

### CM13.17. MAMA Governance Review

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#### Purpose of Report

To provide Council with the outcomes of the governance review of Murray Art Museum Albury (MAMA) and to seek Council endorsement of the preferred governance model and authorisation to proceed with the development of the transition plan.

#### Background

Murray Art Museum Albury (MAMA) launched in October 2015 following the redevelopment of Albury Regional Art Gallery. Since opening, MAMA has established itself as a landmark art and cultural institution. It has significantly increased community engagement with arts and culture. It has earned a national reputation for excellence in contemporary art in a regional context. MAMA has become an important provider of arts education and is a key driver of the region's growing cultural economy. MAMA has contributed to the revitalisation of Albury's central business district, Dean Street and QEI Square, and has elevated the region's tourism offering.

Since the museum's inception, Council's vision for the redeveloped museum was that MAMA must:

- Deliver exciting contemporary and challenging exhibitions that continue to attract diverse and new audiences; and
- Operate under a progressive business model that includes increasing capacity for earned and contributed revenue from commercial operations and through private funding from philanthropists, sponsors, and independent and government funding bodies.

In 2018, after two years of the museum's operation, a comprehensive review of MAMA's capacity to achieve those objectives under its current governance structure was undertaken by the Director of MAMA and AlburyCity. The results of this review were presented to Council on 21 May 2018, where Council endorsed the MAMA Governance Review Report. The report recommended the maturation of MAMA's governance model, concluding that for MAMA to continue to fulfil AlburyCity's vision of a significant art and cultural facility in regional NSW, it must adopt a governance structure that is distinct from Council.

As a result of the Governance Review Report, Council resolved to:

*Endorse the recommended Governance implementation plan (2018 – 2020) in relation to further investigation of the following possible governance models:*

- *Facility operated by Council with support from a NSW Local Government Act Section 355 Committee;*
- *Facility managed by a separate company limited by guarantee governed by a board, with the building and collection owned by Council, significant annual funding from Council and the staff employed by Council.*

Since the 2018 Council meeting, MAMA has implemented the additional recommendations of the Governance Report. This means that should the preferred model be endorsed for the development of a transition plan, MAMA is well positioned to move to an independent governance model. To this end MAMA has:

- Appointed a skills-based Advisory Committee in October 2018;
- Dissolved MoMAMA, the museum's associated members group in August 2019;
- Launched a museum-led membership program in February 2020;
- Developed the MAMA Strategic Plan in January 2020;
- Consolidated philanthropy in July 2020 and the ongoing positioning of the MAMA Art Foundation as the museum's primary fundraising body; and
- Developed the MAMA Business Plan in November 2020.

A stepped approach has been implemented to ensure that effective consultation and appropriate expertise is applied to the governance review process.

#### Consultant Engagement

In October 2020, following the review of three external quotes, Positive Solutions were engaged for \$10,472.00 including GST for the research, planning and recommendation stage of the Governance Review project.

Positive Solutions, and Director David Fishel, have extensive experience in governance, organisational development and review, strategic planning and implementation. They specialise in the cultural and non-profit sectors, with over 30 years experience in strategic planning for cultural organisations, feasibility studies for arts and heritage facilities, and creative industries research projects to inform government cultural policy. Some examples of their work include governance reviews and recommended models for Art Gallery Ballarat, Rockhampton Art Gallery and more recently consulting services relating to the governance restructure of the Shepparton Art Museum.

Positive Solutions also has demonstrated knowledge and experience of AlburyCity, having been engaged to develop the Creative Economy Strategy in 2017.

#### **Issues**

##### Art museum governance models

A recent Australia-wide survey of art museums and galleries revealed that 51% of respondent galleries were operated by local government, 34% by independent companies or associations, 13% by

universities, and 2% other entities. However, it has been recognised across the cultural sector that philanthropy is becoming more competitive and professionalised. An increasing number of local governments are reviewing the governance models of their cultural institutions and opting for independent governance models in order to remain competitive and attract philanthropic funds.

For example, the City of Greater Shepparton has established the new Shepparton Art Museum as a company limited by guarantee, partly because of the benefit of arms-length fundraising, and partly for the lower costs, operational autonomy, and greater flexibility this offers for staffing arrangements. Another example is the Gold Coast City Council's new Home of the Arts (HOTA), a precinct which includes a major new gallery, which operates under a company structure with Council as sole shareholder.

The governance and organisational models under which museums and galleries operate comprise the following elements, all of which need to be considered in transitioning to an independent model:

- Ownership of the building.
- Ownership of the collection.
- Acquisition, and care, of the collection.
- Employment of staff and day to day operations – including programs and projects.
- Fundraising structures and arrangements.
- Friends/ Association/ Supporter structures and arrangements.
- Commercial activity arrangements.

#### Current MAMA Governance Arrangements

MAMA is owned and currently operated by AlburyCity, through Council-employed professional staff. The facility is operated as a section of AlburyCity's Community and Place Cluster in the Business, Growth and Community Directorate, with oversight by the Deputy CEO Business Growth and Community. Council retains control of the facility and is accountable for all decision making.

MAMA is also supported by the MAMA Advisory Committee, MAMA Art Foundation, MAMA Members, Donors and Sponsors. The MAMA Advisory Committee has a Terms of Reference but no delegation of authority. It makes formal recommendations for the maintenance and growth of AlburyCity's permanent art collection and provides informal advice on strategic and operational priorities.

AlburyCity has recognised that in order to optimise philanthropic support and facilitate the development of other revenue streams, it is necessary to transition the Murray Art Museum Albury to an independent governance model. A range of alternative models were reviewed by AlburyCity, and Council endorsed two options for further exploration, a Section 355 Committee and a company limited by guarantee.

The model adopted will need to respect Council requirements as the primary stakeholder, inspire confidence in the community in terms of effective stewardship of both public and private funds, and position MAMA as a leading cultural institution in regional Australia.

Section 355 Committee

The purpose of a Section 355 Committee is to advise Council on the views, needs and interests of the community. Committee members are expected to have experience or expertise in the areas overseen by the Committee and commit themselves to Section 355 Committee responsibilities. A Section 355 Committee is specific to NSW Local Government.

<b>Advantages of 355 Committee</b>	<b>Disadvantages of 355 Committee</b>
Will reserve greater day to day control of MAMA to Council	Can be delegated with advisory responsibilities, but does not have decision-making authority, which may make attraction and/or retention of skilled members challenging
Maintains staff employment within Council and operational delivery under Council systems	Will not satisfy Australian Charities and not-for-profit Commission (ACNC) requirements for independence from local government
Consistent with current governance arrangements	May fail to attract experienced Committee (Board) members as most prospective members will want decision-making authority rather than an advisory role
	Will not address the issue of commercial agility and increasing earned revenue
	Inhibits longer term program and business planning, due to budget adoption uncertainty
	No other gallery operates under a Section 355 arrangement

A Section 355 Committee is not a significant variation in role and powers on the Advisory Committee arrangements which are currently in place for MAMA, and which have proven insufficient for optimising philanthropic support and facilitating the development of other revenue streams. There are no known art museums in Australia operated under this model. AlburyCity does not have any Section 355 Committees.

A Section 355 Committee is not a true independent entity. Under a Section 355 Committee, MAMA will remain a department of Council and will be unable to operate with a progressive business model that includes increasing capacity for earned and contributed revenue from commercial operations and through private funding from philanthropists, sponsors, and independent and government funding bodies.

A Section 355 Committee is not recommended as the preferred governance model for MAMA.

Company Limited by Guarantee

This is a very common form of legal entity for a charitable organisation, which is becoming increasingly common for art museums and galleries. A company limited by guarantee would be a separate legal entity from Council. The relationship between Council and the company would be determined through a Funding Agreement linked to a Council-approved Strategic Plan for MAMA, by a services agreement, and by the terms of a lease or license for occupation of the MAMA building.

<b>Advantages of Company</b>	<b>Disadvantages of Company</b>
Common legal entity for charitable organisations	More vulnerable to cashflow peaks and troughs
Easier access to philanthropic support, if the new entity is a registered charity	Less day-to-day control by Council, although overall control can be exercised through a Funding Agreement, an approved Strategic Plan, and a Lease
Greater donor confidence that donated funds will be used for agreed purposes	Over time it may be more difficult to secure strong 'buy-in' across other sections of Council and by Councillors
Ability to build a strong/experienced board of management	Some common services (e.g. finance, maintenance, procurement) may be more expensive to manage than if provided within Council
Greater day to day autonomy and speed of decision-making	Legal and administrative costs of establishment
Customised financial and administrative processes	Costs of reporting e.g. annual financial audit
Challenging programming can be distanced from Council	

Additionally, a company limited by guarantee:

- Can be structured to meet ACNC requirements and optimise philanthropic support;
- Can fundraise through the company or through the (existing) Foundation, or both;
- Will make clearly visible the costs and revenues associated with MAMA operations; and
- Can benefit from the expertise of a customised board of directors.

A company would have its relationship with Council framed by a funding agreement and strategic plan, services agreement, and lease. While a company would normally be free to establish its own

policies and procedures with regards to human resources, procurement, budgeting and other matters, it is feasible for 'MAMA Ltd' to adopt Council policies in some areas (such as procurement or budgeting) during a transition period.

The consultant's report provides a description of the framework for a company limited by guarantee, and brief commentary on a range of issues that will influence the establishment of the company, and its relationship with Council and other stakeholders. These include:

- Legal entity
- Board of the new entity, including a model duty statement for board members
- Relationship with the MAMA Art Foundation
- Policies and Procedures, including policy checklist and suggestions
- Asset Ownership
- Funding Agreement, including a draft framework
- Services Agreement
- Reporting and Accountability
- Staffing
- Roles and Responsibilities
- Transition Plan outline

It is recommended that a company limited by guarantee be established for MAMA, led by a governing Board in order to optimise revenue generation and philanthropic support.

#### MAMA Advisory Committee

It is recommended that should the preferred model of a company limited by guarantee be endorsed, a transitional committee be set up comprising some members of the current committee and those who might be part of the eventual company board. The terms of this committee would be determined as part of the transition plan and presented to Council for consideration. All but one of the nine current members' terms expire in February 2021. Therefore, it is recommended that the current members' terms be extended through to the May 2021 Advisory Committee meeting to ensure arrangements for the transition period can be finalised prior to the expiration of current terms.

The MAMA Advisory Committee supports these recommendations.

#### MAMA Art Foundation

Should the preferred model of a company limited by guarantee be endorsed, a matter to be resolved during the transition will be how the Foundation and the Board of the company will differentiate and align their fundraising activity and focus. Additionally, within two to three years of establishing the company, consideration should be given to whether the Foundation and company should be merged into one entity (as is occurring at Art Gallery Ballarat) or remain separate.

As part of the transition plan, it is recommended that a Memorandum of Understanding between the company and Foundation be drafted during the company's establishment phase. It is proposed that

the matter of whether the company and Foundation should be merged be considered two to three years following establishment of the company.

The MAMA Art Foundation supports these recommendations.

### Transition Plan

If the preferred model is endorsed, a consultant will be engaged in January 2021 to develop the transition plan. Additional costs such as legal services and the development of revised policies and procedures will need to be factored into the transition plan budget.

In addition to the engagement of a consultant, the transition plan will include a:

- Report for Council consideration of transition board and terms of reference – May 2021;
- Development of key framing documents;
- Memorandum of Understanding with the MAMA Art Foundation; and
- Report with the detailed Transition Plan and key framing documents to establish a company limited by guarantee to be presented for Council consideration by September 2021.

It is anticipated that approximately \$80,000 will need to be set aside for the transition plan, including consultant fees, legal fees, set up of company, development of associated governance documentation and recruitment costs for a skills-based board.

### Our Community Strategic Plan Albury 2030

MAMA facilitates AlburyCity's delivery of many strategic actions in *Our Community Strategic Plan Albury 2030* by consistently performing its function as an art museum of excellence. It is expected that the preferred governance model will enhance MAMA's capacity to deliver on Albury 2030 in the long term. MAMA's Strategic Plan expands on this alignment; however, key actions are:

1. *A Growing Sustainable Economy*
  - 1.1 *Increase visitors to Albury and the surrounding region*
  - 1.2 *Improve visitor and residents' experiences*
  - 1.5 *Promote Albury for industry and business*
  - 1.8 *Albury's infrastructure and assets are well managed and maintained*
2. *An Enhanced Natural Environment*
  - 2.3 *An increased awareness in sustainability and environmental issues*
3. *A Caring Community*
  - 3.4 *Albury offers a diverse and accessible range of facilities and activities for all ages*
  - 3.5 *Improved health, employment and education for the Aboriginal community in Albury*
  - 3.6 *The improved settlement of people from diverse cultures*
  - 3.7 *Increased participation in a diverse range of art & cultural activities in Albury*
4. *A Leading Community*

4.3 *The Albury community provides resources and opportunities to develop future leaders*

4.4 *Albury plans and leads with good governance*

#### Legislation

The transition plan of the governance review project will address all legislative issues related to the formation and practice of the new entity, including interaction and alignment with Council.

The MAMA Strategic Plan identifies a need to achieve museum sector best practice by following guiding principles set out by relevant national and international sector organisations appropriate to the acquisition and conservation of art. The preferred governance model will increase MAMA's capacity to respond quickly to sector developments.

#### Community Impact

MAMA is primarily a service institution for our community. The preferred governance model will allow MAMA to deliver on its Strategic Plan, which articulates the museum's key strategies, actions, and measures that will ensure ongoing deep community impact.

#### Financial Impact

The preferred governance model will ensure that MAMA is able to operate under a progressive business model that includes increasing capacity for earned and contributed revenue from commercial operations and through private funding from philanthropists, sponsors, and independent and government funding bodies. It is expected that this will increase AlburyCity's return on investment in terms of increasing both access to art and culture for our community, and economic impact through tourism.

#### Environmental Impact

The environmental impact of the facility is improved through AlburyCity processes. The MAMA Strategic Plan acknowledges the museum's responsibility in communicating the impacts of climate change with sensitivity and urgency. There is no inherent environmental impact to the preferred governance model.

#### Communication Issues

The preferred model will provide increased transparency on MAMA operations to both Council and external stakeholders, including donors and our community, via the requirements of the Corporations Act. In terms of day-to-day operations, MAMA is guided by its Strategic Plan, which serves as a communication tool to promote the goals and objectives of the museum and is supported by the marketing strategy.

#### Two Cities One Community Strategic Plan

MAMA also addresses issues within the *draft Two Cities One Community Strategic Plan*:

*Section 1: Our economy*

- 1.1 *We have managed the growth and development of our community for the betterment of all.*
- 1.2 *We are a destination that offers a variety of experiences, attractions and events.*
- 1.5 *We are a destination of choice for new residents considering a 'city change'.*

*Section 3: Our community*

- 3.1 *We are recognised as a cultural and creative region, that embraces and celebrates diversity.*
- 3.2 *We are a liveable community, connected to our region and other cities.*
- 3.4 *We are a caring, equitable and inclusive community.*

**Risk**

- **Business Risk** – Under MAMA's current business model, the museum's capacity to attract philanthropy and grow commercial revenue in an increasingly competitive sector environment is the museum's major business risk. The risk is that without adequate earned and contributed revenue, either AlburyCity's contribution would need to increase or the service level would need to reduce. Implementing the preferred model will mitigate this risk for AlburyCity. The achievement of business outcomes will be additionally supported through a skilled Board of Directors under the preferred governance model of a company limited by guarantee. Key framing documents will provide clear direction and, along with a detailed business plan, annual operational plans and staff work plans, will focus activities and serve to mitigate potential business risk.
- **Corporate Risk** – It is important that MAMA retains the confidence of its broad range of stakeholders by adopting and adhering to the highest standards of management expected of a professional art museum. The preferred model will provide independent oversight by a Board of Directors over the delivery of strategic objectives. The preferred model will provide transparency on museum business and outcomes to both Council and external stakeholders.
- **WHS and Public Risk** – The preferred model does not have an any inherent WHS or public risk. At an operational level, appropriate public and staff safety measures are in place at MAMA to adequately address identified risks and this will continue under a new governance model.
- **Environmental Risk** – There is no inherent environmental risk to the preferred model.
- **Delivery Program Risk** – The ongoing delivery of MAMA as a significant arts and cultural facility requires that the museum increase its capacity for earned and contributed revenue from commercial operations and through private funding from philanthropists, sponsors, and independent and government funding bodies. The transition project sits within AlburyCity's project management framework; however, costs associated with the transition plan will not be accounted for in the 20/21 and 21/22 operating budgets unless the preferred model is endorsed by Council, which is a risk to the project finalisation. The preferred model will enhance MAMA's capacity to deliver on objectives within existing AlburyCity budget parameters.

## **Community Engagement**

This review and recommendation is the result of consultation with a broad range of stakeholders and industry professionals including MAMA Staff, the MAMA Advisory Committee, members of the AlburyCity Executive Leadership Team and other relevant AlburyCity staff, and members of the Art Foundation. A further benchmarking exercise was undertaken with Shepparton Art Museum, Geelong Gallery, Art Gallery of NSW and National Gallery of Australia.

Furthermore, the governance review is noted in the Strategic Plan, which was built through extensive consultation and facilitated planning workshops and endorsed by Council. In addition to staff and Advisory Committee sessions, two open community consultation sessions were held at the museum and were attended by a broad range of community members, including business owners and staff, artists, volunteers, general museum visitors, parents, former moMAMA members, Wodonga Council staff, regional cultural organisations and AlburyCity staff.

The draft consultant's report from Positive Solutions was circulated to the MAMA Advisory Committee and the MAMA Art Foundation, with feedback on the preferred model sought, collated and included in the final report and recommendation.

The MAMA Advisory Committee support in principle the preferred model of a company limited by guarantee, subject to the development of a transition plan and supporting documentation.

Additionally, the MAMA Art Foundation has welcomed the review and supports the maturation of philanthropic development, distinction and defining of roles and activities of the Foundation, and the consideration of a merger should the proposed Company be created.

Consultation with impacted stakeholders will continue through the next steps of the project if it progresses to the transition plan.

## **Options**

1. a) Endorse a Company Limited by Guarantee as the preferred governance model for MAMA, proceed with the transition plan, including key supporting documentation, and provide a further report to Council by September 2021; and  
  
b) Extend the terms for the existing Members of the MAMA Advisory Committee until May 2021, whose terms would otherwise expire in February 2021.

## **Recommended**

As a result of research and consultation undertaken, a company limited by guarantee is the recommended option. This model will allow AlburyCity to achieve its stated objective that MAMA operate under a progressive business model that includes increasing capacity for earned and contributed revenue from commercial operations and through private funding from philanthropists, sponsors, and independent and government funding bodies. A company limited

by guarantee will ensure MAMA continues to be a leading art museum in regional Australia, in an increasingly competitive operating environment. The consultant's report demonstrates that the model can be developed with respect to Council requirements as the primary stakeholder, to inspire confidence in the community regarding the effective stewardship of both public and private funds, and position MAMA as a leading cultural institution in regional Australia. The extension of the terms of the members of the Advisory Committee will ensure arrangements for the transition period can be finalised prior to the expiration of current terms.

2. a) Endorse a Section 355 Committee as the preferred governance model for transition for MAMA, develop a transition plan and provide a further report to Council by September 2021; and
- b) Extend the terms for the existing Members of the MAMA Advisory Committee until May 2021, whose terms would otherwise expire in February 2021.

**Not Recommended**

A Section 355 Committee is not an independent entity or a significant variation from the current governance model. Under a Section 355 Committee, MAMA would remain a department of Council and will be limited in its capacity to grow its commercial operations and to attract significant private investment, collection development will continue to be limited to ad hoc gifts, and the necessary ambition of the exhibition program will be stymied. As the museum faces increased competition from burgeoning investment in regional cultural infrastructure across the state and nation, MAMA will struggle to attract high-level professional staff, grants, donations and programming. MAMA cannot deliver on its progressive business model under this option. Strategic objectives will need to be amended and a downwards revision of future performance will be necessary.

3. a) Make no changes to the MAMA governance model and maintain the existing Advisory Committee; and
- b) Extend the terms for the existing Members of the MAMA Advisory Committee until May 2021 so that the formal expressions of interest and Council confirmation process for the Advisory Committee can take place for new members in February 2021.

**Not Recommended**

It is expected that taking a 'do nothing' approach in terms of the museum's governance structure will mean that MAMA will be limited in its capacity to grow its commercial operations, to attract significant private investment, collection development will continue to be limited to ad hoc gifts, and the necessary ambition of the exhibition program will be stymied. As the museum faces increased competition from burgeoning investment in regional cultural infrastructure across the state and nation, MAMA will struggle to attract high-level professional staff, grants, donations and programming. Strategic objectives will need to be amended and a downwards revision of future performance will be necessary.

## **Conclusion**

MAMA has established itself as a landmark art and cultural institution with a national reputation for excellence in contemporary art in a regional context. In 2018, AlburyCity recognised that for MAMA to continue to fulfil its vision of a significant art and cultural destination, it must adopt a governance structure that is distinct from Council. Following a comprehensive review of possible models presented to Council in May 2018, Council endorsed two for further research, a Section 355 Committee and a company limited by guarantee.

Based on the findings of Positive Solutions, an independent consultant engaged to provide a review of the two models, it is recommended that a company limited by guarantee be developed as the preferred governance model for MAMA and that AlburyCity proceed with the development of the transition plan, including key supporting documentation, for this model. Positive Solutions concluded that a Section 355 Committee is not a true independent model or a significant variation on the current governance model, which is insufficient to achieve AlburyCity's objectives for the museum.

A company limited by guarantee will optimise revenue generation and philanthropic support in line with AlburyCity's objective that MAMA must operate under a progressive business model that includes increasing capacity for earned and contributed revenue from commercial operations and through private funding from philanthropists, sponsors, and independent and government funding bodies. The model can be developed to meet Council requirements as the primary stakeholder, to inspire confidence in the community regarding the effective stewardship of both public and private funds, and position MAMA as a leading cultural institution in regional Australia, in an increasingly competitive operating environment.

## **Recommendation**

That Council:

- a. Receives and notes the findings of the consultant's report;
- b. Endorses a Company Limited by Guarantee as the preferred governance model for MAMA, proceed with the transition plan, including key supporting documentation, and provide a further report to Council by September 2021; and
- c. Extends the terms of MAMA Advisory Committee Members to May 2021.

## **Attachments**

1. MAMA Governance Review Positive Solutions.