

# Policy on Public-Private Partnerships

## Introduction

This policy outlines conditions under which the Council will enter into business partnerships with the private sector. Such a public-private partnership, as allowed for in the Local Government Act 2002, can be an arrangement involving grants, loans, investments, commitment or resources and guarantees.

Under stringent assessment criteria and conditions, each potential partnership is scrutinised. The Council will evaluate potential risks alongside forecast benefits and implement a risk management strategy where necessary.

## Policy on Public - Private Partnerships

This policy outlines the conditions under which Council will consider entering into a Public-Private Partnership (PPP), as required under section 107 of the Local Government Act 2002 (LGA 2002).

### 1. Definition

A Public-Private Partnership includes any significant 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.

A partnership is defined in the LGA 2002 as being any arrangement involving grants, loans, investments, commitments of resources or guarantees given to one or more persons engaged in business by one or more local authorities.

This policy sets out the processes that Council will adopt with respect to entering into a Public-Private Partnership.

### 2. Circumstances

The Council may consider entering into a Public-Private Partnership where an activity has been identified in the Council's Long Term Council Community Plan or Annual Plan as a community priority or desirable community outcome.

The circumstances where a Public-Private Partnership may be entered into are likely to be limited to one or more of the following:

- Where the 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 the Council may believe a particular project is of significant community benefit, but may have legal restrictions on its power to participate fully in that project.
- Where neither the 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 Partnership rather than by either of the parties separately.

# Policy on Public-Private Partnerships

- Where the benefits to the community are greater than the costs of the Public-Private Partnership.

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

### 3. Conditions

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

Before entering into a Public-Private Partnership, the Council must be satisfied that:

- The partnership will help achieve the community outcomes or objectives identified in the Council Long Term Council Community Plan.
- The benefit from the partnership is greater than the costs and risks.
- The Council is satisfied that the partner has demonstrated an ability to meet the terms of any agreement.
- All necessary consents, licenses or other approvals have been obtained prior to any financial commitment by the Council.
- 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.

The Council will not enter into a Public-Private Partnership where:

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

Other conditions may be imposed as considered appropriate by the Council.

### 4. Consultation

The Council will undertake consultation on any revision of this policy as part of a Council Long Term Council Community Plan.

Where the Council decides to undertake a Public-Private Partnership, it will not have to undertake further consultation. However, it may undertake additional consultation where:

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

Where practicable, consultation on Public-Private Partnerships under the above criteria will take place under the Annual Plan or Council Long Term Council

# Policy on Public-Private Partnerships

Community Plan process. Alternatively, a separate special consultative procedure may be undertaken.

## 5. Risk Management

When considering a Public-Private Partnership, the potential risks to the Council will be outlined and where the risks are considered significant, the Council will assess the level of the risks against its benefits and management strategies.

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.
- Occupational safety and health risk.
- The relative investment of the private sector partner.
- The level of experience/track record of the partner.
- Risk to the Council's reputation and that of Upper Hutt 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.
- Any other risks identified.

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

## 6. Formation of a Public-Private Partnership

The formation of a Public-Private Partnership that meets the conditions of this policy will be by Council resolution.

## 7. Monitoring and Reporting

Progress reports on specific issues and financial performance will be presented regularly to the appropriate Council Committee.

The overall performance will be included in the Council's Annual Report.