

**LGMA NSW Working Party 2e)**

**Identify, Categorise and Evaluate Alternative Service  
Delivery Models**

**Final Report**

**10<sup>th</sup> May 2013**

## **IMPORTANT NOTICE**

*The Destination 2036 2e) working group was formed to take carriage and work on Action 2e) "Identify, Categorise and Evaluate Alternative Service Delivery Models" under the Destination 2036 Action Plan.*

*The group was co-ordinated by LGMA NSW but is not expressing the views of LGMA NSW, nor any one organisation or individual. We have tried to develop this report by consensus between all of the parties involved, however the USU have requested that whilst it agrees that most of the issues included in the report have been reached by consensus, it does not agree with all the conclusions or recommendations contained within it. Therefore the opinions expressed are from either a consensus or majority view of the group. The report is intended to be of benefit to the NSW local government industry as a whole and to provide guidance for those who wish to embark on delivering services utilising alternative models.*

*Active membership of the working group was:-*

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*Please note that a representative from DEPA was requested for this group but a person was not provided.*

*The working group would like to thank the efforts of John Neish – Convenor for his support and leadership in the development of this report.*

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## LGMA NSW Working Party 2e) Identify, Categorise and Evaluate Alternative Service Delivery Models

### 1 INTRODUCTION AND SCOPE

The original scope of the Action Plan 2e) working group was to explore the development of alternative service delivery business models. The group revised this scope to read '*Identify, categorise and evaluate existing alternate service delivery models which relate to the delivery of council services to the community*'. It was agreed that it was not the role of the working group to develop models but rather support the local government sector to understand what is available to them.

Each local council in NSW provides a wide range of services (both external and internal) which range in scale and scope. These services are in the main monopolistic in nature in that the council is the only provider and therefore its services it are not subjected to challenge and external competition.

Alternative models are often touted as the best and most cost effective way to deliver local government services. Our research clearly shows that alternative service models have a chequered history of both success and failure. This has been the subject of lengthy analysis and extensive research in Australia, New Zealand and the UK, yet there appears to be a lack of understanding of the models already available across the industry. For example, a June 2011 Division of Local Government Collaborative Arrangements Report identified that 879 collaborative arrangements existed within the 103 councils which responded to their survey (Appendix B). Further analysis by the working group identified that many of these arrangements were discussion forums, beneficial to council and communities, but not actual collaborative service delivery models. We identified that there were only 110 collaborative arrangements that met this criteria.

The working group has reviewed this and other research information available to synthesise the key issues to be resolved if shared services are to fulfill the ambition of being a viable alternative. We found that sector education and understanding is a critical component of its future success.

The working group identified 15 alternative service models (Appendix D) operating in the local government sector in Australia and New Zealand. The applicability of each model will be affected by the final structural models of local government in NSW as determined by the Minister. This will be determined following consideration of the Independent Local Government Review Panel's report, the Local Government Act Taskforce's report and all Destination 2036 working groups' inputs. The final decision will impact on how alternative service models will be applied depending on the scale of the councils or possibly the County Councils involved. Variances will be experienced between more highly geared metropolitan councils, regional councils and those based in rural NSW where geographic isolation, financial capability and scale will impact on the most suitable models to be used.

However, no matter what the final decisions are, there are common issues to each service delivery model which need to be addressed. These have been outlined in more detail in this report. Across the 15 models, the key issues to be addressed relate to:

1. **Corporate Governance:** to ensure that both the nature (scale and size of the proposed model) is appropriate for purpose and that attention is given to the corporate governance

structure and skill sets required to ensure that fiduciary responsibility is a hallmark particularly of major enterprises.

2. **Establishment Considerations:** to ensure that all parties have :-

- A shared commitment
- Understanding of risks and establishment complexity
- Awareness of costs
- A realistic expectation of a rate of return on their investment

at the commencement of any proposed model. This requires tight project management and commercial disciplines from all involved.

3. **Facilitating Private and Not for Profit Sector Involvement:** to ensure that barriers to private sector and not for profit sector providers are removed so that there is true choice and the harnessing of innovation and expertise from other sectors. This requires robust but flexible procurement methods and market place competition in the delivery of council services.

4. **Building Confidence in the Alternatives:** to ensure that there is understanding and capability built within the local government sector and awareness built within local communities, so that local government has the confidence and skills to implement alternative service delivery models.

5. **The Industrial Relations Landscape:** to ensure that complex and sensitive industrial relations issues are considered and addressed in the transfer of employees from traditional local government service provision to new ways of working.

The success of alternative service delivery models must be measured not only in financial terms but also in terms of a council's quadruple bottom line responsibilities – social, economic, environmental and civic benefits.

To be successful these issues need to be carefully examined and wherever barriers are identified whether it be legislative, political or otherwise, consideration should be given to their removal. There is no single, simple or best solution to the challenges facing local government in delivering best value services to their communities.

The key is to ensure that the range of models available are understood so that they are appropriately applied and that the soundness of their corporate governance arrangements, structures and cultures work in the best interests of the council and its community. In this way the quadruple bottom line outcomes for local communities can be delivered, utilising the best skill sets and expertise found in the government, private and not for profit sectors.

In summary, documented and anecdotal experience has shown that the establishment of successful alternative services is both problematic and risky even with the best of co-operation. While they are marked by high hopes, they can often end in disappointment – all of which is possible to avoid with professional planning, clear objectives, rigorous needs assessment, matching the right approach to the outcome required, adopting quality governance models, clarifying roles and commitment (both financial and non financial) and implementing expert management practices.

To assist councils focus on these issues the working party has developed an Evaluation Tool (Appendix C) to aid the evaluation of options for alternative service model delivery.

## **2 KEY ISSUES IN DEVELOPING ALTERNATE SERVICES DELIVERY MODELS**

### ***2.1 Issue 1: Strong appropriate corporate governance – an essential foundation***

Alternate service delivery models necessarily imply a change in governance and accountability arrangements. Whilst good will and common intent will be necessary elements of any successful alternate service arrangement, they are not of themselves sufficient for success.

The reason for that is plain enough. What happens when conflict arises between the parties to the new alternate service arrangement? If accountability is seen as being owed to one stakeholder, then conflict will bring with it inherent instability. The failure of the New England Strategic Alliance (NESAC) bears testimony to the weakness of such corporate governance arrangements.

What then are the alternate service arrangements that will bring with them the greatest chances of sustainable success? They are those to whom the prime accountability is to the entity itself, rather than to the stakeholder parties. Governance arrangements must be put in place that ensures this occurs.

Our research indicates that the following conditions are essential determinants of ongoing success:

- Alternate service entities that are at clear arms length to the stakeholders.
- Responsibilities of its appointees are to the success of the entity and not to its stakeholders or shareholders.
- Where corporate entities are established, appointments to their governing bodies must be on the basis of the skills and attributes required to deliver success in the entity, both commercially, and in terms of all the objectives to be achieved.
- The stakeholders or shareholders must determine those objectives and the commercial expectations, to which their appointees will be held accountable.
- The model must be cost effective as it brings with it a new management structure etc.

Of paramount importance in meeting the determinants above, is to be clear about the potential conflict that can occur between the fiduciary responsibility that comes in being a director of an alternative service corporate entity, and the political and managerial considerations that come with being a stakeholder (or shareholder).

Councillors, General Managers or council staff acting as a director of such an entity must at all times successfully navigate and reconcile their political and managerial stakeholder obligations with their fiduciary obligations to the alternate service entity, especially where such an entity has been established in accordance with statutory and regulatory requirements.

Whilst fiduciary responsibilities may be influenced by such considerations, they must never be compromised or dominated by them. Clarifying the governance roles in the operation of the entity will ensure a greater chance of success.

If all alternative service arrangements were to be placed on a continuum, which ranged from independent entities - accountable to shareholders at one end (such as corporate bodies e.g. Hunter Resource Recovery), and informal unstructured collaboration at the other, then it is more likely that the former will be more stable and successful than the latter, as they will be more focused on the longer term sustainability and success of the enterprise, than on the more immediate needs of the stakeholders.

However, there is a key point that must be respected and addressed in relation to the governance structures available for alternative service delivery models and it goes to the very issue of the accountability of councils for delivery of services to their communities. To put this in colloquial terms, alternative methods or models of service delivery cannot neglect the fact that for communities, *'the buck stops with the local council'*.

Contemporary local government in NSW calls on councils and their communities to develop and adopt long term community strategic plans, and their supporting delivery programs, to provide an agreed local framework for service delivery i.e. the Integrated Planning and Reporting Framework (IP&R). It is therefore important that alternative service delivery models – in whatever form, respect the overarching accountability of a council to its community as arrived at and embedded in the IP&R process and the associated agreed outcomes they seek. This compels the need for agreed charters, frameworks or processes that allow this accountability to be respected and met, while at the same time, allowing for a council's various alternative service delivery entities to operate (in line with their objectives) at arm's length from their stakeholders. All appointees made by government to these entities, must meet their responsibilities to the entity as a first priority.

The overarching accountability of the council to its community, does not of itself suggest that councils should not consider alternative service delivery models. Rather, it simply calls for recognition of this accountability and appropriate provision for how this will be met, in the formative documentation for the particular service delivery model. Such provision could be made within any or all of these:

- Constitutions or articles of association for incorporated entities
- Terms of joint venture or partnership agreements
- Services delivery contracts
- Provision for stakeholder input to strategic plans or annual action plans of alternate service delivery entities
- Linked performance measures and reporting against agreed target outcomes

The provisions identified are not presented as exhaustive, but rather to evidence that there are mechanisms through which a council's accountability to its community can be addressed within an alternative service delivery framework.

It is most important that councils have a clear plan and purpose for the establishment of alternate service delivery model entities in line with their council strategic plans and resourcing plans.

*Summary of main points:*

1. *Ensure that fiduciary responsibilities are clearly defined.*
2. *Ensure that governance responsibilities and professional roles are clearly differentiated within the new service delivery models.*
3. *Separate the political and managerial responsibilities.*
4. *Ensure the need for a universal focus on the long term sustainability and success of the entity.*
5. *Ensure an enduring commitment for the agreement to transcend political cycles/terms.*
6. *Ensure that appropriate provision is made to recognise and allow stakeholder councils to meet their accountability to their communities for agreed IP&R outcomes.*

## **2.2 Issue 2: Establishment considerations – start how you wish to end**

The identification and evaluation by the working group of the various alternative service delivery models that have been used or remain in use, suggests that for all models, their establishment requires a significant commitment of time and resources on the part of the proponents, the quantum of which varies commensurate with the scale, scope and nature of the intended service delivery arrangement. Our evaluation demonstrates the importance of a number of key considerations relating to the establishment of an alternative service delivery model.

1. The need for clarity of intent and purpose, agreed by all parties:
  - The motivation for the alternative delivery model needs to be articulated, genuine and sound e.g. cost reduction, service improvement or delivery of a new service are legitimate motivations, but each bring with them a different context in relation to alternative service delivery
  - A clear understanding of stakeholder and/or shareholder expectations, for example; having a Statement of Corporate Intent
  - Determining and agreeing the coverage of the service to be provided i.e. there can (but not necessarily) be an identified natural, logical and practical catchment or footprint for the service
  - Financial, social, economic, environmental and civic objectives and outcomes need to be clearly articulated and agreed
  - Integration of the proposal with the Community Strategic Plan, four year Delivery Plan and one year Operating Plan as well as the Long Term Financial Plan and if necessary the Asset Management Plan of each participating council.

Example: NZ Palmerston North Airport has an annual statement of corporate intent that is set by the shareholders and holds company to account.

2. The need to develop an agreed and robust business plan prepared for the establishment and delivery of the service that:

- Defines the service and its catchment
- Identifies the assets and resources needed to deliver the service
- Quantifies and identifies the sources of and apportioning of establishment costs
- Identifies check points in the establishment timelines
- Identifies risks and their related mitigation actions
- Identifies desired outcomes and measures of performance
- Identifies the start up and operating costs and likely rate of return (if any) for the service
- Identifies asset infrastructure renewal and maintenance costs

Example: NSW Kimbriki Environmental Enterprises has a formal approval of annual business plan by shareholders

3. The requirement to assess and determine the most appropriate service delivery model and governance structure to meet the objectives, taking into account:

- The scope and scale of the service/s to be provided
- Desired outcomes
- The agreed business plan
- The steps/processes involved in establishing the service delivery entity
- The intended longevity of the arrangement or life of the service
- The skill set required for the effective governance of the entity and how that skill set will be delivered
- The management and leadership structure to best support the entity deliver its objectives
- Agreement of the entity's 'risk appetite' relative to the intent and purpose underpinning its establishment
- A clear understanding of the accountability for any assets required to deliver the service and any implications for the councils' balance sheets

These establishment considerations are key to successful and on-going alternative service delivery models. They can only be properly and adequately addressed through committing the time and resources required to do so. This has major implications on the participating councils risk appetites and subsequent budget allowances. Limitations around accessing the time and resources (capacity/ skill/ leadership) can itself impede, limit, or prevent the full and proper consideration of the alternative service delivery models and lead to wrong selections or implementation.

In effect if the rules of engagement are clear and there is alignment of objectives as well as binding and legal agreements between the parties, there is a higher chance of stability of relationships and project success.

We have identified 15 governance models currently in operation in both Australia and New Zealand as defined in Appendix D. These are:-

1. Corporations
2. Companies Limited by Guarantee and licensed not to use the word 'Limited' in their names
3. Incorporated Associations
4. Regional Organisations of Councils (ROCs)

5. Joint Ventures
6. Service Contract Agreements
7. County Councils
8. Alliance Partnerships with Private Enterprise
9. Council- controlled organisations
10. Social Enterprises (Unincorporated Associations)
11. Local Government Property Trusts
12. Cooperatives (strategic Alliances)
13. Regional or Single Subsidiary
14. Beneficial Enterprise Model
15. Section 355 Committees

*Summary of main points:*

1. *Agree and understand the intent, purpose and commitment of the venture*
2. *Agree and commit the resourcing requirements of the service*
3. *Agree the risk appetite and develop a robust business plan for the establishment and delivery of the service.*
4. *Agree the most appropriate service delivery model, governance and management structure.*

### **2.3 Issue 3: Facilitating private and not for profit sector involvement - optimising access to greater choice and value**

The ability of councils to be successful under various service delivery models can also depend on the availability of quality and best value service providers and partners who can bring expertise to the table. However to harness this innovation, requires an ability for all parties to easily enter into partnerships with each other. The ability of a supplier to truly deliver solutions and share risk at a partnering level (rather than a transactional/ supply level), often requires a relationship built on trust, transparency and honesty, with feedback on an ongoing basis. It also requires flexibility in procurement models and a skill set of contractual negotiations within the industry.

The recent discussion paper issued by the Local Government Act Taskforce (A New Local Government Act for NSW Discussion Paper 4 April 2013) describes the current processes as *'prescriptive, reflective of the compliance focus of the Act, applying a one size fits all model, which limits councils from taking a strategic risk based approach to procurement and which limits councils in acting in collaboration with a broader local government system and partners including the state government and ROCs'* .

This is echoed in our own consultations regarding the attractiveness of the local government market to the private and not for profit sector contractors.

Council tendering is restricted to very low thresholds of \$150,000 (Section 55(3) of the Local Government Act NSW). This restrictive limit on procurement is an example of the compliance focus of the relationship between State and local government and is lower than other levels of government. For example the state government threshold for non accredited agencies is \$250,000 and for accredited agencies is to the maximum amount accredited by the NSW Procurement Board.

The low limit of \$150,000 commits councils and suppliers to a costly tendering process involving a high amount of regulation. Existing large scale suppliers find working in NSW (compared to other states), sub optimal due to this low threshold which prevents them from becoming true partners in all stages of the process – initial needs assessment, scoping, tendering and final approval process.

The way that councils procure services from the market (ie how procurement is bundled) also acts as a disincentive to suppliers. For example, a supplier who is supplying multiple councils with similar service requirements finds the additional administration and effort involved in providing multiple tenders at different times, very costly and unattractive.

New suppliers are hesitant to supply the sector due to a lack of understanding of the procurement legislation. Many don't understand why they have to comply with so many rules and regulations for the provision of simple services, when this does not exist in the private sector.

Alternative service procurement is also impacted by the following tendering process related issues:-

- The low level of the public tendering threshold has the effect of focusing suppliers towards a low cost focus (and not a value added one) due to the pressure of the publicly visible tender process and underlying expectation to deliver 'good value' from the 'public purse'. This keeps suppliers who are able to deliver more creative and more expensive (but more valuable) solutions, out of the market, and limits council's choice.
- Current tendering processes do not fully reflect the intentions of the integrated planning and reporting legislation to deliver better overall value to the community in outcomes that they may be willing to pay for.
- The inability to have an open tender process\* (used extensively in the private sector) can limit the ability to share best practice up front between suppliers and councils. This can also limit innovation and council's ability to access valuable input from more experienced suppliers, particularly for more complex service solutions. Supply partners can add value and assist councils to fully identify their needs and better refine the requirements in the specification before tendering commences yet this is not possible under the current restrictive approaches in NSW.

*\*An open tender process is when a council selects a few key suppliers to respond to an initial Expression of Interest request. This stage is followed by direct negotiations with the chosen supplier. The process determines the preferred supplier before council issues a full tender specification and both parties sit down to define all elements of the specification for tender. The preferred supplier prices up the entire project in an open book approach. It does not go to market. This procurement method requires guidance on extra checks and balances to minimise corruption risks. However, this has been achieved in other states.*

The current Act states that under certain circumstances, councils may bypass the tendering process but there is concern that there is insufficient clarity regarding what these conditions are. The fear is that councils will be at risk if they adopt this approach and in general tend to avoid it, again possibly impeding better outcomes.

Whilst councils' over the years have demonstrated the ability to appropriately manage large and complex supply contracts, the unfortunate recent corruption publicity regarding

council officers and their relationships to suppliers, has further dampened the enthusiasm of suppliers to build innovative procurement relationships which add value.

There is no doubt that cost will always be a factor in evaluating all government purchasing. However, with the bar currently set so low by restrictive legislation, there is unwillingness by other sectors to invest the time and resources required to create value adding long term procurement solutions which meet probity standards and deliver innovative results. The current restrictions have the effect of limiting the pool of quality partners and reduce local government's capacity to build strategic purchasing skills.

There is currently more of a compliance procurement culture in local government than an innovative one. This limits councils' abilities to properly assess procurement options and reduces opportunities to increase returns for their communities.

Whilst challenges exist, there are several successful alliance partnerships and models which provide improved procurement of materials and services e.g. engineering services with Fairfield City Council, Regional Procurement (Hunter Councils Inc.), and state level procurement (Local Government Procurement LGP, LGAQ Local Buy, Procurement Australia - Victoria). These models are limited to certain areas and do not lend themselves to large scale infrastructure projects and more complex services procurement.

Private Public Partnerships (PPP) in local government are also highly regulated by the Local Government Act and are another example of 'one size fits all' legislation. All councils (no matter how competent in project management and contractual negotiations) must jump through onerous reporting and compliance hoops. This adds uncertainty to the private sector and retards its ability to bring its expertise to local government. In addition, it adds substantial administration costs and delays to projects which fall under this legislation. Due to the complexity of some contractual arrangements, the understanding of whether a project is covered by this legislation is also unclear and often requires expensive legal advice to determine whether the PPP legislation applies or not.

Procuring the right services from the right partners utilising good governance and probity approaches, is a vital requirement for the delivery of shared service delivery. To harness the private and not for profit sectors innovation and methodologies requires a more flexible, innovative and less restrictive approach to local government procurement.

#### *Summary of main points:*

- 1. Increase the minimum tender limit significantly and reduce the prescription in the tendering processes to be more in line with other states/ best practice.*
- 2. Facilitate and enable public/ private partnerships and remove the barriers.*
- 3. Allow open tendering as is experienced in other states.*
- 4. Retain and improve probity practices to minimise or eliminate corruption.*
- 5. Facilitate an environment that promotes a real alliance partnership of best practice between councils and suppliers (from both private and not for profit sectors) to identify needs, innovation and benefits.*
- 6. Increase strategic purchasing skills for staff with training and visibility of commercial best practice guidelines.*
- 7. Build a culture of solutions, and value for money instead of just low cost.*

8. *Rationalise deficiencies within the current tendering and procurement legislation.*

#### **2.4 Issue 4: Encourage local government – build confidence in the alternatives**

A key challenge facing local government is that of responsibility and authority. Misunderstood at best, or misappropriated at worst, debates and discussions abound about the pressure placed on councils by cost shifting and the manner in which the third tier of government is frequently the end of the line for the least appreciated functions and services. This places further financial pressures to local government since some of their fees for service delivery (e.g. development application fees) are regulated and limit the council's ability to recoup the costs of their services.

Whilst cost-shifting, changing responsibilities and expanding community expectations are legitimate concerns for local government, the inadvertent outcome is that it has created a culture of local government professionals who are risk averse or compliant when it comes to finding alternate or new ways to implement council services.

As indicated in the recent TCORP report, it is important to reduce local government's operating costs whilst still providing social and community outcomes. To do this there are a number of cultural factors that should be considered:

- Fostering industry expectations and an environment where service delivery is viewed not purely through a prism of risk aversion or legislative restriction, but through a more business-like approach to possibilities which are achievable and commercially viable. This should be encouraged by state government policy and supported by training from industry organisations and associations.
- Encouraging and training industry professionals to take the best approaches to service delivery and avoid the human tendency to repeat what has always been done before. This can be encouraged through approaches such as Best Value which:-
  - Consults with the community / customers on their views of the service
  - Compares the current service with better practice benchmarks which deliver similar services elsewhere
  - Challenges the way the existing service is delivered and questions if there are other ways to do it
  - Utilises competitive approaches which may lead to new ways and /or new partnerships to deliver services utilising alternative service models

Instead of 'how can we offer X service?' Best Value requires a workplace culture where community vision and customer demand drives service improvement and organisation design, not the other way around.

- Developing robust training for the sector on alternative service delivery including commercial acumen and negotiation skills, risk management, contract management, fiduciary responsibilities, partnering skills and business planning

abilities etc.

- Promoting better community understanding and confidence in different service delivery models which deliver the services they require. This supports the right environment for innovation to flourish. The promotion, marketing and communication of appropriate skill sets and knowledge for alternative service delivery should be resourced and supported.
- The sensitive and significant issues surrounding corruption and its associated perceptions can create unwillingness and uncertainty around entrepreneurial approaches to service delivery. Thought needs to be given to how best to balance the protection of community interests with an expanded capacity to explore different procurement and service delivery models and to train staff accordingly.

Improvements in these areas will require enhanced competence and skills and there is a strong role for professional associations and Local Government NSW to ensure that both staff and councillors are equipped with the full knowledge to understand alternative service delivery.

*Summary of main points:*

1. *Foster an industry environment and expectation where service delivery is carried out in a more business-like manner emphasising what is possible, achievable and commercially viable.*
2. *Train industry professionals on the range of alternative service delivery models available and the way to make them successful eg. Utilising Best Value methodologies.*
3. *Encourage industry professionals to let desired outcomes drive the development of appropriate service models and options and train them appropriately.*
4. *Create an environment where community vision and demand drives service delivery.*
5. *Promote community understanding of and confidence in different models through promotion, marketing and communication of successful initiatives.*
6. *Balance the protection of the status quo with an expansive capacity to explore different service models or approaches.*

### **2.5 Issue 5: The Industrial Relations Landscape –supporting our biggest asset**

It is important to consider the industrial relations issues that may arise as a result of moving to an appropriate alternate service delivery model. Now and in the future, there is a need for increased flexibility to respond to changing activities and focus. Such issues can vary significantly depending upon which service delivery model is used. When choosing an appropriate service delivery model it is important to consider the following industrial relations issues.

#### **Legislative Considerations**

1. *Do the proposed workplace changes have ‘significant effects’ on employees?*

Significant effects include termination of employment, major changes in the composition, operation, size of the workforce or in the skills required, the elimination or diminution of

job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructure of jobs.

2. *Do the proposed workplace changes mean that the employer/employees will be covered by the state or federal industrial relations jurisdiction?*

Different conditions of employment apply under each jurisdiction. In late 2008, all NSW councils and county councils were declared 'non-national system' employers and as a consequence, NSW councils, county councils and their employees are covered by the state industrial relations jurisdiction. The federal industrial relations jurisdiction applies to all private sector employers/employees as well as to local government, state and public private sector employers/employees that are not declared as non-national system employers/employees.

There are several local government entities that are declared as non national system employers and are covered by the NSW local government State Award eg Newcastle Airport, Kimbriki Environmental Enterprises and Junee Junction. This can also apply to many of the other alternate service delivery models as identified in Appendix D.

### **Award Conditions**

1. *Which award and/or industrial instrument will apply to the employer/employees?*

Different conditions of employment apply depending on the industrial instrument used. Local government employers/employees covered by the state industrial relations jurisdiction are predominately covered by the *Local Government (State) Award 2010*, but may be covered by other state awards, state enterprise awards, state enterprise agreements or be award/agreement free (i.e. designated senior staff are excluded from the Award by virtue of s340 of the *Local Government Act 1993*).

Local government employers/employees that are covered by the federal industrial relations jurisdiction are likely to be covered by the federal *Local Government Industry Award 2010* (the "Federal Award") but may however be covered by other federal awards, federal enterprise agreements or not covered by an award or an agreement.

The Federal Award can cover employers/ employees in the local government industry including activities undertaken by corporations controlled by one or more local government entities. A corporation is considered to be controlled by one or more local government entities if one or more local government entities have the capacity to determine the outcome of decisions about the corporation's financial and operating policies.

It is the working party's view that moving to an alternate service delivery model should not be used as an opportunity to erode the conditions of employment of existing employees. Reforms associated with the implementation of a new *Local Government (State) Award* in 1992, provides a model on how employees can transition from one industrial instrument to another. Under such reforms, ground rules were established which included a commitment that "*No employee will suffer a reduction in their rate of pay as a result of the new award*".

2. *Which industrial organisation(s) are entitled to represent the employer/employees in industrial matters?*

Under state and federal legislation, unions and employer organisations are required to have eligibility rules that determine who may belong to the organisation. For example, the eligibility rule of the USU provides that specified categories of NSW local government employees may belong to and be represented by the USU and the eligibility rule of Local Government NSW provides that NSW councils and county councils may belong to and be represented by Local Government NSW. If, under an alternate service delivery model, the employing entity is not a council or country council, other unions and employer organisations may be entitled to represent the employer/employees in industrial matters.

Before making a decision to move to an alternative service delivery model, consideration should be given on the likely impact on employees and the community. Where a definite decision is made to introduce major changes in production, program, organisation structure or technology that are likely to have significant effects on employees, the council(s) should also ensure that the employees affected by the proposed changes and the union(s) to which they belong are notified and consulted with in accordance with award/agreement requirements.

The prospect of major workplace change can be daunting. At all times it is important that employers/employees who may be affected by such change are treated with dignity and respect, and that a high industrial relations standard of consultation and notice is adhered to.

The USU, on behalf of their members, have noted their concern regarding the potential loss of jobs and conditions under many of the possible alternative service delivery models. They maintain that local government is often the main employer in regional and rural areas and the loss of jobs or conditions can have significant impact on communities.

A counter argument shared by other members of the working party is that if alternative services save councils money, they will have more funds to reinvest in enhancing their asset or services and this will have a counter effect by creating additional jobs in the sector.

When creating some alternative service models in NSW, industrial harmony is more likely to be achieved if the new entity is declared as a non national system employer. There is a general preference for the inclusion under state awards, however when this is inappropriate there is a preference for the development of an enterprise agreement underpinned by the state award.

*Summary of main points:*

- 1. Take care to ameliorate the impact of the significant effects of workplace changes resulting from many alternative service delivery models.*
- 2. Determine whether the new entities are covered under state or federal industrial relations jurisdictions but entities created as a non national system employer are preferred by the USU.*
- 3. Moving to an alternate service delivery model should not be used as an opportunity to erode the conditions of employment of existing employees.*
- 4. Reforms associated with the implementation of a new Local Government (State) Award in 1992 may provide a useful model on how employees might transition from one industrial instrument to another.*
- 5. Professional associations will need involvement in award negotiations.*

6. *Employers/employees who may be affected by such change are treated with dignity and respect at all times and that a high standards of consultation and notice to those affected are adhered to.*
7. *It should be recognised that local government is often the main employer in regional and rural areas and the loss of jobs or conditions can have a significant impact on communities.*

### **3. CONCLUSION**

It is readily apparent from the working party's research that there are a multitude of options available as alternative service delivery models. It is equally apparent that in the past they have tended to deliver less than has been promised, and for a variety of reasons, including:

- Less than total commitment from stakeholders
- Governance and accountability models that are not fit for purpose
- Lack of appropriate business planning

There are therefore no simple solutions, but a few key lessons that need to be applied when discussing them as part of the NSW local government reform landscape.

First and foremost, the rigid application of single model solutions irrespective of circumstance will only deliver variable success at best. Rather, broad statutory guidelines that provide a purpose and principle driven approach will offer the best hope of success. Above all, those stakeholders or shareholders who are receiving those services need to be crystal clear as to their expectations and obligations. It must then be left to the entities themselves to determine the basis on which they will deliver the required services consistent with those expectations.

Secondly, some of the legislative irritants that work against new and better models of service delivery need to be reviewed so that those involved have the best chance of succeeding in a new endeavour. Some of these aspects are covered by issue 3 and 4 of this report.

Thirdly, especially strong regard must be had for the needs of those staff working in (but not exclusively) remote and regional areas, and that neither they nor the communities they serve are detrimentally impacted by changes in the local service delivery landscape. This will require a co-operative approach between unions, employers and professional associations alike.

Finally, this report merely outlines some of the challenges that lie ahead as our sector faces up the challenges of imminent change. It is early days yet, and we have still to grasp just what success could and should look like. It is therefore imperative that the options and possibilities outlined in this paper receive wide and continuing debate.

#### **4. APPENDIX A: REFERENCES.**

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18. A New Local Government Act for NSW Discussion Paper - April 2013
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20. Local Government Service Delivery Models - listing by the DLG (Appendix D)
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#### **ALTERNATE SERVICE DELIVERY MODELS EVALUATIONS UNDERTAKEN.**

Category 1 - Council controlled corporation (Evaluation of Kimbriki)

Category 2 - Council controlled company limited by guarantee (Evaluation of Hunter Resource Recovery)

Category 3 - Council controlled incorporated association (Evaluation of Hunter Council's Inc)

Category 4 – ROC (Evaluation of SSROC Street Lighting and Road Improvements)

Category 5 – Agreement based partnership (Evaluation of the New England Entity)

Category 7 – County Council (Evaluate Upper Hunter Weeds Authority)

Category 8 – Alliance Partnership (Evaluate Fairfield City Council Engineering Services)

Category 11 - Council Controlled Property Trust (Auckland and Hutt Valley Councils)

## **5. APPENDIX B: SUMMARY AND REVIEW OF THE 'DIVISION OF LOCAL GOVERNMENT, COLLABORATIVE ARRANGEMENTS REPORT JUNE 2011'**

103 of the State's 150 councils responded to the Department of Local Government Survey, compiled in mid 2011.

879 collaborative arrangements were listed in the information provided by the 103 councils who provided input into the survey.

On initial review, many of the 879 identified collaborative arrangements were assessed on the available information as not being collaborative service provider entities, but were discussion forums which shared ideas to benefit councils and their communities, but did not actually provide services.

As each of the identified collaborative arrangements were obviously listed in multiple councils in order to be listed as collaborative, careful cross referencing has significantly reduced the number from 879.

The information provided by councils often listed collaborative arrangement services/entities under different names. Some of these were very similar and others bore no similarity at all in their names.

There were 176 separate entities with descriptions listed in the report (excluding ROC's). Cross referencing resulted in 93 of the 176 collaborative arrangements/services listed, being deemed services provided collaboratively.

This information proved to be useful in selecting various service provider models and functions for review. It was also useful in comparing service arrangement/entities at a function/service level, regional level, or industry level.

### **Regional Organisation of Councils (ROC's)**

The June 2011 report lists information for 15 of the state's 16 ROC's.

The report states that Central Coast ROC (CCROC) provided no information for the report and none was readily available to include in the report.

The report lists the following ROC's:

1. Central NSW Councils (CENTROC)
2. Hunter Councils Inc (HROC)
3. Macarthur Regional Organisation of Councils (MACROC)
4. Namoi Regional Organisation of Councils (Namoi ROC)
5. Northern Rivers Regional Organisation of Councils (NOROC)
6. North Sydney Regional Organisation of Councils (NSROC)
7. Orana Regional Organisation of Councils (OROC)
8. Riverina Eastern Regional Organisation of Councils (REROC)
9. Riverina and Murray Regional Organisation of Councils (RAMROC)

10. Shore Regional Organisation of Councils (SHOROC)
11. Southern Councils Group
12. Southern Sydney Regional Organisation of Councils (SSROC)
13. Sydney Coastal Councils Group
14. Western Sydney Regional Organisation of Councils (WSROC)
15. South East ROC

The list below identifies many examples of collaborative arrangements in NSW. Some of these entities/arrangements are in excess of a decade or more old.

	<b>Name of Collaborative Arrangement</b>	<b>No Of Councils Involved</b>
<b>1</b>	<b>Aboriginal Heritage Office</b>	<b>9</b>
<b>2</b>	<b>Active in Canterbury and Bankstown</b>	<b>2</b>
<b>3</b>	<b>Affordable Housing Group</b>	<b>10</b>
<b>4</b>	<b>Animal Shelter Services Agreement</b>	<b>2</b>
<b>5</b>	<b>Auburn Holroyd Joint Risk Management Service</b>	<b>2</b>
<b>6</b>	<b>Australian Art History – Campbelltown Arts Centre</b>	<b>2</b>
<b>7</b>	<b>Bathurst Orange Dubbo Alliance</b>	<b>3</b>
<b>8</b>	<b>Berrigan Conargo Jerilderie Early Intervention Services</b>	<b>3</b>
<b>9</b>	<b>Berrigan Conargo Jerilderie Joint Provision of HACC Services</b>	<b>3</b>
<b>10</b>	<b>Berrigan Hay Joint Tendering of Capital Works</b>	<b>2</b>
<b>11</b>	<b>Berrigan Joint Tendering of Garbage and Recycling Collection</b>	<b>2</b>
<b>12</b>	<b>Blacktown Penrith Business Continuity Facility</b>	<b>2</b>
<b>13</b>	<b>Bourke Technical Support to Brewarrina Shire Council</b>	<b>2</b>
<b>14</b>	<b>Canada Bay/Leichardt Business Sustainability Partnership</b>	<b>2</b>
<b>15</b>	<b>Carrathool/Wollongong Partnership Agreement</b>	<b>2</b>
<b>16</b>	<b>Central Northern Regional Libraries</b>	<b>5</b>
<b>17</b>	<b>Central West Libraries</b>	<b>5</b>
<b>18</b>	<b>Clarence Valley and Coffs Harbour Regional Water Supply</b>	<b>2 plus Country Energy</b>
<b>19</b>	<b>Cobar Shire Council – City of Canterbury Partnership</b>	<b>2</b>
<b>20</b>	<b>Bellingen Trade Waste Inspection Service</b>	<b>2</b>
<b>21</b>	<b>Coffs Coast Waste Service</b>	<b>3</b>

22	Coffs Harbour – Kyogle Sister City/Country Council Alliance	2
23	(Conargo, Deniliquin, Murray) Local Councils Partnership Agreement	3
24	Cooks River Sustainability Initiative	8
25	Councils online	5
26	Cooks River Foreshore Working Group	8
27	Eastern Riverina Noxious Weeds Advisory Group	11 plus 4 Govt Entities
28	Eastern Sydney Libraries Cooperative	4
29	Geospatial Alliance Project	4 plus Goldenfields Water
30	Goulburn, Mulwaree, Palerang and Upper Lachlan Shire Councils Memorandum of Understanding for Shared Services.	4
31	Grain Valley Road	3
32	Greater Hume Aged Care Services	2
33	Greater Hume, Lockhart and Urana Shire Councils Youth Service	3
34	Griffith Region Food Safety Inspection Agreement	4
35	Griffith Region Internal Auditor	6
36	Groundswell (Waste Services)	5
37	Gunnedah /Lane Cove Municipal Council Sister City Agreement	2
38	Gunnedah/Manly Council Friendship Relationship	2
39	Gunnedah Liverpool Plains Draft Water Alliance	2
40	Gunnedah /Liverpool/Narrabri Plains Private Works	2
41	Gunnedah Oxley Community Options	5
42	Hume Billabong Family Day Care	6
43	Inner West Regional Recycling Contract	6
44	Jerilderie Newcastle City Sister Council Relationship	2
45	Kimbriki Environmental Enterprises Pty Ltd	4
46	Leeton-Narrandera Aerodrome	2

47	Leeton – Narrandera Community Transport	2
48	Lower Macquarie Water Utilities Alliance (LMWUA)	8
49	(Macarthur) Regional Waster Management Contract	4
50	Mid Coast Waste Services	3
51	Mid North Weight of Loads Group	17
52	Midwaste	9
53	Mitchell Employee Assistance Program	8
54	Monaro Regional Libraries	5
55	Monaro Regional Weeds Committee	3
56	Murray Campaspe Cross Border Partnership Agreement	2
57	(Muswellbrook) Collection of Waste from Upper Hunter Shire Council	2
58	Namoi Regional Food Surveillance Group	3
59	Newcastle and Hunter Cooperative Library Agreement	4
60	Netwaste	28
61	Newcastle Airport Limited	2
62	Northwest Weight of Loads	8
63	Northern Inland Regional Waste	13
64	Northern Inland Weeds Advisory Committee	13
65	Northern Sydney Councils Internal Auditing Services	6
66	Oolong Aged Person Business Arrangements	2
67	Overdrive – e-library 24/7 State Library of NSW Development Collaborative Grant Project	5
68	Paddington Library Agreement	2
69	Palerang Council- use of Queanbeyan Animal Pound	2
70	Queanbeyan Palerang Library Agreement	2
71	Riverina Regional Library Service	9
72	Review of Core business Systems – Technology One	2
73	Richmond Upper Clarence Regional Library	2
74	Riverina Eastern Noxious Weeds Authority	3

75	Shorelink Library Network	5
76	Snowy Monaro Regional Resource and Waste Management	3 Councils plus National Park Svc
77	South East Weight of Loads	12
78	South Western Regional Waste Management Group	8
79	Southern Tablelands Regional Library (STRL)	4
80	St George Regional Waste Contract	3
80	St George Regional Waste Contract	3
81	Tree Management	2
82	Upper Hunter Regional Library	2
83	Wakool Shire – Swan Hill Rural Waste and Recycling Services	2
84	Walcha – Rubbish Collection with Uralla Shire Council	2
85	Waverley Botany Hume Library Service	2
86	Waverley and Woollahra SES	2
87	The WBC Strategic Alliance	3 plus Central Tablelands Water
88	Weddin Hawkesbury City Country Alliance	2
89	Western Riverina Regional Library Service	6
90	WESCOL (West South West Community Language Collection)	5
91	Willoughby/Lane Cove Family Cay Care	2
92	Wollongong Carrathool Inter Council Friendship Agreement	2
93	Wollongong City Council and Shoalhaven Council Shared Cadet Progam	2

## **6. APPENDIX C: ALTERNATIVE SERVICE MODEL EVALUATION TOOL**

### *Evaluation Methodology*

When considering whether an alternative service delivery model is a solution to improved service delivery, there is a range of complex issues for a council to consider. Underpinning the assessment is an assumption that models will ultimately need to display innovative approaches to reduce costs to rate payers and/or improve service delivery.

This assessment methodology has been developed to guide the identification, categorisation and evaluation of alternative service delivery models available to local government in NSW. Whilst the tool has been developed to assist in the overarching review of service delivery models, it is designed to be a tool that can also be used when considering specific opportunities for alternative service delivery models in their own operations.

The aim of this tool is to provide prompts on the range of issues to consider when making this choice. The evaluation methodology is designed to support councils when considering which of the available options best suit requirements by using a systematic and consistent approach. It requires careful analysis of each factor which may assist councils to make the right choice.

The assessment tool is designed to operate as a series of questions to be applied to the model being assessed. It provides a series of standard considerations against key criteria, leading the assessor through a logical set of issues as may be relevant to any given model.

No one tool can make the assessment of a proposed service delivery model a simple task. This evaluation tool is a reminder of the areas that should be evaluated when assessing the appropriateness of a given model. It is a guide only to point out the areas that require careful analysis and consideration. The final choice of the best model will be a matter of local determination dependent on local circumstances.

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**1. Briefly describe the entity. Does it provide organisation or community benefit? Does it provide direct services, indirect services or internal services?**

## **2. Community Benefit**

*Definition: improvement in service levels and/or cost for either community or customer service*

**2.1 Does the entity provide a tangible benefit for the community?**

**2.2 Does the entity demonstrate a more cost effective way to deliver services to the community? If so, how?**

## **3. Risks**

*Definition: Factors which would expose the council to danger, harm or loss including:*

*Governance risk - exposure to failing leadership and oversight*

*Legal risk - exposure to challenge within the legal system*

*Finance risk - exposure to commercial failure*

*Reputational risk - exposure to negative stakeholder perception*

**3.1 3.1 Does the entity reduce governance risk? If so, how?**

**3.2 3.2 Does the entity reduce legal risk? If so, how?**

**3.3 3.3 Does this entity reduce financial risk? If so, how?**

**3.4 Does this entity reduce reputational risk? If so, how?**

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#### **4. Skill requirements**

*Definition: Level of knowledge, capacity and formal qualifications required to establish the entity and it's ongoing management*

**2.6 Are all the required skills easily found within local government/ other government sectors?**

**2.7 Do some skills need to be sourced externally from non-Local Government Services? If so, what type?**

#### **5. Governance**

*Definition: the way that leadership and oversight is established and formalised to direct the entity*

**5.1 Does existing legislation enable this entity to exist? If so, how?**

**5.2 Is there well established and easily applied legal framework for the entity? Explain.**

**5.3 Is the establishment of the entity complex? If so, how?**

**5.4 Is the Governance framework effective in delivering the outcomes intended for the entity? If so, how?**

**5.5 Does the strategic leadership capacity required to govern the entity exist? If so, how?**

**5.6 Is fiduciary responsibility clearly understood by those on the governing body? If so how is it expressed?**

**5.7 Is the relationship to Council Community Strategic Plan and associated resourcing plans clearly articulated?**

## **6. Resourcing implications**

*Definition: measures the impact on financial, staff and assets required to establish & operate the entity*

**6.1 Is there a clearly articulated business plan for the entity?**

**6.2 Does the establishment of the entity require additional financial resources? If so, how and how much?**

**6.3 Does the establishment of the entity require additional staff resourcing? If so, what?**

**6.4 Does the establishment of the entity require additional assets? If so, what?**

**6.5 Does the operation of the entity require additional ongoing cost? If so, how much?**

## **7. Industrial implications**

*Definition: measures the extent to which the entity impacts on remuneration, career opportunities and employment of existing council staff?*

**7.1 Is the industrial environment clearly understood?**

**7.2 Does the entity maintain or improve remuneration opportunities for staff? If so, how?**

**7.3 Does the entity maintain or improve career opportunities for staff? If so, how?**

***7.4 Does the entity lead to significant impacts on the staff involved? If so, how?***

***7.5 Does the entity trigger the workplace change provisions of the relevant industrial instruments? If so, how?***

## **7.APPENDIX D – LOCAL GOVERNMENT SERVICE DELIVERY MODELS**

*The working group would like to acknowledge the assistance of the DLG in the development of this Appendix.*

The following 15 models were derived from those researched by the working party. Each model is operating within various local government jurisdictions in both Australia and New Zealand and examples have been given of where they operate.

These models are not mutually exclusive (e.g. a Corporation may also be classed as a joint venture or a ROC be classed as an Incorporated Association or Company Limited by Guarantee). However, they provide an overview of the alternatives that have been employed to date and may form a guide to those that are contemplating alternative service delivery.

### **7.1 Corporations**

*Examples:* Kimbriki Environmental Enterprises Pty. Ltd, Central Coast Water Corporation

#### *Description*

One or more councils may form a corporation for the purposes of providing services and conducting business. Incorporation creates a separate legal entity with the ability to enter into contracts and to conduct business transactions.

Under section 358 of *the Local Government Act 1993*, councils must obtain the Minister's consent before forming or acquiring a controlling interest in a corporation, with the exception of a company limited by guarantee and licensed not to use the word "Limited" in its name. As such, incorporation requiring ministerial approval will typically be sought by councils wishing to establish a company that provides services which may generate profit.

#### *Legislation*

Councils may form a corporation or acquire a controlling interest in a corporation with Ministerial consent under section 358 of the *Local Government Act 1993*. To obtain consent a council must satisfy the Minister that the formation of, or the acquisition of a controlling interest in, the corporation is in the public interest. Circular 07-49 lists the criteria that are applied in determining whether or not a particular proposal is in the public interest. Corporations are registered through the Australian Securities and Investments Commission (ASIC), a Commonwealth entity, and must comply with the *Corporations Act 2001* (Cth).

### *Performance*

By creating a separate legal entity, councils will not be held liable by actions undertaken by the company and its board. By choosing incorporation limited by shares (a proprietary company), councils become shareholders and will benefit from any profit generated by the entity. However, accountability issues may arise from the ability of the board to act independently without the express approval of shareholder councils.

## **7.2 Companies Limited by Guarantee and licensed not to use the word “Limited” in their names**

*Examples:* Newcastle Airport Limited, Hunter Councils Limited. Western Sydney Regional Organisation of Councils (WSROC).

### *Description*

A company limited by guarantee and licensed not to use the word “Limited” in its name is typically a non-profit entity that can be chosen by councils to deliver services without generating profit. All revenue collected by such an entity is generally used to continue delivering community services. Councils seeking to establish such an entity are not required to obtain the prior approval of the Minister.

### *Legislation*

Section 358(2) of the *Local Government Act 1993* permits councils to establish companies limited by guarantee and licensed not to use the word “Limited” in their names without ministerial approval. Such companies are registered through ASIC and must comply with the *Corporations Act 2001* (Cth).

This provision may no longer be of any practical use as it is no longer possible to establish a company which is licensed not to use the word “Limited” in its name. Section 150 of the *Corporations Act 2001* (Cth) now allows corporations not to use the word “Limited” in their name provided they meet specified criteria.

### *Performance*

In the past, councils seeking to establish a company limited by guarantee and licensed not to use the word “Limited” in its name did not need to meet the public interest test of Section 358 of the *Local Government Act 1993*. They were not directly able to benefit from any revenue generated by the company. Accountability issues could have arisen from the ability of the board to act independently without the express approval of guarantor councils.

### **7.3 Incorporated Associations**

*Examples:* Majority of NSW ROCs including SSROC, SHOROC, NSROC, Hunter Councils, REROC, Sydney Coastal Councils Group

#### *Description*

An incorporated association is similar to a corporation limited by guarantee; however such an entity is established and administered through NSW legislation and must conduct the majority of its operations in NSW. Incorporating an association creates a separate legal entity which must not secure profit for its member councils, and must use all revenues to further the objects for which the association was established. Incorporated associations in NSW are administered through NSW Fair Trading.

#### *Legislation*

Incorporated associations in NSW are established and administered under the *Associations Incorporation Act 2009*.

#### *Performance*

Given the requirement that a majority of business be conducted in NSW, an incorporated association is unsuitable for council-managed organisations which may need to conduct extensive business in external states or territories. An incorporated association is typically suitable for smaller organisations seeking a simpler alternative to a corporation limited by guarantee structure, and with less onerous reporting requirements.

### **7.4 Regional Organisation of Councils (ROCs)**

*Examples:* Sixteen ROCs in NSW, the majority of which are Incorporated Associations or Section 355 Committees. Central Coast ROC (CCROC), Central NSW Councils (CENTROC), Hunter Councils Inc (HROC), Macarthur Regional Organisation of Councils (MACROC), Namoi Regional Organisation of Councils (Namoi ROC), Northern Rivers Regional Organisation of Councils (NOROC), North Sydney Regional Organisation of Councils (NSROC), Orana Regional Organisation of Councils (OROC), Riverina Eastern Regional Organisation of Councils (REROC), Riverina and Murray Regional Organisation of Councils (RAMROC), Shore Regional Organisation of Councils (SHOROC), Southern Councils Group, Southern Sydney Regional Organisation of Councils (SSROC), Sydney Coastal Councils Group, Western Sydney Regional Organisation of Councils (WSROC), South East ROC

### *Description*

ROCs are voluntary regional organisations of councils recognised by section 355 of the Local Government Act 1993. These organisations can provide an entity that support employment of staff and the undertaking of initiatives across council regions. The Act does not confer on ROCs any status as legal entities. They may however acquire this status through some other legislative provision, for example, by incorporation as a company under the *Corporations Act 2001 (Cth)* or by incorporation as an association under the *Associations Incorporation Act 2009*. A prime function of ROCs is to provide a forum to identify issues, lobby state and federal governments for increased financial and other resource enhancement, promotion of policy and legislative change, promotion of a region and fostering cooperation between councils. NSW currently has 17 ROCs undertaking activities such as waste management planning, telecommunications feasibility, transport, public works and environmental management.

### *Legislation*

ROCs are recognised by section 355 of the *Local Government Act 1993*, which states that a council may exercise its functions in a number of ways which include, jointly with another council(s) (including by means of a ROC of which the councils concerned are members) or by a delegate of the council such as a ROC of which the council is a member.

### *Performance*

Unlike county councils, the legislation does not stipulate a required legal status or other legislative requirements for the structure of an ROC. As such, councils have flexibility in determining how the entity can best meet its purposes. ROCs provide a flexible means for councils to identify, discuss, and plan common issues, and have provided a forum for the organisation of formal legal relationships between councils as a means of conducting shared operations.

## **7.5 Joint Ventures**

*Examples:* Hunter Resource Recovery (company), New England Alliance

### *Description*

A joint venture involves more than one council working together to provide a clearly defined service such as a waste facility or an airport. This model involves the creation of a separate business entity providing some level of protection from the risks associated with the management of the organisation. Similar to the formation of

council-operated corporations, joint ventures require prior ministerial approval under section 358 of the *Local Government Act 1993*.

#### *Legislation*

Councils are permitted to form joint ventures after obtaining Ministerial approval under section 358 of the *Local Government Act 1993*.

#### *Performance*

Joint ventures may be best suited to smaller single-purpose council partnerships that will not require the full legal rights and obligations of a company structure.

### **7.6 Service Contract Agreements**

*Examples:* Brighton Common Service Model, Sutherland and Sydney Councils Animal Services Shelter Agreement, Bourke & Brewarrina Technical Support

#### *Description*

This type of model involves a partnership where one council offers services and council functions to other local governments on a commercial basis. These services may include information technology, financial management, and planning expertise. One prominent example of service contract agreements is the Brighton Common Service Provision Model enacted by Brighton Council in Tasmania, where Brighton has provided services to client councils from Tasmania, West Australia, and Eurobodalla in NSW.

#### *Legislation*

It should be noted that section 379 of the Local Government Act prohibits a council from delegating any of its regulatory functions under Chapter 7 of that Act to any person or body other than a committee of the council of which all the members are either councillors or employees of the council, an employee of the council, or a county council. A council's regulatory functions under Chapter 7 include the granting of approvals and the issuing of orders.

#### *Performance*

Many councils have difficulty in attracting and retaining staff with expertise in certain areas. By securing services on a commercial basis from other councils, this

model provides a means by which professional expertise can be shared at a benefit to both council administrations.

## **7.7 County Councils**

*Examples:* Rous Water, Central Tablelands Water (Central Tablelands County Council), Far North Coast Weeds (Far North Coast County Council, Richmond River County Council, Upper Hunter County Council (Weeds Authority)

### *Description*

County councils are specialist bodies that have a governing body elected by constituent councils as chosen from among the councillors of the participating councils. They are established by proclamation from the Governor after the Minister gives agreement to a proposal made by a council group. The functions of a county council are limited by the initiating proposal from member councils and subsequent proclamation. There are currently 14 established county councils in NSW, most of which are single-purpose with the function of providing either eradication of noxious weeds, water supply, sewerage services, or floodplain management.

### *Legislation*

County councils are bodies' politic created under part 5 of Chapter 12 of the *Local Government Act 1993*. As such, they are legal entities in their own right.

### *Performance*

In NSW, county councils have achieved economies of scale in managing each purpose beyond the borders of each council. The participation of councillors from each member council results in a significant representative base.

## **7.8 Alliance Partnerships with Private Enterprise**

*Examples:* Fairfield City Council and Sinclair Knight Merz Alliance Partnership for the provision of engineering services. City of Ryde with Local Government Corporate Solutions in the provision of automated Corporate Reporting.

### *Description*

Alliance partnerships can involve long-term contractual arrangements between a council and a private entity where that entity provides council with a service to enable the improved delivery of council deliverables. Such an alliance may allow council to access external services such as planning expertise or information technology services that may not be available internally. Such an alliance may also

encompass public private partnerships, where councils consider an arrangement with a private entity for the purpose of providing public infrastructure, facility, or services.

#### *Legislation*

Councils must comply with the provisions of Part 6 of Chapter 12 of the *Local Government Act 1993* before entering into public-private partnerships or carrying out any project under a public private partnership.

#### *Performance*

Alliance partnerships with private entities can allow councils to access services for which councils may be unable to provide internally due to a lack of resources or otherwise. Public private partnerships will allow council to share the risk of a project with a private entity. However, there may be a higher risk of project failure and financial liability where the terms of such a partnership are unrealistic or where they do not protect the interests of council.

### **7.9 Council-Controlled Organisations**

*Examples:* Auckland Tourism, Events and Economic Development Ltd, Auckland Watercare Services (provides and manages water supply and wastewater treatment facilities and infrastructure), and Auckland Transport (provides transport requirements from roads and footpaths to traffic signals, rail and buses).

#### *Description*

A council controlled organisation (CCO) is the name given by the Local Government Act 2002 (NZ) to an organisation in which one or more councils control 50% or more of the votes or have the right to appoint 50% or more of the directors or trustees. CCOs were formerly known as Local Authority Trading Enterprises (LATE) under earlier legislation. Such organisations may be companies or entities such as partnerships, trusts, profit sharing arrangements, joint ventures etc. A CCO that operates a trading undertaking for the purpose of making a profit is called a council controlled trading organisation. CCOs also include non-profit entities such as charitable trusts and incorporated societies. Certain entities are exempted from the requirements for CCOs under sections 6 and 7 of the Act. CCOs are governed by their boards of directors or trustees and operate at arm's length to the council(s). CCOs are used for a wide variety of purposes. For example, CCOs controlled by Auckland City Council include Auckland Tourism, Events and Economic Development Ltd, Auckland Watercare Services (provides and manages water supply and wastewater treatment facilities and infrastructure), Auckland Transport (provides transport requirements from roads and footpaths to traffic signals, rail and buses).

### *Legislation*

Part 5 of the *Local Government Act 2002 (NZ)* prescribes the accountability regime for CCOs. It includes consultation requirements that councils must undertake before establishing a CCO, the appointment and duties of directors, monitoring and reporting, and the manner in which council undertakings may be transferred to a CCO. Notably, *the Local Government Official Information and Meetings Act 1987 (NZ)* and the *Ombudsmen Act 1975 (NZ)* apply to CCOs in a similar manner as they apply to councils.

### *Performance*

Given that the framework for the establishment and administration of CCOs is specified under New Zealand's local government legislation, the New Zealand Government can implement trading laws specifically designed for the local government sector. Unlike operations directly run by councils, which are not required to pay tax, CCOs are required to pay tax to the New Zealand government.

## **7.10 Social Enterprises (Unincorporated Associations)**

### *Description*

Social enterprises are entities that serve a social or environmental purpose using business methods. Unincorporated associations are groups of people who act together as an organisation but without creating a separate legal entity through incorporation. Using social enterprises to assist the service delivery of local government has become a popular model in the United Kingdom, where local councils have contracted out services to social enterprises such as social care, transport, leisure services, housing, grounds maintenance, and catering.

### *Legislation*

In NSW unincorporated non-profit associations are not specifically regulated by one piece of legislation, although some specific kinds of associations, such as charities which wish to raise money by requesting donations from the public, may need to be registered under various Acts.

### *Performance*

Non-profit unincorporated associations can often deliver services more efficiently than local government because such associations may not pay taxes, rates, and may have more flexible staffing and purchasing arrangements. As such, the decision of councils to contract with social enterprises of this type can deliver cost savings whilst ensuring that services are delivered by an organisation dedicated to a specific social or environmental purpose.

## **7.11 Local Government Property Trusts**

*Example: Hutt City Council*

### *Description*

Property trusts controlled by local governments are business models where council-owned property is managed by an external board for the purposes of administering maintenance, tenancy agreements, refurbishments, and investment returns for the property. Property held in the trust can be used for different purposes. For instance, Hutt City Council in New Zealand has established a property trust to manage property providing social housing to residents of Hutt Valley while developing the housing portfolio to increase property values and provide an investment return. A property trust may also be used to manage buildings used for council operation or commercial property in order to encourage efficient property maintenance and investment returns.

### *Legislation*

A property trust will need to be incorporated under the *Commonwealth Corporations Act 2001* and registered by the Australian Securities and Investment Commission (ASIC). If the trust will generate a profit for the council, it should be registered as a corporation limited by shares and the council must seek approval from the Minister for its establishment under the *Local Government Act 1993* (NSW). A property trust managed by a corporation limited by guarantee would not need Ministerial approval.

### *Performance*

A local government property trust may allow council to ensure a more effective management of property by allowing an expert board to administer assets and to seek more efficient structures of management that might not be able to be pursued directly by council, such as the employment of staff or the outsourcing of maintenance. The corporate structure of a property trust would also shield the council from direct liability whilst allowing a benefit from any investment returns.

## **7.12 Cooperatives (Strategic Alliances)**

*Examples: Coffs Coast Waste Service, Bathurst Orange Dubbo Alliance, Aboriginal Heritage Office, Blacktown Penrith Business Continuity Facility, Midwaste, Netwaste, WBC Strategic Alliance*

### *Description*

Cooperatives are voluntary arrangements, usually between neighbouring councils, for the purposes of pooling resources, reducing duplication and developing a common platform to develop initiatives. They are usually governed by a Memorandum of Understanding or a Constitution, and may interrelate with other alliances or partnership structures. A cooperative arrangement between councils may lead to a formal partnership structure, such as incorporation for the purposes of jointly providing services.

### *Legislation*

Section 355(d) of the *Local Government Act 1993 (NSW)* provides that a function of a council may be exercised jointly by the council and another council or councils.

Councils must be aware of section 379 of the *Local Government Act 1993* which prohibits them from delegating their regulatory functions under Chapter 7 of this Act (see 6 above).

Strategic alliances are not necessarily co-operatives.

Generally, a strategic alliance is nothing more than a relationship between two or more parties to pursue a set of common goals while remaining independent of each of other. The alliance is a co-operation or collaboration intended to create a synergy where each party hopes that the benefits from the alliance will be greater than those from individual efforts.

Should a strategic alliance lead to the formation of a corporation, a formal partnership structure or other entity as defined in section 358(4) of the *Local Government Act 1993* the councils concerned must first obtain the Minister's approval under section 358 of this Act.

Co-operatives are regulated and supervised by NSW Fair Trading's Registry Services under the *Co-operatives Act 1992*. When a co-operative is formed under this Act it has its own legal identity separate from its members.

The International Co-operatives Alliance has formulated 7 co-operative principles to guide the operation of co-operatives which give them a distinctive member-owned, member controlled and member-used focus. These are set in section 6 of the Act.

The *Co-operatives (Adoption of National Law) Act 2012* was passed to enable the uniform Co-operatives National Law and national regulations to be applied in NSW from the date of commencement of that Act. This Act is yet to commence.

Section 358(2) of the *Local Government Act 1993* provides that a council does not need the prior consent of the Minister under section 358(1) to become a member of a co-operative society.

#### *Performance*

Strategic alliances and cooperatives can assist with streamlining business processes, managing costs, identifying resource-sharing options, and carrying out planning on a larger regional basis. Such a model can also allow for preliminary discussion and planning with regards to establishing a more formal entity between councils within the cooperative.

### **7.13 Regional or Single Subsidiary (SA)**

#### *Description*

Regional and Single Subsidiaries can be established in South Australia after obtaining Ministerial approval. Either subsidiary can be established to provide services, carry out activities, or perform functions of the council/s. A single council subsidiary may also be established to manage or administer property or facilities on behalf of a council. A subsidiary must operate within its purposes for establishment as outlined in its charter.

A regional subsidiary is established by two or more councils and there are currently 22 operating in South Australia. Regional subsidiaries in SA have been formed to undertake the following functions: waste management, cemetery management, health services, mobile library services, floodplain management, saleyards, community transport, water management, advocacy and policy development.

#### *Legislation*

Sections 42 and 43 of Chapter 4 to the Local Government Act 1999 (SA) provide councils with the ability to establish subsidiaries. Schedule 2 of the Act provides the method by which council/s must apply to the Minister for approval, as well as the matters which must be addressed by the subsidiary's charter and the way in which

#### *Performance*

Regional Subsidiaries are established and operate in a similar manner to NSW county councils, allowing economies of scale in managing defined purposes across council borders. However, unlike NSW, the charter of subsidiaries must detail how board members are to be selected and the board may consist of members who are not members of a constituent council.

## **7.14 Beneficial Enterprise Model (QLD)**

### *Description*

A beneficial enterprise is an enterprise that a Queensland council considers is directed to benefiting, and can reasonably be expected to benefit, the whole or part of its area. Queensland councils are permitted to conduct a beneficial enterprise, if the council is engaging in, or helping, the beneficial enterprise.

Beneficial enterprises are associations that are either: a partnership, a corporation limited by shares but not listed on a stock exchange, a corporation limited by guarantee but not listed on a stock exchange, or another association of persons that is not a corporation. Councils do not require ministerial approval to conduct a beneficial enterprise.

### *Legislation*

Queensland councils may conduct a beneficial enterprise under Part 2, Division 1 of the *Local Government Act 2009* (Qld). The Act was amended in December 2012 to give local governments an express power to conduct beneficial enterprises, to repeal requirements to consult with all employees, and repeal provisions which imposed obligations with respect to planning beneficial enterprises with the private sector.

### *Performance*

The current beneficial enterprise model used in Queensland provides a flexible means for councils to participate in different types of corporate entities. The Queensland legislation gives councils certainty that each may conduct a beneficial enterprise without ministerial approval and express restrictions on the type of activity conducted by the enterprise.

## **7.15 Section 355 Committees**

*Example: Snowy Works and Services*

### *Description*

Councils may exercise their delegable functions by means of committees known as section 355 committees. The composition of section 355 committees is not restricted to councillors. They may include members of staff and members of the public. They need not include any councillors.

Snowy Works and Services is an example of such a committee. It was formed by the Tumut Shire Council to undertake council's civil engineering, construction and maintenance functions. It also provides services of a like nature to external customers. The seven members Committee comprise two councillors, council's General Manager, council's Director Corporate Services, a community representative, the CEO of Snowy Works and Services, and a staff representative.

The Committee, in effect, conducts a business operation on council's behalf, under the trading name "Snowy Works and Services". Through the delegation of council and general manager functions, the Committee can undertake business activities and provide a financial return to the council.

Councils have typically established section 355 committees to encourage community people to engage with council and manage community facilities and functions. For example Tamworth Council has 44 Section 355 committees, including Community Development Committees, which allow community members to provide council with advice regarding the development and growth of a particular town or locality. Snowy Works and Services is different from typical section 355 committees because it operates the main business activities of Tumut Council.

### *Legislation*

Section 355 of the Local Government Act (1993) allows a council to exercise its functions through a committee of the council. Section 377 allows a council to delegate any of its functions to the committee, other than a select number of functions listed, such as setting rates, acquiring land, and borrowing money. Section 378 allows a council's General Manager to delegate any of the General Manager's functions. This would allow, for example, a General Manager to delegate his or her functions to appoint, direct or dismiss staff under section 335.

Councils are not required to obtain the consent of the Minister under section 358 of the Act before forming a committee.

Section 355 Committees provide a simple procedure for councils to establish a mechanism for the purposes of undertaking business and providing services to council and the community. However, section 355 committees are not separate legal entities from the council that formed them. Consequently, the council retains liability and risk for actions undertaken by the Committee.

Staff who are employed by the committee are council staff. The operations of a Committee are dependent upon delegation by council and, where necessary, the council's general manager. A committee cannot undertake activities beyond those which council and its General Manager has responsibility and can delegate. An alternative corporate entity may allow more flexibility in business operations with less exposure to risk for a council.

## **8. APPENDIX E – IR CONTEXT/ BACKGROUND - THE INDUSTRIAL RELATIONS CONTEXT FOR ALTERNATIVE SERVICE DELIVERY CONSIDERATIONS**

(The working party would like to acknowledge the contribution of the USU to this Appendix)

### **Background**

The first Local Government (State) Award (the “State Award”) was created in 1992 by the industry parties as a part of a process to modernise local government awards. The State Award replaced the five awards that had previously covered the majority of local government employees. Unlike those awards, the State Award was skills based. Since 1992, all councils in NSW have transitioned onto their own salary systems and salary ranges underpinned by a simplified NSW State Award that allowed and assisted each council to create their own position descriptions for their organisations requirements. This led to higher productivity, flexibility and efficiency based upon a multi-skilled workforce. In the two decades since 1992, employers and employees in NSW local government have collaborated in modernising and advancing the award and the sector as a whole.

All Local Government (State) Awards have been consent awards, negotiated successfully between the industry parties including:

- the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union (the USU);
- the Local Government Engineers’ Association of New South Wales (the LGEA);
- The Development and Environmental Professionals’ Association (DEPA);
- the Nurses Association of New South Wales; and
- Local Government New South Wales (formerly the Local Government and Shires Associations of New South Wales).

Benefits negotiated via this process included an innovative paid parental scheme, access to salary progression, access to arrangements for flexibility for work and family responsibilities and rates of pay that reflected the cost of living in NSW. Protracted industrial disputes are now uncommon in the sector, due to the working relationships between the industry parties.

There are differences between the state and federal industrial relation laws, and differences between the federal Local Government Industry Award 2010 and the State Award.

The Federal Minister for Industrial Relations has the power to declare, by Order, that an employer (refer to following section) is a ‘non national system employer’ under section 9A of the Industrial Relations Act 1996. To have effect such an order must, pursuant to section 14(4) of the Fair Work Act 2009 (Cth) also be endorsed by the relevant Commonwealth Minister. The Commonwealth Minister also has the power to revoke or amend such an endorsement. In late 2009, all NSW councils and county councils were declared ‘non-national system employers’ and as a consequence, NSW councils and county councils and their employees are covered by the state industrial relations jurisdiction. Other entities such as Kimbriki Environmental Enterprises Pty Ltd, Newcastle Airport Ltd and Blacktown Venue Management Ltd were also declared ‘non national system employers’ and as such, are also covered by the state industrial relations system. The Federal

industrial relations jurisdiction applies to all private sector employers/employees and those entities that are not declared as non-national system employers.

It is the working parties view that moving to an alternate service delivery model should not be used as an opportunity to erode the conditions of employment of existing employees. Approaching the Minister for Industrial Relations for an Order that the entity or model be declared a 'non national system employer' is a step that can be taken. However, such a step is not guaranteed as a declaration by the State Minister needs to be endorsed by the relevant Commonwealth Minister. Nonetheless, reforms associated with the implementation of the Local Government (State) Award in 1992 may provide a useful model on how employees might transition from one industrial instrument to another. Under these reforms, ground rules were established which included a commitment that "No employee will suffer a reduction in their rate of pay as a result of the new award".

Before proceeding with an alternative service delivery approach, a council should consider whether services would genuinely be better delivered in that way and a significant consideration in this should be the impact on employees and the community. Local government is often the main employer in regional and rural areas and any loss of jobs or conditions can have a significant impact on communities.

It is important to remember that one of the aims of the Destinations 2036 Outcomes Report is to retain and attract staff to the local government sector and make NSW local government an employer of choice. This is an important aim as local government needs to retain and attract the right employees in order to be able to face the unique challenges of the sector. In many regional areas councils compete with other industries such as the mining sector which pay relatively higher than average wages and as such local government needs to be competitive in the recruitment market.

### **Non National System Employers**

Under section 9A of the NSW Industrial Relations Act 1996 an eligible employer can be declared 'not to be a national system employer' for the purposes of the Fair Work Act 2009 if the Minister for Industrial Relations declares the employer not to be a national system employer by Order. This Order must be published on the NSW legislation website and be endorsed with a reciprocal order from the Commonwealth Minister.

Pursuant to section 14 of the Fair Work Act 2009 a particular employer is not a national system employer if:

- (a) that employer:
  - (i) is a body established for a public purpose by or under a law of a State or Territory, by the Governor of a State, by the Administrator of a Territory or by a Minister of a State or Territory; or
  - (ii) is a body established for a local government purpose by or under a law of a State or Territory; or

(iii) is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of, or is wholly controlled by, an employer to which subparagraph (ii) applies; and

(b) that employer is specifically declared, by or under a law of the State or Territory, not to be a national system employer for the purposes of this Act; and

(c) an endorsement by the Minister under paragraph (4)(a) is in force in relation to the employer.

If an employer is declared 'not to be a national system employer' the NSW state industrial relations jurisdiction and the Local Government (State) Award will apply otherwise, the federal industrial relations jurisdiction and the Local Government Industry Award 2010 would apply.

**Eligibility to be declared 'not to be a national system employer' for Different Entities:**

*1.1 Corporations*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.2 Companies Limited by Guarantee and licensed not to use the word "Limited" in their names*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.3 Incorporated Associations*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.4 Regional Organisation of Councils (ROCs)*

It depends what form the ROC is organised as. If the ROC is organised under section 355 of the Local Government Act 1993, there would be no need to have it declared a non-national system employer as the employer would be the relevant council. If the ROC is an incorporated association or corporation it would be possible to declare it a 'non national system employer'.

*1.5 Joint Ventures*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.6 Service Contract Agreements*

Not relevant as a council would be the employer.

*1.7 County Councils*

Yes

*1.8 Alliance Partnerships with Private Enterprise*

No as the private enterprise involved would not be eligible to be declared a 'non national system employer'.

*1.9 Council-controlled organisations*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.10 Social Enterprises (Unincorporated Associations)*

Not relevant as the social enterprise itself would not employ anyone, it would be the various councils involved who would employ staff.

*1.11 Local Government Property Trusts*

No as council does not control the Trust.

*1.12 Cooperatives (Strategic Alliances)*

Not relevant as council remains the employer unless a decision is made to incorporate. If the cooperative becomes incorporated, it can be declared a 'non-national system employer' provided it is wholly owned or wholly controlled by councils.

*1.13 Regional or Single Subsidiary (SA)*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.14 Beneficial Enterprise Model (QLD)*

Yes provided it is wholly owned or wholly controlled by a council or councils.

*1.15 Section 355 body*

Not relevant as the employer in this case is a council or a number of councils.