

CM13.5. Murray Art Museum Albury (MAMA) Governance Transition

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Purpose of Report

To present to Council the MAMA Ltd. governance model for Murray Art Museum Albury (MAMA) and the proposed implementation process, seek endorsement of the draft Company Constitution, and endorse an application to the Minister for Local Government seeking consent under section 358 to participate in the formation of a company limited by guarantee to facilitate the establishment of MAMA LTD.

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 QEII 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.

Since the 2018 Council meeting, MAMA has implemented all recommendations of the Governance Report including:

- 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.
- Developed the MAMA Business Plan in November 2020.
- Appointed independent consultant Positive Solutions to assess and recommend a preferred governance model for MAMA, October 2020.
- Presented a further report to Council in December 2020.

On 14 December 2020, Council resolved 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.

Further, on 24 May 2021, Council endorsed a nine-member Provisional Board to advise on the transition process and appointed the Interim Acquisitions Committee to oversee acquisitions to the permanent collection during the transition period.

Consultant Support

Positive Solutions continues to support the Governance project since their appointment in January 2021, for \$50,204 (incl. GST) to manage the Transition Phase of the Governance project. Additionally, with legal fees, set up of company, development of associated governance documentation and recruitment costs for a skills-based board, it is anticipated that a total of \$80,000 will be expended on the transition.

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 and having delivered the first phase of the MAMA Governance Review project in December 2020.

Since the appointment of Positive Solutions in January 2021, David Fishel, the MAMA Director and AlburyCity officers have been working with Kell Moore to confirm the MAMA Ltd. model in detail

including preparing the draft Constitution, shaping key model principles, clarifying legal requirements, and defining the transition plan as outlined further in this report. Since the appointment of the MAMA Provisional Board on 24 May 2021, additional consultation has been undertaken to ensure the expertise and experience of this group has further supported the development of the model.

Issues

Per Council's endorsement, the MAMA Ltd. model has been conceived to leverage growth potential for philanthropy and earned revenue, 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.

The MAMA Ltd. model has been designed to ensure it:

- Meets Australian Charities and Not for Profit Commission (ACNC) requirements and optimises philanthropic support;
- Ensures Council's arts and culture objectives are met through structural alignment with Our Community Strategic Plan Albury 2030 and future versions;
- Allows MAMA to benefit from the expertise of a customised board of directors;
- Increases transparency of costs and revenues associated with MAMA operations; and
- Reduces Council's responsibility for day-to-day operations.

A three-phase approach to the implementation of the MAMA Ltd. model is recommended to ensure all elements of the model are addressed in detail, interdependencies are managed through appropriate consultation with impacted stakeholders, and legal advice can be sought by impacted stakeholders at the appropriate time.

Phase 1 – Establishment of the Company

July – November 2021

- Step 1 – 26 July 2021 Council Report – consideration of the draft Constitution and model principles; *If endorsed*
- Step 2 – Application to the Minister for Local Government seeking consent under section 358 to participate in the formation of the Company; *If approved*
- Step 3 – Company set up and registered with Australian Securities and Investment Commission (ASIC) and the ACNC.

Phase 2 – Transition to MAMA Ltd. Model

December 2021 – 30 June 2022

Development and adoption of Lease, Funding Agreement, Service Agreement, Employment Contracts

- Step 1 – Council Report – Consideration of Lease, draft Funding Agreement, Service Agreement; *if endorsed*
- Step 2 – Council consideration of Financial Assistance request; *if endorsed*
- Step 3 – MAMA Ltd. adoption of Lease, Funding Agreement, Service Agreement, Employment Contracts

Phase 3 – MAMA Ltd. assumes responsibility for the governance and delivery of MAMA

01 July 2022

This report addresses Phase 1

Phase 1 of the governance transition addresses key elements required to progress through to the establishment of the Company.

Phase, 1 Step 1

26 July 2021 Council Report – Consideration of the draft Constitution and model principles:

- Draft Company Constitution
- Lease principles
- Strategic Plan
- Funding agreement principles
- Service Agreement principles
- Our People transition principles

Draft Constitution

The draft Constitution (Attachment 1) has been prepared by Kell Moore based on the model Constitution prepared by the ACNC, with reference to the company limited by guarantee precedent recently adopted by the Shepparton Art Museum (SAM) and in consultation with Positive Solutions and the MAMA Provisional Board.

The draft Constitution includes all standard clauses of a not-for-profit constitution and outlines the purpose and structure of the Company, its charitable status, how it is to conduct its business. It further outlines the Members of the Company and the Board of Directors and their terms of office, as well as the process for appointing the Board of Directors (the Nominations Committee).

The draft Constitution has been designed to meet Australian Charities and Not-for-profit Commission requirements and structured to optimise philanthropic support.

Additionally, the draft Constitution includes clauses that relate specifically to Council, which are outlined below.

The Guardian Member (Council)

Council retains control through its inclusion in the draft Constitution as the Guardian Member. The Guardian Member:

- Cannot be removed
- Will nominate one member to the Nominations Committee 7.1.2
- Can appoint one Director to the Board (Guardian Member Appointed Director) 7.4
 - The Board of Directors will comprise between 6-8 Directors, including the Guardian Member Appointed Director.
- Can remove or replace Directors – 7.13.3

- Has the right to receive notice of, attend, speak at general meetings, but it does not have the right to vote at general meetings – 4.4.2
- Approves amendments to the Constitution – 12.2

The Nominations Committee – 7.1

The Nominations Committee is made of three members, one of which is appointed by the Guardian Member (Council). The other two members will be a Company Director and an independent nominated member. The Nominations Committee will recommend to the Board candidates to be elected as Elected Directors to the Board via the recruitment process outlined in the draft Constitution. The Nominations Committee will be established prior to the first General Meeting.

The Guardian Member Appointed Director – 7.4

The Guardian Member (Council) may appoint one director to the Board (the Board will comprise between six and eight directors). The Guardian Member Appointed Director is not required to go through the Nominations Committee. Positive Solutions and the Provisional Board recommend that this appointment be at the CEO, or their delegate, rather than at the Councillor level, due to the difficulty of managing conflicts of interest of being a Councillor and the Guardian Member. The CEO, or their delegate, can manage conflicts of interest through Company policies. This arrangement is in place at the Shepparton Art Museum, where the Guardian Member Appointed Director is the Council CEO.

Transition

Transition clauses have been included in the draft Constitution to ensure directors are in place to establish the Company (7.9.1) and to ensure staggered terms of office (7.9.2) are in place for the initial Board of Directors.

The Provisional Board supports this approach and they were consulted on and contributed to the draft Constitution.

Lease Principles

MAMA Ltd will operate within the purpose-built facility of Murray Art Museum Albury which will remain owned by Albury City Council.

Key principles:

- Peppercorn lease (\$1 per annum)
- Minimum 20-year term
- Albury City Commercial Lease
- Include Albury City's security interest over the Art Collection
- Cohabit the facility with Canvas Eatery on a separate Lease

Kell Moore have recommended that AlburyCity's standard commercial lease form the basis of the final lease agreement, which is a common arrangement for independently governed cultural institutions that inhabit public buildings. The lease will be presented to Council for consideration in accordance with AlburyCity's Leasing and Licensing Policy and Procedure.

Impact on Onsite Restaurant

MAMA Ltd. will cohabit the facility with Canvas Eatery. AlburyCity will remain the Lessor for both entities with each entity having a separate lease agreement. There will be no change to the restaurant lease.

The Provisional Board supports the recommended principles.

Strategic Plan

The Murray Art Museum Albury Strategic Plan 2020-2024 was adopted in January 2020. Future Strategic Plans will be developed through community consultation processes and be presented to Albury City Council for approval to ensure continued alignment with the arts and culture objectives of Our Community Strategic Plan.

Key Principles:

- AlburyCity Council will continue to endorse the MAMA Strategic Plan.
- The Key Performance Indicators (KPIs) of the Strategic Plan will form the basis of the KPIs of the Funding Agreement.
- MAMA's Strategic Plan will be updated within 12 months of the adoption of Our Community Strategic Plan Albury2050.

The Provisional Board support the recommended principles.

Funding Agreement Principles

AlburyCity will continue to contribute operating and base program funding to MAMA Ltd. via AlburyCity's established financial assistance processes in line with service delivery under a Council governance model (MAMA Strategic Plan KPI 27% non-Council income, 73% council funding, excluding capital). MAMA Ltd. will be tasked with increasing earned and contributed revenue from other levels of government and commercial operations, and philanthropy in collaboration with the MAMA Art Foundation.

Key principles:

- Albury City will contribute operations and base program funding through the Financial Assistance process.
- KPIs aligned with the Council-endorsed MAMA Strategic Plan.
- Annual Report presented to Council, including audited financial statements.
- Five-year agreement.
- Agreement to be based on best practice for government multi-year funding of cultural institutions.

The dual transparency and accountability mechanisms of AlburyCity's financial assistance process and the annual presentation of the MAMA Ltd. Annual Report to Council, including audited financial statements, will increase the transparency of costs and revenues associated with MAMA operations under the MAMA Ltd. model.

Funding will be managed through the funding agreement and performance will be assessed through KPIs aligned with the MAMA Strategic Plan. Per the advice of Kell Moore and Positive Solutions, the agreement will be based on best practice in government funding for cultural institutions established by the NSW and Commonwealth Governments.

Financial assistance is addressed in the Financial Impact section of this report.

The Provisional Board supports the recommended principles.

Service Agreement Principles

A service agreement will be in place between MAMA Ltd. and Albury City. The service agreement will address key areas of asset management co-responsibility, including.

- Asset Management – Facility
 - Owned by Albury City Council
 - Managed through Lease and AlburyCity's Asset Management Plan for MAMA

The MAMA facility will be owned by Albury City and managed in collaboration with MAMA Ltd. The management of the facility will be addressed under the standard lease conditions and Albury City's Asset Management Plan for MAMA.

- Asset Management – Art Collection
 - Owned by AlburyCity Council
 - Managed by MAMA Ltd.
 - Governed by Art Collection Policy
 - i. Acquisitions Committee

Public ownership of the collection is considered a vital ongoing feature of the collection. The Art Collection will remain owned by Albury City and managed by MAMA Ltd. and will be governed by a newly developed Art Collection Policy for MAMA Ltd. An acquisitions sub-committee of the MAMA Board (established through processes outlined in the draft Constitution) will recommend the acquisition and the deaccessioning of artworks to the Art Collection. The sub-committee will include a Councillor representative per the former MAMA Advisory Committee and current MAMA Interim Acquisitions Committee.

The Provisional Board supports the recommended principles.

Our People Transition Principles

MAMA Ltd. will have responsibility for the employment and management of employees. Current employees will transition from AlburyCity to MAMA Ltd. Per the recommendations of Kell Moore and AlburyCity's People and Culture team, the transfer of employees will occur in line with the provisions of the NSW Local Government Award and the Fair Work Act, including an employee consultation process.

Key principles:

- Current employees will have their entitlements transitioned from ACC to MAMA Ltd through an Enterprise Agreement (EA). The transfer of entitlements and terms of the EA will be subject to BOOT (better off overall test) and all applicable sections of the Award and Act.
- The redundancy provisions of the Award will apply to any employees who do not agree to accept employment by the new entity. However, the Award indicates that the employer may pay a lesser amount (or no amount) of severance pay if the employer obtains acceptable alternative employment for an employee. This will be assessed on a case-by-case basis.
- The CEO will require a bespoke employment contract due to the change in responsibility from the Director MAMA to CEO.

The Provisional Board supports the recommended principles.

Phase 1, Step 2

Council's consideration and endorsement of this report will allow the project to progress to Phase 1, Step 2 – Application to the Minister for Local Government seeking consent under section 358 to participate in the formation of the Company. Section 358 restricts councils in forming or participating in the formation of a corporation or other entity without first obtaining the consent of the Minister for Local Government.

Per advice provided by Kell Moore, Council must resolve to make an application to the Minister for AlburyCity to participate in the formation of MAMA Ltd. and receive consent prior to the establishment of the Company. Kell Moore has sought advice from the Office of Local Government and will prepare the application on behalf of Council with input from AlburyCity officers. This report will be attached to the application, along with the draft Constitution.

The application must address four key criteria, which are addressed through the content of this report:

1. Is the proposal consistent with the functions of the council or an existing service that the council provides?
 - a. Alignment of the MAMA Strategic Plan with Our Community Strategic Plan Albury2030.
 - b. Funding Agreement KPIs linked to the Strategic Plan.
2. Will the proposed entity be legally separated from the council?
 - a. Legal separation – Draft Constitution.
 - b. Financial separation through funding agreement principles, lease principles, service agreement principles.
3. Is the council currently financially viable?
 - a. Assessment of Council's overall financial viability – routine.
 - b. Financial impact.
4. What is the impact of the proposal on existing council staff?
 - a. Our People transition principles.

Phase 1, Step 3

Approval of AlburyCity's application under section 358 to participate in the formation of MAMA Ltd. will allow the project to progress to Phase 1, Step 3, the establishment of MAMA Ltd.

To establish the company, per the requirements of the draft Constitution, the following steps are required:

1. Appoint the initial members

Clause 5.4 – The initial Members of the Company are those persons named in the application to the Australian Securities and Investments Commission to register the Company.

The members are:

- Guardian Member – AlburyCity Council.
- Initial Board of Directors – per draft Constitution Clause 7.6 Directors are Members of the Company for their period office.

2. Appoint the initial directors of the company

Clause 7.9.1 – The Company shall have 6 Directors from incorporation, including the Guardian Member Appointed Director, until its first general meeting.

- a. Council will appoint the Guardian Member Appointed Director, which is recommended to be the CEO or their delegate.
- b. The MAMA Provisional Board will appoint five from the current nine member Provisional Board in line with the Company's draft skills, experience, network and diversity matrix process for the Board.
- c. At or after the first general meeting, up to an additional two directors may be appointed through the Nominations Committee process, if the Board chooses.

3. Submit the application to ASIC to register the Company

4. Submit the application to the ACNC to register the Charity

Phase 2 – Action Timeline

Once the Company is registered with ASIC and the ACNC and the initial board of directors is in place, Phase 2 actions can commence. The next step is the appointment of the Nominations Committee. As previously outlined in this report, the Guardian Member (Council) will appoint one member to the three member Nominations Committee. It is recommended that the Council appointee is the Councillor representative who will also sit on the acquisitions sub-committee to ensure continuity. This is proposed to occur when Council reviews the Council Committees and Working Parties Register following the election.

The following table outlines further actions of Phase 2 along with indicative due dates, which will be confirmed upon Company registration.

Action Phase 2	Due	Endorsement	Adoption
Lease	Jan 22	ACC	ACC, MAMA Ltd.
Service Agreement	Jan 22	ACC	ACC, MAMA Ltd.
Funding Agreement	Jan 22	ACC	ACC, MAMA Ltd.
MAMA Asset management Plan	Jan 22	ACC	ACC
Fundraising Strategy	Jan 22	MAMA Ltd., MAF	MAMA Ltd., MAF
MAMA Ltd. budget	Jan 22	MAMA Ltd.	MAMA Ltd.
Report to Council – Lease, Service Agreement and draft Funding Agreement	Feb 22	ACC	ACC, MAMA Ltd.
Employee consultation process	May 22	ACC	ACC
Financial Assistance	June 22	ACC	ACC
Employment Contracts	June 22	MAMA Ltd.	MAMA Ltd.
MAMA Art Foundation and MAMA MOU	June 22	MAMA Ltd., MAF	MAMA Ltd., MAF
MAMA Ltd. Operational Policies	June 22	MAMA Ltd.	MAMA Ltd.
Art Collection Policy	June 22	MAMA Ltd.	MAMA Ltd., ACC

Phase 3 – 01 July 2022

Once the actions of Phase 2 have been executed, employees will transition, and MAMA Ltd. will assume responsibility for the governance and delivery of MAMA

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

Local Government Act 1993

Section 356 of the Local Government Act 1993

Section 356 prescribes the requirements for when councils provide financial assistance to others (including charitable, community and sporting organisations and private individuals). Financial assistance must be for the purposes of exercising the council's functions.

Per advice provided by Kell Moore, financial assistance to MAMA Ltd. will be administered through Council's established financial assistance processes meeting Council's obligations under section 356 of the Act. Further, financial assistance will be tethered to the Funding Agreement KPIs which are aligned with the MAMA Strategic Plan, which defines how MAMA will exercise Council's functions in pursuit of its arts and culture objectives in Our Community Strategic Plan.

Section 358 of the Local Government Act 1993

Section 358 restricts councils in forming or participating in the formation of a corporation or other entity without first obtaining the consent of the Minister for Local Government.

Per advice provided by Kell Moore, and as previously outlined in this report, Council must resolve to make an application to the Minister for AlburyCity to participate in the formation of MAMA Ltd. and receive consent prior to the establishment of the Company.

Corporations Act 2001

The draft Constitution conforms to the requirements of the Corporations Act 2001.

Australian Charities and Not-for-profit Commission (ACNC)

Kell Moore have drafted the Constitution based on the ACNC template constitution and with reference to the ACNC Guide. The ACNC will formally review the Constitution during the application process to register the company as a charity.

Operational Specific Legislation

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 exhibition, acquisition and conservation of art.

Community Impact

MAMA is primarily a service institution for our community. The MAMA Ltd. 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 structure of the future 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. This will amplify the impact of AlburyCity's investment in terms of increasing both access to art and culture for our community, and economic impact through tourism.

AlburyCity funding for MAMA Ltd. will be distributed via AlburyCity's established financial assistance processes and managed through the funding agreement, which is linked to the Council-endorsed MAMA Strategic Plan. The MAMA Ltd. model will enhance MAMA's capacity to deliver on objectives within existing AlburyCity budget parameters. MAMA Ltd. will be tasked with supplementing Council's investment with support from other levels of government, philanthropy, sponsorship and earned revenue.

Operating and Program Impact

Albury City will continue to contribute operating and base program funding to MAMA Ltd. in line with service delivery costs under a Council governance model.

A detailed budget will be reviewed by MAMA Ltd. upon establishment of the Company and form the basis of the financial assistance request put to Council for consideration as part of the 2022/23 operational plan and four-year delivery plan process. An indicative base funding floor of \$1.8 million reflects operating costs for MAMA based on the 2020/21 operating results and the approved forward operational plan 2021/2022 and includes service costs associated with the operation of MAMA that are currently reflected in other areas of AlburyCity's operational plan (Human Resources, Information Technology, Finance, Insurance). Efficiencies will be achieved for both MAMA Ltd. and AlburyCity through the outsourcing of these services for MAMA Ltd. Service estimates have been arrived at through service mapping and extensive consultation with AlburyCity employees and external service providers and are considered market appropriate.

The MAMA Ltd. model is anticipated to increase MAMA's commercial revenue capacity by increasing responsiveness to market conditions and increasing employee productivity through a reduction in Council administrative requirements that are unnecessary for the management and delivery of a cultural institution.

The MAMA Ltd. model is also anticipated to increase MAMA's eligibility and competitiveness for grant funding and sponsorship for arts and culture program activities. For example, under the Council governance model, MAMA has been precluded from applying for COVID-19 relief funding from the

state and federal governments, including additional program funding to support business pivots in the face of COVID-19.

Capital Impact

The Constitution of the MAMA Ltd. model has been designed to significantly increase MAMA's competitiveness for philanthropy. Capital donations to the art collection are expected to increase (currently, an average of \$300K per year since the establishment of MAMA) and will be transferred to AlburyCity. Capital improvements to the facility will also be transferred to AlburyCity.

Environmental Impact

The environmental impact of the facility, which will continue to be owned by AlburyCity, 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. Additionally, the MAMA Strategic Plan outlines the museum's responsibility for the preservation of Aboriginal and European heritage. Through improved capacity for earned and contributed revenue, the MAMA Ltd. model will enhance the museum's capacity to expand the visual art collection, which is a key mechanism for the preservation of and education about Aboriginal and European heritage in our region and nationally.

Communication Issues

The proposed structure of the Company governance 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.

The Provisional Board has strong ties to the community and the national cultural sector and will facilitate greater awareness of the aims and outcomes of the governance transition. The Interim Acquisitions Committee is comprised of members whose work on the MAMA Advisory Committee ensures there is continuity of purpose during the transition phase. The MAMA Art Foundation will continue to operate as normal through the transition process ensuring stability and continuity around MAMA's fundraising program.

A comprehensive communications plan supports the transition process and addresses key stakeholders.

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** – 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. This risk is accounted for during Phase 1 as AlburyCity retains fully responsibility for the management and delivery of MAMA, and this is reflected in the 2021/2022 Budget and 4-year Delivery Program. The MAMA Ltd. model will mitigate this risk for AlburyCity once fully implemented at Phase 3. The achievement of business outcomes will be additionally supported through a skilled board of directors and the capacity for increased philanthropy and earned income is expanded by the structure of the draft Constitution. The model principles put forward will provide clear direction through Phase 1 and Phase 2 and, along with a detailed business plan, annual operational plans and employee work plans, will focus activities and serve to mitigate potential business risk during the transition.

The draft Constitution recognises AlburyCity as the primary stakeholder through the Guardian Member.

The appointment of the Guardian Appointed Director at the CEO, or their delegate level, will ensure business and service continuity under the MAMA Ltd. model.

- **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 MAMA Ltd. model will provide independent oversight by a board of directors over the delivery of strategic objectives. The MAMA Ltd. model will provide transparency on museum business and outcomes to both Council and external stakeholders once fully implemented at Phase 3. Further, the model reduces risk to Council by situating management of image and stakeholder confidence with the Company. Clauses within the key documents will allow Council to retain control in terms of ensuring effective service delivery to our community, but reduce risks associated with day-to-day management of an art museum (e.g., controversial programming).

MAMA will benefit from the support of the Provisional Board during Phase 1 and the MAMA Ltd. Board during Phase 2. This input will ensure a truly independent and collaborative governing body is established for the new company, mitigating future corporate risk to AlburyCity.

- **WHS and Public Risk** – The MAMA Ltd. model situates the management of WHS and Public Risk with MAMA Ltd. Appropriate public and employee safety measures are in place at MAMA to adequately address identified risks, and this will continue under the company governance model.
- **Environmental Risk** – The environmental impact of the facility, which will continue to be owned by AlburyCity, 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. MAMA is a key cultural institution through which AlburyCity meets its heritage and culture objectives outlined in Our Community Strategic Plan Albury2030. In alignment with Council's objectives, the MAMA Strategic Plan outlines the museum's responsibility for the preservation of Aboriginal and European heritage. The risk is that without adequate earned and contributed revenue, AlburyCity's contribution would need to increase, or it will not be able to meet those objectives. Through improved capacity for earned and contributed revenue, the MAMA Ltd. model will mitigate this risk to Council as it will enhance the museum's capacity to expand the art collection, which is a key mechanism for the preservation of and education about Aboriginal and European heritage in our region and nationally.
- **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 to an independent governance model sits within AlburyCity's project management framework. However, the interdependencies of the project in terms of staged requirements for Council endorsement, Ministerial approval, company registration and board of directors input to progress through to Phase 3 is a risk to the finalisation timeline. The phased project approach, extensive ongoing consultation and a detailed timeline of the requirements through to Phase 3 mitigates this risk. The MAMA Ltd. model will enhance MAMA's capacity to deliver on objectives within existing AlburyCity budget parameters.

Community Engagement

This transition to the MAMA Ltd. model is the result of consultation with a broad range of stakeholders and industry professionals including MAMA employees, the MAMA Advisory Committee, the MAMA Provisional Board, members of the AlburyCity Executive Leadership team and other relevant AlburyCity officers, and members of the Art Foundation. A further benchmarking exercise was undertaken with Shepparton Art Museum (SAM), Geelong Gallery, Art Gallery of NSW and National Gallery of Australia. Ongoing consultation has occurred with SAM as the museum has implemented its new independent governance structure and learnings have been incorporated into the draft Constitution and model principles.

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 employees 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

employees, artists, volunteers, general museum visitors, parents, former moMAMA members, Wodonga Council officers, regional cultural organisations and AlburyCity officers.

The MAMA Provisional Board provided input into the draft Constitution and supports it. The Provisional Board supports the model principles of the lease, funding agreement, service agreement, and employment contracts. The Provisional Board supports the revision of the Strategic Plan within 12 months of the adoption of Our Community Strategic Plan Albury2050. For the remainder of Phase 1, the Provisional Board will participate in the drafting of the Lease, Service Agreement, Funding Agreement and Our People Transition Plan developed by AlburyCity under the advice of Kell Moore. The Provisional Board will also draft company policies that will shape the governance of the new company. The input of the Provisional Board will ensure a truly independent and collaborative governing body is established for the new company.

Additionally, the MAMA Art Foundation has welcomed the shift to an independent governance model and supports the maturation of philanthropic development, distinction and defining of roles and activities of the Foundation, and the consideration of a merger once the company is operational. The relationship between MAMA Ltd. and the MAMA Art Foundation will be framed by a Memorandum of Understanding to be developed upon establishment of the company during Phase 2.

Options

1.
 - a. Endorse the three-phase transition approach, the draft Constitution and the model principles of the lease, funding agreement, service agreement, Strategic Plan and Our People transition plan; and
 - b. Apply to the Minister for Local Government seeking consent under section 358 to participate in the formation of MAMA Ltd. and, if approved;
 - c. Endorse the AlburyCity CEO or their delegate as the initial Guardian Appointed Director; and
 - d. Receive a further report in due course presenting the MAMA Ltd Lease, Service Agreement and draft Funding Agreement for consideration.

Recommended.

The draft Constitution and the proposed model principles of the lease, funding agreement, service agreement, Strategic Plan and Our People transition plan are the result of extensive research and consultation. They will support a MAMA Ltd. model that 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. The MAMA Ltd. model will ensure MAMA continues to be a leading art museum in regional Australia, in an increasingly competitive operating environment.

The draft Constitution and proposed model principles demonstrate that the model can be developed to respect Council requirements as the primary stakeholder, 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 draft Constitution and proposed principles of the model

will facilitate an application to the Minister for Local Government seeking consent under section 358 to establish the company. The formation of the company will allow AlburyCity to finalise the key supporting documents during Phase 2 in collaboration with the MAMA Ltd. Board of Directors, ensuring the best foundation is laid for the new model. The appointment of the AlburyCity CEO or their delegate as the initial Guardian Appointed Director will provide continuity under the new model.

2. Seek amendments to the draft Constitution and the model principles of the lease, funding agreement, service agreement, Strategic Plan and Our People transition plan.

Not recommended.

3.

- a. Make no changes to the MAMA governance model;
- b. Wind up the MAMA Provisional Board; and
- c. Provide a further report on the future structure of the Interim Acquisitions Committee by June 2022.

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 employees, grants, donations and programming. Strategic objectives will need to be amended and a downwards revision of future performance will be necessary.

It will be necessary to continue the Interim Acquisitions Committee to ensure MAMA remains able to fulfill a core objective of its endorsed Strategic Plan and acquire artwork into the permanent collection until a viable alternative solution can be developed.

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.

The three-phase approach to the implementation of the MAMA Ltd. model will ensure all elements of the model are addressed in detail, interdependencies are managed through appropriate consultation with impacted stakeholders, and legal advice can be sought by impacted stakeholders at the appropriate time. The phased approach and timeline have been conceived through consultation with and advice from Positive Solutions, Council's engaged consultant, Kell Moore, Council's legal advisors, the MAMA Provisional Board, and Council employees.

Council's consideration of the draft Constitution and model principles during Phase 1, Step 1 will allow the process to progress to Phase 1, Step 2 - the making of a Section 358 Application to the

Minister for Local Government seeking consent for Council to participate in the establishment of the company. Approval from the Minister will allow the process to progress to Phase 1, Step 3 - the establishment of MAMA Ltd. With the company registered and the Board of Directors in place, Phase 2 actions will commence, including a report to Council presenting the draft Funding Agreement, Lease, Service Agreement for consideration and, if approved, their subsequent adoption by MAMA Ltd. Phase 3 represents the full implementation of the model with MAMA Ltd. assuming responsibility for the governance and delivery of MAMA.

The MAMA Ltd. model 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. Through a phased approach, the model is being 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. Endorses the three-phase transition approach, the draft Constitution and the model principles of the lease, funding agreement, service agreement, Strategic Plan and Our People transition plan;
- b. Applies to the Minister for Local Government seeking consent under section 358 of the *Local Government Act 1993* to participate in the formation of MAMA Ltd.; and if approved
- c. Endorses the AlburyCity CEO or their delegate as the initial Guardian Appointed Director; and
- d. Receives a further report in due course presenting the MAMA Ltd Lease, Service Agreement and draft Funding Agreement for consideration.

Attachments

1. Draft Constitution (DOC21/151287).