Chapter 15: Public private partnership policy

15.1 Policy purpose and overview

The purpose of this policy is to allow council to consider if procuring a project through a public private partnership (PPP) will deliver the best value for money outcome for council and its stakeholders.

15.2 Policy background

A PPP is a service contract between the public and private sector where council pays the private sector (usually a consortium) to deliver an infrastructure asset or facility and provide services associated with the asset over the long term. The private sector designs, constructs, finances, maintains and operates the facility over a long period. This also involves the private sector being responsible for the condition and performance of the asset over the contract period.

Any partnership arrangement under this policy must comply with other relevant legislation, including:

- restrictions on form and asset ownership of Watercare Services Limited until the end of 30 June 2015 under the Local Government (Auckland Transitional Provisions) Act 2010
- conditions on concession agreements for roads under the Land Transport Management Act 2003.

15.3 Policy details

Defining PPPs

PPPs are a procurement model where the private sector partner takes on responsibility for roles such as finance, operations and maintenance, in addition to construction. The contract is for service typically over a period of 20-30 years. At the end of the contract term ownership of the assets reverts to the public sector entity.

PPPs can take a variety of forms but can be grouped into two main categories: availability PPPs and concession PPPs.

Availability-based PPPs typically involve the public sector making regular payments over the term of the contract to the private sector partner, who has an obligation to make the asset available for use and provide associated services.

Concession based PPPs typically involve the transfer of demand risk to the private sector. Typically they involve the private sector party making the asset available in return for payments from users of the asset. Toll roads are a common form of concession based PPP.

Scope of the policy

This PPP policy applies to significant partnerships only, and therefore excludes the majority of ongoing relationships or partnerships council has with private sector bodies, not-for-profit entities, community organisations and other public sector entities. These arrangements are typically governed by other guidelines, delegations or policies.

The focus of this policy is on large scale projects, typically infrastructure assets, for which PPP procurement is being considered.

This policy is not intended to cover general partnerships or arrangements involving:

- other local authorities
- council organisations or council controlled organisations
- contracts for supply of goods or services to or on behalf of council
- community organisations and other not-for-profit organisations to provide community, arts and cultural, and leisure facilities
- local business communities and organisations involved in main street or business improvement district programmes
- council sponsorships.

PPP criteria

Auckland Council will only consider entering into a PPP if the following criteria are met:

1. the partnership provides a higher quality and more cost-effective solution than alternative procurement options
2. the proposal is being considered as an option within a broad procurement strategy, ie it is not a stand-alone consideration
3. the partnership is of significant scale, with whole of life costs estimated at more than $50 million
4. for availability based PPPs, council's desired outcomes can be well specified and linked to a performance evaluation framework that impacts on the remuneration received by the private sector.

In addition, consideration of a PPP as a procurement option will focus on whether:

1. risks can be transferred to the partner best able to manage them

1. the project presents an opportunity to provide certainty in regard to whole of life costs, by enabling the prospective partners to present a whole of life cost solution for the provision of the asset and/or service
2. the proposed contract addresses the needs of all stakeholders, and is not unnecessarily complex
3. where there are more than two possible consortia interested in bidding for the project and at least two consortia who are committed to the project at tendering stage
4. where the project presents opportunities for the private sector to earn third party revenues, these additional revenues should be compatible with the core service provided under the PPP contract
5. there is scope, opportunity and incentive for innovative solutions to be achieved through the procurement of the contract
6. there is adequate time to deliver the project
7. the service required by council is not subject to large scale change over time, which could not be addressed within the context of a PPP.

Auckland Council is not obliged to enter into a partnership with the private sector even if one or more of these criteria are met.

Risk management

Every project that is considered for PPP procurement will need to be evaluated to determine the project's risk profile. This evaluation should include:

1. identification of all material risks for the project
2. qualitative and quantitative risk analysis, which considers -

    a. the likelihood (probability) of the risk occurring
    b. the consequence, or impact of the risk if it did occur

3. identification of mitigation strategies for risks
4. council's preferred allocation of risks between council and the private sector.

The purpose of risk management is to determine if the risks present in the project can be allocated to the party (council or private sector) best able to manage them in an efficient and economic manner. Determination of this factor forms a key part of the evaluation of a project's suitability for PPP procurement.

Risks that should be considered include, but are not limited to the following[18].

Table 15.3.1

Risk	Description
Site and resource consent risk	The risk that the project land will be unavailable, or unable to be used at the required time, or in the manner or the cost anticipated, or the site will generate unanticipated liabilities
Design, construction and commissioning risk	The risk that the design, construction or commissioning of the facility (or certain elements of those processes) is carried out in a way that results in adverse consequences on cost and/or service delivery
Sponsor risk	The risk that the contracting party (private sector) with whom council enters into the PPP contract does not fulfil their contractual obligations
Financial risk	This includes the risk that private finance will not be available, the project will not prove financially robust, or changes in financial parameters will alter the bid price before financial close
Operations risk	The risk that payments to the private sector are reduced for poor performance. The greater the value of the services provided, the greater this risk will be
Demand risk	The risk that demand for a service will vary from that initially projected, or that the price for a service will vary from that initially projected, so that the total revenue derived from the project over the project term will vary from initial expectations
Environmental and climate change risk	The risk that the provider may not have the same expectations for managing environmental and climate requirements as the council
Network and interface risk	This arises where the contracted services, or method of delivery of those services are linked to, rely on, or are otherwise affected by certain infrastructure, inputs and other services, or methods of delivering the contracted services, eg the development of a railway station next to a live rail line
Industrial relations risk	The risk that industrial action impacts on the performance under the contractual obligations
Legislative and government policy risk ('change in law')	The risk that government will exercise its powers and immunities, including but not limited to the power to legislate and determine policy, in a way which negatively impacts, or disadvantages the project
Force majeure risk	The risk that events may occur which will have a catastrophic effect on either party's ability to perform its obligations under the contract
Asset ownership risk	The risk of maintaining the asset to the requisite standard (including the risk that the cost of maintenance may increase during the term), the risk of premature obsolescence, or that the construction of competing facilities will occur
Tax risk	The risk that changes in the taxation framework may impact on the financial assumptions of the project (eg, thin capitalisation rules, building depreciation)
Interest rate risk	The risk of adverse interest rate movements

In managing some risks (for example, the failure of the PPP partners) council will retain appropriate step-in rights such as a first right of refusal to purchase the partnership arrangement.

Monitoring and reporting

PPPs utilise a payment mechanism that is tied to performance and therefore they generally have more demanding monitoring and reporting requirements than traditionally procured projects. Specific monitoring and reporting requirements will vary by project and therefore only high level requirements are provided here.

18 This risk table is based on the *Infrastructure Australia, National Public Private Partnership Guidelines, Volume 4: Public Sector Comparator Guidance*

Generally, the private-sector partner must submit a report outlining:

1. Progress on agreed outcomes, objectives against key performance indicators

1. Steps taken to maintain the assets to the agreed standards
2. Provisions made for funding asset renewal
3. Audited financial information (using generally accepted accounting principles that are appropriate to the entity)
4. Internal audit reports on operational effectiveness and risk management.

Other reporting may be required from time to time such as reporting on the social, economic, cultural and environmental impacts that the project has had to date.

15.4 Adoption and amendment of this policy

The council is not required to follow the special consultative procedure set out in the LGA 2002 to adopt and amend this policy. However, this policy will be reviewed at least every three years to assess its usefulness and potential improvements.