



# Penrith Town Council

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## Partnership Protocol

### Introduction

In practice, partnership arrangements usually fall into two principal categories:

- (i) **Partnership Bodies** – This is where a number of organisations (for example, a Local Authority, a private sector company, or a voluntary sector body) come together to form a separate body to carry out a specific service or function or to consider a particular project. The great majority of the partnerships that the Council enters into fall under this category. The separate body may be a legal entity in its own right. In other cases, a distinct and separate legal entity may not be created, and the partners may have responsibilities for undertaking aspects of the service, function, or project.

The nature of partnerships may vary and will be dependent on the format which is considered to be most suitable in any specific case. At one extreme, a partnership may be directly providing a service, for example, a shared service arrangement: at the other, the partnership may be more strategic and seek to enable other or members of the partnership to perform the direct roles.

- (ii) **Partnering Contracts** – This is where the Council engages a contractor (often from the private sector) to carry out a service(s) or function(s) and where the terms of the contract are such that both parties share something tangible in respect of the service(s) or function(s). For example, cost savings could be shared, as could profits. In all cases, both parties will share some common objective(s) usually associated with service improvement and/or cost reduction and may bear commensurate and identified responsibilities.

Neither of these arrangements should be confused with a **good working contractual relationship**. This is where the Council engages a contractor (usually from the private sector) to carry out defined work and where the Council and contractor liaise fully and properly throughout the work to ensure that the work is carried out correctly and in accordance with the contract .

### Purpose

The purpose of this protocol is to provide a guide for officers and members of Penrith Town Council who are considering seeking to involve the Council in either a Partnership Body or a Partnering Contract. Every Partnership Body and Partnering Contract will have its own characteristics and no checklist can cover every eventuality.

## **Project Management**

The instigator of any partnership arrangements should consider who will project manage the proposals through to completion. The need for project management to provide effective co-ordination must not be under-estimated.

## **Legal and Financial Implications**

Partnership Bodies and Partnering Contracts may involve complex legal and financial relationships. There will be issues and implications for the Council which will be required to be addressed and understood. It is essential that any officer or Member who is considering the involvement of the Council in either of these types of relationships, **must contact** the Town Clerk and inform her of the proposal so that the actions which the Council may need to take are identified at the earliest opportunity. It is likely that a report will be required to be submitted to Council and appropriate authorities and approvals obtained should the proposal proceed. The report will need to identify the relevant legal and financial implications for the Council in connection with the proposal. Depending upon the particular partnership arrangements being entered into, it will be advisable to involve other relevant professionals/specialists. The officer instigating the partnership arrangements should (at the earliest opportunity and in discussion with appropriate colleagues in the Council) identify what other professional/specialist advice needs to be taken and make appropriate arrangements.

## **The Council's Interests**

In developing any Partnership Body or Partnering Contract, it is necessary to fulfil the following two basic requirements:

- i. Ensure that the essential elements of good governance, accountability and transparency are maintained within the proposed partnership; and
- ii. Any risks associated with the proposed partnership have been assessed and procedures put in place to best manage those risks.

Separate checklists are provided for a Partnership Body (Appendix **A**) and a Partnering Contract (Appendix **B**). The relevant officer should complete the checklist as part of the assessment of the implications for the Council of entering into the partnership arrangement. The checklist should be discussed with the Town Clerk and any other relevant officer or advisor. The checklist and the identification of issues will be material to the report which will be required to be prepared for Council for approval and authorisation. The checklist must be completed and all appropriate approvals obtained before the partnership can be entered into.

## **The Council as Accountable Body**

The Council may, on occasions, be the Accountable Body for a Partnership Body. An Accountable Body is required where a major funder, gives a grant, but requires one particular organisation, which is likely to be the local authority, to be responsible for accounting, project reporting, and the delivery of the project. In particular, the Accountable Body will usually be responsible if there is any grant clawback. It is likely that the accountable body will have to enter into a formal agreement with the funder. The governance arrangements between the partners and within the partnership will need to be clear, agreed and appropriately documented.

Council approval must be obtained before Accountable Body status is accepted. There will almost certainly be a requirement for a formal claim which may, or may not, have to be audited. If the Council becomes an Accountable Body for a new project, the responsible officer should contact the Town Clerk to ensure the requirements of the claim and/or audit are understood. The report to Council on the project must make clear the implications of the accountable body role and obtain all approvals which are required to enable the project to proceed.

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**Reviewed: 2023**

**Next Review: 2033**

**Partnership Checklist**

A Partnership Body will involve a relationship between parties which is designed to serve fulfil shared objectives based on:

- a clear and shared understanding of those objectives, and the aspirations of all of the parties.
- a non-confrontational relationship based on trust, transparency and openness, but, nevertheless, with the need for formal arrangements to be established.
- a recognition of the diverse skills and expertise of the parties facilitating development and innovation.
- a recognition of the need to share the benefits resulting from joint working.
- a sharing of information; and
- the need to work closely towards the resolution of disputes that may arise, to avoid, wherever possible, recourse to more formal procedures.

A partnership agreement is advisable for most partnerships, unless neither financial nor legal issues arise. Shared services are particularly challenging and may require a range of legal agreements covering administration arrangements, service levels and staff transfers. Whilst the length of any agreement will need to recognise the complexity of the individual partnership, any agreement should include, or clarify, the matters set out below.

| <b>Legal</b>   | <b>Comment</b> |
|--|----------------|
| Does the Council have the legal power to enter into this partnership?  |                |
| Have the implications for the Council been considered and have they been identified and documented?  |                |
| Has the appropriate authority been obtained from Council for the partnership arrangements?   |                |
| Shared services are particularly challenging and may require a range of agreements covering administration, service levels and specifications, staff transfers and any other relevant matters. |                |
| <b>Title of Partnership</b>  |                |
| What is the intended Partnership name?   |                |

| <b>Parties</b>   | <b>Comment</b> |
|--|----------------|
| What processes have been undertaken to identify and select potential partners?                         |                |
| Who are the intended partners?   |                |
| Do you have full names and addresses together with details of representatives?                         |                |
| What approvals have been obtained to date to establish the Partnership?                                |                |
| What further approvals are required?<br>(Members' approval, checking legality of proposals, and so on) |                |

| <b>Partnership Aims and Objectives</b>                                       | <b>Comment</b> |
|--|----------------|
| Are the objectives of the Partnership clearly set out?                       |                |
| Do the objectives complement the Council's priorities and strategic actions? |                |

| <b>Resource Implications</b>   | <b>Comment</b> |
|--|----------------|
| Have the resource implications for the Council, in terms of manpower and finance, been identified as and are they available? |                |
| If there are any financial implications, has budgetary provision been made or obtained?                                      |                |

| <b>Comment</b>   | <b>Comment</b> |
|--|----------------|
| Whilst assessing VFM is necessarily subjective, it is important that, before entering into a partnership, the costs are balanced against the benefits. Can you demonstrate that this partnership is VFM? |                |

| <b>Risks</b>  | <b>Comment</b> |
|---|----------------|
| What are the financial and legal risks for the Council?                         |                |
| How will the Partnership manage risks?  |                |
| Does the Partnership have a business continuity plan?                           |                |
| Does the Partnership manage the risks to its objectives?                        |                |
| Are appropriate exit strategies are in place.                                   |                |
| What is the exit strategy for the Council, and can this be applied effectively? |                |

| <b>Duration</b>   | <b>Comment</b> |
|---|----------------|
| When is the partnership due to commence and what is the intended duration of the Partnership? |                |

| <b>Partnership Constitution</b>   | <b>Comment</b> |
|---|----------------|
| Is it intended that the Partnership would have its own legal status, i.e., become a separate legal entity and body corporate in its own right? If so, has the most appropriate vehicle been identified, for example, a company limited by guarantee or, a trust, CIC, and so on?  |                |
| Who is to draft any necessary documentation and form the body corporate?  |                |
| <p>Is it intended that the Partnership will not have a separate and distinct legal status to that of its partners? If so, it will be necessary for the Partnership to have a written constitution and formal documented arrangements which will regulate the relationship between the partners.</p> <p>Whatever mechanism is chosen, have the following constitutional and management arrangements been addressed?:</p> |                |

| <b>Structure</b>  | <b>Comment</b> |
|---|----------------|
| <p>How are the proposed partners to be involved at membership/management body and operational levels?</p> <p>Who is to be the Chair and Vice-Chair?</p> |                |

| <b>Conduct of Meetings</b>   | <b>Comment</b> |
|--|----------------|
| <p>How are the Partnership/Board meetings to be conducted, for example, where will the meetings take place, frequency, notice and quorum for meetings?</p> <p>Will all parties need to be present at meetings?</p> |                |

| <b>Decision Making</b>  | <b>Comment</b> |
|---|----------------|
| <p>What will be the voting entitlement of representatives at Partnership/Board meetings?</p> <p>How will conflicts of interest (that is, where a Partnership representative has an interest in any matter to be considered by the Partnership/Board) be addressed and identified?</p> |                |

| <b>Confidentiality</b>  | <b>Comment</b> |
|---|----------------|
| <p>During the course of the Partnership business, will partners and their representatives receive confidential information?</p> <p>If so, are will the partners and their representatives be required formally not to divulge that information to third parties nor use it themselves for non-Partnership purposes?</p> |                |

| Officer Support  | Comment |
|--|---------|
| <p>The Partnership will require officer support. This may include ensuring compliance with applicable legislation, preparing, and issuing agenda for Partnership Board meetings and the recording and keeping of minutes of those meetings.</p> <p>Who is to undertake or provide these roles?</p> |         |

| Corporate Governance  | Comment |
|---|---------|
| <p>The Partnership will require an effective corporate governance framework. This may vary depending on the reason for establishing the Partnership, how it is to be formed and managed and the degree of independence that it is to have from its participating members. Clearly, the corporate governance arrangements should be proportionate to the partnership.</p> <p>The arrangements should include clear, written, and agreed answers to all the questions in this checklist.</p> <p>In addition, they may need to address some, or all, of the following areas:</p> |         |
| a. Budget requirements  |         |
| b. Receipts and payments, including petty cash  |         |
| c. Salaries and wages   |         |
| d. Travel and subsistence   |         |
| e. Accounting procedures  |         |
| f. Contracts/purchasing including:  |         |
| i. Tendering  |         |
| ii. Assets  |         |
| iii. Inventories/stocks   |         |
| g. Insurance  |         |
| h. Personnel procedures   |         |



| <b>Management of Information</b>   | <b>Comments</b> |
|--|-----------------|
| Where will information be stored to facilitate close working and how will access be controlled? How will data be shared? This is likely to be an important point in service sharing. |                 |

| <b>Equalities</b>  | <b>Comments</b> |
|--|-----------------|
| How does the Partnership and the partners ensure that it and they promote equality in relation to the project and generally? |                 |
| How will information be provided and reported to Partnership members?  |                 |
| Are there means of monitoring service delivery established and are they appropriate?   |                 |

| <b>Documentation</b>                         | <b>Comments</b> |
|--|-----------------|
| Who is to draft any necessary documentation? |                 |

| <b>Contributions of Partners</b>   | <b>Comments</b> |
|--|-----------------|
| What have the partners agreed to contribute and provide to the Partnership?  |                 |
| What form will any contribution take, for example, contribution of assets, provision of accommodation and facilities, secondment of employees? |                 |
| On what terms will any contributions be made?  |                 |
| Is a contribution to be made in return for cash, or is it to be treated as a contribution in kind?   |                 |
| Are there any written agreements in place which deal with the above issues satisfactorily?   |                 |

| <b>Funding of the Partnership</b>   | <b>Comments</b> |
|---|-----------------|
| In addition to, and/or in place of the matters raised in paragraph 6, will the Partnership require finance, capital, and/or revenue, to deliver its aims and objectives?                  |                 |
| If so, on what terms is any funding to be made available, for example, how will the contribution be shared amongst the partners and how will it be adjusted for inflation?                |                 |
| Is any third-party funding required? If so, who is the funder, what is the amount required and when and on what terms and conditions will it be made available?                           |                 |
| Have all the partners agreed that, should the Partnership receive grant income, they will comply with all requirements specified by the funder and will provide all information required? |                 |
| Is an "Accountable Body" required?  |                 |

| <b>Financial Responsibilities</b>  | <b>Comments</b> |
|--|-----------------|
| Will separate financial records for the Partnership be maintained?   |                 |
| <p>Who will be responsible for ensuring that financial records are maintained and kept? What access will members of the partnership have to the financial records?</p> <p>If this is to be provided by the Partnership, then the Partnership will be required to provide details as to how this will be achieved.</p> <p>Alternatively, it may be the case that this is to be provided on behalf of the Partnership by one of the partners, or an external organisation. Again, detailed information will be required.</p> |                 |
| Where an external organisation is to provide this role, will there be a written agreement with that organisation?  |                 |
| Have insurance requirements been considered and advice sought?   |                 |

| <b>Financial Responsibilities Continued</b>  | <b>Comments</b> |
|--|-----------------|
| Has advice been sought on the VAT rules applying to the Partnership and any other tax issues which are relevant?   |                 |
| Who will provide the role of treasurer and external auditor?   |                 |
| If the Partnership is large, there may be a need for it to put internal audit arrangements in place.   |                 |
| Accounting practices may vary according to size. Whilst a smaller partnership may keep basic records and accounts on a simple receipts and payments basis, larger partnerships will need to follow accepted accounting principles, for example, preparing accounts on an accrual's basis. The practices which are adopted must be sufficient to comply with the requirements of any external funder and of any Accountable body. |                 |

| <b>Budgetary and Accounting Arrangements</b>  |  | <b>Comments</b> |
|---|--|-----------------|
| The arrangements will need to be proportionate to the size of the Partnership. As a guide, the requirements may be: |  |                 |
| Small partnership   | > An annual projection of likely receipts and payments                     |                 |
|   | > An annual statement of the previous year's accounts                      |                 |
| Large partnership   | > Business plan  |                 |
|   | > Management accounts  |                 |
|   | > Cash flow monitoring   |                 |
|   | > Regular reporting of the financial position to the Partnership executive |                 |

| <b>Legal Responsibilities</b>  | <b>Comments</b> |
|--|-----------------|
| Has appropriate provision been made for compliance with the law, for example various local government acts, procurement, health and safety, data protection, freedom of information, employment, and any service-specific legislation? |                 |
| Is it necessary for the Partnership to have a formal computer security policy?   |                 |
| Who will be providing legal support to the Partnership?  |                 |

| <b>Council Representatives on Partnership Body</b>   | <b>Comments</b> |
|--|-----------------|
| Are Members and/or staff clear about their roles and obligations, for example, an awareness of their potential legal liability and obligations and the governance framework? |                 |
| How will the potential for conflicts of interest arising be addressed?   |                 |
| A Director and Trustees will have responsibilities in law to the company and the Trust, respectively, which will need to be understood. Will indemnities be required?        |                 |
| Will the individuals have insurance cover?   |                 |

| <b>Audit Access</b>  | <b>Comments</b> |
|--|-----------------|
| What audit access will each individual partner have in relation to documentation in the possession, custody, or control, of the Partnership?   |                 |
| What audit access will each individual partner have in relation to documentation in the possession, custody, or control, of the Partnership?   |                 |
| Will it include the right to interview staff, take copies of documentation and have access to, and take copies of, any computer data held for the purposes of the specific Partnership objectives? |                 |

| Monitoring  | Comments |
|---|----------|
| Where the Council has a major financial interest in a Partnership, it should ensure that it monitors its financial performance regularly. An external funder may require monitoring information on the partnership's activities. How will this monitoring function be serviced? |          |

| Partnership Records  | Comments |
|--|----------|
| Who will be responsible for maintaining, on behalf of the Partnership, a full record of all matters relating to the specific Partnership objectives? For what length of time is it intended that records will be retained? |          |

| Liabilities  | Comments |
|--|----------|
| What will be the liabilities (actual or contingent) of the Partnership?  |          |
| What are the arrangements for determining the responsibility for each partner for any such liabilities?          |          |
| Are any indemnities to be given? If so, by whom, and on what basis? Have any indemnities been approved formally? |          |

| Termination   | Comments |
|---|----------|
| How may and will the Partnership be brought to an end?  |          |
| Will any partner have the right to withdraw from the Partnership? If so, when, on what terms, and what will the effect be upon the Partnership? How is any withdrawal to be affected?   |          |
| What mechanisms will be used to value and realise assets and determine liabilities? If a surplus arises how will the surplus be shared between the partners? If a shortfall arises how will the shortfall be met by the partners? |          |
| Who owns the assets of the Partnership and how are any assets distributed on dissolution?   |          |

| <b>General</b>                                | <b>Comments</b> |
|---|-----------------|
| What arrangements are there for dealing with: |                 |
| assignment of rights and duties?              |                 |
| resolution of conflict between partners?      |                 |
| public announcements?                         |                 |
| changes?                                      |                 |

**Appendix B overleaf**

**Partnering Contract Checklist**

Generally, all usual considerations when entering into a contract should be applicable (Procurement Rules, usual contract clauses, and so on). However, some of the points below may be of particular relevance in a partnering environment.

| General   | Comments |
|---|----------|
| Is the contract clear and understandable, especially in relation to those aspects that go beyond normal contractual arrangements?                                       |          |
| Are the responsibilities of both parties set out clearly (for example, who does what, when, and where, and who pays what, and when)?                                    |          |
| Are service delivery standards and targets clear?   |          |
| How can things be changed (for example, change to work carried out)?  |          |
| Are innovations encouraged (for example, innovative ways of delivering a service) and what happens to any resulting cost saving?  |          |
| What happens if things go wrong (for example, withholding payments, damages, termination)? Does this also cover the issue of problems with innovative service delivery? |          |
| Have all potential risk liabilities been fully considered?  |          |
| Financial arrangements – is the payment procedure clear?  |          |
| Is the duration of the contract clear? Can it be extended, and, if so, under what terms?  |          |

| General  | Comments |
|--|----------|
| How are the Council's strategic actions communicated to the Contractor?  |          |
| What are the liaison arrangements between the Council and the Contractor?  |          |
| Are there any requirements about consulting customers/public?  |          |
| What arrangements are in place to monitor and report service delivery?   |          |
| Does the contract state that this is not a 'partnership'? (The creation of a partnership gives rise to some complex liabilities/responsibilities between the partners).  |          |
| The Council's Legal Services should be consulted on relevant issues at the appropriate points to identify and clarify those issues and before they have been determined. |          |