

STAFF REPORT

TO: Mayor & Councillors

FROM: Executive Officer – Strategic Development

REFERENCE: A503

DATE: 3 December 2008

SUBJECT: **Policy on the Commitment of Council Resources to Partnerships with the Private Sector**

PURPOSE/REASON FOR REPORT

To allow Council to consider the adoption of the Policy on the Commitment of Council Resources to Partnerships with the Private Sector, and inclusion of such in the 2009-2019 LTCCP.

BACKGROUND

Section 107 of the Local Government Act 2002 (the Act) requires a local authority to develop a policy relating to the commitment of local authority resources to partnerships between the local authority and the private sector.

COMMENT/DISCUSSION

Council officers believe the current policy could be improved (Appendix A) and expanded to enable the Council to enter a partnership with the private sector should it wish to do so.

The recommended new policy (refer Appendix B) fulfils the requirements of S107 of the Act in order to provide the Council with the option of using a partnership with the private sector should it desire it by clearly outlining the process that the Council would follow.

RECOMMENDATION

THAT the Policy on the Commitment of Council Resources to Partnerships with the Private Sector (Appendix B) be adopted for inclusion in Council's 2009-2019 LTCCP pursuant to Section 107 of the Local Government Act 2002.

Sandra Hartley

Policy on the Commitment of Council Resources to Partnerships with the Private Sector (Proposed policy for 2009 LTCCP)

The Legal Context for the Policy

Section 107 of the Local Government Act 2002 (the Act) requires a local authority to develop a policy relating to the commitment of local authority resources to partnerships between the local authority and the private sector¹.

For the purposes of this policy, a partnership with the private sector is defined according to the Act, as:

“any arrangement or agreement that is entered in between one or more local authorities and one or more persons engaged in business, but does not include –

- 1. an agreement in which the only parties are –
 - a. local authorities; or*
 - b. one or more local authorities and one or more Council organisations; or**
- 2. a contract for the supply of any goods or services to, or on behalf of a local authority”.*

This policy sets out the circumstances and terms of the commitment of Council resources to partnerships with the private sector. Section 107 of the Act says that such policies must include:

- 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;
- What consultation the local authority will undertake in respect of any proposal to provide funding or other resources to any form of partnership;
- What conditions the local authority will impose before providing resources to any form of partnership;
- An outline of how risks associated with any such funding or other resources are assessed and managed;
- An outline of the procedures by which any such funding will be monitored and reported on to the local authority;
- An outline of how the local authority will assess, monitor and report on the extent that community outcomes are furthered by the provision of funding or other resources or a partnership with the private sector.

The following policy meets the requirements of the Act.

The Policy

¹ “Partnership with the Private Sector” has the meaning given to it in section 107(2) of the Local Government Act 2002. For the purposes of clarity, this policy does not cover any partnership with any not-for-profit or charitable organisation.

Circumstances where Partnerships with the Private Sector will or will not be considered:

Tasman District Council will consider partnership arrangements with the private sector for the provision of infrastructure or services where:

- that infrastructure or service will contribute to the Council's outcomes or the objectives of the Long Term Council Community Plan;
- the benefits to the Council justifies the transaction and ongoing management costs of a partnership; and
- such a partnership is likely to deliver a better service or activity or provide better value for money, based on cost, time and financial arrangements, than alternative delivery methods.

The Council may be interested in a partnership with the private sector for any or all of the following reasons:

- access to capital – a partnership arrangement may give access to capital for the project
- spreading risk – the Council may be unwilling or unable to bear all the risk of a particular project itself
- legal restrictions – the Council may be keen to undertake a particular project but may not be able to participate fully in that project because engaging in the project might require some particular power the Council does not have.
- common outcome – the Council may be interested in a partnership with the private sector where the other agencies in the partnership have similar or common outcomes with the Council and there are efficiencies or benefits of working together on a project or activity.

The Council will not engage in a partnership where the Council considers that:

- the activity or project will not contribute to the Council's outcomes or the objectives of the Long Term Council Community Plan;
- the risks of the partnership are too high; or
- the activity or project is not lawful.

Consultation

Where any proposal for a partnership with the private sector involves commitment of significant Council resources or it may have other significant consequences for the Council or the Tasman District, the Council will consult on that proposal in accordance with the principles in section 82 of the Local Government Act 2002.

Conditions to be Imposed

Before committing any resources to any form of private sector partnership, Tasman District Council will establish the following conditions:

- The Council will satisfy itself that the partnership represents the best terms available to it and will seek to maximise transparency and disclosure of processes and outcomes, while acknowledging the need to protect commercial confidentialities as appropriate;
- The inputs, outputs and the roles of each of the partners will be clearly specified including measurable performance standards where appropriate;
- The Council will commit resources to the partnership only in accordance with the terms of the partnership agreement;
- A clear and enforceable risk management regime will be agreed;
- Tasman District Council will satisfy itself that the terms and conditions of the partnership agreement retain the Council's accountability for the resources committed and the delivery of the products and services, to the maximum extent possible in the context of the partnership;
- Tasman District Council's information requirements for monitoring of outcomes will be agreed.

Risk Assessment and Management

A comprehensive assessment of risk associated with any partnership proposal will be undertaken before any commitment to proceed.

A risk management regime will be agreed to as a condition of the partnership.

The prime principle for risk management within a partnership shall be to transfer risk to the party best placed to manage it.

Monitoring and Reporting

Partnership agreements will be monitored and reported in accordance with an agreed financial and programme reporting regime.

The contribution of any partnership arrangement to community outcomes will be assessed and monitored as required under the Local Government Act 2002.