

Policy on Partnerships with the Private Sector

INTRODUCTION

This policy on partnerships with the private sector outlines the Council's general approach to entering into this type of arrangement, when consultation would be undertaken prior to such a partnership, what conditions might be imposed on such partnerships, their risk management, and reporting on the funding and outcomes of any such partnerships.

RATIONALE FOR THE POLICY

Partnerships with the private sector are risk sharing mechanisms where the public sector specifies the public good elements to be delivered, then engages the private sector to deliver them. Private sector operators typically have greater expertise and incentive to manage risks than the public sector, and this greater effectiveness can result in benefits for the public and private sector alike.

The policy will guide Council's decision-making in the area of partnerships with the private sector. The definition of this type of agreement used in the Act is very broad and is likely to cover a wide range of situations.

For this reason the policy contains general principles that will be taken account of when developing and managing a partnership proposal. It is likely that every such proposal would include a detailed analysis of structure, risks, and management provisions.

Specific proposals for partnerships with the private sector may well be judged significant under the Council's significance policy and subject to wider consultative and assessment requirements. However, the wide range of agreements covered under the Act ("any arrangement involving grants, loans, investments, commitments of resources or guarantees given to a person engaged in business") could cover some relatively routine contractual arrangements that are not likely to be considered significant in terms of the Council's significance policy.

STATUTORY REQUIREMENTS

For statutory requirements, refer to section 107 of the Local Government Act 2002 (LGA 2002).

A partnership as defined in the Act is any arrangement involving grants, loans, investments, commitments of resources or guarantees given to a person engaged in business (the context in which the term 'engaged in business' is used appears to mean 'engaging in an activity for profit') by 1 or more local authorities. Taken together the limitation on the types of arrangements that are considered partnerships with the private sector and the limit in the definition to persons engaged in business means that a partnership with the private sector for the purposes of this Act is really only a commitment of resources to the commercial sector.

For the purposes of this section, a partnership with the private sector includes any agreement or arrangement that is entered into between one or more local authorities and one or more persons engaged in business and does not include:

- a contract for the supply of goods or services to or on behalf of a local authority; or
- arrangements where the only parties are local authorities, or council and council-controlled organisations. (Section 1 07 (2)).

This policy must be in place for the 'first' LTCCP or annual plan.

Under Section 1 07, the policy on partnerships with the private sector must set out any policies that the local authority has with respect to committing resources to partnership with the private sector. This includes

- the circumstances in which the local authority will provide funding or other resources under partnership with the private sector (this includes grants, loans, investments or acting as a guarantor)
- what consultation the local authority will undertake with respect to any proposed commitment of funding or resources to a partnership with the private sector (undertaking a partnership with the private sector does not require consultation in and of itself unless it involves transfers or ownership or control of significant assets)
- any conditions that will be imposed before entering into a partnership with the private sector
- procedures for assessing and managing associated risks
- monitoring and reporting procedures (including assessment, monitoring and reporting against the furtherance of community outcomes).

This policy on partnerships with the private sector sets out the processes that Council will adopt with respect to engaging in any partnerships with the private sector. Once adopted, this Policy may only be amended as an amendment to Council's Long Term Council Community Plan (Section 102).

CIRCUMSTANCES

The Council may consider entering into a partnership with a private sector partner, where an activity has been identified in Council's Strategic Plan, Long- Term Council Community Plan (LTCCP) or Annual Plan (henceforth referred to generically in this section as LTCCP) as a community priority or desirable community outcome. The circumstances where a partnership with the private sector may be entered into are likely to be limited to one or more of the following:

- 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 services 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 partnership with the private sector.

Partnerships are expected to provide benefit to both the local authority and the private sector.

CONDITIONS

Council will enter into a partnership only where it expects that the partnership will help achieve the community outcomes or objectives in the LTCCP, but nothing in this policy commits Council to entering into such a partnership even if it will help achieve community outcomes or objectives.

Before entering into a partnership with the private sector, Council must be satisfied that:

- The partnership will help achieve the community outcomes or objectives identified in the Strategic Plan or LTCCP.
- The benefit from the partnership is greater than the costs and risks.
- Council is satisfied that the partner has demonstrated an ability to meet the terms of any agreement between Council and the private partner.
- All appropriate consents, licenses, or other approvals have been obtained.
- The partnership and its proposed business are lawful.
- A clear exit/termination strategy is agreed.
- Roles, responsibilities and liabilities of each partner are clearly defined.
- Council will not enter into a Public Private Partnership where:
 - The activity is primarily speculative in nature
 - The cost or risk of the partnership with the private sector is judged to be greater to the community than the benefits that would accrue from the partnership with the private sector
 - Where appropriate, Council reserves the right to apply competitive tendering processes, in accordance with Council policy. Other conditions may be imposed as considered appropriate by Council.

TYPES OF INVOLVEMENT

Council will consider the following methods of implementing a partnership with the private sector:

- Grants, where the assessed benefit to the community justifies, where the partnership with the private sector is accorded priority by Council, and funds are available for the activity
- Loans, where the benefit to the community is significant, but it is assessed that income or other funding can in time be accessed, and / or there will also be significant benefits to the private partner and/or it is otherwise unsuitable to provide other funding
- Investments, where there are deemed to be significant public benefits
- Acting as a guarantor for assets being constructed on Council-owned land
- Acting as a guarantor in extraordinary circumstances may be considered by Council and where there are appropriate safeguards in place to ensure budgets are not exceeded and where limitations are specified as to the total amount Council is guarantor for.

CONSULTATION

Council will undertake consultation on any revision of this "Policy on Partnerships with the Private Sector" as part of a Long-Term Council Community Plan. Where Council decides to undertake a partnership with the private sector in accordance with the policy, further consultation will not be required to be undertaken except in specific circumstances (see below).

Council may undertake additional consultation on individual partnerships with the private sector where:

- A partnership with the private sector is assessed as being greatly beneficial, but falls outside the conditions or circumstances identified in the policy.
- It is proposed to act as guarantor in extraordinary circumstances.
- The partnership would result in significant positive or negative changes in service levels, as defined in Council's Significance Policy.
- The proposal would have a material impact on Council's projected budgets, performance measures, outcomes or other objectives.
- Ownership or control of a significant asset (as defined in Council's Significance Policy), is to be transferred to or from Council.
- There is expected to be considerable public interest in whether or not the partnership with the private sector should proceed.

Where practicable, consultation on partnerships with the private sector under the above criteria will take place under the Annual Plan or Long Term Council Community Plan process. Alternatively, a separate special consultative procedure may be undertaken.

RISK MANAGEMENT

When considering a public private partnership, the potential risks to Council will be outlined and where the risks are considered significant, in terms of probability and potential effect, Council will assess the level of the risks against their benefits and management strategies.

Risk will be assessed by calculating the probability of an adverse outcome multiplied by the cost/impact of that adverse outcome, while taking into account mitigating strategies and associated costs.

Risks which may be considered are:

- Design and construction risk;
- Commissioning and operating risk;
- Service and under-performance risk;
- Maintenance risk;
- Risk of change to the legal or regulatory environment;
- Risk of legal challenge;
- Technology obsolescence risk;
- Planning risk;
- Price risk;
- Taxation risk;
- Residual value risk;
- Demand or valuation risk;
- Occupation safety and health risk;
- The relative investment of the private sector partner;
- The level of experience / track record of the partner, particularly in that activity;
- Risk to the reputation of Wellington City Council and Wellington City generally;
- Insurance coverage and limitations;
- Risk to the capacity of the council to carry out its activities, now and in the future;

- Risk to property;
- Protection of any intellectual property; and
- Any other risks identified.

Where risks exist and a partnership is to be agreed, a risk management strategy may need to be put in place to appropriately minimise or provide cover for that risk to the satisfaction of Council. Risk management in any or all of the above areas may be specified as being the responsibility of Council or the partner.

MONITORING AND REPORTING

A private sector partner will be expected to report using GAAP (generally accepted accounting principles) appropriate to their type of financial entity, and to allow auditing of financial and nonfinancial records as and when reasonably requested by Council or a representative appointed by Council. Monitoring and reporting requirements will vary, depending on the level of resources Council is expending/investing/protecting, and the nature of the partnership.

The following points may be considered:

- Proposals for partnerships with the private sector should state how they might contribute to outcomes or objectives in the LTCCP
- Measurable and auditable performance standards should be included where appropriate in partnership documents
- Progress on agreed outcomes and objectives should be reported on to Council's Strategic Planning and Policy Committee on a six-monthly basis
- Quarterly or annual financial reports may be required
- Transparency in the conduct and reporting of partnership with the private sector activities should be emphasised, acknowledging the need to protect commercial confidentiality where appropriate
- The performance of partnerships with the private sector will be reported on in Council's Annual Report.

REVIEW

It is anticipated that this policy will be reviewed as part of the next LTCCP process, three years from now.