

**SUBMISSION TO INFRASTRUCTURE AUSTRALIA IN RESPONSE  
TO REVIEW OF REGIONAL WATER QUALITY AND SECURITY**

**COOTAMUNDRA SHIRE COUNCIL**

**March 2011**

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## **COOTAMUNDRA SHIRE COUNCIL SUBMISSION**

Council acknowledges the final report makes five key recommendations:

- 1) *Mandate compliance with Australian Drinking Water Guidelines through legislation or regulation*
- 2) *Implement a nationally consistent Best Practice Management Framework for all urban water utilities*
- 3) *Improved Water Pricing*
- 4) *Develop a more highly skilled workforce to operate and maintain water systems in regional water utilities by developing a nationally consistent trade qualification*
- 5) *Reform the governance structure of regional water utilities in NSW and Queensland*

Council would agree entirely with the first four of these recommendations and as per Council's submission to the NSW Water Inquiry in April 2008 (abridged version included below) believes there is a need for structural reform of the governance arrangements for water utilities in NSW.

However, Council would not agree with the conclusion of AECOM that:

*'Our preferred reform model would see the urban water utility functions currently performed by local government in NSW and Queensland transferred to Government owned Regional Water Corporations, the responsible boundaries of which would match catchments to the extent practicable.'*

The report notes that there are two Regional Water Corporation ownership models operating in Australia at the moment that could guide the Commonwealth. Victorian Regional Water Corporations wholly owned by the State Government of Victoria, and Tasmanian Water Corporations jointly owned by the councils that fall within the boundaries of the Water Corporation.

The report also notes that a third solution is "mandatory" regional alliances governed by a board consisting of representatives from each Council, the State water departments and the Catchment Management Authorities in the region, similar to the Lower Macquarie Water Utilities Alliance currently operating in NSW as an interim stage in the progression towards Regional Water Corporations.

Council is concerned that the Infrastructure Australia report only looked at potable water supply and did not consider the full integrated water management cycle including water supply, sewerage disposal, effluent reuse and stormwater management.

Council would suggest that the state owned corporate model favoured by AECOM would not cover the full integrated water management cycle as efficiently as a council owned corporate structure working in conjunction with its constituent councils.

Council does not believe that the incorporation of boundaries matching river catchments would be either practical or sensible.

Many existing water supply systems, such as Riverina Water and Goldenfields Water in this area, comprise infrastructure that traverses catchment boundaries and are historically based on groupings of council boundaries. Additionally Council considers that the variation in a catchment such as the Murrumbidgee catchment, between Tumbarumba in the east and Balranald in the west, would make a single corporate entity both unwieldy and impractical to manage.

Council believes that council owned water corporations are the appropriate model of governance to allow the necessary interaction between the water authority and constituent councils to allow proper integrated water cycle management to occur. That is, not merely dealing with water and sewer supplies but also incorporating effluent reuse schemes, stormwater capture and reuse, stormwater diversion and environmental sustainability over appropriately sized and resourced regions.

**COOTAMUNDRA SHIRE COUNCIL REFORM PROPOSAL TO NSW WATER INQUIRY -  
APRIL 2008** (Abridged)

Development of a Corporate Model for Water and Sewer Service Provision

CSC proposes the development of a corporate structure covering the present areas covered by the local government areas of Bland, Coolamon, Cootamundra, Corowa, Greater Hume, Gundagai, Junee, Lockhart, Temora, Tumbarumba, Tumut, Urana, Wagga Wagga, Young and Harden, and Goldenfields Water (GWCC) and Riverina Water (RWCC) based on the following:

- A Proprietary Limited Liability Company under Commonwealth legislation.
- Shareholders being the General Purpose Councils within the defined area only.
- The Company being operated on a fully commercial basis.
- The Company covering all water and sewer operations.
- The Company operating under a single management structure.
- The Company being governed by a small professional Board of Directors (not elected members per se).
- The ownership of all County Council and General Purpose Council fixed assets and reserves being passed to the Company.
- The ownership of all County Council assets and reserves being passed to the Company.
- Shareholding being based on the percentage of total assets passed to the Company by the General Purpose Councils.
- Shareholding of GWCC and RWCC assets being divided amongst the shareholders on a per capita basis.
- The transfer of all existing staff presently employed solely for water and sewer operations to the Company.
- The Company encompassing the total area presently covered by REROC, GWCC and RWCC.
- The Company paying its shareholders a minimum dividend fixed each year prior to setting the annual operating budget plus a dividend on profits.
- The Company being set up debt free, by means of Government grants to cover any outstanding debt already incurred by any of the participating Councils.
- The Company being headquartered in Wagga Wagga.

Legality and Benefit of the Corporate Model

Under s358 of the NSW *Local Government Act*, Councils can form corporations as follows:

***358 Restrictions on formation of corporations and other entities***

*(1) A council must not form or participate in the formation of a corporation or other entity, or acquire a controlling interest in a corporation or other entity, except:*

*(a) with the consent of the Minister and subject to such conditions, if any, as the Minister may specify, or*

*(b) as provided by this Act.*

*(2) This section does not prevent a council from being a member of a co-operative society or a company limited by guarantee and licensed not to use the word "Limited" in its name.*

*(3) In applying for the Minister's consent under subsection (1)(a), the council is required to demonstrate, to the Minister's satisfaction, that the formation of, or the acquisition of the controlling interest in, the corporation or entity is in the public interest.*

*(4) In this section, "entity" means any partnership, trust, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.*

CSC would argue that the formation of a corporation under the terms outlined above is in the public interest by virtue of:

- A single entity covering all water and sewer operations and thus having the capacity to comply with all best practice and water cycle management requirements
- Utilising a single management structure rather than the multiple variations of administration presently involved in providing water and sewerage services to the communities involved.
- The ownership of all assets and reserves remaining with the communities through their individual Council shareholding.
- The retention of all existing staff positions through transfer to the new entity.
- The corporation encompassing an area large enough to allow cross subsidisation of the costs of provision of water and sewerage services to the communities involved.
- The economies of scale able to be achieved by an entity of this size.
- The increased ability of a large entity (presently 59,110 customers over the total area) to attract and retain professional staff.
- The payment of a minimum dividend to each Council based on the reasonable amount of revenue lost to the Councils general fund as a result of surrendering the provision of water and sewerage services.

## Proposed Type of Corporate Entity

Whilst councils are able to establish a Company Limited by Guarantee, this is not a suitable vehicle because it does not allow for the distribution of dividends to members and it is not the intention to operate for charitable purposes.

Therefore the participating councils would need to establish a Proprietary (private), Limited Liability Company and consequently would need to obtain the consent of the NSW Minister for Local Government to do so.

Proprietary companies must be limited by shares, have no more than 50 non-employee members and not undertake any activities that would require the issuing of a prospectus. That is, they cannot openly seek investment from the public.

Members of the company are usually shareholders and their liability is limited to the nominal value of their shares plus any unpaid amount on their shares. Nominal capital is defined as the capital with which the company was incorporated.

In order to establish such a company it would be necessary to draw up a Constitution and a Shareholders' Agreement based on the following considerations:

1. A Constitution that reflects the objectives of the Company in which replaceable rules are not utilised.
2. A Shareholders' Agreement which deals with a number of issues, including but not limited to the following:
  - The initial contributions and shareholdings of the shareholders;
  - The terms on which additional capital will be injected and shares allotted;
  - The structure of the management of the company, including the appointment of a managing director or CEO and any limits on his or her powers;
  - Detailed provisions regarding the number of directors each shareholder is entitled to appoint, how they will be appointed and removed and how conflicts of interest issues will be dealt with;
  - Detailed provisions regarding the holding of board meetings and shareholder meetings, meeting notices and voting rights at meetings (which can differ from the normal provisions in the Constitution);
  - Provisions regarding the preparation of accounts and the frequency with which accounts are to be given to shareholders;
  - A well defined share dividends policy that addresses issues such as reinvestment and depreciation needs;
  - Restrictions on the transfer of shares;
  - Dispute resolution provisions and provisions for dealing with deadlocks;

- Obligations of exiting shareholders, including what happens if a shareholder is subject to a forced amalgamation;
- Confidentiality provisions; and
- Priority of the Agreement over the Constitution.

All of these requirements would be easily attainable in the corporate model proposed by CSC.

#### Present Legal Impediment with the Corporate Model in NSW

It would be necessary for the NSW Minister for Energy and Water to grant an operating licence under the *Water Management Act 2000 (WMA)* and include the new entity in Schedule 3 of the *WMA* as a Water Supply Authority.

Section 287 of the *WMA* states:

#### **287 Statutory body may be water supply authority**

- (1) The Governor may, by proclamation published in the Gazette with the consent of the Minister administering the Act by or under which a statutory body is constituted, amend Schedule 3 by adding the name of the statutory body to Part 2 of that Schedule.*
- (2) On the addition of the name of a statutory body to Part 2 of Schedule 3, it becomes a water supply authority but still has its other functions.*

Section 287 only provides for Statutory Bodies to become water supply authorities. At present there is no provision for an alternative body such as a private Company as CSC is proposing to become a water supply authority.

There also appears to be no mechanism in the *WMA* for declaring a new Local Water Utility (LWU). All the current licences held by LWU's were previously held by the same bodies under the *Water Act 1912* and were converted to Water Access Licences on the introduction of the *WMA*.

The Gosford-Wyong model is essentially a corporate model but is not registered with ASIC. In this model both Councils were added to Schedule 3 as part of the introduction of the *Central Coast Water Corporation Act 2006 (CCWCA)* and consequently became Water Supply Authorities. The *CCWCA* includes many of the provisions that are contained in the State Corporations Act.

Whilst it may be possible to take the same route as Gosford-Wyong and become a statutory body through enactment, Council would recommend that the *Water Management Act 2000* simply be amended to allow Water Access Licences to be granted to Non Statutory Bodies.

## **BACKGROUND TO COOTAMUNDRA SHIRE COUNCIL REFORM PROPOSAL**

### **Introduction**

In August 2007 the Minister for Water Utilities, Nathan Rees, announced an inquiry into the institutional and regulatory arrangements by which town water supply and sewerage services are provided in country NSW.

In October 2007 the Minister wrote to Cootamundra Shire Council (CSC) advising the preliminary Terms of Reference (ToR) for the inquiry and seeking input from Council into the final ToR.

The purpose of the inquiry was stated as being to identify the most effective governance arrangements for the long term provision of water supply and sewerage services in country NSW, and to ensure these arrangements are cost-effective, financially viable, sustainable, optimise whole-of-community outcomes, and achieve integrated water cycle management.

To conduct the inquiry independently, the Government appointed the former Deputy Premier, Ian Armstrong, and the former head of the Premier's Department, Dr Colin Gellatly.

In January 2008 Council received a Discussion Paper produced by the Department of Water & Energy (DWE), including the final ToR for the inquiry.

Council was invited to make a submission to the inquiry by 7 March 2008 and was then advised that the date for submissions had been extended until 30 April 2008.

### **NSW Minister for Water Direct Statements**

On 14 February 2008 the then Minister, Nathan Rees, attended a meeting of Councils in Wagga Wagga regarding the inquiry and expressed his views on the process and outcome.

Perhaps most important and relevant to Cootamundra was the statement that the Minister would not accept the status quo as an outcome from the inquiry. It was made very plain to all in attendance that the Minister was seeking new and reformed institutional and regulatory arrangements for water supply and sewerage in rural and regional NSW.

This was despite repeatedly stating that he had no predetermined outcome in mind, except perhaps that things needed to change!

On 26<sup>th</sup> February 2008 the Minister was recorded in Hansard as saying:

“In each of the towns I have visited I have said the models they develop must meet six criteria:

- they must protect revenue streams of Councils,
- protect and enhance capital works programs for Councils,
- protect local jobs,
- provide access to the skills and capacity required for intellectual knowledge into the future,
- have the right pricing model, and
- provide best practice governance.”

This is essentially the same message that was given in Wagga Wagga, minus the statement that the Minister would not be accepting the status quo.

### Final Terms of Reference

The ToR for the inquiry, after input from Local Government generally and this Council particularly are as follows:

1. the historical structure of the industry and its performance record to date;
2. the current and future challenges facing the industry;
3. the present capacity of the industry to address those challenges;
4. alternative industry arrangements used in other states;
5. the impact of any changes on the financial sustainability of councils;
6. the socio-economic impacts on the community, including indigenous communities, of any new institutional and regulatory arrangements;
7. the relative performance of other states and their experience with industry reform;
8. the institutional and regulatory options available, including the relative merits and drawbacks of each; and
9. the role local, state and federal governments should play in further improving services.

### CSC Position Relative to the Stated Background to the Inquiry

The discussion paper stated that the review is based on the following premise:

*“The last detailed review of the water supply and sewerage services for country towns was conducted in 1993. Since then, the operating environment of local water utilities has changed dramatically. Drought, climate change and sustainable extraction rules have reduced the yield of local water utilities’ water systems. Forecast population growth will place additional pressure on water yields and will require sewerage system enhancements and expansion. A substantial capital expenditure program is underway to replace ageing assets. Additionally, local water utilities are experiencing shortages in the skills needed*

*to plan and operate water assets. This situation will deteriorate further with the ageing of the workforce. These challenges will require substantial investment in both physical assets and skilled human resources to ensure efficient, reliable, affordable and safe water supply and sewerage services in the future.”*

The discussion paper also cites the need for the inquiry as being the failure of many water supply authorities to comply with the Governments *Best Practice Management of Water Supply and Sewerage Guidelines*.

It is stated that over 85 per cent of water supply authorities with more than 10,000 connected properties do comply, but compliance by smaller local water supply authorities is significantly less. The statistics cited indicate that of water supply authorities such as Cootamundra (1,501 to 3,000 connected properties) only 66% comply for water supply and 51% for sewerage.

The discussion paper then lists the numbers who do not comply with the DWE’s Key Performance Indicators (KPI’s) in Table 1 – Analysis of 2005/06 Water Supply Performance and 2 - Analysis of 2005/06 Sewerage Performance, of the NSW Local Water Utilities (LWUs).

Based on CSC’s returns to the DWE, CSC complies with all of these indicators except Water Indicator 15 and Sewer Indicator 14. In both of these indicators Council has a very high return due to mistakenly reporting failures of individual water service lines and sewer blockages of boundary traps as Mains Breaks and Mains Chokes. Council’s reporting has now been modified to align exactly with the DWE description; with the result being CSC is well below the allowable limits and in reality complies with all of the KPI’s.

It is interesting to note the numbers of non compliant LWU’s as a percentage of the 107 LWU’s and to wonder why it was not possible to simply assist or require the small percentage failing to improve their performance and comply.

CSC complies with all of the Best Practice Guidelines with the exception of:

Water

- drought management plan
- strategic business plan
- water loss management plan
- water quality plan
- adopted levels of service

Sewer

- liquid trade waste agreements

### Council's Existing Arrangements for Water and Sewer

Potable water is presently accessed by the community of CSC in various different ways:

1. by CSC as a County Council operating a retail reticulation network in the town of Cootamundra,
2. by Goldenfields Water County Council providing wholesale water distribution to Council's reservoirs in Cootamundra and a retail reticulation network in the villages of Wallendbeen and Stockinbingal and to some rural properties,
3. by use of rainwater capture on the majority of rural properties, and
4. by trucked supply from Cootamundra town system in times of low rainfall.

Sewerage disposal is presently provided to the community of CSC in two different ways:

1. by CSC operating a reticulated drainage network in the town of Cootamundra, and
2. by CSC approving and controlling Onsite Sewage Management Systems in the villages of Wallendbeen and Stockinbingal and all rural properties.

Whilst Council would contend that this system is adequate and has served the community well for many years it is acknowledged that it is not an ideal arrangement to have different authorities dealing with different parts of the physical system and different customers within the one Council area.

### Council's Consideration of Alternative Arrangements for Water and Sewer Service Provision (ToR 8)

At the time the inquiry was announced Council's initial reaction was that it was satisfied with the status quo and believed it was providing good service to the community under the present arrangements. In many ways Council would still put the same argument, however, the Minister's comments regarding the status quo have been taken at face value and a variety of variations on the existing structure have been investigated.

CSC has considered various options, including:

1. Continuing with the status quo.
2. The formation of a County Council covering the areas of Cootamundra, Young and Harden formed to provide wholesale bulk water and retail distribution to the total area. This County Council would also provide wholesale bulk water to Temora Shire. Under this option sewerage would remain the responsibility of the individual Council as at present.

This was seen as remaining close to the status quo but as being too small a water supply enterprise to really achieve economies of scale into the future whilst still leaving sewerage with each Council.

3. The formation of a County Council covering the areas of the local government areas of Bland, Coolamon, Cootamundra, Corowa, Greater Hume, Gundagai, Junee, Lockhart, Temora, Tumbarumba, Tumut, Urana, Wagga Wagga, Young and Harden.

This area was considered based on firstly the physical infrastructure existing within the present systems, and secondly the overlap of these Councils with the Riverina Eastern Region of Councils (REROC). The overlap with REROC resulted in Corowa, Tumut, Gundagai and Tumbarumba also being considered despite their present stand alone status.

The County Council proposal operated on the basis of providing wholesale bulk water distribution to each General Purpose Council who would then undertake all retail water reticulation and continue to operate their sewerage systems.

This was seen being a substantial and viable change to existing arrangements. However, following discussion of the concept with the other Councils involved the concept was not accepted. All Councils agreed that sewerage was best operated and administered on a Council by Council basis due to the localised nature of each system. However the majority considered water, which by its nature often crosses Council boundaries, would be more efficiently administered and operated as a single entity on a larger scale.

One of the difficulties identified was the enormous variation in present water operations across the REROC, GWCC and RWCC areas, from total water cycle starting with river extraction and filtration (Tumut, Gundagai), creek and small dam extraction (Tumbarumba), river and groundwater extraction (RWCC & GWCC), wholesale and retail supply (GWCC), urban and rural water distribution (Young, Harden), town water distribution only (Cootamundra) to no water activity (Bland, Temora, Coolamon, Junee). Added to this complexity, Greater Hume and Urana have a mixed system, whilst Corowa is separate altogether from RWCC, similar to Tumut, Gundagai and Tumbarumba.

4. The development of a new structure based on the following:
  - A Corporation under Commonwealth legislation.
  - Shareholders being the General Purpose Councils only.
  - The Corporation being operated on a fully commercial basis.

This proposal was considered as having merit and Council continued to investigate this model resulting in the recommendations included in this submission.

Council’s Assessment of Further Suggested Potential Governance Models (ToR 8)

In Mid February the LGSA and Water Directorate released the “*Options Paper on the Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW*” prepared by the Institute for Sustainable Futures for the Local Government and Shires Associations of NSW and Water Directorate, February 2008.

The following nine models were identified in the Options Paper.

|   | <i>Option</i>  | <i>Explanation</i>  |
|---|--|---|
| 1 | Regional ‘mandatory’ alliance  | Local Water Utilities (LWUs) must join alliances and pool resources.  |
| 2 | County Council – services provision only   | Assets are owned by councils, but operation is provided by a council-owned and controlled entity under the Local Government Act.                    |
| 3 | County Council – including asset ownership   | As for 2, but the county council owns the assets.   |
| 4 | Council-owned regional water corporation   | As for 3 but with a corporatised structure. The structure could have board members representing councils or nominated by both State and councils.   |
| 5 | State-owned regional water corporation   | As for 4, but State is the only shareholder. The main example is Victoria, with 15 regional corporations.   |
| 6 | Regional council aligned to catchment or sub-catchment   | Amalgamated councils, operating over larger areas, but full service structure (water, sewerage and all other general purpose functions).            |
| 7 | Single, state-wide agency  | One agency for the whole of regional NSW – either a State department or a corporatised entity.  |
| 8 | Disaggregated model – bulk supply, distribution and retail (i.e. the opposite of vertical integration) | Vertically disaggregated organisations, each dealing with one part of the cycle (e.g. bulk supply; bulk distribution; grid management; and retail). |
| 9 | Status quo   | Existing council-based water utilities remain in place where appropriate.   |

Of these nine potential models only Models 4, 8 & 9 are considered reasonable by CSC.

- Model 1 is a forced amalgamation of a single part of Council and has no real merit in either operational or administrative efficiency.
- Model 2 is the status quo for water and the loss of sewer operations for CSC, and again has no real merit in either operational or administrative efficiency.
- Model 3 is Model 2 plus the loss of Council's assets.
- Model 4 is seen by CSC as providing the best and safest long term outcome for the CSC community.
- Model 5 is effectively a State takeover of all water and sewer assets and could, quite logically, lead to takeover of other potentially profitable Council activities.
- Model 6 is a proposal for wholesale amalgamations based on river drainage systems rather than people and communities of interest.
- Model 7 is Model 5 at its logical conclusion.
- Model 8 is a variation on the large County Council proposal considered by CSC and whilst having some merit was not accepted by the other Councils involved.
- Model 9 would not be acceptable to the Minister and would be likely to lead to the imposition of Model 5 or 7.

#### Effect on Council Operations of Loss of Water and Sewer (ToR 5)

The potential direct loss of staff in the event that the present water and sewer operations are no longer undertaken by CSC directly is as follows:

- 2 x Water and Sewer Attendant
- 1 x Treatment Plant Operator
- 1 x Administration Clerk

The Treatment Plant Operator and Water and Sewer Attendants are funded totally from the water and sewer funds. The Administration Officer is funded from General Fund via the contributions from the water and sewer funds.

Whilst it is presumed that any alternate arrangement from the present would still require a Treatment Plant Operator and two Water and Sewer Attendants to be stationed in Cootamundra in order to continue the practical operation of the systems, the same cannot be assumed for the Administration Clerk.

Council presently budgets the following contributions from its Water and Sewer Funds to its General Fund:

| <b>Contribution from:</b>                                | <b>Contribution to:</b> | <b>Amount \$</b> |
|--|-------------------------|------------------|
| Water fund   | Administration          | 42,300           |
|  | Engineering             | 79,500           |
|  | Environment             | <u>7,100</u>     |
| Potential Loss from General Fund of loss of water only   |                         | 128,900          |
| Sewer Fund   | Administration          | 40,400           |
|  | Engineering             | 95,700           |
|  | Environment             | <u>9,400</u>     |
| Potential Loss from General Fund from loss of sewer only |                         | 145,500          |
| Potential Saving - 1 x Administration Clerk              |                         | 46,000           |
| <b>Total Potential Loss from General Fund</b>            |                         | <b>228,400</b>   |

As can be seen, the water and sewer funds cover approximately 1.5 engineering staff, 1.5 administration staff and 0.2 health and building staff.

All of these people operate in dual roles undertaking water and sewer and other operations within Council and as such cannot simply be removed from the structure. In practical terms the only reduction in staff based solely upon the loss of a complete position would be the one Administration position referred to above. However, the shortfall in all of the other staff would need to be funded from other sources within General Fund. This will also create difficulties for Council in replacing these positions as the variation in working conditions will make the positions less attractive.

Additionally, Council presently recycles approximately 320 Mega litres of treated effluent onto community Parks and Gardens, an 18 hole golf course and three State schools. Council would need to factor in the additional cost of purchasing recycled effluent, at a cost as yet undetermined. Assuming this water was charged at \$500/Megalitre Council would need to find an additional \$160,000/annum.

In any restructure or reorganisation of water and sewer operations Council would need to receive approximately \$230,000 per annum to replace the present contribution to General fund from the water and sewer functions and potentially an extra \$160,000 to cover effluent reuse water.