

Chapter 1: Establish the Internal Framework

The purpose of this chapter is: To outline the structural steps the municipality should take prior to initiating a comprehensive PPP Program.

These steps are:

- ✿ Assigning general responsibility for PPPs to an existing or special purpose committee
- ✿ Establishing a municipal PPP **policy**

These steps provide the framework to identify, evaluate, and implement potential PPPs. By focusing responsibility for PPPs in one committee, the expertise required can be brought together on short notice.

When the decision is made to proceed with a PPP project, having a specific municipal policy will make the process much easier.

Stages of The Partnership Building Process

1. Establish the Internal Framework

2. The Decision to Partner

3. Develop the Implementation Plan

4. Selecting a Preferred Partner

5. Negotiating the Contract

1.1 Reasons for appointing a PPP Committee

A PPP **committee** concentrates expertise and responsibility for partnering in one place. It is both a champion and a cynic of partnering. It allows consideration of PPPs for all services and infrastructure while at the same time ensuring they are used only when appropriate. The specific responsibilities of a PPP committee may include:

- ◆ **Consulting** with council, staff, unions, the public, and the private sector to define preferred partnership structures, acceptable levels of risk and minimum service requirements;
- ◆ Establishing a municipal PPP **policy** outlining the general practices to be followed in evaluating and implementing partnerships. The policy should reflect the findings of the consultation process;
- ◆ Providing a **point of entry** for the private sector to approach the municipality with PPP initiatives;
- ◆ Developing and managing a **communications strategy** to educate staff and the public on the benefits of PPPs. It should lay out, in detail, how the municipality plans to ensure service quality and continuity and how it will deal with existing employees;
- ◆ **Identifying and evaluating** existing and future PPP opportunities, as outlined in “The Decision to Partner”. This responsibility includes evaluation of PPP proposals from staff and the private sector;
- ◆ **Allocating responsibility** for individual PPP proposals to project teams and providing support as required;
- ◆ Ensuring that PPP initiatives receive an appropriate level of **review**, in a timely manner, and are conducted according to the PPP policy;
- ◆ Reviewing the project team’s conclusions and making **recommendations** to council whether or not to proceed with PPP contract negotiations;
- ◆ Reviewing draft PPP **contracts** and making recommendations to council to approve or modify contracts;
- ◆ Ensuring that the private partner **complies** with contract provisions as detailed in *Chapters Five and Six*;

The committee should be provided with a mandate from council to fulfil each of these responsibilities. Much of this mandate can be included in the municipal PPP policy.

The PPP committee should not, however, add to the size and complexity of government. Line departments and staff should have the authority to seek out and initiate PPP opportunities as they arise. The role of the PPP committee is to provide support for this process rather than add an additional layer of bureaucracy.

A. Structure of the committee

The structure of the PPP committee will depend upon the size and resources available to the municipality and its commitment to public private partnering. The municipality could:

- ◆ Create a **special or select** committee to deal exclusively with PPPs. This committee may include councillors, staff, members of the public, and the private sector;
- ◆ Expand the role of an **existing committee**, such as Corporate Services or a standing committee of council, to include responsibility for PPPs;
- ◆ Delegate responsibility for PPPs to **Committee of the Whole**; or
- ◆ Delegate responsibility for PPPs to a **staff department** such as Finance, Planning, Engineering, or Public Works.

The municipality should choose the committee structure that best suits its own circumstances.

B. Choosing The committee members

In order to fulfil its responsibilities, the PPP committee must include members with a variety of skills, including tangible skills, such as finance and law, and less tangible ones, such as creativity, entrepreneurship, and insight into the marketplace.

Although most PPP committee structures are made up of municipal councillors, the ongoing involvement of staff in the process is essential. This is especially true when the role of the committee is to evaluate current municipal services and operations as potential areas for increased PPP.

The PPP committee should include or have access to at least one staff member from the following disciplines or departments:

- ◆ Executive office
- ◆ Purchasing

- ❁ Public Works/Engineering
- ❁ Unions
- ❁ Planning
- ❁ Human Resources
- ❁ Finance/Audit
- ❁ Legal Services
- ❁ Economic Development

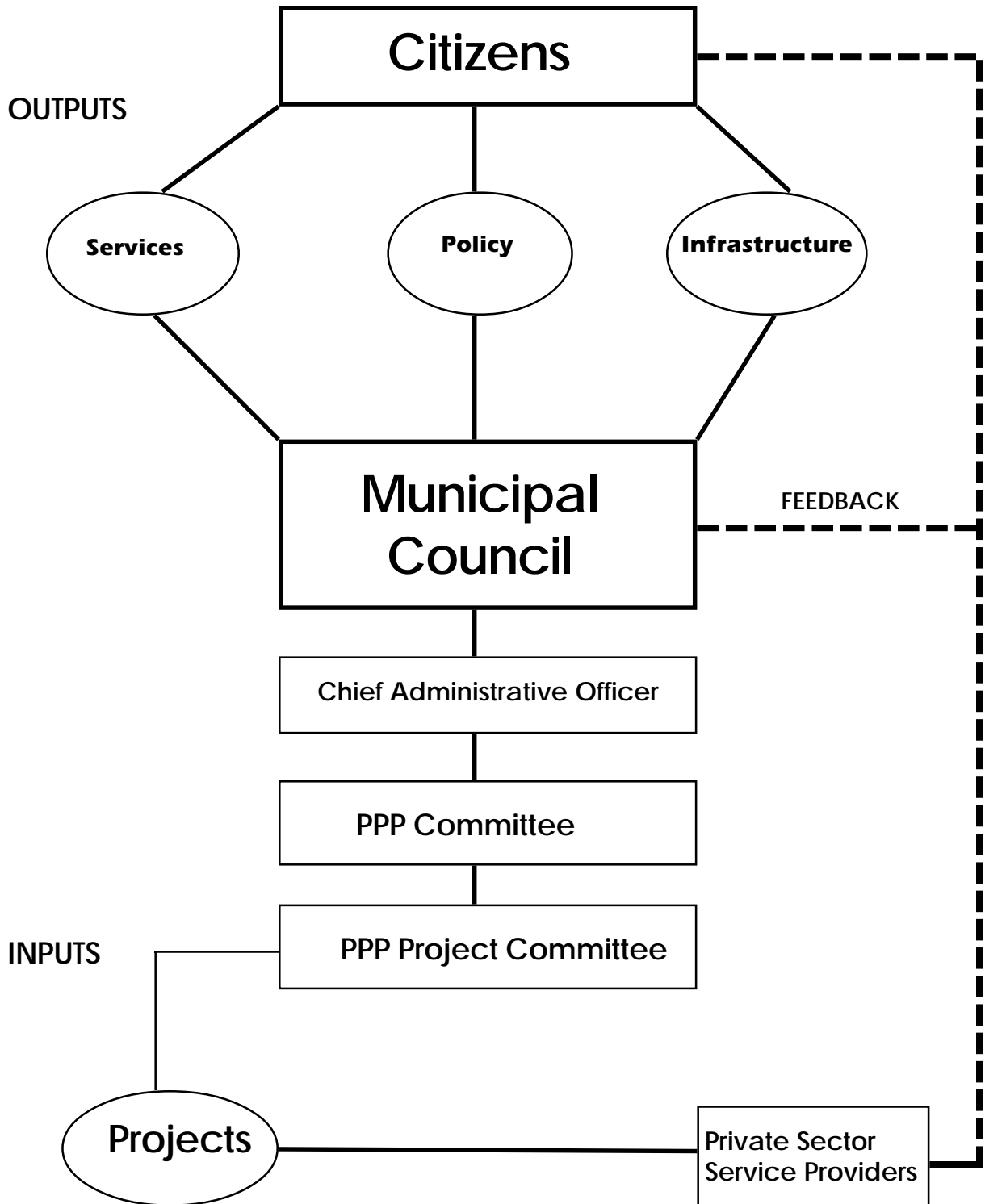
While it is recognized that smaller municipalities in the province may not have all of the staff resources listed above, it is important to include people with a range of backgrounds on the PPP committee.

In addition to council and the staff members listed above, the committee should include, or have access to, individuals with expertise in the following areas:

- ◆ Public and private finance
- ◆ PPP arrangements
- ◆ Legislation and regulation
- ◆ Land and building development
- ◆ Taxation
- ◆ Asset valuation
- ◆ Cost accounting and financial modelling
- ◆ Facility operations
- ◆ Business management
- ◆ Investment and development incentives
- ◆ Architecture/engineering/information technology
- ◆ Local commercial development market
- ◆ Communications
- ◆ External advisors for specific projects

It may be beneficial for the committee to have authority to appoint advisory members as it deems necessary and appropri-

Figure 1.1: The Public Private Partnership Process



ate because the committee's responsibilities are general, as opposed to project specific. Individuals with expertise in these areas may only be required at committee meetings from time to time, e.g., when writing the PPP policy, reviewing a draft contract or monitoring the performance of a private partner. Experts will be of most benefit to the project teams appointed by the PPP committee for specific PPP projects.

Municipal staff will require training in order to operate in the PPP environment. Therefore it is essential to ensure that training is provided in:

- ◆ Business management
- ◆ Negotiation
- ◆ Mediation
- ◆ Arbitration
- ◆ Contract law and legal elements of contracting out
- ◆ Project management
- ◆ Performance management

Personnel with this training should be called on to act as in-house resources and may also, depending on the circumstances, be called upon to instruct other staff as required.

Case Study 1.1:

The District of Chilliwack, B.C.

In 1996, the District of Chilliwack established a Task Force on Public Private Partnering. The task force consists of municipal councillors and staff, and its role is to assess all PPP opportunities in the District.

The District has undertaken a number of PPP projects. The Municipal Airport has been privatized. All construction undertaken by the District is carried out under Design-Build PPPs. To date, 11 construction projects have been completed as PPPs saving the municipality \$2.5 million dollars.

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1.2 Establish a municipal PPP policy

The first task of the PPP committee will be to establish a **municipal policy** on public private partnering. Its purpose is to formally state the benefits the municipality hopes to achieve through PPPs and the process it will follow.

The policy need not be an endorsement of PPPs for all municipal services and infrastructure. Rather, it should provide a **documented, systematic approach to conducting PPPs on a service-by-service basis.**

No matter how many times a municipality conducts a PPP, each one will be different. A formal policy will provide individual project managers with a road map to guide them through the process. It will also ensure that the process itself is fair and open and that the interests of the public are protected.

The PPP policy should compliment existing policies concerning procurement, planning, conflict of interest, labour relations, etc.

A. Goals of the PPP policy

The specific goals of a formal PPP policy include:

- Defining what the municipality means by public private partnering and who it considers to be acceptable partners;
- Ensuring that PPPs are examined as an option for delivering existing and future services;
- Ensuring that PPPs are used only when appropriate;
- Providing a step-by-step guide to project managers who are responsible for evaluating and negotiating individual PPPs;
- Communicating the municipality's approach to partnering to the public, municipal staff and the private sector. This will ensure the use of a transparent, accountable, and accessible process;
- Defining standards of conduct and conflict of interest guidelines for those involved in the process.
- Outlining the municipality's approach to unsolicited proposals.
- Identifying the risks and concerns associated with PPPs and documenting how the municipality will address them.

B. The consultation process

The PPP policy should be a reflection of the municipality's goals and objectives as well as the concerns and aspirations of its residents. In order to achieve this, the PPP committee should organize and conduct a comprehensive **consultation process** involving:

- ◆ Elected officials
- ◆ Municipal management
- ◆ Municipal staff
- ◆ Unions
- ◆ The municipality's agencies and organizations
- ◆ Special interest groups
- ◆ Residents
- ◆ The local Chamber of Commerce
- ◆ Potential private partners
- ◆ Relevant provincial departments and regulatory agencies

A number of **techniques** are available to assist the PPP Committee in gathering information that is both useful and reflective of public opinion. They include:

- ◆ **One-to-one interviews** with councillors, municipal managers, union leaders, and heads of interested community and business groups;
- ◆ **Focus groups** with individual departmental teams including Finance, Planning, Public Works, Administration, Legal, and Human Resources;
- ◆ **Public meetings** to inform and solicit input from residents and community groups;
- ◆ **Meetings** with various service and facility user groups and private sector organizations;
- ◆ **Distribution of information** to employees and the public accompanied by mail-in response forms or via the municipality's world wide web site (if appropriate) by adding a feedback loop to the website, and
- ◆ **Distributing the results of the consultation process**, along with a draft PPP policy, indicating where public input has been incorporated.

Understanding and acceptance of PPP by residents is key to the success of the policy and ultimately any partnership. It is of little value to go through the process of preparing a policy and attempting to put it into practice if the concerns of the end users, have not been addressed.

In preparing the policy, the PPP committee should make a special effort to ensure that the residents have an opportunity for input into the process. For example, the committee could host public meetings or open houses to both inform and solicit input from residents. At the conclusion of the process, the committee could put in an advertisement in the local paper indicating that the policy was finished and indicate where copies were available.

The consultation process is not only to gather useful information for the PPP policy. It is also a means of communicating the municipality's reasons for exploring the benefits of PPP and to encourage 'buy in' by staff and the public and of gathering input which leads to a better policy. Communicating openly and discussing the options available to employees and their unions, may minimize some of the fears associated with the change in service delivery.

Residents and municipal employees are more likely to support a PPP Policy if they have participated in its development. The consultation process leads to creation of a community, as opposed to a government PPP Policy.

Case Study 1.2:

The Region of Halton, Ont. (pop. 340,000)

In 1995 the Region of Halton, Ont. conducted a comprehensive consultation process leading towards the development of a corporate policy on PPP. The following issues or concerns were identified through the process:

- Maintaining control of services**
- Ensuring the partner's accountability**
- Evaluating the cost/benefit ratio**
- Consulting with stakeholders**
- Ensuring a fair and objective process**
- Maintaining continuity of service**
- Managing human resources**
- Transferring assets**
- Dealing with potential abuse of privilege**
- Managing partnering in**

Halton's corporate policy addresses each of these issues individually and outlines the general process to be followed by staff when evaluating and conducting PPPs.

C. Elements of the Policy

Just as every PPP is unique, so too are the policies that municipalities adopt to guide them through the process. In general, a **PPP Policy** consists of five distinct parts:

- (i) Introduction
- (ii) Guiding principles
- (iii) Communications strategy
- (iv) Human resources strategy
- (v) The PPP process

The content will depend on the municipality's specific goals and objectives and the results of its consultation process. The following discussion is intended to act as a guide only.

C.(i) Introduction

This part of the policy may include the following elements:

- ✿ Purpose of the policy
- ✿ Municipality's definition of PPP
- ✿ Benefits accruing to the municipality from a PPP
- ✿ Components of service provision eligible for PPP
- ✿ Forms of PPP permitted
- ✿ Eligible private partners

This part of the policy provides specific policy statements to address the issues raised during the consultative process. These policy statements must be specific if they are to have a direct impact on the negotiation of PPPs. However, they must also be flexible enough to allow innovation and creativity on the part of the private partner.

C. (ii) Guiding principles

The following **guiding principles** have been adapted from those proposed by the Government of Nova Scotia to encourage effective PPP arrangements:

Accountability for the level and quality of essential services will remain with the municipality: Services can be contracted out or turned over to the private sector; governance cannot.

All legislative and regulatory requirements can and will be met: In certain cases, however, legislation and regulations must be amended in order for a partnership to succeed.

Fair and adequate provisions will be made for existing employees: This may include first consideration for public employees by the private partner, offers of alternative positions within the municipality, severance packages, and the right of existing employees to compete against the private sector.

PPPs will only be considered when there are adequate opportunities for competition: A public monopoly will not simply be exchanged for a private one.

An open and transparent process will be used in all PPP initiatives: In order to maintain public trust and ensure fairness, all parties must be willing to expose their proposals to public scrutiny.

PPPs must result in equal or better service delivery: Measures must be taken to ensure that private partners can and will maintain or enhance the delivery standards set by the municipality.

PPPs must reduce the cost to government of delivering a service: The reductions in cost to government must, however, be weighed against increased user fees to residents.

The municipality will maintain reasonable in-house expertise when the cost of doing so is reasonable: Maintaining in-house knowledge is necessary to evaluate partnering proposals and service delivery once a partner is providing the services. It also eases the transition back to public service provision should this become a necessity.

Opportunities should be created for sustainable economic growth: Not all PPPs will result in economic growth. Priority should be given to those that do.

PPPs must have acceptable implications for other government services and the private sector: PPPs with large companies can displace smaller local firms or transfer expertise that the municipality relies upon for other purposes to the private sector. This must be factored into any decision to enter into a PPP.

The issues and policy statements presented above have been taken from an existing PPP policy. The PPP committee

will be responsible for writing policy statements unique to your own jurisdiction. The **Best Practice Guidelines** presented at the end of each chapter in this document may be of some assistance to the PPP committee in writing these statements. In the final analysis, however, each statement must be tailored to address the concerns of the public and gain approval by council.

C. (iii)
Communications
strategy

If a PPP is to succeed, it needs to have communications strategies in place at various points in its life cycle. Effective communications has always been about understanding who the audience is through extensive research and dialogue and then designing an approach that will bring understanding or consent.

The strategy must address internal audiences - employees, union leaders, and councillors so they understand the rationale behind PPPs and their impact on the municipality's finances, personnel, and service delivery. When the agreement is signed there has to be open and effective communication between all members of the private partnership.

Then there are the outside audiences - residents of the municipality who may be affected by changes in service delivery. It is in the municipality's best interest to have a communications strategy that explains the reasons for entering into a PPP and the benefits the citizens will receive as a result.

The communications strategy should clearly indicate the circumstances where public input will be sought before a PPP begins or it should indicate the stage in the PPP process where it will be sought. Different levels of communication with the public will be required depending on the service being partnered. For example, greater public involvement is required for the sale of an asset than for contracting out the delivery of a municipal payroll.

C. (iv) Human
resources strategy

Employees of the municipality may be the ones most affected by the PPP. Their jobs may be transferred from the public sector to the private, changed, or eliminated. A human resources strategy can help address these concerns and allay the fears of the employees by requesting that affected municipal employees have right of first refusal for positions within the PPP, that succession rights of unions (as described in the Trade Union Act) are transferred to the private partner, and by investigating options such as encouraging employees to bid

on the contract themselves (and giving them the tools to do this), transferring employees within the municipality, arranging buyouts and early retirement, and trying to minimize the number of layoffs.

C. (v) The PPP process

The final part of the PPP Policy outlines the process that the municipality will follow each time it considers a PPP for the provision of services or infrastructure. Although the particulars may vary from partnership to partnership, the following six stages should characterize each and every partnership considered by a municipality:

Figure 1.2: Stages in the PPP Process

Stage 1: Establish internal framework

This stage involves creating a PPP committee and establishing the municipality's PPP policy. This is the broad framework that guides the conduct of all PPPs in the municipality;

Stage 2: The decision to partner

This stage involves identifying current and future PPP opportunities, evaluating and prioritizing specific projects and deciding to proceed with a particular PPP;

Stage 3: The implementation plan

This stage involves the creation of a project team, constructing a detailed cost/benefit analysis, selecting a procurement process, developing a communications strategy and the securing of necessary approvals;

Stage 4: Selecting a preferred partner

This stage involves selecting evaluation criteria, issuing RFQ and RFP documents, selecting the preferred partner, and debriefing unsuccessful proponents;

Stage 5: Negotiating a contract

This stage involves creating a contract negotiation team, defining what is/is not open to negotiation, developing a draft contract and service transfer plan and obtaining council's approval;

Stage 6: The partnership in action

This stage involves working with the private partner, monitoring performance, conducting regular evaluations, dissolving the partnership and returning the service/facility/infrastructure to public sector ownership (where applicable)

Stage One of this process had been discussed in detail in this chapter. Stages *Two* through *Six* will be discussed individually in the chapters which follow.

1.3 Giving the policy teeth

The PPP policy should describe the partnering process without limiting the flexibility required to deal with each proposed PPP on a project-by-project basis. The policy should act as a guide for project managers rather than a rigid set of instructions.

Once the PPP committee has finalized the policy, it should become an official municipal document. Not only will this demonstrate the municipality's commitment to fair and open public private partnering. It also prevents the policy from being amended on an ad hoc basis.

A number of options exist to formalize the PPP policy, including:

- ◆ Presenting the PPP policy to council for approval as a municipal policy;
- ◆ Presenting the PPP policy to council for approval as a recorded resolution or administrative order; or
- ◆ Amending the municipality's planning strategy or procurement policy to include the PPP policy.

The remainder of this document deals with stages Two through Six in the PPP process. It details the specific steps and considerations the municipality should take when evaluating and negotiating PPPs. From this point onward, it will be assumed that the municipality has established a PPP committee and formalized a municipal policy.

BEST PRACTICES

- ◆ Make sure there is support from senior staff and council support for public private partnering. It requires support and leadership from the top echelons if it is going to succeed. (Intransigence on behalf of middle management is a major obstacle for PPPs.)
- ◆ Senior levels of the organization must take ownership of the PPP process and must be actively involved in overseeing it.
- ◆ Involve top management in preventing or resolving internal impediments to the PPP process.
- ◆ Establish a municipal PPP committee and ensure it has the resources to carry out its mandate.
- ◆ Develop a municipal PPP policy which:
 - identifies key risks and concerns and the guidelines for dealing with them;
 - puts appropriate measures in place to protect the citizens of the municipality,
 - has been developed with input from council, staff, community groups and the residents of the community, and
 - ensures that there is a consistent approach to all PPPs that is transparent, accountable, and accessible.
- ◆ Have a communications strategy in place to inform employees, unions, councillors, media, and the public on the reasons for entering into a PPP and the effects it will have on service, employment, and municipal finances.
- ◆ Remember that real or perceived conflict of interest issues can hamper implementation or hurt credibility.