A Regional Joint Organisation Structure For North Shore Councils

Sydney

7th May 2015

Terms of Reference

Percy Allan & Associates was engaged to prepare a report on *"possible legal and organisational structures for a Regional Joint Organisation of Councils with the pros and cons for each option"* as part of a wider brief by consultants to investigate a Joint Regional Body for North Shore councils.

Executive Summary

This report first outlines necessary policies to keep Sydney a liveable and affordable city in the face of strong population growth.

It then outlines how a Regional Joint Organisation (RJO) providing shared advocacy, planning and other services would contribute to this end.

Such a partial merger is superior to a full amalgamation of Councils because it:

- Focuses on regional imperatives rather than everything,
- Merges only those functions that benefit from centralisation,
- Drives efficiencies by making shared services market contestable,
- Frees up councils to focus on services that are done best locally, and
- Avoids the enormous cost and disruption of mass mergers.

This report recommends that the existing Northern Sydney Regional Organisation of Councils (NSROC) be upgraded to form:

- A Regional Council of Mayors (RCOM), constituted as a County Council, to conduct regional advocacy and lobbying and to engage with the State Government in regional growth planning and related decisions; and
- A Regional Shared Services Centre (RSSC), registered as a Company Limited by Guarantee and governed by a Board of Council GMs, to provide shared services to its member councils and other prospective clients as well as staff an independent Regional Planning Panel (RPP), located within the County Council, to assess regional development applications.

To ensure the RSSC is customer responsive and cost efficient it should:

- Negotiate Service Level Agreements (SLAs) with each client council,
- Report to a supervisory board of client council GMs,
- Distribute its profits as a price rebate on client councils' purchases, and
- Become market contestable for shared services after five years (i.e. have a sunset clause on its exclusive franchise contract with member councils).

The appendices which are included in the main report cover shared services operating procedures and the advantages and disadvantages of alternative legal structures for regional local government bodies.

Glossary of Terms

- ACELG: Australian Centre for Excellence in Local Government
- CEO: Chief Executive Officer
- GM: General Manager
- IPART: Independent Pricing and Regulatory Tribunal
- ILGRP: Independent Local Govt Review Panel
- LPP: Local Planning Panel
- RCC: Regional County Council
- RCOM: Regional Council of Mayors
- RJO: Regional Joint Organisation
- ROC: Regional Organisation of Councils
- RPP: Regional Planning Panel
- RSSC: Regional Shared Services Centre

Disclaimer

This report contains general information about possible legal forms for a Regional Joint Organisation (RJO) and Regional Shared Services Centre (RSSC). The information is not legal advice, and should not be treated as such. Local Councils should obtain professional legal advice before implementing any of these structures.

A Better Way Forward

Australian home ownership is becoming unaffordable and the predicament is most acute in Sydney.

To make Sydney a liveable and affordable city in the face of strong population growth the State Government should forget council amalgamations and focus instead on the imperatives of boosting dwelling supply and improving public mobility by:

- Planning and funding public and private transport corridors,
- Concentrating development close to major transport hubs,
- Making developed areas mixed use to reduce car dependency, and

- Merging only council services that benefit from regionalisation.

Such a strategy requires metropolitan wide initiatives driven by the State Government in cooperation with local councils. Some are already underway while others have still to be started.

- Re-zone major Sydney transport corridors and hubs in suburbs ripe for urban renewal (see next chart) for multi-use purposes to create vibrant self-contained villages where people can live, work, shop and enjoy themselves without having to travel outside their neighbourhood,
- Require councils to introduce form-based codes to regulate the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks (Note: this reform has already been enacted),
- Require all council development applications to be allocated (by value) for determination by expert local and regional planning panels independent of politicians so as to separate policy application (by independent adjudicators) from policy making (by councillors) thereby removing perceived conflicts of interest.
- Require councils to use asset depreciation provisions and reserves for their intended purpose (i.e. renewing degraded infrastructure),
- Require councils to fund infrastructure rehabilitation and renewals by increasing their average net financial liabilities ratio[i] from an average of 4% to a range of 40% to 80%,
- Replace rate pegging with a cap on local government operating expenditure so that any future real growth in revenues is devoted to correcting the displacement of capital spending over many decades and to contribute to a regional fund to assist with the cost of providing essential utility infrastructure to greenfield sites , and
- Require councils to form regional shared services cooperatives for those back and front office activities that would benefit from economies of scale and scope to free up councillors and management of existing councils to focus more on client and place needs requiring customised solutions.

The Australian Productivity Commission* gave the following Sydney LGAs a low social capital rating. This makes them early candidates for multi-use style urban renewal so as to improve their liveability:

- Burwood, Strathfield, Auburn and Holroyd (negative social capital score: average 56.8%, range of 54%-60%)
- Fairfield, Bankstown and Liverpool (negative social capital score: average 52.3%, range 49%-54%)
- Rockdale and Botany (negative social capital score: average 55%, range 53%-57%)

* Based on negative or don't know answers to public survey of affinity with local community (APC Report, Performance Benchmarking of Australian Business Regulation, April 2011, Vol 2, page 610)

These reforms will require Councils in distinct regions forming a Joint Organisation to undertake regional advocacy, planning and development and a Shared Services Centre to undertake tasks done best on a larger scale.

Such an approach is superior to merging Councils because it:

- Focuses on regional imperatives rather than everything,
- Merges only those functions that benefit from centralisation,
- Drives efficiencies by making shared services market contestable,
- Frees up councils to focus on services that are done best locally, and
- Avoids the enormous cost and disruption of mass amalgamations.

The rest of this report explores optimal organisational and legal structures for a Regional Joint Organisation and Shared Services Centre.

A Regional Joint Organisation

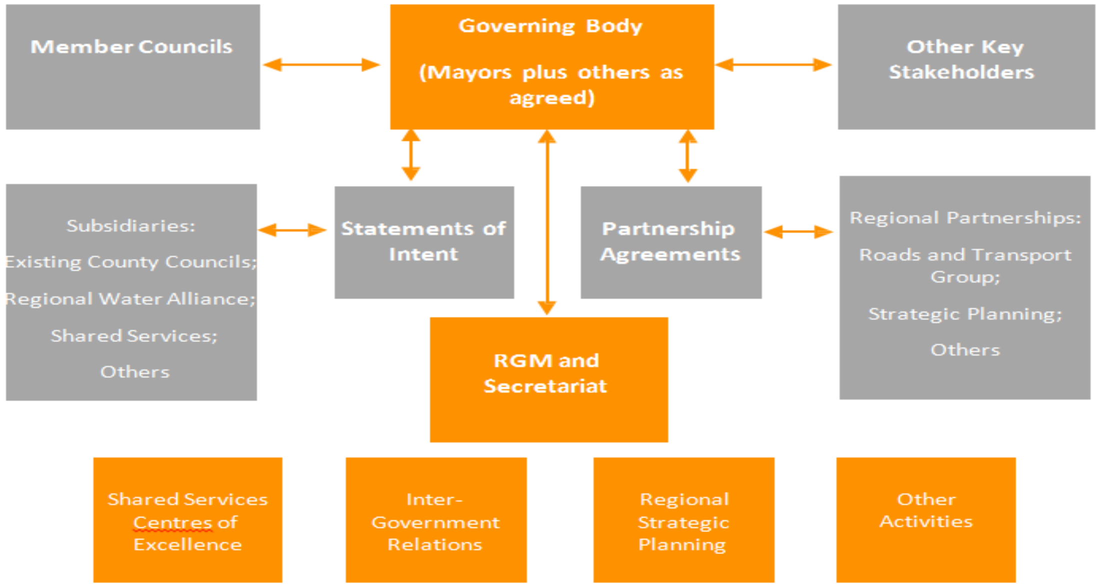
- Fit for the Future proposed regional Joint Organisations for non-metropolitan NSW[ii], but did not preclude their formation within the Sydney metropolis.
- A Regional Joint Organisation (RJO) would be compatible with the Local Government Act given that an existing ROC (Hunter) has been using a State Incorporated Association (Hunter Councils Inc) to undertake regional advocacy and a wholly owned Public Company Limited by Guarantee (Hunter Councils Ltd) to perform shared services functions.
- In NSW, like most Australian states, there are limits on local government's power to establish companies. In contrast, New Zealand councils have full authority to do so and this is proving a useful enabler of shared services activity.
- Local councils in the Hunter Valley obtained Ministerial approval in the 1990s to establish Hunter Councils Ltd so the same should be possible for other councils in this state.

According to a study by the ACELG[iii]:

- An important issue is the extent to which provision is in place for post-establishment governance (of local government owned companies).
- England provides this through guidance issued by the Secretary of State.
- In New Zealand the Local Government Act establishes a comprehensive framework based largely on central government's state-owned enterprises regime.
- In Australia, apart from specific provisions in South Australian legislation, there is virtually no formal framework regulating post-establishment governance.

The ILGRP saw a regional Joint Organisation being broadly structured as follows:

Figure 7: Model Structure for Joint Organisation



Source: ILGRP, *Revitalising Local Government - Final Report of the NSW Independent Local Government Review* Panel, October 2013, page 84

A **Public Company** or **Cooperativ**e structure is best suited for operating a RSSC because it is more operationally flexible and economically competitive than a County Council structure.

A public company limited by guarantee (with councils acting as guarantors rather than contributing share capital) would be preferable to a cooperative which is based on equality of member contributions, rights and benefits. Such equality may not be practicable given differences in resource capacity and service needs of member councils.

Commercial contestability is important not only for retaining Council membership, but also expanding sales to other clients in the public and private sectors.

However, a **County Council** is better suited for regional planning functions where regulatory powers are required.

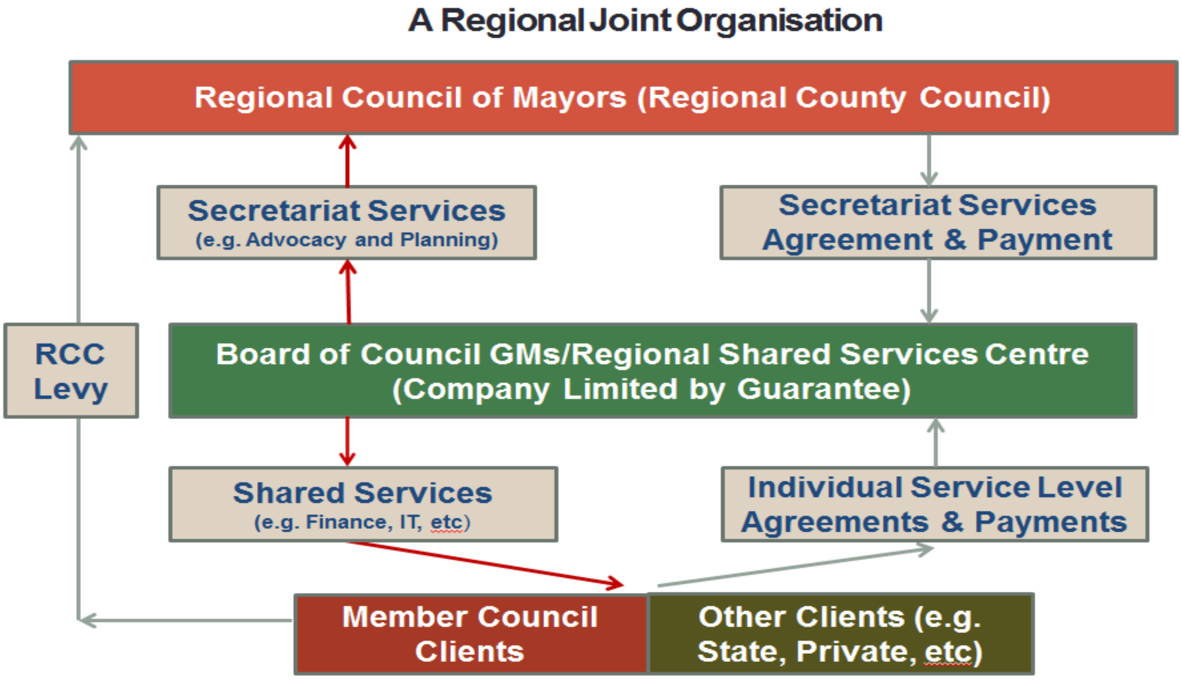
Also the County Council model by giving an existing ROC (reconstituted as a RJO) a statutory basis would give it greater authority when making submissions to state and federal government agencies.

For these reasons a RJO could seek a two-part legal structure to create three bodies:

- A **Regional Council of Mayors (RCOM)**, constituted as a County Council, to conduct regional advocacy and lobbying and to engage with the State Government in regional growth planning and related decisions; and
- A **Regional Shared Services Centre (RSSC)**, registered as a Company Limited by Guarantee and governed by a Board of Council GMs, to provide shared services to its member Councils and other prospective clients as well as staff an independent **Regional Planning Panel (RPP)**, located within the County Council, to assess regional development applications.

Such a structure would:

- Satisfy the ILGRPs preference to establish a Regional Council of Mayors (RCOM) in place of a Regional Organisation of Councils (ROC) within a County Council framework[iv];
- Satisfy the need for a Regional Planning Panel (RPP) to have statutory powers;
- Satisfy the commercial reality that a Regional Shared Services Centre (RSSC) can only operate viably as a public company.



Source: Percy Allan & Associates Pty Ltd

A Shared Services Centre

The first step would be to undertake an enquiry to identify local council corporate support and front-line services that exhibit sufficient economies of scale and scope to suggest they would be more efficient and effective to produce on a collective rather than individual council basis.

The second step would be to decide which of these services should be transferred to the RSSC on a trial basis. The RSSC may operate on either a centralised or distributed production model.

A separate report (Percy Allan & Associates, *A Shared Services Centre Migration Plan For North Shore Councils*, May 2015, page 4) examined services within private and public sector organisations that had proven most suitable for sharing. It found that those parts of finance, personnel, procurement, systems and other forms of corporate support that involved routine, generic, high-volume and transaction-based work offered the best scope for process improvement and cost savings.

A distributed or networked RSSC could involve each member council providing one or more shared services on behalf of the RSSC. Such an approach has both pluses and minuses.

The RSSC would have its own management structure with a CEO appointed by the RSSC cooperative board consisting of the General Managers (GMs) of member Councils of the Regional Organisation of Councils (ROC).

Each individual council through its general manager would negotiate a services contract (i.e. Services Level Agreement) with the CEO of the RSSC.

As a cooperative the RSSC would pay a “dividend” to each council member commensurate with the value of services sold to it (similar to the Co-op Bookshop which is the largest cooperative in Australia).

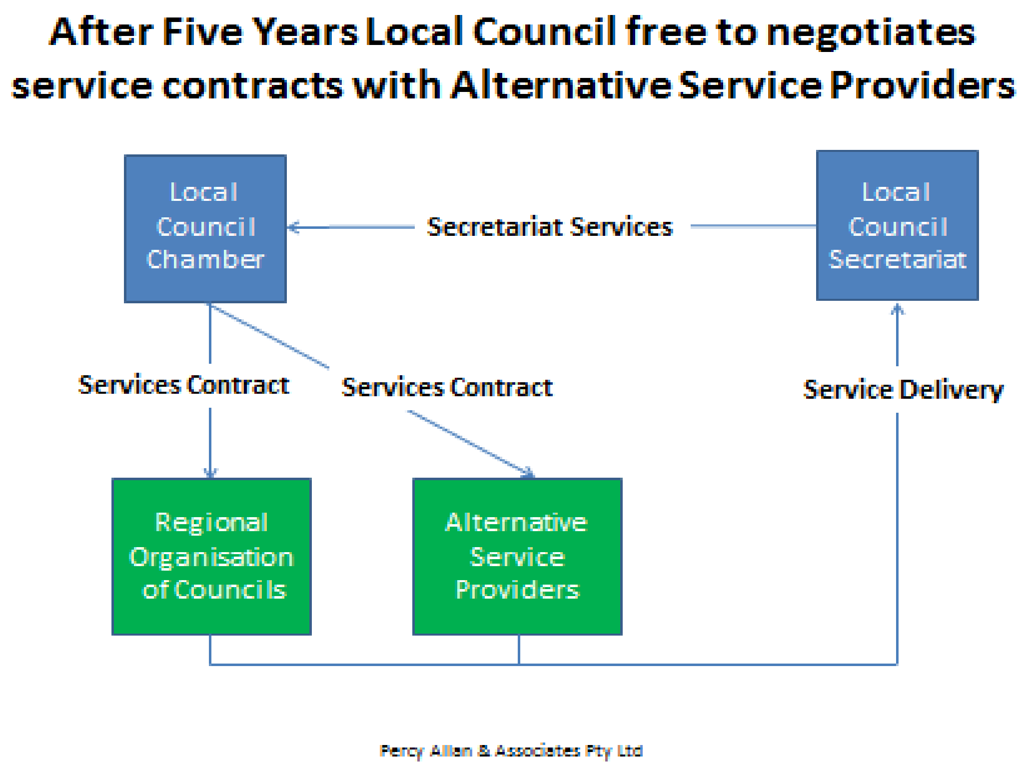
The Shared Service Centre would adopt many of the features of a “corporatised” state entity, though if it chooses to be a not-for-profit entity its return on capital would be distributed to member councils in the form of either service price discounts or an annual membership rebate (similar to the Co-op Bookshop, Australia’s largest cooperative).

Service discounts to those who actually buy the services from the RSSC (i.e. branch or divisional procurement officers within Councils) may attract greater customer loyalty than an annual rebate or dividend to a Council as a whole (i.e. paid to its finance section).

An explanation of how a “corporatised” RSSC would operate is provided in the Appendix of the main report.

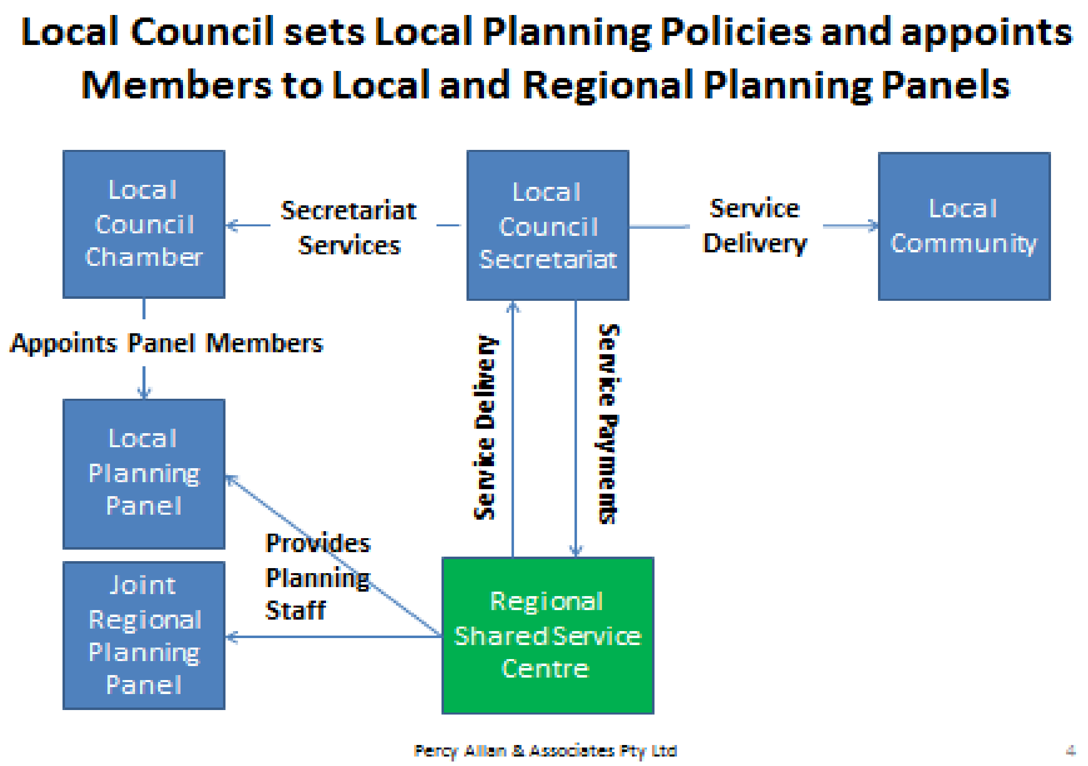
After say five years, each council would be given the discretion to buy services from any provider, public, not-for-profit or private. Shifting business to alternative providers would mean forfeiting cooperative dividends. Nevertheless such a sunset clause would put the RSSC on notice that unless it performed efficiently and effectively it could expect to lose custom once its five year exclusive contract expired.

Where a community wanted a smaller council for better place management of its services and infrastructure such a contract model would allow municipal councils to be established on neighbourhood precinct lines without sacrificing economies of scale and scope.



Local & Regional Planning Panels

- Each council would appoint an independent Local Planning Panel (LPP) to decide all local development applications in accordance with council planning and development policies. All councils within a region would continue to have a say in appointing the Regional Planning Panel (RPP) that decides development applications of a regional nature.
- The RSSC would have an ongoing mandate to provide professional staff to assist the local and regional planning panels with fees charged for providing such planning expertise set by the NSW Independent Pricing and Regulatory Tribunal (IPART).



Conclusion

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Appendices (see main report)**:**

- **RSSC Operating Procedures**
- **County Councils**
- **Public versus Private Agencies**
- **Possible Legal Structures**
- **Pros and Cons**
- **County Council Legislation**
- **Termination Process in a County Council versus a Public Company**

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[i] The net financial liabilities (NFL) ratio of a council means its net liabilities (total liabilities less (i) unrestricted cash and investments, (ii) any restricted cash and investments matching restricted liabilities, and (iii) receivables) expressed as a percentage of total operating revenue. A NFL ratio up to 60% should be compatible with an investment grade (single-A) credit rating provided a council had a minimum operating surplus/total operating revenue of 2.5% and a minimum unrestricted current assets/unrestricted current liabilities ratio of 1.25.

[ii] NSW Office of Local Government, *Fit for the Future - a Blueprint for the future of Local Governmen*t, Sept 2014, page 11.

[iii] ACELG, *Consolidation in Local Government, A Fresh Look*, Vol 1: Report, May 2011, page 41

[iv] Note that the ILGRP's preference was for regions outside the Sydney metropolitan area to form Joint Organisations using a County Council structure However, under the Local Government Act, County Councils are also permissible for regions within the metropolitan area.