



9.0 Partnerships with the Private Sector Policy

9.1 Objective

To enable Council to enter into partnerships with the private sector, where there is a potential benefit for the well-being of the community in Hamilton City.

9.2 Policy Outline

This policy outlines the circumstances in which Council will consider entering into public-private sector partnerships (PPPs), 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. For statutory requirements, refer to section 107 of the Local Government Act 2002 (LGA 2002).

9.3 Definition

A Public-Private Sector Partnership (PPP) includes any agreement or arrangement that is entered into between one or more councils and one or more persons engaged in business but does not include:

- A contract for the supply of goods or services to or on behalf of a council; or
- Arrangements where the only parties are local authorities, or local authority and local authority controlled organisations.

A partnership as defined in the LGA 2002 is any arrangement involving grants, loans, investments, commitments of resources or guarantees given to 1 or more persons engaged in business¹ by 1 or more local authorities. The nature of the entity's activities, rather than its legal form, is the relevant consideration, and can include charitable trusts.

Partnerships should have an identified shared interest, clear roles and responsibilities for both parties, and aim to build long-term relationships based on respect and trust.

This policy on PPPs sets out the processes that Council will adopt with respect to engaging in any PPPs. Once adopted, this Policy may only be amended as an amendment to Councils Long Term Council Community Plan (section 102, LGA 2002).

9.4 Circumstances

Hamilton City Council (Council) may consider entering into a partnership with a private sector partner, where an activity has been identified in Council's Long-Term Council Community Plan

¹ The term "engaged in business" is defined as "engaging in an activity for profit". The nature of the entity's activities, rather than its legal form, is the relevant consideration. (Opinion from Ann Webster, OAG) The focus is on commercial relationships with entities engaged in trading activities undertaken for the purpose of making a profit. (Opinion from Mike Reid, LGNZ)



(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 PPP may be entered into shall 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 PPP.

9.5 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 PPP, Council must be satisfied that:

- The partnership will help achieve the community outcomes or objectives identified in the 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 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.

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

- The activity is primarily speculative in nature;
- Insurance cover cannot be obtained that is considered adequate to meet foreseeable risks;
- The cost or risk of the PPP is judged to be greater to the community than the benefits that would accrue from the PPP.

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.



9.6 Types of PPP Involvement

Council will consider the following methods of implementing a PPP:

- **Grants**, where the assessed benefit to the community is justified, where the PPP 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, and the community has been consulted, either during an LTCCP consultation or separately using the special consultative procedure ².
- Acting as a guarantor for assets being constructed on Council-owned land.
- **Acting as a guarantor in extraordinary circumstances** may be considered by Council following community consultation, 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.

9.7 Consultation

Council will undertake consultation on any revision of this “Policy on Public-private sector partnerships” as part of the LTCCP.

Where Council decides to undertake a PPP in accordance with the policy, further consultation will not be required to be undertaken except in specific circumstances (below) where a separate consultative procedure may be undertaken

Council will consult on individual PPPs where:

- A PPP is assessed as being greatly beneficial, but falls outside the conditions or circumstances identified in the policy;
- An investment is proposed;
- 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 PPP should proceed and/or it meets the test of significance as set out in Council’s Significance Policy.

² The Policy on Partnership with the Private Sector should be developed to be robust enough to cover most ‘run of the mill’ potential opportunities for public-private sector partnerships (PPPs) without the need for further public consultation. PPPs that are unusual, controversial, or of considerable public interest would be expected to be consulted on separately (either using the special consultative procedure, or in a form otherwise specified in the policy).



9.8 Formation of a PPP

Formation of a public private partnership that meets the conditions of this policy will be by ordinary council resolution, unless authority to form a partnership is delegated to a committee, subcommittee, or the Principal Administrative Officer, in which case the partnership must also meet the conditions of this policy.

Formation of a partnership that does not meet the conditions of this policy will be by ordinary council resolution only after appropriate and required consultation, and due consideration of any issues raised by that consultation.

9.9 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 Hamilton City Council and Hamilton 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 will 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.

9.10 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 non-financial 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 PPPs 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 Finance and Audit Committee as required;
- Quarterly or annual financial reports may be required;
- Transparency in the conduct and reporting of PPP activities should be emphasised, acknowledging the need to protect commercial confidentiality where appropriate;
- The performance of PPPs will be reported on in Council's Annual Report.