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Northern Rivers Councils

ballina shire council

Byron Shire Council

Kyogle Council

lismore city council

clarence valley council

Richmond Valley Council

TWEED SHIRE COUNCIL

Regional Waste Governance Model Update – November 2013

Contents

local government

"Regional Waste Governance Model"

Background

- Each of the seven councils of the Northern Rivers region has traditionally relied on its own landfill facilities for managing the disposal of residual waste
- Several member councils face critical pressure to secure disposal capacity, while others have sufficient capacity for local needs well into the future
- As an outcome of an earlier workshop councils plan to continue to use the SEQ option to supplement landfill capacity while it is economically favourable. However this is viewed as being short term to mid-term option only

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3

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Background

- Previous reports have identified significant benefits from developing a long term regional waste disposal facility in the Northern Rivers region;
  - Potential to strengthen regional collaboration
  - Offers significant savings through economies of scale
- The development of a regional landfill at Bora Ridge as been estimated as providing regional savings of approx $6m pa*.
- The development of a regional waste disposal facility at Bora Ridge or elsewhere provides the opportunity to consider the most effective and efficient disposal solution available. This includes the consideration of Alternative Waste Treatment as well as a landfill.

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**Waste projections and savings acknowledged as coming from the Northern Rivers Waste Disposal Strategy 2012 produced by Hyder*

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Background

- Investigations have begun into feasibility and options for a regional waste disposal facility at the Bora Ridge site. If this is an appropriate site then development is estimated as taking 7 years.
- This report is focussed on the governance model that would best suit the development and operation of a regional waste disposal facility including;
  - The process involved to implement the preferred option; and
  - The commitment required from the councils
- This report assumes that a business case for the construction of a regional disposal facility can be made out at Bora Ridge or another suitable site.
- Report has also been written in a way that allows the advantages and disadvantages of different models to be understood as applying to other services/enterprises.

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Purpose

- Morrison Low has been commissioned to;
  - Provide a high level review of governance options
  - Determine what Councils need to do to commit to preferred model; and
  - Develop a Memorandum of Understanding to support the process
- The purpose of this initial report is to provide a high level review of potential governance models in order that a preferred option(s) be identified for further and more detailed analysis (e.g. aspects of implementation)
- In our experience of shared services and creating multi council governance models, the best results are achieved when all of the councils have early involvement in the process. This provides for early identification and understanding of key issues
- We also recommend that each council formally agree to the attached MOU to provide a strong basis on which to conduct further investigations

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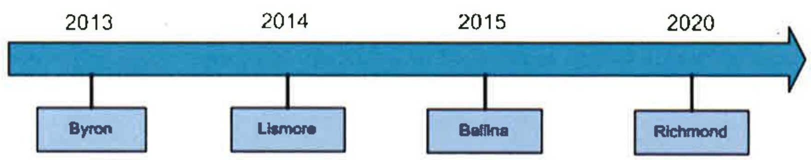
Existing Situation

- Regional capacity is available but is unevenly spread across region. South East Queensland is seen as the best option for supplementing capacity in short to mid term while regional solution is developed

Estimated Regional Landfill Closure Dates



- Regional savings of $6M per annum from Bora Ridge are based on volumes of waste reported by each Council in WARR data returns. This equates to only 54% of the total available waste in the region.

2010/11	Ballina	Byron	Clarence	Kyogle	Lismore	Richmond	Tweed	Total
WARR waste disposal (tonnes)	13,502	11,443	21,066	3,040	8,344	8,630	30,601	96,625
Total waste disposal (tonnes)	24,753	24,300	38,261	5,854	20,530	16,872	48,416	178,986

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7

Objectives and Issues

- Minimising risk to Council
  - 'Competition' from neighbouring landfills
  - Security of waste stream
  - Significant upfront costs of development
  - Certainty required for long term and multi-council shared services
- Affordability
  - Significant costs to develop a new regional waste disposal facility
    - Bora Ridge landfill has been estimated at $12 million with operating costs estimated to total $6.1 million p.a ($61/t)
  - These costs fall on the organisation responsible for its development whether that be a council, group of councils or a council owned company.

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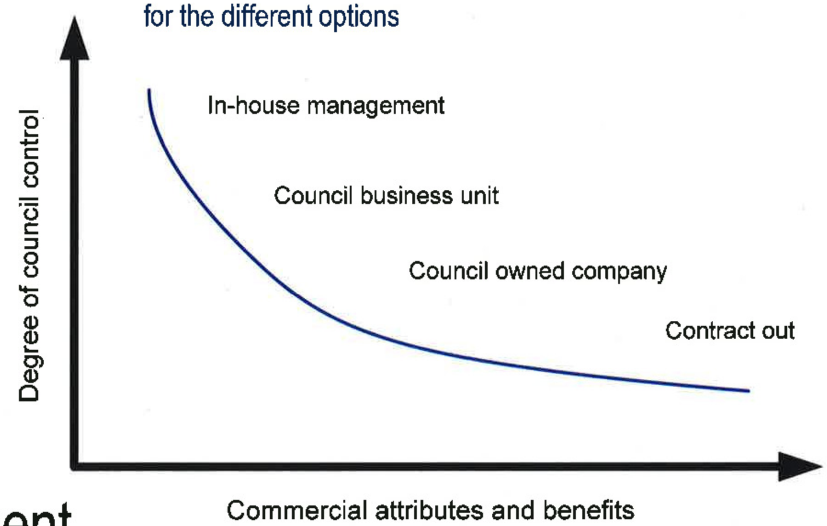
Objectives and Issues

- Keeping control
  - Perception of level of control often a key issue
  - Method of exerting control over organisation and its service delivery changes depending on the governance model chosen
    - Important that all stakeholders understand the different mechanisms used for the different options



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Objectives and Issues

- Desire to make a return
  - Council run facility may not be as business focused as a private waste company and therefore is not in a position to best maximise its profits
  - Profit or lowest price path?
    - For example, the regional savings of $6M per annum are based on only the council controlled part of the waste stream. There is a further 46% of the waste produced in the Northern Rivers region which potentially could be disposal of at a regional facility.
- Waste Minimisation & Levels of Service
  - Irrespective of governance model, all member councils able to retain control over levels of service for their communities
  - Each council remains free to decide and implement the Waste Strategy that its community desires
  - Regional Facility is the a long term disposal solution which processes the waste provided to it by each council. Strategy, collection services and education remain with each council.

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Governance Options

- In-house Management
  - Single council would be responsible for developing, owning and operating facility
  - Is that consistent with the concept of NOROC Regional Waste facility?
  - Section 355 Committee and/or Advisory Committee
- Unincorporated Joint Venture
  - Entity that otherwise lacks a formal structure of the type identified in this report
  - A board of representatives established with contractual abilities to provide governance to the venture
  - Establishing a joint venture is likely to require the approval of the Minister (like a company).
  - Lack of formal structure and long term certainty creates higher risk for each council

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Governance Options

- Regional Organisation of Councils
  - There is no specific legislative framework or model for a Regional Organisation of Council and models across the state vary
  - NOROC is an incorporated association and its own separate legal identity from the constituent councils
  - Rules in the Associations Incorporation Act 2009 have significant impacts on the suitability of NOROC (as it currently exists) as a governance model
    - Thresholds on income, assets and expenditure of $2M
    - Profits or dividends cannot be distributed to the members
    - If wound up, it is unlikely that the assets could be distributed to the members

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12

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Governance Options

❖ County Council

- Established by proclamation of the Governor (section 387 of the Local Government Act)
- The governing body is responsible for managing the affairs of the county and must be elected from the councillors of the constituent councils
- Would have a separate legal identity from the constituent councils and would have all the same features of the constituent councils
- Does not allow for introduction of independent directors to the governing body
- Representation at governing body level does not take into account size of the council nor the volume of waste produced
- Model appears to have fallen out of favor in New South Wales

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Governance Options

- Council Owned Company
  - Separate legal identity from each of the constituent Council shareholders and would have all the typical features of a company
  - Board of directors appointed by the shareholders
    - Directors could be appointed for their particular skills and expertise
  - Founding documents set out
    - the purpose of the company
    - set performance expectations; and
    - defines arrangements between shareholders
  - Approval of the Minister required to establish a company limited by shares
    - Must be in the public interest
  - Limited use of the model currently in NSW but successfully used elsewhere

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14

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Summary of Options

Council Objective	In-house	Unincorporated Joint Venture	Regional Organisation of Council	County Council	Council owned Company
Minimising risk to Council	✓	✓	✓	✓✓	✓✓✓
Keeping control	✓✓✓	✓✓	✓	✓	✓✓
Affordability	✓	✓	✓	✓✓	✓✓✓
Ability to make a return / Profitability	✓	✓	✓	✓	✓✓✓
Waste Minimisation & Levels of Service	✓✓✓	✓✓	✓✓	✓✓	✓✓

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Recommended Model

- In our view the most appropriate model for developing and operating a regional waste disposal facility is a council owned company.
  - Long term certainty for all shareholders
  - Common, well understood governance model
  - Allows for flexibility of shareholding appropriate to each council
  - Control exerted through foundation documents and ongoing performance monitoring
  - Able to attract and make use of industry experts as board of Board of Directors
  - Able to borrow development funds in its own right reducing the upfront cost to each council of developing a regional facility,
- Some interesting features of two well known New South Wales examples of council owned companies involved in waste management are briefly highlighted in the following pages

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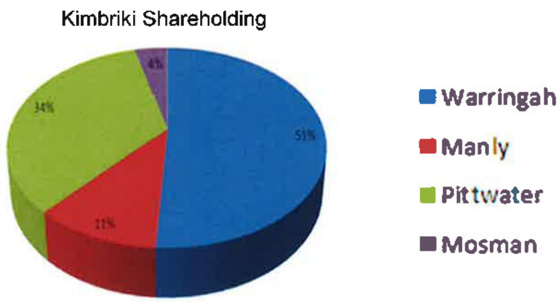
16

Kimbriki - Shareholding

- Kimbriki Environmental Enterprises
  - Owned by Manly, Mosman, Pittwater & Warringah councils
  - Provides recycling and waste disposal (non-putrescible). Is currently in the process of developing an Alternative Waste Treatment Facility
  - Does not own the landfill site, site leased from Warringah Council
  - Has long term waste services agreements with each council
- All directors are independent of the councils and are appointed for their skills and expertise
- Minister approval required a majority shareholder and for any staff transferring employment to be transferred on the same terms and conditions



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17

Hunter Councils

- Hunter Councils
  - Engages in a wide range of activities using Council owned companies
    - Waste management, legal services, environmental services, procurement
  - Umbrella Company approach
- Hunter Resource Recovery
  - Specialist waste management company (Cessnock, Lake Macquarie,, Maitland and Singleton councils)
  - Does not own assets
  - Essentially administers a joint collection & recycling contract
  - Board has Council officers (General Managers & Staff) as well as elected members. No independent directors
  - Shareholding is shared equally

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Key issues to determine for council owned company

- The following issues will be addressed as part of further and more detailed analysis into the potential for the formation of a Council owned company
  - Capitalisation
  - Shareholding
  - Setting performance requirements
  - Structure of the Board
  - Shareholders committee
  - Competing objectives
  - Pricing
  - Council procurement rules
  - Existing landfills
  - Ministerial approval

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Key issues to determine for council owned company

- The resolution of all the issues identified in the previous page will be implemented through the foundation documents for the company including;
  - Statement of Corporate Intent
    - Performance expectations
    - Roles, responsibilities and skills/expertise of the board
    - Role and responsibility of the shareholders committee
  - Company Constitution
    - Formally establishes the company
  - Shareholders agreement(s)
    - Establishes the arrangements between shareholders including transfer of shares
  - Waste Services Agreements
    - Provides long term security of the waste stream which gives the company its value

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Recommend Next Steps

Action	Timeframe
Council briefings	November
MOU signed	December
Complete governance report	December
Preparation for application to Minister	January/February
Preparation for formation of council company	To be confirmed

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Questions

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procurement
alliance partnering
long term financial plan
asset management
waste management
governance
financial/feasibility modeling
economic development
sustainability

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Ballina Shire Council

Report on establishing a council owned company for commercial activities

November 2013

ballina shire council

Purpose

- Council's recent organisational review contained the following recommendation

  10. Council to consider the establishment of a council owned company to operate its commercial activities

- This report is the next step in considering whether and, if appropriate, how that recommendation be implemented
- The initial review has been high level and focussed on:
  - identifying key issues around governance and management of the Council's commercial activities
  - clarifying what a council owned company is and how it would/should operate
  - identifying examples of council owned companies
  - considering whether a council owned company would be appropriate for Ballina
- This is not a review of the Council's Property Investment and Development Policy or the Airport Strategy, the performance of the businesses or the staff

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establishment of a council owned company

2

Commercial activities

Holdings	Estimated Value	Rental
Investment Properties	$18.3M	$1.71M
Residential and Industrial Land Holdings	$14M - $21M	-
Café Leases	$1.27M	$170,000
Residential Properties	$1M	$50,000
Other	-	$350,000
Airport	$30 - $40M	$4.5m
TOTAL	$64.5M - $81.5M	$6,780,000

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3

Commercial strategies

- Property Investment and Development Policy

Level of Risk	Benchmark Above 90 Day BBSW
Low	< 2%
Medium	2% to 5%
High	5% to 10%
Speculative	> 10%

- Airport (LTFP)
  - Operate as a stand alone business
  - No expectation that there will be a return on investment
  - Wider economic benefits for the community

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establishment of a council owned company

Rationale put forward for change

- The organisational review provided the following reasons for the recommendation to form a company
  - Clarity and transparency
    - Both the Investment and Development Policy and The Organisational Review Report highlight the separate roles that Council has in its commercial property activities, being developer and consent authority
    - There is a need for care to be taken in managing and separating these roles
  - Focus on Council's core role
    - The Organisational Review Report also highlighted the distraction to Council's core business and key resources being allocated to non-core local government activities

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establishment of a council owned company

5

Company options

- There are probably two main options for structuring distinctly different council activities into a composite company structure. These are:
  - A separate operating company for each; all held 100% by a holding company

  - A single company holding all activities

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Some examples

- Council Airport Company
  - Newcastle Airport Ltd
- Council Property Company
  - Auckland Council Properties Ltd
- Investment Companies
  - City of Brisbane Investment Corporation
  - Timaru District Holdings

- The most realistic comparison should be to a fully commercialised Business Units
  - Snowy Works & Services

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Maximise the return

ballina

- Airport and property development are complex and specialised businesses
  - This is already recognised by Council through the current management of these businesses and reporting to special interest committees
- Councils are the experts in providing local services to their communities
  - Legislation demands transparent governance processes and access to decision making and information
  - Councils typically have well-developed processes, procedure and policies that support delivery of their particular business model
  - These do no necessarily translate into councils operating commercial business well
- These activities are not core Council business and if Council is in the business of undertaking these it should to so with the express purpose of maximising the return on investment.
- A company structure with a board of skilled and experience board members would assist Council in achieving the greatest possible return

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8

Managing risk

- Major risks for Council
  - Financial risk from property development
  - Financial risk from airport operations
  - Operational risks from airport
- How is the future capital investment for the airport to be funded
- Oversight of compliance and risk management frameworks are key components of effective governance
- The ability to separate and share financial and operational risks arises most effectively through creating a company
- Reducing risk and improving risk management are generally seen as key advantages of a company as the responsibilities tend to be more clearly defined and monitored
- Council's appetite for risk is generally closely related to the issue of control

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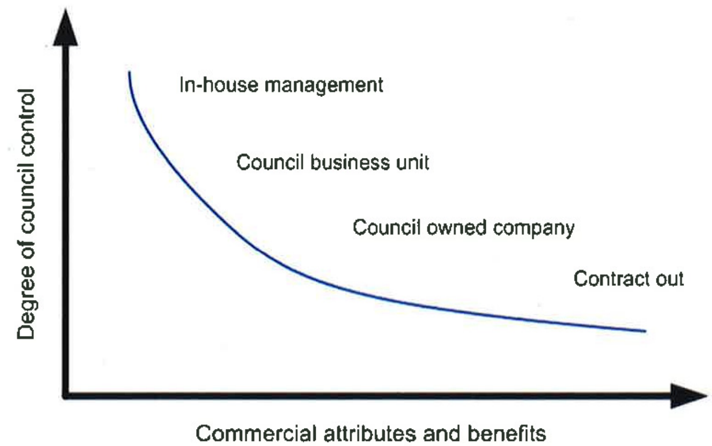
Control

❖ Can be a perception of a loss of control if a company is formed, but arguably a change to a company structure along with improved reporting, transparency and accountability increases the level of Council control over an activity.

Typical view of the relationship between commercial attributes and degree of Council control



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establishment of a council owned company

Conclusions

- Use of outside and independent expertise is likely to add value to Council's investment decisions and commercial activities
- A company structure would provide a more flexible and focused organisation that can respond to changing market conditions
- A company structure is likely to provide:
  - increased focus on commercial activities
    - Strategic (Council and Company)
    - Operational (Company)
  - better allocation and management of risk
  - more transparent separation of the developer and regulatory role, and
  - allow Council to focus on its core roles
- While a company structure will introduce costs (e.g. directors fees and compliance costs) given the size of the assets and expected returns these are likely too be able to be justified
- Appropriate control mechanisms must be put in place to protect Council and the communities investments

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Summary

Council Objective	In-house	Council owned Company
Maximise Return	✓	✓✓✓
Minimising risk to Council	✓	✓✓✓
Keeping control	✓✓✓	✓✓

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establishment of a council owned company

Next steps

- The following issues will be addressed as part of further and more detailed analysis into the potential for the formation of a council owned company
  - Structure of the company(s)
  - Capitalisation
  - Setting performance requirements
  - Structure of the Board
  - Shareholders committee
  - Financial framework
  - Transfer of assets (if required)
  - Ministerial approval
  - Implementation costs
- Recommended that an early discussion be held with the Minster to understand his position on the formation of a company

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13

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procurement
alliance partnering
long term financial plan
asset management
waste management
governance
financial/feasibility modeling
economic development
sustainability