

Objectives

- To outline under what circumstances Council would consider entering into partnerships with the private sector.
- To outline what consultation would be required prior to entering into public private partnerships.
- To disclose what conditions may be imposed on such a partnership.
- To outline Council's position in relation to risk management and reporting of such partnerships.
- To outline Council's policy in relation to funding arrangements.

Principles

This policy is developed under section 107 of the Local Government Act 2002 (LGA) and outlines the circumstances in which Council will enter into partnership with a private sector partner, circumstances under which consultation may be undertaken prior to any such partnership being entered into, conditions that may be imposed on such partnership, risk management measures, financial reporting, and targeted outcomes of any such partnerships.

Once adopted, this Policy may only be amended as an amendment to the LTP (section 102 of the LGA). This policy targets the following Community Outcomes:

- CO 4 A district which takes ownership over issues of health provision, education provision and infrastructure maintenance
- CO 6 Leadership is respected, trusted, transparent, accountable, visionary and has integrity and a positive attitude.
- CO 7 Leadership facilitates a coordinated approach in providing effective solutions.
- CO 9 A community that provides excellent activities and facilities for youth.
- CO 12 Key service providers consult with the community and common goals are identified and worked towards.
- CO 15 A sense of community pride and togetherness is fostered where people work towards common goals and speak positively about the community.

CO 16 A community that encourages participation in planning around community or district issues and promotes community responsibility.

Background

Section 107 of the LGA states:

- (1) A policy adopted under section 102(4)(e):
 - (a) must state the local authority's policies in respect of the commitment of local authority resources to partnerships between the local authority and the private sector; and
 - (b) must include
 - (i) the circumstances (if any) in which the local authority will provide funding or other resources to any form of partnership with the private sector, whether by way of grant, loan, or investment, or by way of acting as a guarantor for any such partnership; and
 - (ii) what consultation the local authority will undertake in respect of any proposal to provide funding or other resources to any form of partnership with the private sector; and
 - (iii) what conditions, if any, the local authority will impose before providing funding or other resources to any form of partnership with the private sector; and
 - (iv) an outline of how risks associated with any such provision of funding or other resources are assessed and managed; and
 - (v) an outline of the procedures by which any such provision of funding or other resources will be monitored and reported on to the local authority; and
 - (vi) an outline of how the local authority will assess, monitor, and report on the extent to which community outcomes are furthered by any provision of funding or other resources or a partnership with the private sector.

- (2) *In this section, partnership with the private sector means any arrangement or agreement that is entered into between one or more local authorities and one 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) *one or more local authorities and one or more council organisations; or a contract for the supply of any goods or services to, or on behalf of, a local authority.*

Policy Statement

1. Definitions

Partnership

Section 107(2) of the LGA defines partnership as any arrangement involving grants, loans, investments, commitments of resources or guarantees given to one or more entities engaged in business by one or more local authorities.

Business

Business is defined as engaging in an activity for profit (Office of the Auditor General definition). The nature of the entities' activities rather than its legal form is the relevant consideration. The focus is on commercial relationships with entities engaged in trading activities undertaken for the purpose of making a profit (Local Government New Zealand definition).

Council Controlled Organisation (CCO)

A CCO is defined by section 6 of the LGA to include any partnership, trust, arrangement for sharing of profits, union of interest, co-operation, joint venture, or other similar arrangements, but does not include a committee or joint committee of Councils, or a company. There are circumstances under section 6(7) where Council may exempt an organisation from consideration as a CCO.

2. Scope

A Public Private Partnership includes any agreement or arrangement that is entered into between one or more councils and one or more entities engaged in business, specifically pertaining to:

- Arrangements or agreements for provisions of grants, loans, guarantees or investments.
- Arrangements or agreements for a venture where Council participates with a private sector partner engaged in business.
- Any agreement with a private sector partner in business to form a CCO, or any agreement to sell shares in a CCO to a person engaged in business (in addition to the consultation requirements of section 56, if applicable).

This policy excludes the following:

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

3. Circumstances and Conditions

Ruapehu District Council may consider entering into a partnership with a private sector business partner for the provision of funding, infrastructure and/or services (excluding a contract for goods and services), under the following circumstance and conditions, where:

- (a) An activity has been identified in the LTP or Annual Plan as a community priority or desirable community outcome, and
- (b) The potential partnership demonstrates the capacity to achieve the desired community outcomes, and
- (c) Any alternative private providers, or Council, are unwilling or unable to provide the services or activity alone, and
- (d) Benefits to the community (measured in terms of cost, quality, efficiency and ability to promote the social, economic, cultural and environmental well-being of the community) are demonstrated, and
- (e) There are identifiable advantages in undertaking the project or activity as a public private sector partnership, and
- (f) It is demonstrated that the partnership and its proposed business are lawful, and

- (g) Risk is assessed as acceptable, as defined by this Policy's Risk Management Provisions, and
 - (h) Any other conditions Council considers appropriate are met, and
 - (i) A written agreement is entered into by the partners disclosing terms of the relationship including:
 - The way in which the partnership demonstrates requirements (a)-(h) above.
 - Terms of partnership, including details of the funding arrangement.
 - An identified shared interest, clear roles and responsibilities for both parties.
 - The parties' respective responsibilities and obligations under the agreement including responsibilities for obtaining any necessary consent, licence or other approval.
 - Details of Key Performance Indicators (KPIs), used in performance monitoring, accounting and reporting arrangements.
 - An outline of any penalty or reward arrangements, disputes and exit procedures.
 - Confidentiality provisions.
 - Other provisions as agreed by the partnership.
- (b) Risk will be assessed by considering the costs of mitigating that risk, the likelihood of an adverse outcome, and the cost/impact of that adverse outcome.
 - (c) Risks that will be considered include:
 - Occupational Health and Safety
 - Risk to the reputation of Council and the Ruapehu District
 - Risk to the capacity of the Council to deliver its significant activities now and in the future
 - Protection of any intellectual property
 - Risk of legal challenge
 - The level of experience/track record of the partner, particularly in that activity
 - Risk to property or any other Council asset
 - Financial Risk
 - Any other risk, considered relevant and significant by Council.

4. Consultation

- (a) Consultation on this Policy will be undertaken as part of LTP or Annual Plan process and will give consideration to decision-making and principles of consultation under sections 76 and 82 of the LGA respectively.
- (b) Any revision or amendment of this Policy will be consulted on using the Special Consultative Procedure.

5. Risk Management

- (a) When considering a Public Private Partnership, the potential risks to Council will be disclosed in the proposal and in consultation, and where the risks are assessed as significant in terms of probability and potential effect, a risk management strategy will be adopted to appropriately mitigate risk to the satisfaction of Council.

6. Monitoring and Reporting

- (a) The private sector partner will be expected to report using generally accepted accounting principles and to allow auditing of financial and non-financial records as outlined by the partnership agreement.
- (b) Monitoring and reporting requirements will be undertaken in accordance with the partnership agreement and may include:
 - The way in which the partnership is achieving the community outcomes that it targets
 - KPIs that are measurable and auditable
 - Financial reporting
- (c) The performance of the partnership will be reported to Council according to the partnership agreement, at least on an annual basis.

Delegations

Refer to Council's Delegations Manual.