



# **Attachment 2 to Item 10.2.1**

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## **Table of Possible Entity Structures**

Date of meeting: 28 May 2024  
Location: Council Chambers  
Time: 6:30pm



Elements	Unincorporated Organisation	Incorporated Organisation					Trust	County Council	Joint Organisation
		Co-Operative	Company Limited by Guarantee	Incorporated Association	Incorporated Joint Venture	Incorporated Limited Partnership			
<b>Enabling Legislation</b>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 358, Local Government Act 1993</a>	<a href="#">Section 387, Local Government Act 1993</a>	<a href="#">Section 400, Local Government Act 1993</a>
<b>Examples</b>			Western Sydney Regional Organisation of Councils South Eastern Queensland Council of Mayors	Northern Sydney Regional Organisation of Councils, Riverina Eastern Regional Organisation of Councils, South Sydney Regional Organisation of Councils.				Currently nine County Councils in NSW.	Currently 13 Joint Organisations in NSW.
<b>Governance and Accountability</b>	Ownership and control apportioned equally amongst Members. Governance arrangements governed by the terms of the Agreement/MoU.	Ownership and control apportioned equally amongst Members. Co-operative must have at least five (5) Members at all times.	Governed by Board of Directors appointed by Company Members.	Ownership and control apportioned equally amongst Members. Governed by Committee of Management.	Joint Venture is managed by Board, with Directors appointed by JV Members and reflective of Members' proportional interest in the JV.	Partnership Agreement outlines rights and duties of each Partner.	Governed by appointed Board of Directors, who have the trust objective to meet the Statement of Business Intent.	Governing Body comprises representatives nominated by each Member Council (may be Councillors, not necessarily the Mayors).	Governing Body comprises the Mayor of each Member Council, and potentially additional voting representatives as determined by the Board, General Managers of each Member Council entitled to attend Board Meetings.
<b>Governance Issues and Considerations</b>	As there are no legal formalities, there are minimal costs to establish. Some costs may be expected in drafting a formal Agreement/MoU; ongoing Governance costs could be contained within one Member's operations.	Co-operative must keep various registers and produce Annual Report, but these could be contained within existing resources.	Company will need to adopt Constitution and comply with all applicable requirements of the Corporations Act 2001. As detailed below, additional reporting obligations attached to financial reporting/auditing requirements could lead to additional costs.	Incorporated Association is relatively simple and straightforward to establish.	Joint Venture model is geared towards profit-making enterprises, but JVs can take a number of legal forms. Typically used for projects that are high-risk and involve large capital costs.	Partnership model is geared towards profit-making enterprises. As with Joint Ventures, this model is predominantly used for projects that are high-risk and involve large capital costs.	Board members should be independent with requisite experience and skills. Establishment of Trust more complex and costly than establishing a Company structure. If assets, resources and data/information are to be transferred to Trust, this could prove to be costly and time-intensive process.	Governing Body comprises representatives nominated by each Member Council (may be Councillors, not necessarily the Mayors).	Governing Body comprises the Mayor of each Member Council, and potentially additional voting representatives as determined by the Board, General Managers of each Member Council entitled to attend Board Meetings.
<b>Strategic Planning</b>	No legislated strategic planning requirements.	No legislated strategic planning requirements.	No legislated strategic planning requirements.	No legislated strategic planning requirements.	No legislated strategic planning requirements.	No legislated strategic planning requirements.	No legislated strategic planning requirements.	County Councils plan and report under a modified Integrated Planning and Reporting (IP&R) framework. The County Council prepares a Strategic Business Plan rather than a Community Strategic Plan.	Joint Organisations do not directly undertake IP&R, but they do have a streamlined planning and reporting framework under the Local Government (General) Regulation 2021. This includes preparing a long-term Statement of Strategic Regional Priorities as well as an Annual Performance Statement.
<b>Legal Status and Trading</b>	Not a separate legal entity from its Members. As such, Members are personally liable for the debts and liabilities of the group.	Separate Entity.	Separate Entity.	Separate Entity.	Separate Entity.	Separate Entity.	Separate Entity.	Separate Entity.	Separate Entity.
<b>Financial Limitations</b>	Cannot establish bank account or hold funds.	Can open bank account and hold funds.	Can open bank account and hold funds.	Can open bank account and hold funds. However, where income exceeds \$5 million, total assets exceed \$5 million or current assets exceed \$2 million, Incorporated Association may be requested to transition to alternative corporate structure such as Co-Operative or Company Limited by Guarantee, both of which provide a more robust legislative framework.	Can open bank account and hold funds.	Can open bank account and hold funds.	Can open bank account and hold funds.	Can open bank account and hold funds.	Can open bank account and hold funds.
<b>Financial Reporting</b>	No financial reporting requirements, unless otherwise specified in Agreement/MoU.	Minor financial reporting obligations, including preparation of basic Financial Statements. An audit may be required if specified in Co-Operative's rules or requested by Member(s).	Dependant on annual/ consolidated revenue. If less than \$250,000, no requirements. If greater than \$250,000 but less than \$1 million, Company must prepare a Financial Report and Directors' Report and may elect to have its Financial Report reviewed. If Company has revenue greater than \$1 million, the Financial Report must be audited.	Dependant on total revenue and assets. If income is less than \$250,000 and assets less than \$500,000, the Incorporated Association must prepare basic Financial Statements. If income and assets are greater than \$250,000 and \$500,000, respectively, the Financial Statements must be prepared in accordance with Accounting Standards and be subject to audit.	Joint Venture will need to produce Financial Statements.	Partnership will need to produce Financial Statements.	Trust will need to prepare Financial Statements and lodge tax returns. Income and capital gains may be distributed in accordance with Trust Deed.	Subject to same financial reporting and external audit requirements as local councils.	Subject to same financial reporting and external audit requirements as local councils.
<b>Risk Liability</b>	Risk carried by Members. No separate legal structure, so no risk mitigation/containment strategy.	Risk contained within Co-Operative structure. However, as with Incorporated Associations, office bearers carry Director Duties akin to Company Directors.	Risk contained within the Company structure. However, Directors carry greater exposure as they are typically subject to Director Duties requirements.	Risk contained within Incorporated Association structure. Committee Members who are office bearers carry Director Duties, akin to Company Directors.	Risk contained within the company structure of the JV.	Partnership must have at least one General Partner with unlimited liability, meaning if the Partnership cannot fulfil its obligations, the General Partner(s) will be held personally liable.	Risk contained within the Company and Trust structure.	Risk transitioned from Member Councils to County Council.	Risk transitions from Member Councils to Joint Organisation.
<b>Costs</b>	Nil.	Minor - Establishment costs would include various registration fees, higher than those attached to Incorporated Association establishment. Further costs expected with transfer of assets, resources and data/information.	Minor - Establishment costs would include registration fee (approx. \$800). Further costs expected with transfer of assets, resources and data/information. Ongoing costs would include preparation of Financial Report and Directors' Report, as well as external audit.	Minor - Establishment costs would include registration fee (\$186). Further costs expected with transfer of assets, resources and data/information.	Significant - Establishment costs would include legal fees, coupled with cost of transfer of assets, resources and data/information.	Significant - Establishment costs would include legal fees, coupled with cost of transfer of assets, resources and data/information.	Significant - Establishment costs would include legal fees, coupled with cost of transfer of assets, resources and data/information.	Moderate - Limited establishment costs, which could be carried by individual Members. May be costs associated with transfer of assets, resources and data/information.	Moderate - Limited establishment costs, which could be carried by individual Members. May be costs associated with transfer of assets, resources and data/information.
<b>Assessment</b>	This option is unlikely to be suitable. It would largely represent a continuation of the existing arrangements, which are no longer fit-for-purpose given the size of Sydney Parklands and	This option is unlikely to be suitable. While the Co-Operative model has similarities with the Incorporated Association; it operates under more complex legislation (the Co-Operatives Act 2012 is nearly four times longer than the Associations Incorporation Act 2009) and there are more compliance requirements (e.g. education program for members). The Co-Operative model is better suited to ventures in which members share common cultural, economic or cultural aspirations.	This option may be suitable. This option carries marginally higher administrative/governance costs to an Incorporated Association, dependant on revenue (ie. Need to prepare Financial Report and Directors' Report, undertake audit, etc.). If Company revenue exceeds \$250,000, this option may not be preferable as reporting obligations are greater and more frequent than those of an Incorporated Association. This option would be attractive if the Member Councils were seeking to trade or do business on a national level; as this is not the case, the Incorporated Association could be a more appropriate model. The Company would also operate under a different regulatory framework managed by a different regulator (ASIC), whereas an Incorporated Association would fall under State regulation.	This option may be suitable. An Incorporated Association is relatively inexpensive to establish, and ongoing governance/administrative arrangements could be met by existing resources. While similar to a Company Limited by Guarantee model; this option may be preferable in that it will be governed by State law and operate in a regularly framework that is relatively easy to understand and apply.	This option is unlikely to be suitable and not recommended. The model is better suited to a profit-making venture.	This option is unlikely to be suitable and not recommended. The model is better suited to a profit-making venture.	This option is unlikely to be suitable and not recommended. The model is better suited to a profit-making venture in which asset and income distribution would be expected.	This option is not likely suitable. County Councils lend themselves to service delivery functions (e.g. water services, noxious weed services, waste services) in a defined geographical area (local government areas - whole or part). County Councils are not designed to be advocacy and research organisations. In this regard, the Joint Organisation model is preferable.	This option may be suitable. Joint Organisations are designed to be advocacy organisations and there are well-established Joint Organisations throughout NSW that have demonstrated a sound track record in advocacy and strategic collaboration. However, there are no Joint Organisations currently established in metropolitan NSW. If this option is to be pursued, further discussions will be required with OLG to ascertain NSW Government position on establishing a metropolitan Joint Organisation.