



**BYRON
SHIRE
COUNCIL**

DRAFT Policy

Supporting Strategic Partnerships

20192023

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Further Document Information and Relationships

Related Legislation	The Local Government Amendment (Public-Private Partnerships) Act 2004-1993 (The Act) <u>Parts 6 and 13</u> ; The Local Government (General) Regulation 2021 (the Regulation); The Local Government Act 1993, Section 625 The Local Government Act 1993, Investment Order (relating to investments by Council)
Related Policies	Byron Shire Council Financial Sustainability Plan #E2016/26998 Byron Shire Council <u>Procurement and Purchasing Policy-E2020/9746</u> <u>Code of Conduct</u>
Related Standards, Procedures, Statements, documents	NSW Office of Social Impact Investment; <u>Unsolicited Proposals Guidelines – Byron Shire Council</u> <u>Unsolicited Proposal Guide for Submission and Assessment – NSW</u>

	<p><u>Government (May 2022)</u></p> <p><u><i>Social Impact Investment Policy 2.0: Growing our impact</i>, NSW Office of Social Impact Investment-(July 20126)</u></p> <p><u>Impact Investing Australia (refer website: https://impactinvestingaustralia.com/useful-links/)</u></p> <p><u><i>Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships</i>, Department <i>Public Private Partnership (PPP) Guidelines</i>, Office of Local Government _-(1 September 2005January 2022)</u></p> <p><u><i>Investment Policy Guidelines</i>, Division of Local Government, Department of Premier and Cabinet (May 2010)</u></p> <p><u><i>Capital Expenditure Guidelines</i>, Division of Local Government, Department of Premier and Cabinet (December 2010)</u></p> <p><u><i>Integrated Planning and Reporting Guidelines -and Handbook for local government in NSW</i>, Division <u>Office</u> of Local Government, Department of Premier and Cabinet (March 2013September 2021)</u></p>
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Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

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~~A policy to support partnerships~~Policy Statement

This policy aims to stimulate and encourage investment and innovation in the Byron Shire for the benefit of the community, while establishing a robust and transparent framework to assist in appropriately managing partnerships.

Delivering better services and results for the ~~c~~Community is a key priority for Byron Shire Council. When it comes to tackling our most pressing issues, we recognise that Council may not be able to solve them alone. ~~Our~~The Byron Shire Community Strategic Plan, which sets the community's main priorities and aspirations, aims for its outcomes to be delivered ~~by~~in partnership ~~between~~with individuals, community groups, state agencies and Council. The opportunity exists for Council to harness the innovation and capital of the non-government sectors to deliver better outcomes for the ~~c~~Community.

meet legislative requirements and

1. Purpose

The purpose of this policy is to set out the framework for the establishment, management, and governance of partnerships entered into by Byron Shire Council with third parties, and
Provide clear pathways that assist parties in determining whether Council will consider partnerships and ensuring e that Council is compliant with all relevant legislation and statutory requirementsis intended to:.

1. Ensure transparency, accountability, and fairness in Council's consideration of partnership arrangements
2. Establish partnerships that achieve economic, social, environmental, and cultural/governance outcomes, consistent with Council's strategic direction and existing suite of policies
3. Provide clear pathways that assist parties in determining whether Council will consider partnerships and ensure that Council is compliant with all relevant legislation and statutory requirements

~~This policy establishes a framework to assess if a partnership approach is the best project delivery mechanism to achieve economic, social, environmental and cultural/governance outcomes.~~

~~It will assist project (internal and external) proponents in determining when Council will consider partnerships with Council and will seek to ensure that Council is compliant with all relevant legislation and statutory requirements.~~

2. Objectives

- a) To ensure partnerships demonstrate transparency, probity, accountability, and consistency, and encourage competitive open market processes to achieve best value for money for the community.~~To develop partnerships that demonstrate transparency, probity, accountability and consistency from their inception.~~
- b) To protect Council's reputation and minimise risk of corruption.

- ~~b) To ensure projects achieve transparency and encourage competitive open market processes to achieve best value for money for the community.~~
- c) To enable the development of partnerships that can achieve quadruple bottom line outcomes (economic, social, environmental, civic leadership) and deliver recurrent revenue to Council.
- d) To commit to improving Council's capacity to identify and engage with social impact investment opportunities for the market to bring forward innovative proposals and engage with potential investors.
- e) To assist Council, retain and manage public land in a financially sustainable way delivering quantifiable and demonstrable benefit of the Community, where it is in the best interest of the community to do so.

3. Scope

This policy applies to all forms of partnership with the private and non-government sector. Council may enter into different types of partnerships with third parties, depending on the nature and scope of the project or initiative. Some examples include:

Joint venture partnership: In this type of partnership, Council and a third party agree to work together to establish a new venture or project. They both contribute resources, expertise, and capital to the partnership, and share the profits and risks.

Service provision partnership: Council can enter into a partnership with a third party to provide a service or deliver a project on behalf of the council. This type of partnership is common in areas such as waste management, transport, and social services.

Collective impact: The commitment of a group of actors from different sectors to a common agenda for solving a specific social problem, using a structured form of collaboration. This type of partnership is often used in community development projects, where the council and community groups work together to deliver services or programs.

Public Private Partnership: A PPP can broadly be defined as a long-term arrangement between the public and private sector for the development, delivery, operations, maintenance, and financing of service enabling public infrastructure.

Other types of partnerships may arise from lease and sale agreements, tendered services, Council in-kind and land donation, philanthropic opportunities, among others. The type of partnership a council enters into with a third party will depend on the specific project or initiative, and the goals and objectives that they are trying to achieve.

Exclusions

Council may enter sponsorship agreements subject to the Sponsorship Received by Council Policy.

~~This Policy applies to:~~

- ~~a) All Council operations~~
- ~~b) Operational or Community Land owned by Council~~

- ~~e) Public land managed by Council, to the extent that partnerships on that land may be legally possible~~
- ~~d) New areas of service that will positively affect Council operations and the community~~
- ~~e) All forms of partnership with the private and non-government sector that includes but is not limited to PPPs (as defined by The Act) and captures all other types of partnerships including lease and sale agreements, tendered services, Build Own Operate Transfer arrangements, Council in-kind and land donation, Philanthropic/Volunteering and others.~~

~~This policy does not apply to land that has been identified in Council's Financial Sustainability Plan for a particular use/purpose.~~

~~4. Statement~~

~~Byron Shire Council is committed to considering partnerships as a means of:~~

- ~~a) Delivering infrastructure and services that may not otherwise be possible~~
- ~~b) Providing accelerated delivery of priority infrastructure projects~~
- ~~c) Retaining valuable land in community ownership~~
- ~~d) Delivering projects with quadruple bottom line outcomes and that offer the best value for money to the community.~~
- ~~e) Accepting innovative approaches and paying only if they achieve their outcomes.~~

5. Partnership Principles

~~There are many different types of partnership arrangements and innovative models emerging in Australia. Any model can be considered that delivers on the objectives and meets the principles of this Policy, along with statutory requirements (Refer Appendix A for case studies and examples).~~

1. **Shared goals and vision:** Partnerships should have a shared understanding of the goals and vision of the partnership, and work collaboratively towards achieving them.
 2. **Mutual benefit:** Partnerships usually benefit all parties involved, and each partner should have a clear understanding of the benefits they will receive from the partnership.
 3. **Clear communication:** Partnerships should have clear communication channels, including regular meetings and reporting, to ensure effective collaboration and decision-making.
 4. **Defined roles and responsibilities:** Partnerships should clearly define the roles and responsibilities of each partner, to avoid confusion and ensure accountability.
 5. **Trust and respect:** Partnerships should be based on mutual trust and respect, and partners should be committed to working together in good faith.
 6. **Continuous evaluation:** Partnerships should be regularly evaluated to ensure that they are meeting their objectives, and to identify opportunities for improvement.
- ~~a) Partnership arrangements can only arise through an open, market-based process, where everyone is given the opportunity to compete for the partnership opportunity.~~

b) — The primary focuses of partnerships proposals should be to:

- i) Delivering infrastructure and/or services that may not otherwise be possible fund services and projects that would not otherwise be able to be delivered or delivered within an acceptable timeframe;
- ii) Providing accelerated delivery of priority projects and that may not otherwise be achievable within an acceptable timeframe;
- ii) Delivering projects with quadruple bottom line outcomes and that offer the best value for money to the community.
- iv) Accepting innovative approaches and paying only if they achieve their outcomes.

~~improve the financial sustainability of the Council and deliver positive quadruple bottom line outcomes for Community.~~

c) — The outcomes of partnerships a proposal must be to generate recurrent revenue, reduce recurrent expenditure or otherwise deliver quantifiable, demonstrable and recurrent benefit to the Council and the community.

d) — Generally, preference will be given to retention of land and assets in public ownership and avoidance of sale or extremely long periods of exclusive use (eg 99yr long leases).

6. Strategic framework

~~Refer to Byron Shire Council Financial Sustainability Plan.~~

~~Since 2013 Council has had a Financial Sustainability Plan, the objectives of which include:~~

- ~~• improving the financial sustainability of Council~~
- ~~• identifying and realising viable and sustainable commercial opportunities~~
- ~~• identifying opportunities for and achieving cost and waste reductions in operating and/or cost activities of Council~~
- ~~• identifying opportunities for sustainable increases to existing recurrent revenues, and to research, investigate and evaluate opportunities for deriving new, recurrent and sustainable sources of revenue~~
- ~~• identifying and pursuing new and recurrent revenue sources including opportunities arising from the strong tourism/visitor market~~
- ~~• increasing resource sharing through collaboration with government agencies and community stakeholders~~
- ~~• improving the overall financial performance of Council.~~

The plan has a Chapter dedicated to “Collaborations and Partnerships”. It notes:

“Council cannot achieve the outcomes of its Community Strategic Plan on its own. Undertaking strategic partnerships and sector collaboration increases the transparency and accountability of Council, strengthen the capacity of projects and services and achieve shared objectives. The benefits of partnerships include:

- More effective service delivery
- More efficient resourcing
- More effective policy development and decision making
- Promoting innovation
- Decreasing duplication”

This Policy, with its quadruple bottom line sustainability objectives, has been developed as an action under the Financial Sustainability Plan.

Refer to Policy No 2.6 Procurement and Purchasing.

Council’s adopted Key Procurement Principles are:

- a) Value for Money and Sustainability
- b) Fair, Honest and Consistent Dealings
- c) Local and Australian Content
- d) Ethical Behaviour
- e) Risk Management
- f) Competitiveness

Refer to Integrated Planning and Reporting Guidelines for local government in NSW:

Integrated Planning and Reporting

The Act provides that Integrated Planning and Reporting must be at the centre of all council plans, activities, resourcing decisions and improvement strategies. The *Integrated Planning and Reporting Guidelines* set out the requirements for councils across NSW to undertake their planning and reporting activities in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*. The Guidelines state that “...partners, such as State agencies and community groups may also be engaged in delivering the long-term objectives of the [Community Strategic] Plan” and includes Essential Element 1.1 which states:

“The Community Strategic Plan should be developed and delivered as a partnership between the council, state agencies, business and industry groups, community groups and individuals...”

Any partnership considered by Council must undergo a clear planning process that links it to Council's Local Strategic Planning Statement made under s. 3.9 of the *Environmental Planning and Assessment Act 1979*, and the Community Strategic Plan, Resourcing Strategy, Delivery Program, and Operational Plan.

Council must carefully weigh up the risks associated with taking advantage of any partnerships, especially where it will involve expenditure or commitments that impact on Council's ability to deliver on existing and adopted long-term plans.

~~These Guidelines set out the requirements for councils across NSW to undertake their planning and reporting activities in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*. The Guidelines state that "...partners, such as State agencies and community groups may also be engaged in delivering the long-term objectives of the [Community Strategic] Plan" and includes Essential Element 1.1 which states:~~

~~"The Community Strategic Plan should be developed as a partnership between council, state agencies, community groups and individuals..."~~

7. Processes

The process to be followed is determined depending on the nature of the partnership. Where required, Council will follow the legislative requirements and existing guidelines to determine the appropriate process prior to entering into a partnership arrangement.

Public Private Partnerships

If the partnership relates to the provision of public infrastructure or facilities, there is potential that ~~such a proposal~~ it may be considered a public-private partnership (PPP).

Sections 400B(1) and defines a PPP as ~~an arrangement~~:

1. An arrangement:

- (a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and
- (b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control

1A. For the purposes of subsection (1), the provision of public infrastructure or facilities includes the delivery of services during the carrying out of any project under the public private partnership.

All ~~Local Government~~ PPP proposals, regardless of whether they originate from within council or from an ~~external source~~unsolicited proposal, are required to comply with the Public Private Partnership (PPP) Guidelines in accordance with s400C of the Act.

Unsolicited Proposals

Council may, from time to time, receive unsolicited proposals. Such proposals can provide a great opportunity for Council to enter into partnerships that may otherwise not have been considered. Any potential project evolving from an unsolicited proposal must meet legislative requirements and undergo rigorous testing against Council's strategic planning documents to ensure consistency with Council's and the community's long-term strategic direction.

Council will generally only consider proposals where both the proposal and its proponent have unique attributes such that others could not deliver a similar proposal with the same value-for-money outcome.

The process for making and evaluating an unsolicited proposal is defined in the *Unsolicited Proposals Guidelines*.

If an unsolicited proposal relates to the provision of public infrastructure or facilities, Council will, as soon as practicable, determine if the proposed arrangement is required to be treated as a PPP and the process will proceed to follow the PPP Guidelines accordingly.

Memorandum of Understanding

There are no legislative requirements that regulate the negotiation of an MOU, but it must be consistent with the requirements, principles, and approaches as outlined in this Policy.

7. ~~Sustainability and innovation~~ Impact investment

Byron Shire Council is interested in supporting innovative forms of finance that address social or environmental challenges while generating financial benefit. This may be where investors actively seek to place capital in businesses and funds that can harness the positive power of enterprise.

Impact investment is ~~one emerging~~ an approach which brings together capital and expertise from across the public, private and non-profit sectors. It is driven by ~~measurable~~ measurable outcomes, innovation, prevention and partnerships. Investors may include:

- Philanthropic foundations, including public ancillary funds
- Financial institutions, including banks, credit unions and development finance institutions
- Superannuation funds
- Retail funds or trusts
- Wealthy individuals and families

~~Byron Shire~~ Council will prepare for future transactions by improving our capacity to identify and engage with impact investors or innovative financing arrangements opportunities.

~~The UN Sustainability Development Goals (SDG) provide useful examples to contextualise, communicate, and align impact objectives amongst a broad group of stakeholders, including governments, development finance institutions, investors, and non-profits. The SDGs provide context for impact investors to see how their strategies and objectives fit into broader sustainable development efforts. By using these examples and~~

~~actively pursuing their impact objectives, long term positive impact on society and the environment can be created alongside commercial returns. The examples include:~~

~~Social~~

- ~~• Poverty reduction, food security~~
- ~~• Good health and wellbeing~~
- ~~• Quality education~~
- ~~• Gender equality~~

~~Environmental~~

- ~~• Clean water and sanitation~~
- ~~• Affordable and clean energy~~
- ~~• Sustainable cities and communities~~
- ~~• Life on land~~
- ~~• Life below water~~
- ~~• Climate action~~

~~Economic~~

- ~~• Decent work and economic growth~~
- ~~• Industry, innovation and infrastructure~~
- ~~• Responsible consumption and production~~

~~Governance~~

- ~~• Compliance with relevant legislation and Council's policies~~
- ~~• Peace, justice and strong institutions~~
- ~~• Partnerships for the objectives~~

8. Definitions

Policy acronym	Definition
<u>Capital Expenditure Guidelines</u>	<u>Guidelines to assist Councils with capital expenditure for projects outside of the Public Private Partnership definition.</u>

<u>Impact Investment</u>	<u>Investment which aims to solve social or environmental challenges while generating financial profit. Impact investors actively seek to place capital in businesses and funds that can harness the positive power of enterprise.</u>
<u>Eol</u>	<u>Expressions of Interest</u>
<u>MoU</u>	<u>A memorandum of understanding (MOU) is a voluntary agreement between two or more parties, that can formalise the terms of a relationship, or set an agreed way of operating between the parties, but is not legally binding.</u>
<u>OLG</u>	<u>The Office of Local Government</u>
Policy	A course or principle of action adopted or proposed by an organisation or individual.
PPP	A Public Private Partnership is an arrangement between a Council and a private person for the purposes of providing public infrastructure or facilities in which the Council has an interest, liability or responsibility under the arrangement, and/or, delivering services in accordance with the arrangement.
The Act	The Local Government Amendment (Public Private Partnerships) Act 2004. <u>Act 1993</u>
The Guidelines	<u>Public Private Partnership (PPP) Guidelines (January 2022)</u> Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships, Department of Local Government (1 September 2005).
<u>Eol</u>	Expressions of Interest.
<u>OLG</u>	The Office of Local Government.
<u>Unsolicited Proposal</u>	<u>Approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.</u>
<u>Capital Expenditure Guidelines</u>	Guidelines to assist Councils with capital expenditure for projects outside of the Public Private Partnership definition.

**Impact
Investment**

~~Investment which aims to solve social or environmental challenges while generating financial profit. Impact investors actively seek to place capital in businesses and funds that can harness the positive power of enterprise.~~

Appendix 1 – Legislative Framework

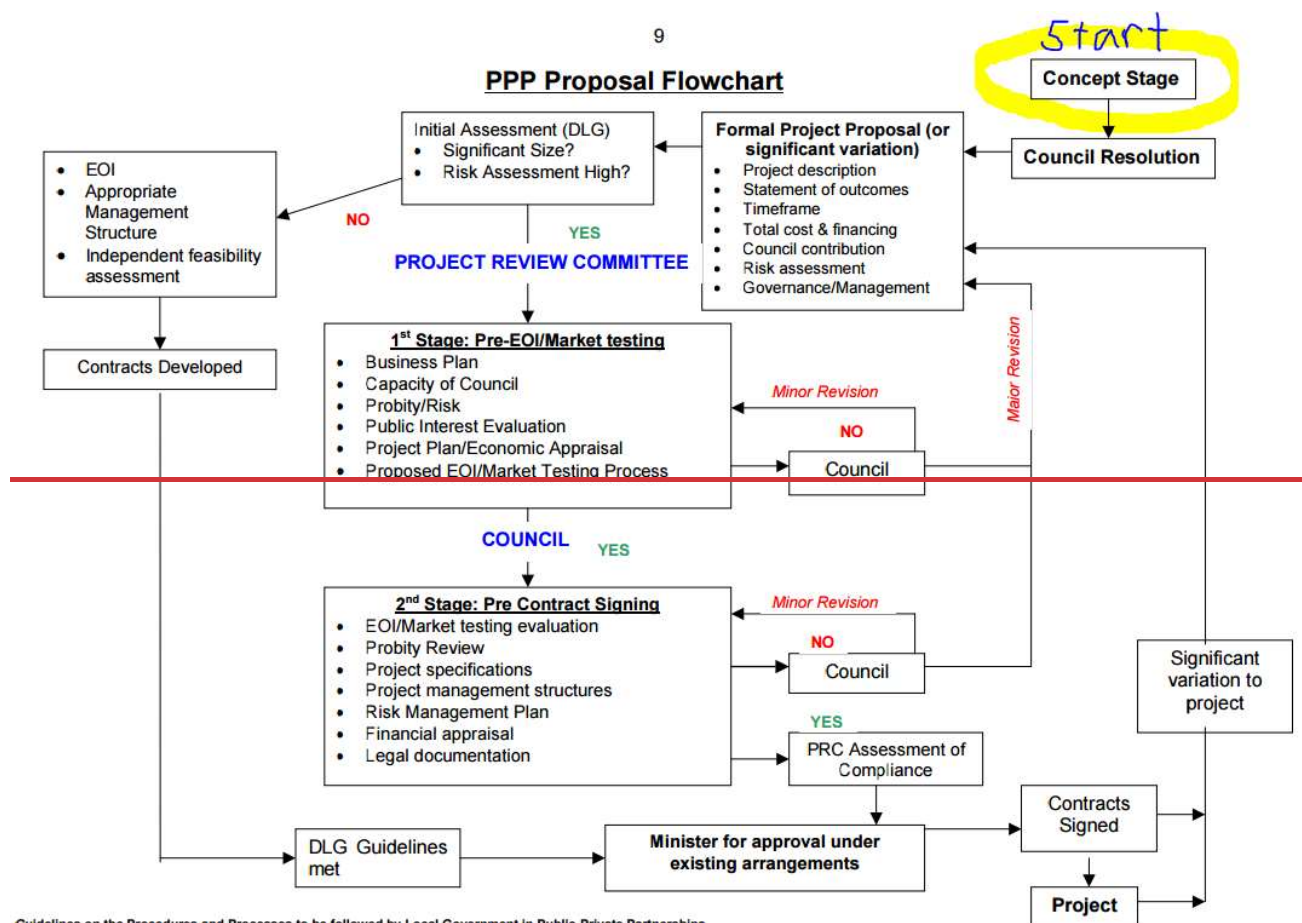
In June 2004, the NSW Government introduced legislation by way of amendment of the Local Government Act 1993. The Act brings into effect the recommendations of the Emeritus Professor Maurice Daly, Commissioner of the Liverpool City Council Public Inquiry, in relation to Public Private Partnerships.

The Act is aimed at providing a framework within which local governments can successfully negotiate and implement PPP arrangements in NSW. This framework is outlined in an Office of Local Government (OLG) document Office of Local Government's Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships.

To assist NSW Councils, the Office of Local Government published its Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships. These Guidelines provide comprehensive and explicit information to assist Councils in meeting their legal requirements. The guidelines establish procedures to be followed for the various stages of a PPP project.

See the Guidelines – Department of Local Government – Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships (nsw.gov.au)

The PPP Proposal Flowchart proscribed by the OLG Guidelines is copied below:



Guidelines on the Procedures and Processes to be followed by Local Government in Public-Private Partnerships

Appendix 2 – Case Studies/Examples of Partnerships

It is intended that this Appendix is updated and refreshed with relevant case studies and examples of partnerships.

The OLG provides the following case study from Woollahra Council:



Case Study 1:

Cross Street, Double Bay (currently car park)

Council EOI selected Palace Cinemas in a consortium with Built and Axiom Properties in July 2016.

The project is a rebuild on car park site with mixed use development (residential; public parking; retail and 10 theatre cinema complex).

Proponent selected from both a planning and financial perspective, driven by placemaking principles and street activation.

Woollahra Council has undertaken a number of earlier PPPs:

The Cosmopolitan Centre (Double Bay) – 2006

PPP with Gloxinia Investments Pty Ltd to redevelop the Cosmopolitan Centre. The PPP involves a 99 year lease to Gloxinia Investments Pty Ltd for the ground level retail stratum and the upper residential stratum with Council owning the middle carpark stratum containing 78 car spaces, function room and office space.

Kiaora Lands Redevelopment (Double Bay) – 2011

PPP with Woolworths Ltd for the redevelopment of various parcels of land owned by Woolworths and Council around Kiaora Lane and Kiaora Road in Double Bay.

Case Study 2:

An alternative model – Lismore Community Solar Project (Farming the Sun)

Lismore City Council's Community Solar Project is now up and running with the first solar farm installed and generating energy on the roof of the Goonellabah Sports & Aquatic Centre.

Lismore Community Solar is a collaboration with Farming the Sun, a not-for-profit renewable energy facilitator, to build two 99kW solar farms in Lismore, the second being a solar farm at the East Lismore STP using innovative floating technology.

They are believed to be Australia's first ever council/community solar farms and they are funded by a financial model that is unique in Australia.

About the business model

<http://farmingthesun.net/lismore/business-model/>

It is intended for each of the two solar farms to be funded by up to 20 impact investors (i.e. 40 investors in total) by way of two \$180,000 loans to Lismore City Council.

Council has approved the loan subject to full subscription of the investment share offers by the community companies. Each loan will be used to procure and construct the solar farm, with any surplus funds (noting that the actual cost for each project is still subject to a public tender process) can be applied to other projects under Council's 2023 Renewable Energy Master Plan.

Council will repay the investors with interest to the community companies for a period of seven years followed by a 'bullet' repayment of capital in full.

Two proprietary companies have been established as investment vehicles, one for each 100kW solar farm. Each community company will raise the capital for the loans through a private impact investment share offer.

Simplicity is the key to this business model and loan-based structure being used. So too is transparency of the financial and legal arrangements: for both the prospective investors and for Lismore City Council.

The financial backing of Lismore City Council, the use of Class A solar power equipment with long-term maintenance agreements, make these impact investments sound and low risk.

Disclaimer: Lismore City Council (Council) is not in a financial partnership or joint venture with Starfish Initiatives, the Farming the Sun collaboration, or any other associated entity or organisation. Council's role in this initiative is as borrower of funds and as the entity that owns and constructs the solar farms. Council does not guarantee the appropriateness of any investment in this initiative. The material provided by Council about the initiative is general in nature and does not constitute financial advice. If you are considering investing in this initiative, you should obtain advice from a suitably qualified advisor. You should obtain and review a Product Disclosure Statement or Prospectus before making any decision to invest.