagement methods will be selected. Given the large scale nature of a PPP, consultation will be required (but may form part of consultation on the Annual or Long-Term Plan).

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<sup>1</sup> See Council’s Procurement Policy for details on Council’s commitment to sustainable procurement.

As required by s.17A(5) of the Local Government Act 2002, Council shall ensure that there is a contract or other binding agreement that clearly specifies:

- (a) The required service levels
- (b) The performance measures and targets to be used to assess compliance with the required service levels
- (c) How performance is to be assessed and reported
- (d) How the costs of delivery are to be met
- (e) How any risks are to be managed
- (f) What penalties for non-performance may be applied; and
- (g) How accountability is to be enforced.

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

- The activity is primarily speculative in nature
- The cost or risk of the PPP is equal to or greater than the benefits that would accrue to the community.

## 5. Assessment and management of risks

Every project that is considered for PPP procurement will need to be evaluated to determine the project's risk profile in line with the Council's Corporate Risk Policy. 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) Damage to 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. Monitoring and reporting on the PPP

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.

Formal monitoring reports to the designated committee of the Council will generally be required. The report will include financial updates and progress on agreed outcomes and objectives.