

Council

**ACTING CEO REPORT ON KEY PERFORMANCE  
INDICATOR 4**

Report – Regional Organisation

Meeting Date: 27 January 2021

Number of Pages : 10

# **REVIEW THE POTENTIAL FOR A REGIONAL ORGANISATION TO PROVIDE SERVICES OVER NUMEROUS LOCAL GOVERNMENTS**

## **SUMMARY**

The process of moving toward resource sharing will require a strong commitment from the Councils as well as the CEO and staff in all the Shires. There will have to be a 'culture change' within each of the Shires from the traditional thinking of developing practices and procedures that will provide services and facilities within the boundaries of its district to the development of practices and procedures that will provide services and facilities to the districts of all the Shires as a whole. Experience from other groups of local governments is that the parochialism that exists is one of the greatest impediments.<sup>1</sup>

Should some or all of the local governments in the Great Southern wish to further peruse resource sharing opportunities they should commence the process by establishing a working party that provides the vehicle for greater communication between the staff and the elected members. Once that communication link is established opportunities will be identified that can be commenced immediately or in the medium term. There needs to be an acceptance that benefits will not be seen for a period of time and the commitment will be difficult to manage, especially the impost on staff.<sup>1</sup>

Current legislative requirements, both for a regional local government and a regional subsidiary body, have substantial legislative compliance requirements that incur significant administration costs to operate. This is predominately the reason why not many local governments have taken up the opportunity to establish such a body to provide regional services across a number of local governments.

Given the current legislation requirements and the administration costs involved in establishing a regional organisation it's recommended that no action be taken at this time on the formal establishment of a regional organisation or regional council in the Great Southern and the matter be revisited once the current LG Act 1995 review is completed. Any resource sharing considered at this time should be via an informal cooperative approach between local governments with any sharing of staff proposals being undertaken via a simple MOU arrangement.

Finally, the South Coast Alliance, potentially with some modifications to comply with the proposed new LG Act, would appear to be well placed to expand to take on the role of a regional organisation to provide a range of services to local governments in the Great Southern.

## **BACKGROUND**

As part of my contract of employment as Acting Chief Executive Officer (A/CEO), prior to Council appointing a permanent CEO, the Council indicated that the prime function of my role, in addition to day to day management responsibilities, *'is to determine the place Plantagenet may fit into the local government role heading into 2030 and to look at the strengths and weaknesses of the organisation and make recommendations in areas of both personnel and hard assets.'*

The Council has set four Key Performance Indicators (KPI's) for completion within the initial six month employment contract and requested a report be submitted to the Council on each one by a predetermined date. If the temporary CEO term is extended by three months to the 22 April 2021 then a fifth KPI may be forthcoming to the Council. The fourth KPI is as follows:

- ❖ *Review the potential for a regional organisation to provide services over numerous Local Governments.*

The key task requested by the Council in regards to this KPI is to:

- ❖ *Look into the potential for a regional organisation to provide services over numerous Local Governments. The Acting CEO will be requested to look deeper into this option as a practical solution for true resource sharing over municipal boundaries.*

The Council has requested that the report respond to the following:

- ❖ *Provide council with a report based on the current position of our LG neighbours (including VROC) and the strategic future that may give strength and resilience to the greater region in regards to the functions of LG. This report is to define which services and professional procurement can provide a stronger and more cost effective outcome to our community and ratepayers alike.*

### **Regional Organisations**

The Local Government Act (LG Act) has several relevant sections that provide the ability for local governments to form a regional organisation involving two or more local governments, with the relevant sections detailed as follows.

#### **3.61. Establishing regional local government**

- (1) *Two or more local governments (referred to in this Division as the **participants**) may, with the Minister's approval, establish a regional local government to do things, for the participants, for any purpose for which a local government can do things under this Act or any other Act.*

#### **3.62. Constitution and purpose of regional local government**

- (1) *A regional local government —*
  - (a) *is a body corporate with perpetual succession and a common seal; and*
  - (b) *is to have as its governing body a council established under the establishment agreement and consisting of members of the councils of the participants.*
- (2) *The purpose for which a regional local government is established (referred to in this Division as the **regional purpose**) is as set out in the establishment agreement.*

#### **3.69. Regional subsidiaries**

- (1) *Two or more local governments making arrangements under which they are to provide a service or carry on an activity jointly may, with the Minister's approval and in accordance with the regulations, form a subsidiary body (called a **regional subsidiary**) to provide that service or carry on that activity.*

- (2) *If the Minister approves the formation of a regional subsidiary, the Minister must, by notice in the Gazette, declare that the regional subsidiary is established —*
  - (a) *on the date set out in the notice; and*
  - (b) *under the name set out in the notice.*
- (3) *A regional subsidiary —*
  - (a) *is a body corporate with perpetual succession and a common seal; and*
  - (b) *is to have a governing body consisting of members appointed in accordance with the regional subsidiary's charter (as approved by the Minister in accordance with section 3.70(3)).*

Whilst the two organisations are very similar there are some subtle differences, detailed as follows:

#### Formation

- ❖ A regional local government is established via an agreement.
- ❖ A regional subsidiary is established via a charter.

Both require Ministerial approval before commencing.

#### Constitution

- ❖ A regional local government is a body corporate consisting of members of the councils of the participants.
- ❖ A regional subsidiary is a body corporate whose members are appointed in accordance with the charter and **may include members who are not council members or employees.**

#### Legislative Requirements

- ❖ A regional local government is required to comply with the LG Act and regulations as if it was a local government established for the district.
- ❖ A regional subsidiary is only bound by 7.1 and Part 7 Divisions 3A to 4 of the LG Act relating to audit requirements
- ❖

#### Activities Allowed

- ❖ A regional local government can only do things for the regional purpose.
- ❖ A regional subsidiary body can undertake the provision of any service or activity jointly, subject to Ministerial approval. **(not bound by regional purpose only).**

#### Members Fees

- ❖ Both organisations require the payment of fees to its members for attending meetings of the organisations.

## **INTRODUCTION**

The presumption that a larger local government, or large groups of local governments, can provide services more economically cannot be supported for the provision of all services. Some services do benefit from economies of scale, when required on a larger scale, while others are provided more economically and at a higher quality when provided locally.<sup>1</sup> It is identifying these differences that has the potential to provide the greatest benefits to the participating local governments.

For resource sharing to be achieved there will need to be a culture change within the local governments by both the staff and elected members. The change will include a change from considering matters as a single local government to considering matters for the benefit of all the local governments, or most of them, as one entity. Part of developing that culture will be changing the response to opportunities that arise in any one of the local governments from 'how do I resolve this in my Shire' to 'does this provide an opportunity for all the Shires.'<sup>1</sup>

## **REPORT**

As can be seen from the information in the Background section of this report legislative requirements, both for a regional local government and a regional subsidiary body, have substantial legislative requirements that incur significant administration costs to operate and is predominately the reason why not many local governments have taken up the opportunity to establish such a body to provide regional services across a number of local governments.

### ***Regional Cooperation***

The establishment of a regional organisation is currently fairly restrictive under the LG Act and is effectively the establishment of another local government that is subservient to all the legislative compliance requirements that apply to existing local governments and would incur significant overhead costs that would have to be passed onto the participating local governments<sup>1</sup>. For this reason, any proposal to form such an organisation should include potential membership from all the Great Southern local governments (South Cost Alliance and Southern Link VRC local governments).

Those regional organisations in Western Australia that have been established have done so as a formal regional local government, under the LG Act legislation, are mostly in the metropolitan area and have predominately been established specifically to deal with waste. There are five (5) in the metropolitan area and one in a regional area (Bunbury Harvey RC) that deal only with waste, whilst a further two in the metropolitan area provide a range of services to member local governments.

Establishing a regional organisation to provide services across numerous local governments should only be considered where there is a clear demonstration of the lack of supply of identified services such as professional staff, specialist plant etc. The utilisation of joint tenders/quotations to engage contractors to undertake works on a regional basis has the potential risk of the local contractors being excluded or priced out of the works. The Shire of Denmark has a very strong emphasis on supporting local by utilising local contractors whenever the opportunity arises, something that this organisation will have to consider in the context of regional cooperation.

A margin or allowance, for local contractors, similar to that provided in the Regional Price Preference Policy, could be introduced (say 10-15%) to encourage and benefit the use of local contractors for the supply of goods and services and works that are below the current threshold amount outlined in the Regional Price Preference Policy. However, this generally goes against the original intention of establishing a regional organisation to supply services

One of the biggest dilemmas local governments have to confront, especially smaller rural ones, when considering the concept of regional cooperation/resource sharing, is whether their decision should be driven by a desire to achieve cost efficiencies, best value for money or support for local businesses.

## **Role of Local Government**

The primary function and role of local government is to provide services to its community that are identified as 'community services' and these are ones where in most instances there is no corporate business provider because the service does not generate a profit. Local governments should not engage in businesses activities that are in direct competition to private enterprise because:

1. It's generally not one of its core business activities, so does not generally have the expertise in that area.
2. If not carefully managed can become a financial burden to the local government.
3. Can at times result in the demise of a local business that is already providing this service.

If there is the ability for a local business to provide the service, even on a regional basis, then local government should stay out of it.

## **Adjoining Local Governments**

As part of my recent visit to the CEO's of Albany and Denmark to discuss regional cooperation, the potential to share underutilised plant was discussed including the use of contractors for some common works like road verge slashing and spraying and road sweeping etc. Both Albany and Denmark are open to consider any proposals. However, there will be some challenges with the Shire of Denmark, especially in the areas of road verge slashing and spraying, as their community have some very specific requirements and expectations that may negate the ability for joint contract/tender arrangements. Discussions with the local governments to the north of the Shire could also be worthy of merit in some of these areas.

At the Southern Link VROC meeting on 8 November 2019, the Plantagenet Shire President sought comment from the other local governments on their support for the formation of a regional subsidiary body. The general consensus at that time was that all of the local governments encouraged resource sharing opportunities, via informal agreements between local governments, rather than a formal model.

Albany & Denmark are generally large enough to provide full-time positions for key professional staff and services to the community. Denmark has some services gaps but either sources these from the local private sector or from Albany. With professional staff they currently have an arrangement in place with the City of Albany to provide these services either on a cost recovery basis or as a joint share arrangement. There is an opportunity for the Shire of Plantagenet to increase its level of participation with these two local governments in the regional resource sharing of staff and provision of some services. This should be in an informal way, via MOU's or other such arrangements, as the cost of establishing and maintaining a regional organisation, under current LG Act requirements, would far outweigh the benefits.

The local governments to the north, that are members of the Southern Link VROC, are small local governments (except for Katanning), that very much rely on established MOU arrangements to source or share specific professional services from other local governments or engage consultants. The Shire of Plantagenet currently provides Environmental Health Officer services to Cranbrook and Broomehill/Tambellup under this arrangement.

## **Services and Professional Procurement on a Regional Basis**

As indicated in a previous report responding to KPI 2, it was indicated that the CEO's at the Shire of Albany and Denmark identified the following services/staff that could be shared:

- IT and GIS, Asset Management, Financial Services, Human Resources, Governance, Planning, Building and Health Services, Community Development, Events and Marketing and Bushfire Management.

In addition to the above, the Gilfellon Report of 2007/08 also identified a number of potential opportunities for joint tendering and purchasing, staff resource sharing and centralising of various administration tasks. These are detailed below together with some additional new ones identified.

It's interesting to note that it appears that since the Gilfellon Report was completed there has not been any take up of the joint tendering and purchasing proposals. One of the main impediments to this occurring has always been the administration and time required to prepare documents etc. Smaller local governments have traditionally struggled with undertaking these just for their own local government, let alone taking on a regional role, so unless the largest local government in the group has volunteered to take on this role, it does not progress. Where these tasks have successfully been undertaken they are provided by a regional organisation/council who supply this service to the individual local governments.

These are detailed below together with some additional new ones identified.

### *Joint Tendering and Purchasing*

- Bitumen sealing works
- Concrete works
- Culvert and drainage pipe work
- Plant, Equipment and Motor Vehicles
- Computer PCs and Equipment
- Waste and Recycling Collection
- Stationery Supplies
- Electrical and Plumbing Services
- Legal Services
- Street Cleaning and Sweeping
- Rural Road Verge Tree Pruning
- Townsite Tree Pruning
- Parks and Ovals Mowing
- Cleaning of Buildings/Public Facilities

It should be noted that some of the above have the potential to have both a positive and negative impact on local suppliers and contractors depending on the successful tenderer.

### *Staff Resource Sharing*

- Information Communication Technology (ICT) Support
- Planning Services

- Engineering Services
- Building and Environmental Health Services
- Governance Services
- Media Communications
- Asset Management (Roads)

#### *Centralising of Administration Tasks*

- Payroll/Costing
- Rating
- Human Resource Management (HR)
- Firebreak and Fire Plan Inspections
- Website Management

#### **Future Legislation**

The state government commenced a review of the existing LG Act 1995 in 2017, which has involved substantial local government and community consultation and feedback. The government also, in November 2019, appointed a *Local Government Review Panel* which provided a report back to the Minister for Local Government in May 2020. Several of the recommendations of the Panel relate specifically to regional cooperation by local governments, as follows.

#### *Expanded Regional Cooperation*

12. The Panel recommends that the new Act should promote and mandate expanded regional cooperation between local governments by:

- Making increased collaboration a specific objective and principle.
- Providing an improved model of joint (regional) subsidiaries that can be used for strategic planning, resource sharing, shared services delivery and commercial enterprises (see also Recommendations 14 and 39).
- Requiring regional cooperation as part of IPR (see also Recommendation 35).

13. The Panel recommends that consideration also be given to the potential need for a new form of 'regional authority' to enable collaboration on specific issues between governments and with other key stakeholders.

14. The Panel recommends:

- The regional council model is discontinued.
- A flexible model of joint (regional) and single (local) subsidiaries be introduced in order to enable:
  - collaboration between local governments; and/or
  - involvement of local government in economic development including commercial activities.

#### *Local and Joint Subsidiaries*

40. The Panel recommends that the new Act should provide the freedom for local governments to be involved in commercial activities where it is in the public interest and subject to competitive neutrality principles.



41. The Panel recommends that 'beneficial enterprises' not be introduced as a new mechanism for local government commercial activities, but that instead an updated and more flexible subsidiary model should provide for the following:

- a. Local government autonomy to establish a single or joint subsidiary to:
  - (i) Carry out any scheme, work or undertaking on behalf of the council;
  - (ii) Manage or administer any property or facilities on behalf of the council;
  - (iii) Provide facilities or services on behalf of the council; and/or
  - (iv) Carry out any other functions on behalf of the council.
- b. The subsidiary to be established through a charter.
- c. The charter to be certified by an independent and suitably experienced legal practitioner as within power and National Competition Policy.
- d. Public notice of the proposal to establish the subsidiary to ensure that there are no private operators that would be significantly disadvantaged.
- e. The subsidiary to be able to undertake commercial activities (within the limits of competitive neutrality and a thorough risk assessment).
- f. The subsidiary to have the ability to acquire, hold, dispose of or otherwise deal with property.
- g. Dividends able to be paid to member local governments.
- h. The requirement for employees of the subsidiary to be employed under the same award or agreement conditions as the relevant local government/s and within the jurisdiction of the Western Australian Industrial Relations Commission.
- i. No requirement for ministerial approval at the outset, but reserve powers for the Minister for Local Government to intervene if issues arise should be included.

42. The Panel recommends local governments should utilise the subsidiary models and, as a general rule, should not form entities outside this, such as under the Associations Incorporation Act, except as a means of establishing or maintaining partnerships with other local or regional organisations in those instances where the local government is not the dominant party.

As can be seen from the above recommendations, if these were included in the new LG Act, there will be a significant change in legislation that appears to provide greater flexibility for local governments to undertake regional cooperation and establish regional organisations to provide services to a number of local governments. As with all legislation, quite often the devil is in the detail, especially the associated regulations that support particular parts of the legislation/Act.

For this reason, it is suggested that no action be taken to establish a regional organisation to provide services to local governments in the Great Southern until the new LG Act is proclaimed and any proposed resource sharing opportunities be via a simple MOU agreement.

## **CONCLUSION**

The local governments that have formed Regional Councils in the WA metropolitan area are all of a substantial size, have the financial capacity to meet the additional administration costs of a regional organisation and have predominately been established specifically to deal with waste. Their focus is predominately on one service only (waste) rather than a whole range of services to a group of local governments

The establishment of a regional organisation, to provide regional services to a group of local governments in the Great Southern, under the current LG Act legislation, would incur significant overhead costs that would have to be passed onto the participating local governments. It's not considered that the local governments under the umbrella of the South Coast Alliance and Southern Link VROC are of a sufficient size to be able to justify the additional administration costs involved. In many instances the local governments in the Southern Link VROC would not have the financial capacity to meet these additional costs.

Given the current discussion and review of the LG Act 1995 that is taking place, it's suggested that no action be taken at this time to form a regional organisation in the Great Southern. Should the new LG Act legislation (when eventually produced) provide a less exhaustive compliance approach to the establishment of a local government regional organisation then the proposal could be revisited, assuming there is still support by a majority of the Great Southern local governments, with an organisation similar to the current South Coast Alliance Group.

In the immediate future any resource sharing arrangements between local governments should be informal in nature, utilising simple MOU's, until such time as the new LG Act is released and proclaimed and a clearer understanding is provided to local governments around the legislation requirements for establishing regional organisations/council.

Paul Sheedy  
Acting Chief Executive Officer

8 January 2021.

Acknowledgement

1 'REPORT OF THE FEASIBILITY STUDY TO IDENTIFY RESOURCE SHARING OPPORTUNITIES' FOR THE Shires of Cranbrook, Denmark and Plantagenet by JC & C Gilfellon, Local Government Consultants 2007/08