Legal and Governance Models for Shared Services in Local Government

ACKNOWLEDGEMENTS

INTRODUCTION

The paper 'Legal and Governance Models in Local Government' forms a component of ACELG's research programme. As such, it builds on the report 'Consolidation in Local Government: A Fresh Look' prepared by the Centre and its partners earlier this year.

The proposal for this paper has been a collaboration between the Centre and the Wellington Blaney Carbonne – or WBC - Strategic Alliance of the Central Tablelands of NSW.

This paper is not intended to discuss the merits, or otherwise, of shared services relative to amalgamation but rather to identify ways of improving shared service delivery within existing governance and legal frameworks

The paper's objective is to identify the ways in which services can and are currently shared in local government. It identifies the legal frameworks under which this can happen and draws on a set of case studies of organisations which have established shared service arrangements using different

governance models, summarising how they work, identifying their strengths and challenges, and the extent to which each model can be replicated.

LEGAL BACKGROUND

I'll now briefly run through the legal background before proceeding on to the case studies themselves.

The ability of councils to share services with other local councils can be constrained by the laws and regulations enacted within their State.

As you probably know, each State has enacted its own laws and regulations to guide and direct local councils in the activities which they can or cannot undertake in sharing services.

This presentation is not intended to cover the specific laws for each State in this regard. However, I will summarise a group of principles which pertain to most jurisdictions and offer a guide to the legal framework under which councils can operate and share services as a group.

Flexibility

Generally, a council has a significant degree of flexibility in what shared services activities it can arrange. In the main, there is no limitation here. So both back-of-house and front-of-houses services may be proposed for sharing.

Geography

Generally, there is no geographical limitation as to where a council can operate a shared service. Although the practicalities of distance need to be taken into account, and there tend to be restrictions on the regulatory powers which a council can exercise outside its council area.

Entity Formation

There is less discretion, however, on how a council can carry out and implement shared activities.

In most States, a council or group of councils will need to seek ministerial approval to form an entity to manage and operate shared services.

Legal Structures

Depending on the jurisdiction, councils can choose to undertake shared arrangements using one of two legal stapporachess:

- The most common method is to form an entity as a body corporate or incorporated association. This appears to be favoured as a model as councils tend to be comfortable with the familiar governance structures, reporting and compliance requirements afforded by this approach.
- Alternatively, in some States, such as Queensland and NSW, a group of councils may form under a company structure, such as The Hunter group of councils. Whilst this affords the group more flexibility in how it operates, the compliance requirements are rigorous, there are more regulations to adhere to, increased record-keeping is required and there can be higher administrative costs

I will now discuss the case studies.

CASE STUDIES

The core of the paper sets out a group of case studies which analyse how shared services operate in practice under a range of different governance models.

I will briefly run through three of these models. They are the Cradle Coast Authority in Tasmania, the Eastern Health Authority in South Australia and the Waikato and Bay of Plenty Local Authority Shared Services in North Island New Zealand.

CRADLE COAST AUTHORITY (TAS)

So, the first case study is The Cradle Coast Authority in Tasmania.

What is it?

The Authority was established in 1999 as a joint authority by 9 councils across the North-West and West Coast of Tasmania. It was set up under Section 30 of the Local Government Act of Tasmania and constituted as an incorporated association. As such it performs its functions as if it was a local government. The Authority is governed by a two-tiered structure comprising a representative group of elected councillors from each council and a skills-based board of directors.

Why was it established?

It was formed to respond to the economic recession of the late 90's. The region was closing down. In the first few years of its establishment, the Authority's function was unambiguous. Its priority was to bring re-development to the region, by attracting capital and funding from any source to revive the economy. The Authority used an investment-ready, easy-to-work philosophy for the region with the support of State and Federal money to implement a cross regional employment, infrastructure and grants programme.

What does it do?

Since then, the Authority has seen its main function to assist in resource sharing by member councils and deliver on activities delegated to a regional level. The Representative Group create the strategic direction and agenda for the region. The Board, using its skills-based experience, craft this strategy into budgeted, resourced and time-framed operational activities.

How does it do it?

The Board identifies ways in which synergises can be created across different policy pathways to provide common outcomes. For example, the Authority hosts the region's natural resource management committee and staff. This provides a platform on which value-adding activities can be created. The NRM

group are currently working in the Tarquinne area and developing integrated outcomes for the potentially competing interests of economic growth, retaining ecological diversity and encouraging tourism development.

The organisational structure of the Authority is modular. It can alter its size and focus in response to the strategic direction being taken. Its service activities expand and contract depending on the changing priorities of the member councils and the needs of the region.

Good Aspects

As stated earlier, the Authority has a regional perspective and works at this higher level. This is exemplified in the area of waste management. A group of member councils have created a separate joint authority to operate a group contract for waste services and operate a landfill. The Authority has worked in alignment with this approach by establishing a regional waste group to develop environmental policy and other waste matters at a strategic level.

The Authority also provides a way for State Government to refer to one entity rather than having to deal with nine separate councils. This approach provides a collective voice and cuts down transactional costs. However, the Authority also recognises that in many cases, where the State Government is unable to deal with issues across the State at a regional level, it may need to revert to the alternative pathway of consulting on a council-by-council basis.

At the business level, the Authority works productively with other regional and State agencies. For example, it has a service agreement with Tourism Tasmania and charges a fee to perform marketing and co-ordination roles for its member councils.

By helping to rebuild communities in the region, the Authority has begun to partner with other organisations such as universities and young professional groups to retain local talent and stem the youth brain drain leaving the region. To this end, it is working on educational programmes, workforce development

and heading upstream into other areas such as social inclusion for disadvantaged groups.

Challenges Ahead

In challenges ahead, the State Government is working through planning reform in such areas as water authority structures and there is current discussion about where joint authorities fit into this landscape. The Authority is also aware that examples of its success can also be interpreted as empire-building and can be seen to unduly influence the decision-making process of the member councils. Ongoing and effective communication is an important tool to ensure that the stakeholders can feel in control of this master/servant relationship.

Replicable

The joint authority model generally works well. By using a simple body corporate form of governance it can be replicated in other jurisdictions. The activities and positioning of the Authority indicates that it occupies an important position within the local government sector. The Authority can provide a service delivery focus for the regional where operations can be done better and at a larger more effective scale whilst at the same time allowing other services like community development to be delivered by individual councils themselves. The Authority occupies a pivotal position where scale benefits can be achieved with democratic representation at the local level still being retained.

EASTERN HEALTH AUTHORITY (SA)

The second case study is the Eastern Health Authority of South Australia.

What is it?

The Eastern Health Authority was set up as a regional subsidiary, by a group of councils located in the eastern and inner northern suburbs of Adelaide, under Section 43 of the South Australian Local Government Act.

Why was it established?

Since its inception in 1899 as the East Torrens County Board, the Eastern Health Authority has played a significant role in the promotion and enforcement of public health standards. Under the Act, the Eastern Health Authority has been established, and provides specific environmental health services on behalf of its five member councils.

What does it do?

The Authority's objective is to protect and promote public and environmental health for the wellbeing of the community on behalf of its constituent councils. The Authority ensures that its councils meet their legislative responsibilities relating to environmental health as mandated in the Public and Environmental Health Act, Food Act and Supported Residential Facilities Act.

How does it do it?

The Authority's governing board is composed of ten directors, with two representing each council.

Its main functions includes, provision of immunisation services, the surveillance of food safety, sanitation and disease control, and the licensing of supported residential facilities

Under the Act, the Authority may also provide services to councils outside the constitutent council group, with the group's endorsement. To this end, the Authority currently provides immunisation services to Adelaide City Council and the licensing of residential facilities on behalf of Unley City Council.

Strengths

The authority has a number of strengths. Community satisfaction surveys indicate that the Authority is providing an efficient and effective service. The Authority has a relatively small group of highly skilled and trained professional environmental health officers. They are accountable directly to the Board and as such undergo a greater degree of accountability in their direct reports to the

Board than staff members at equivalent levels in an individual council's health department.

The Authority has an accountable financial structure. Its service costs are apportioned according to the level and type of activity undertaken for each council. As a result, its activities are charged on a fee-for-service basis with no hidden financial support.

Because it only employs about 17 staff, it is able to buy in corporate services such as payroll and HR from one or more of its constituent councils without having the administrative costs of running these services themselves.

The Authority has been able to demonstrate the cost and quality advantages that can be gained by providing specific health service activities, such as an immunisation programme, across the group of councils. Bulk supply of drugs can reduce costs, the provision of a network of clinics can standardise and maintain a high level of service, as well as allow residents of a constituent council to access such services in another council area within the group.

Challenges

It is not all good news though. The Authority has ongoing challenges to deal with. It is aware that it needs to maintain good and ongoing communication between the executive of the Authority and the member councils than would otherwise be the case for an internal council health department. Such communication avoids the Authority being isolated from potential decision-making avenues within councils and can also demonstrate to the constituent councils that they are receiving good value for money.

There are also concerns that higher levels of accountability by health officers to the Board might have a potentially negative effect on recruitment if a supportive environment and professional development opportunities does not continue to be present.

Replicable

Within South Australia and other jurisdictions, there is clearly a place for this regional subsidiary model. It can occur where there are council services such as environmental health which can benefit from a highly trained team managing complex legislative responsibilities for a council group. This model is also appropriate where there is the political will by councils to relinquish tactical and, to a degree, strategic control of council's services - such as environmental health - to a separate independent authority.

WAIKATO & BAY OF PLENTY LOCAL AUTHORITY SHARED SERVICES

The third example, is Waikato and Bay of Plenty Local Authority Shared Services.

What is it?

This is a comparative study of two adjacent regions within the northern part of North Island in New Zealand. Both Waikato and Bay of Plenty form natural catchments and the councils have historically developed collaborative links with each other within each region.

Under Sections 6 and 7 of the NZ Local Government Act, a 'council controlled organisation' is defined as 'any company with a majority council shareholding' where more than one council may be represented. A council controlled organisation can have various purposes. Operating under a business structure, it takes the form of a 'local authority shared service' or LASS as its acronym.

Why was it established?

Waikato and Bay of Plenty regions identified this legal entity as an appropriate structure to develop regional opportunities. The councils in Waikato decided that the management of data on property valuations in the region could be best achieved through forming a commercial entity as a local authority shared

service. As a result Waikato Local Authority Shared Services, or WLASS Ltd, was formed.

The Bay of Plenty councils' initial aim was a more broad approach to take advantage of collective procurement opportunities and provide a platform and more positive response to council amalgamations. They also identified the council controlled organisation structure as suitable for their purposes and decided to form Bay of Plenty Local Authority Shared Services, or BOPLASS Ltd.

How does it work?

Both Authorities have a governing board structure. The membership of the WLASS board is optional. It was decided to establish a board of six members with one council representing two or three other member councils. In contrast the councils of BOPLASS jointly agreed the importance for each council to be represented on the board and to be committed to the decision-making process. With a focus on business, the CEOs of each local authority represent their council.

Both Authorities determined that it should not be compulsory for all members to participate in every initiative the authority undertakes. However, BOPLASS actively encourages its members to engage in the process on the basis of members needing to indicate reasons as to why they would not participate. WLASS have been more non-committal in this regard.

What does it do?

In the Waikto region, the three CEO's from Hamilton City, the Regional Council and Waikato Council championed the establishment of the authority. The opportunity was seen to develop this central database which would not only serve the member councils, but also service third party customers on a fee-for-service basis. Both this database model and another initiative, a regional transport model, have been working effectively and efficiently over recent years.

At its commencement, BOPLASS identified simple activities which could demonstrate early benefits to the council group, and build future activities from this solid start. Early achievements were the procurement of stationary, IT software, aerial photography and insurance. Building on these positive outcomes, BOPLASS has responded to an NZ government incentive to develop a regional broadband network. The introduction of this service has allowed member councils to access and share data with each other. This has created significant benefit in advancing collaborative activities.

How does it do it?

Both authorities commenced on the basis of responding to external factors rather than moving member councils forward with a multi-layered regional strategy. WLASS was driven by a single project with BOPLASS more concerned to use the authority as an instrument of risk management. It is perhaps understandable that as councils are constituted primarily to work in the best interests of the community they represent, they do not necessarily seek such benefit through shared activities.

Engagement at a regional level is potentially a high risk activity, reliant on collective trust and common objectives to be agreed and delivered by a number of councils. The danger of reputational damage and costly mistakes are ever present should regional initiatives fail to succeed. (Note eg New England Councils experience)

Looking at the experience of these two groups, the development of collaborative activities has tended to depend on the track record and success of previous initiatives, and to move forward at a varying rate of progress, dependent on the quality and drive of its leadership, and the decision-making of the most risk averse member council.

Challenges Ahead

With challenges ahead, regional collaboration for WLASS appears to have stalled. The CEOs who provided the driving force for setting up the authority have since left and the new CEOs appear to be less committed to regional collaboration within the authority. There is also a perception of a cost burden and level of bureaucracy which has further deterred new activities being undertaken, together with the perception that Hamilton City plays a dominant role in the group, which seems to have created a political imbalance.

The challenges for BOPLASS have been different. Engagement of the politicians has presented a challenge as elected members have seen the role and interest of the authority as a business function of their executive top management. The CEOs from the member councils have different management styles. As a result, some have found it difficult to cover the regional issues at a strategic level of thinking. Aligning the capacities, capabilities, and situations of member councils is an ongoing challenge. The need to find and develop a clear strategic direction for the region is seen as more important now.

Replicable

In closing the case study, replication of this governance model is possible if legislation in a jurisdiction allows councils firstly to form group activities under a company structure and secondly to be able to engage in commercial activities.

In addition to legal legitimacy, other attributes are also necessary. Equitable relationships between member councils need to be established where no one council is seen or perceived to be seen as dominant.

And the shared entity also needs to have the flexibility to grow and transform in response to the changing confidence and aspirations of its member councils.

CONCLUSION

To conclude:

In the overarching business of a council, the sharing of services is a complex area of review and selection which inevitably involves the development and management of external relationships outside the direct influence of the council.

Risk increases when there is less of an ability to control the process and outcomes which involve other players.

Compromise, effective negotiation and a strong degree of consensus are key elements required between member council.

The organisation created by the group of councils, needs to have highly tune communication skills to handle perceptions and unintended outcomes which may affect their relationship with their member councils.

Shared services arrangements need to be viewed as a strategic activity with a strong political collective will for collaborative arrangements to work.

The glass needs to be seen to be half full.

That ends my presentation.

The paper is currently under editorial review and will be published by ACELG early next year.