



Preliminary – former Byron Bay Hospital Governance Model Options

Executive Summary:

1. There will need to be 3 stages of governance in this project – Preliminary, Establishment and Operation & Review.
2. There are at least 11 governance models that could be available for this project. Each has varying levels of impost on Council (cost, staff and risk), degree of community involvement, process complexity and level of autonomy and decision-making power - see Matrix.
3. Currently, there are many unknowns. That is ok, as more elements become clearer the governance model options can be refined.
4. The intention of this paper is to:
 - present the models available, including the base-level opportunities and constraints associated with each model
 - inform discussions with the Steering Committee and provide them with the information required to investigate further and come back to Council with their preferred model(s) for this project.

Next Steps:

- A. Continue to work with Community Steering Group to refine information and objectives to inform options for governance models. .
- B. Start negotiations on terms of contract with Department of Health as this will also help inform options.

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1. Purpose:

- Preliminary investigation into the different types of models available, how they might work and pros and cons.
- Ascertain which model(s) the Steering Committee and Council would consider workable for this project and what the processes/requirements for them are.

2. Objectives:

The Community Group's Objectives for any governance structure, as they are understood by staff, include:

1. Maximise opportunities to harness grant, public and philanthropic funds.
2. Maintain capacity to access to low interest loans to part-fund re-development.
3. Enable employment of staff.
4. As little 'red tape' as possible.
5. High level of transparency and medium-high level of autonomy.
6. Enable the generation of income (for-profit) that can be redistributed to community services associated with the project.

In addition, Council's Objectives for any governance structure, include:

7. Continuation of leadership by the community steering group.
8. Demonstration of Council's leadership and commitment to Community Led Governance Principles including supporting co-design, co-delivery and optimising public use of spaces etc.
9. Transparency, accountability, effectiveness (including sound risk management) and efficiency (including cost effectiveness).
10. Statutory Compliance.

In addition, a shared objective of State Government, Community Group and Council is:

11. That the governance model be as replicable as possible, as this appears to be a first in NSW.

3. Proposal put to NSW Government

See #E2018/56011

The proposal contained 4 key stakeholders and reporting lines shown below :



This paper looks at the governance structures that might be available for the 'management committee' stakeholder group.

4. Stages

There are 3 stages of governance in this project.

a) Preliminary Stage

This has included the period to date and will continue during the contract negotiation and until the governance model is chosen. Based on recent experience with the former Mullumbimby Hospital site, this stage is likely to continue until late 2019.

This stage will involve a continuation of the existing informal governance arrangements with:

- i) Community Steering Group led by Chris Hanley, continuing to lead the project and build on their work to date, including site and governance planning.

The Community Steering Group will continue to provide information to community and media about the project.

This has been a community-led project with the core group of community members being the main drivers behind the project to date. Just some examples of the reasons this needs to continue include:

- Acknowledgment of the significant contributions and achievements of that group – they are the only reason the site has been secured for continued public ownership.
- Maintaining momentum and project knowledge.
- Recognising the extensive expertise and capacity within that group is needed to deliver successful outcomes.

Care needs to be taken to ensure potential conflicts of interest are identified and managed as required, to ensure that volunteers involved now do not unintentionally impact themselves in later stages.

- ii) Council's role being:

- Providing support and information to the Community Steering Group. Council can assist the Group by bringing skills to the project in those areas that are within the functions of Council for example governance, planning, infrastructure and project planning and management.
- Negotiating contract terms with State Government. This will be the sole responsibility of Council as at the end of the day whether or not to accept the terms will be a matter for Council. However, Council will need and will look for support from the Community Steering Group throughout the negotiations. The final decision on whether to acquire the land or not will be matter for the elected Council as it is a non-delegable function (s377(h) LG Act).



Council's support will be led by the General Manager's Office and supported by staff from key services areas as required.

- b) **Establishment Stage**
- c) **Monitoring and Review Stage**

Establishment stage would cover the processes for setting up the governance structure and obtaining required approvals.

Monitoring and review stage will commence once the governance structure is in place. Initially it would monitor the adequacy of the governance structure and ensure that any required adjustments to the structure are made. Over time, this would move to monitoring operations to ensure that successful outcomes are being achieved and any required adjustments to operations are made.

Who will be involved, timeframes, processes, roles and responsibilities during these stages cannot be clarified until the preferred governance model is chosen.

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5. MATRIX – Some Key Factors

Draft only for purposes of discussion and input from community steering group.

	Direct service delivery	s355 Committee	Lease – Operational Land	Lease – Community Land	Service Contract	PPP – BOT, BOOT, PFP	Incorporated Association	Company Limited by Guarantee – Ltd (with Trust / Foundation)	Company Limited by shares - Pty Ltd – Council owned or PPP (with Trust/ Foundation)	Company Limited by guarantee – Ltd – Charitable Foundation	Company Limited by Shares – Full Private Ownership
Summary	Council runs the facility itself, using staff or contractors it retains	Council delegates the running of the facility to a Council Committee of community volunteers. That Committee has some decision making delegations	Land classification does not restrict uses. Whole facility (or parts of it) are leased to an entity for them to use and operate as per terms of lease.	Land classification restricts uses. Whole facility (or parts of it) are leased to an entity for them to use and operate as per terms of lease.	Council contracts an entity to manage the facility (or parts of it)	Any arrangement between Council and a private entity to provide public facilities in which Council has an interest and which are at least part funded through private sector financing, ownership or control.	A registered legal entity usually for recreational, cultural or charitable purposes. All profits must be put back into the association's activities.	Council sole member. Board oversees management and hiring of CEO responsible for day to day ops. Cannot pay dividend. On winding up assets flow to debt recovery and then as per constitution	Council and/or other shareholders. Board oversees management of facility and hiring of CEO responsible for day to day operations. Can pay dividend. Equity set by shareholding. (Could meet definition of PPP)	Membership open (for \$) per constitution. Board oversees management and hiring of CEO responsible for day to day ops. Cannot pay dividend. On winding up assets flow to debt recovery and then as per constitution	Private entities own the shares in the company. Company asset owner.
Examples	Cavanbah Centre	Loan Goat Gallery, Halls and Community Centres	Fletcher Street (Golden Breed), ACE Mullumbimby, Katia Nursery	Pre-Schools, Mullumbimby Drill Hall, Visitors Centre, Red Cross (retail) lease	Swimming Pools and Caravan Parks	Kempsey's Cinemas & Kuring-gai's Lindfield Hub (both stopped) Eurobodalla's Leisure Facility (started 2016 and has not gone to EOI stage)	RDA Northern Rivers Inc,	Camden Region Economic Taskforce	Newcastle Airport	Abbotsford Convent former Northern NSW Helicopter Rescue Service Ltd.	Beechworth Gaol

	Direct service delivery	s355 Committee	Lease – Operational Land	Lease – Community Land	Service Contract	PPP – BOT, BOOT, PFP	Incorporated Association	Company Limited by Guarantee – Ltd (with Trust / Foundation)	Company Limited by shares - Pty Ltd – Council owned or PPP (with Trust/ Foundation)	Company Limited by guarantee – Ltd – Charitable Foundation	Company Limited by Shares – Full Private Ownership
Possible	Not without funding	Yes but not preferred	Yes	Yes but must be for use consistent with PoM & Regulations & maximum term 30 yrs (s46 LG Act)	Yes	Yes	No – asset value exceeds maximum	Yes	Yes	Yes	Yes
Competitive Process Required for governance / management committee**	No	No	No (s55)	< 5yrs No > 5 yrs Yes unless to not-for-profit (s46A)	Yes	No		No	No	No	No
Equity/ Ownership	Council	Council	Council	Council	Council	Council or Shared		Council	Council or Shared	Foundation but with devolution to specified entities on winding-up	Private
Minister's/ Dept's approval required	No	No	No	Yes if there's any objection to lease from public exhibition (s47)	No	Yes		Yes	Yes	Depends on terms	Depends on terms
Cap Ex Review required ***	Yes if > base	Yes if > base	No	No	Yes if > base	No		No	No	No	No
Meets Community Group Needs/ Expectations	No	No	Possible	Unlikely	Possible	Possible		Possible	Possible	Possible	Possible
Meeting Community Needs/ Expectations	No	No	Possible	Unlikely	Possible	Possible		Possible	Yes - if Council owned Unlikely - if shared.	No-Unlikely	No

	Direct service delivery	s355 Committee	Lease – Operational Land	Lease – Community Land	Service Contract	PPP – BOT, BOOT, PFP	Incorporated Association	Company Limited by Guarantee – Ltd (with Trust / Foundation)	Company Limited by shares - Pty Ltd – Council owned or PPP (with Trust/ Foundation)	Company Limited by guarantee – Ltd – Charitable Foundation	Company Limited by Shares – Full Private Ownership
Role clarity	High	Low-Medium	High	High	Low-Medium	High		High if in constitution	High if in constitution	High	High
Transparency of decisions	Medium-High	Medium	Low-Medium	Low-Medium	Medium	Medium-High		High if in constitution	High if in constitution	Low	Low
Level of Council responsibility for delivery	Sole	Sole with volunteering	None	None	Sole	Shared		Shared	Shared	None	None
Decision Making	Council	Committee	Council & Lessee	Council & Lessee	Council & contractor	Council or Council & partners		Board	Board	Board	Private Board
Risk responsibility	Council	Council	Council & Lessee	Council & Lessee	Council & contractor	Council or Council & partners		Council	Board and Council & investors	Board and Council	Board and Private owners
Ongoing Council staff time costs	High	Medium	Low	Low	Medium	Medium-High		Low (if independently resourced) Medium – High (if staff resourced)	Low (if independently resourced) High (if staff resourced)	None-Low	None-Low
Non-property related risks to Council	Low	Low	Low	Low	Medium	Medium-High		Low-Medium	Medium-High	Low	Low
Governance Structure Establishment Costs (for Council)	Low	Low	Low	Low	Low to Medium	Medium-High		High	High	Low	Low
Governance structure ongoing administration eg reporting	Low	Low	Low	Low	Medium	High		High	High	Low	Low

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Access to Council's borrowing advantage	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Depends on constitution	No	No
Council tax exemptions apply	Yes	Yes						Yes			
Access to Council's Grant Pool and potentially reserved funding sources	Yes	Yes	No	No	No	Depends on structure		Yes grants No reserved funding	Yes grants No reserved funding	No	No
DGR capacity / attractive to philanthropy	Yes - Low	Yes - Low	Depends on lessee's structure	Depends on lessee's structure	Depends on contractor's structure	Depends on who the partner his		Yes - High	Yes – Low to Medium for P/L but High for supporting Trust	Yes - High	Unlikely – Unknown
Employees	LG Award	Volunteers	Unrelated to council	Unrelated to council	Unrelated to council	Depends on structure of PPP		LG Award	LG Award – council owned Unrelated - PPP	Unrelated to council	Unrelated to council

* Charitable Trust/Foundation can be set up separately to keep philanthropic donations separate and constrained to charitable use (as opposed to company having capacity to pay dividend to Council) which can be more attractive to donors in some cases. ** Market-based processes may still be desirable for community, Council and independent overseers. *** Best practice is to always undertake a Cap Ex Review.

6. Possible Options for Governance Models

Preliminary review indicates that there are at least 10 models that could be currently available and 1 that has been ruled out for Council (but could still be an option for a lessee/site manager).

Each option has different benefits and challenges and would deliver different outcomes.

In considering potential governance models, some of the matters to be considered include:

- Membership / Boards - who will be members and how will they be identified/appointed?
- Delegation and Decision-making – who will have what level of decision making authority?
- Community input/need – what level of community input is required/desirable, when and how etc?

- Transparency
- Accountability
- Risks/liability

- Statutory and discretionary reporting – internal and external
- Financial, employment and commercial matters.
- Statutory requirements.

7. What others are doing: Case studies

7.1 Abbotsford Convent, Vic <https://abbotsfordconvent.com.au/>

Type

Company Limited by Guarantee, with open membership.

Board independent of government, although Councillors and State/Federal Members eligible to be Board Members.

Company owns the site.

Company must have DGR status to be able to receive donations from Trust.

Company is supported by a Charitable Trust.

History

In 2004 the main Abbotsford Convent site was gifted by Vic State Government to the Abbotsford Convent Foundation, together with \$4M to commence the restoration works and a further \$1M from City of Yarra Council.

The Foundation “owns and manages” the site with a focus on arts, culture and learning. The Foundation has been gifted an additional 2 adjoining public spaces in recent years.

The Site

16 acres with 11 buildings and gardens. It currently houses over 100 studios, 2 galleries, cafes, a radio station, a school and green open space available for formal and informal use. On their books the site, plant and equipment is valued at \$12M.

Restoration of buildings has been staged and is continuing. It has been funded entirely from grants, philanthropy, donations, volunteering and commercial activities.

Studio and office spaces are tenanted, venues are used for performances, workshops, rehearsals, conferences and meetings and there is an extensive program of events staged each year.

It operates as a “community hub, accessible cultural platform and creative cluster”.

It has nearly 1M visitors a year, is home to more than 100 artists, writers, makers and creative practitioners and organisations and is open 365 days a year.

Governance

They have:

1. a skills-based Board;
2. skills-based subcommittees that have specific terms of reference.

They employ significant numbers of staff including Chief Executive Officer, Chief Operating Officer and employed staff across buildings, facilities, gardens, marketing, communication, development, programming, tenancy management and administration, leasing, venue hire, accounting and accounts management, governance and administration. Many staff appear to be term appointments (presumably as the positions rely on grant funding).

They are supported by a very large group of volunteers.

Governance is supported by a suite of key documents including:

1. Strategic Plan with:
 - 4 focus aims of Activation, Place, Viability and Governance;
 - each of the Aims is supported by 3 -5 key strategies;
 - each of the Strategies supported by 1-7 key directions.
2. 3-year Business Plans
3. Site Masterplan
4. Integrity Guidance - Code of Conduct, Conflicts of Interest Policy, Values, Tenancy Vision, Arts Manifesto, Feedback and Complaints Handling Framework.
5. Board Governance Guidance - Board induction, Board Workplan, Decision Register, Reporting Framework, Committee Terms of Reference.
6. Risk Management - Risk Framework & Register, Compliance Calendar, Assets Register.
7. Policies – Tenancy, Leasing, Open Space, Food and Beverage, Site Rules etc.

They demonstrate high levels of accountability and transparency, making more information about their structure, planning and decision making publicly available than any other case study reviewed.



Finance

They have no borrowings.

In 2016/2017:

- The supporting Trust received \$650k in grants, donations and interest and made \$78k in donations to the Foundation.
- The Foundation received \$3.25M in operating income and had \$3.85M in operating expenses. The deficit of \$600k was offset by \$1.15M in grant income and the \$100k in donations.
- The Charitable Trust attracted \$550k in donations and bequeaths compared to the \$23k the Foundation received.
- Nearly 50% of the Foundation's operating expenses are staff costs (\$1.8M pa).

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Snapshot: Abbotsford Convent

Operators:	Abbotsford Convent Foundation Wholly community run
Model:	Company limited by guarantee. Supported by a Trust. Constitution embeds qualification criteria for Board.
Finance	Foundation
2016/2017	Revenue \$3.25M Ops + \$2.24M Grants, Donations & Interest Expenditure \$3.85M (\$1.8M in staff costs)
	Trust
	Revenue \$650k Donations, Grants and Interest. Trust Expenditure \$78k
Strategies/Plans:	Site Masterplan Strategic Plan 3yr Business Plans
Policies:	Extensive supporting policies and frameworks
Community consultation	Was a community-driven initiative to secure the site for public use in the face of a State Government tender for interest in re-development of the site. Post initial advocacy for retention of the site in early 2000's it is unclear what level, if any, of community consultation has occurred since.

Key Learnings

- Wholly community run example
- Operating income insufficient to meet expenses
- Relies on grants and donations to be financially sustainable.
- Significant staff to support operations – Term appointments due to funding uncertainty could be a challenge.
- Significant support required from volunteers and donors.

7.2 Collingwood Arts Precinct, Vic

<https://capmelbourne.org/>

<https://creative.vic.gov.au/showcase/co-working-and-collaboration/collingwood-arts-precinct>

<https://www.miglicdean.com.au/for-lease/100-35-johnston-street-collingwood-vic-3066>

CEO Marcus Westbury, 0425 786 272 Open to discussions about advising/managing precinct

Type

Company Limited by Guarantee. Not known whether membership closed or open.

Not clear whether Ltd company is the registered not-for-profit or whether there is an associated charitable entity.

State Government owns the site.

History

Creative Victoria, a Vic State Government agency managed the site from 2010. They undertook an initial \$15M redeveloped the site completed in 2014.

In 2014 Collingwood Arts Precinct Ltd (CAP Ltd) was created and charged with further redevelopment of the site.

The Site

Former TAFE premises consisting of 3 building and open space. Around half is used by Circus Oz with the remainder still to be repurposed.

The intention is for it to be a “cross-disciplinary cultural precinct that provides secure customised space for the creative industries”.

In its current state the site has being used to host markets, concerts, art exhibitions, installations and local events.

CAP Ltd has used an EOI process to call for “*small to medium sized cultural organisations and creative enterprises, such as galleries, offices and studios*” to become “key tenants” on 2 – 6 year leases <https://capmelbourne.org/information-for-key-tenants>

The site is currently closed.

Governance

No information was available online. CEO, Marcus Westbury, has been of assistance in providing information listed below.

- Board of directors – no details of criteria for membership
- Staffing - CEO (Marcus Westbury) only full time positions with other part time support positions. 3.5 full time equivalents in total.
- Charitable and social enterprise entity.
- Supported by philanthropists
- Cross subsidy model being used to try to enable financial sustainability for creative hub/artists. Goal is that on average 70% of market rent is achieved, ie some tenants will pay 100%, of market rent and others less than 70% (they are holding back reduced subsidies until closer to opening) with 1/3rd left vacant.
- Their goal is to be an “enabling landlord” and to curate by choosing who give space to.
- Leasing is to be managed by commercial property consultants.

They demonstrate low levels of accountability and transparency with no governance information available publicly.

Finance

Website indicates CAP Ltd has raised \$14M for further redevelopment and lists a number of philanthropic donors but it is unclear if the amount is all donations or also includes grants.

Snapshot: Collingwood Arts Precinct

- Operators:** Collingwood Arts Precinct Ltd
- Model:** Company limited by Guarantee.
- Turnover:** \$2 million capital investment by the Victorian Government
- Strategies/Plans:**
- Deed and performance obligations with State Government
 - Arm's length to Government
- Policies:** Not available

Key Learnings

Advice is to:

- Maintain flexibility and adaptability – don't spec before you secure tenants.
- Experiment, don't overcommit, evolving site overtime and tenancy timeframes. Ie some 20yrs, some 1-2-6-8years. Dynamic
- Not one entry, three building, 4500 m2 in area, think of it as a block rather than one building, passive system to allow flexibility
- Doesn't require "front desk" with staffing but rather separate tenancies, access points and areas

7.3 Old Beechworth Gaol, Vic <https://oldbeechworthgaol.com.au/>

Type

Company limited by Shares – privately owned

History

Founded by 2 people, with the aims of:

- Building a thriving rural community by igniting entrepreneurship in young people and their communities; and
- Positioning north east Victoria as premier cycling tourism destination.

In 2011, privately owned company raised \$1.7M in share capital, which allowed the company to attract philanthropic funds and borrow to purchase the Old Beechworth Gaol site for \$2.5M.

In 2014, a not-for-profit company limited by guarantee, was established and uses the site as its headquarters – the Australian Centre for Rural Entrepreneurship (ACRE) <https://acre.org.au/>.

The 2 people driving the project are:

- Matt Pfahlert – CEO of ACRE, social entrepreneur and social enterprise consultant in rural Australia, former Young Australian of the Year for his work in youth development and board member on Social Traders Board and Regional Partnerships Victoria.
- Clayton Neil – Cycle tourism entrepreneur and advocate, local government economic development background, owner/operator of cycle tourism business and former or current member of Vic tourism and cycling bodies.

So far the project has received philanthropic funding from the Lord Mayor's Charitable Foundation, the Yulgilbar Group (which has a base in Northern Rivers), June Canavan Foundation and Into Our Hands Community Foundation.

The Site

Includes at least, the Old Gaol buildings and around 4 acres of land.

So far, the site has up and running:

- Old Gaol Café that operates from a 1964 Airstream Caravan in the walled courtyard with indoor and outdoor seating – open 7 days;
- Gaol tours - operating 7 days.

Masterplanning for the site is estimated to take 12 – 18 months. Potential uses for site are listed as:

- Home for the Social Enterprise Academy Australia and the Australian Centre for Rural Entrepreneurship (ACRE)

- Honouring heritage and the Ned Kelly story
- Visual arts, entertainment, film, culture, music and events programming
- Hospitality and retail – showcasing regional beer, food and wine
- Flexible co-working and collaboration space for small businesses and artisans
- Tourist accommodation focused on cycle tourism and cultural heritage visitors
- A bicycle training and development centre and cycling tours and experiences
- Wellness centre and conference facilities
- Possibly residential development

Snapshot: Old Beechworth Gaol

Operators: Private

Model: Company limited by shares.

Not-for profit enterprise operating from site.

Finance Unknown

2016/2017

Strategies/Plans: None available

Community consultation It appears there was none prior to the State Government's sale to the private company. Post the acquisition, a community open day held.

Key Learnings

- Individuals have been key to driving the project
- Full commercial operation in private ownership is different from other recent examples in Vic.
- Staged approach with revenue-generating operations up and running first.
- Realistic timeframes

7.4 Camden Regional Economic Taskforce Ltd

<https://www.camden.nsw.gov.au/business/camden-region-economic-taskforce/>

CEO: Debbie Roberts – Debbie.roberts@cret.com.au

Type

Company Limited by Guarantee, with closed membership (Council only member).

Even though they are a not-for-profit being limited by Guarantee, they do not have DGR status as they are not in an industry that attracts donations.

History

Commenced options review in late 2013.

Applied to OLG for approval for company structure in 2015 – took 9 months of negotiation with OLG.

OLG application included business case, draft constitution and supporting corporate documents. Has been operational now for less than a year.

The Project

CRET Ltd was established to bring together key local business leaders and experts to drive and facilitate the economic growth and create jobs, attract investment and to support the growth of business and industry, now and into the future.

Independence from Council is reported by CEO as being beneficial as it:

- Frees company up from red tape
- Allows it to be more responsive
- Gives them more capacity to engage and negotiate without being fettered by competing roles/responsibilities
- Gives them independence for their advocacy role.

Governance

They have a non-skills based, unpaid Board consisting of:

- 2 Councillors, elected by Council Resolution and whose directorship ceases on them ceasing to be a Councillor.
- 5 community members, with only broad 'community-based' criteria.

The appointment of community board members has become highly political and can be contentious.

The Board meets monthly. Meeting quorum is 4 + member representative which is the Council GM or their delegate. Having Council GM present at meetings with authority to be able to agree to actions has been key to keeping momentum going.

Their Directors' term is 3 years for full Board. It does not sync with election cycle and full, 'fill n spill' has no succession capacity. This is problematic and is one of the parts of their constitution they will be seeking to change.

Directors are not remunerated. OLG were not supportive of remuneration but given their objectives, lack of remuneration has caused them some difficulties in past.

They employ a full time Chief Executive Officer and a part time (3 day/wk) executive assistant.

Company Secretary is the Chief Financial Officer of the Council. This was a deliberate decision to harness the oversight that comes with processing payments and preparing reports as a fraud and risk control. CEO advised that the ASIC annual reporting is not onerous.

Governance is supported by a suite of key documents including:

1. Strategic Plan
2. Code of Conduct for Board – adopted from LG model code
3. Procurement Guideline – self-imposed LG Act competition requirements;
4. Service Level Agreement with Council, under which. Council provides the following services to CRET Ltd:
 - funding;
 - HR recruiting and management;
 - IT
 - Finance – invoicing, payments, banking and reporting
 - Premises and premises maintenance.
5. Statement of Intent (Business Plan) with KPI's linked to Strategic Plan.
6. Template for Quarterly Activity Reports and 6-month Finance Reports to Council (same format as Council reports to keep it simple)



7. Template for Reports to Board (same format as reports to Council).
8. Company calendar (meetings and reporting) that integrates with the Council calendar.

After much deliberation and legal advice, they have decided that the requirements of GIPA do not apply to CRET Ltd so they run their own records system separate from Council.

The CEO of Cret Ltd meets with the GM of

They demonstrate high levels of accountability and transparency in some regards, eg fraud and risk management, procurement and high levels of regular reporting to Council (which are public reports). However, the exclusion from GIPA could be perceived by community as reducing transparency.

Funding

In their first 2 years of operation they will be 100% funded by Camden Council, and they are charged with raising ongoing funding through sponsorships, partnerships, memberships, commercial opportunities and grants.

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Snapshot: Camden Region Economic Taskforce Ltd.

Operators:	Camden Region Economic Taskforce Ltd
Model:	Company Limited by Guarantee Council owned
Finance	Unknown
2016/2017	
Strategies/Plans:	Strategic Plan Statement of Intent (Business Plan) Code of Conduct
Policies:	Procurement Guideline
Community consultation	Only Advertising (through consultants) for community board members and promotion of activities. No involvement in Strategic Plan.

Key Learnings	<ul style="list-style-type: none"> If creating a company, do invest in using a specialist legal firm to prepare constitution due to scrutiny it will received from OLG, how much it will impact operations and high costs/process time if it needs to be changed. If there is going to be a Director term, link it to election cycle and stagger it so there's succession. Have skills-based board to avoid it becoming highly politicalised. Consider and address risk management early. Keep reporting the same format to avoid duplication. Learn lessons from others' experiences in this area.
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7.5 Newcastle Airport

Type

Partnership between 2 Councils that is supported by 5 companies limited by shares (Pty Ltd).

History

Newcastle and Port Stephens Councils jointly took over operation of the then small airport from Federal Government in 1993 with a 30-year lease over the terminal and air operation land.

It was originally established as a not-for-profit company limited by guarantee owned jointly by Port Stephens and Newcastle councils.

In 2013 the governance was from to the current 5-company shareholder structure to allow:

- the company Newcastle Airport Pty Ltd to borrow independently of the councils and to increase its borrowings;
- the councils to receive dividends from Newcastle Airport P/L in future; and
- give the councils the ability to realise part of their capital or introduce third party investors in future.

The Site

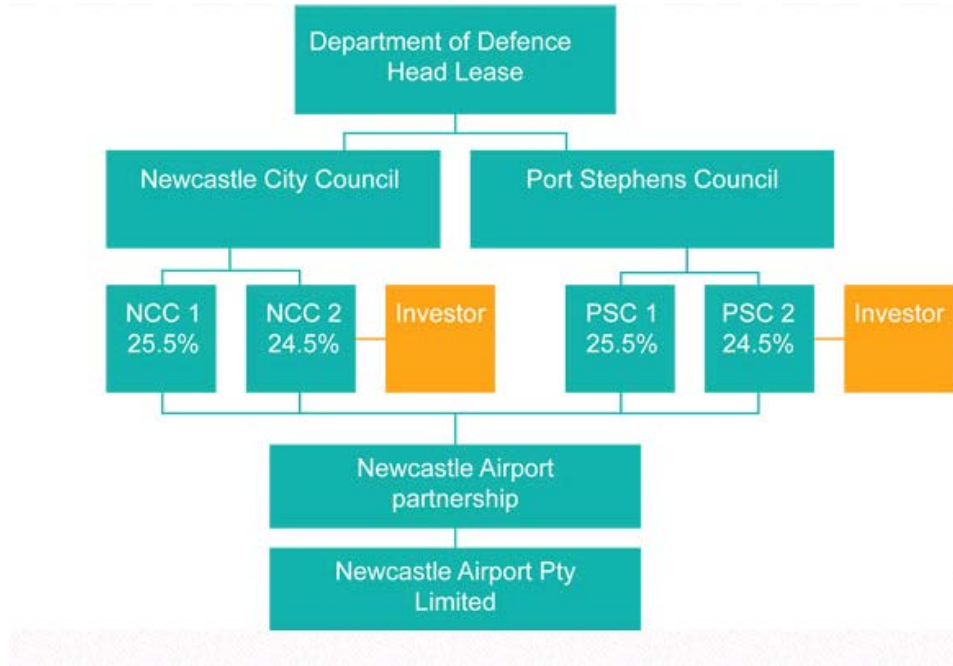
Full commercial operation, providing domestic and some international services, with over 1.25M passengers in 2016/2017.

Governance

Their structure has:

- Federal Government as asset owner.
- Newcastle Airport Partnership (2 councils) as head lessee from Federal Government.
- Newcastle Airport Pty Ltd is land manager and operator as nominee and agent of Newcastle Airport Partnership.
- Newcastle Airport is owned by 4 shareholders:
 - o 2 companies solely owned, one by each of the 2 councils;
 - o 2 companies that have tradable shares giving capacity for either of the councils to realise part of their capital and/or attract private investment, one owned by each of the 2 councils.

On their website this is shown below but it is perhaps not the best visual depiction:



They have a 7-Director Board made up of:

- the 2 GM's of the councils; and
- 5 skills-based members (all with previous experience as directors of companies in related industries eg aviation, airports, transport, energy and tourism sectors).

They do not demonstrate a high levels of accountability or transparency, with limited information available on Newcastle Airport Pty Ltd's or the 2 councils' websites.

Finance

Not available.



Snapshot: Newcastle Airport

Operators:	Newcastle Airport Pty Ltd, Port Stephens and Newcastle Councils
Model:	Partnership between Councils with companies limited by shares (Pty Ltd) owned by councils
Finance	Not available
2016/2017	
Strategies/Plans:	Not available
Policies:	Not available
Community consultation	None

Key Learnings

- Full commercial operation.
- Be clear about desired outcomes and make sure that governance structure will deliver.
- Changing structures can be expensive and take time
- Built up gradually over 25 years
- Councils bear 100% of the risk and receive 100% of the profits.

7.6 Port Hedland International Airport

Operators: The PHIA Group of Companies (PHIA Group) is the lessee and operator of the Port Hedland International Airport. PHIA Group's underlying investors, managed by AMP Capital and Infrastructure Capital Group.

Model: 50-year long term lease (commenced March 2016).

Town of Port Hedland accepted an offer by private consortium to take control of its airport. Deal was worth \$205 million (\$165 million one-off payment to the Town and commitment to spend \$40 million over the next five years on airport upgrades).

\$165M was to be established into a community fund by Council with dividend every 5years, however this hasn't progressed.

Turnover:

Strategies/Plans: Masterplan being reviewed

Policies:

Community consultation Communication and engagement campaign to "create a narrative" about the reasons for the proposed lease and provide evidence. Tactics included full-page ads in local newspaper, radio advertising, social media posts, information booth/display at local shopping centres, and community forums.

[https://www.porthedland.wa.gov.au/documents/1149/attachment-1-to-item-711-adoption-of-the-business-plan-\(port-hedland-international-airport-long-term-lease-business-plan\)](https://www.porthedland.wa.gov.au/documents/1149/attachment-1-to-item-711-adoption-of-the-business-plan-(port-hedland-international-airport-long-term-lease-business-plan))

Key Learnings

- Lengthy governance review process to look at and evaluate various models based on objectives, critical success factors and understanding the value of the asset and potential liability of the site (ie required redevelopment)
- Models reviewed included:
 - commercialisation (separate business entity)
 - council controlled organisation (WA legislation different to NSW)
 - leasehold

Appendix 1 – Considerations

Currently, there are many unknowns. That is ok, as more elements become clearer the governance model options can be refined.

Some elements requiring consideration include the following, along with the Proposal details where it addresses these matters.

4.1 Asset Ownership – land, buildings and fixtures.

It has been confirmed that Council will initially own the land, buildings and fixtures but the terms of ownership are not yet known.

Those terms will influence the types of actions Council can take with the land, eg:

- If the transfer to Council is unconditional, would Council be open to selling the site or part of it?
- If the transfer to Council is conditional, how do those conditions impact governance model options?

This element is fundamental to suitability of some governance model options.

4.2 Business Plan and Cap Ex

The intention of the proposal and Council is that the facility is self-sustaining and that it make a profit that is able to be returned to community.

A sound business plan and Capital Expenditure Review will be needed.

The Capital Expenditure Review may need to be submitted to the OLG if the thresholds are met.

4.3 Financial return

The proposal sets out the aim of generating a modest income, to:

- Fund a sinking fund to cover repairs, replacement and maintenance; and
- Distribute back to tenant service providers on a merit basis and/or used to fund community projects.

While the proposal said a sinking fund would be created the proposed distributions of returns set out in the proposal, make no allowance for the sinking

fund. Does this need to be clarified? What level of sinking fund, if any, is required?

4.4 Expanded benefits to community

The proposal identifies the expanded benefits to community as including:

- retention of public assets in public ownership
- affordable/below market rent premises for organisations representing welfare, health, education and cultural sectors
- wholly subsidised rent, zero cost space, for community projects
- surplus income able to be invested back into community welfare programs addressing homelessness, women's refuge services and social projects
- innovation and co-design, increasing industries and high value jobs not tied to tourism, diversified economic base for Shire
- 20 new full time equivalent jobs from operations and another 21 full time equivalent jobs during redevelopment works.
- education opportunities within Shire reducing travel for residents
- reduced barriers (distance, travel cost and lack of public transport) for vulnerable residents accessing services in Byron Bay, improved services and improved wellbeing outcomes
- increased social cohesion and connectivity.

4.5 What level of management expertise is required for the operating entity?

4.6 What is the acceptable level of risk to Council?

4.7 How will Council balance autonomy and control? Should it?

4.8 Should the operating entity stand alone from Council?

4.9 How long is the tenure period?

This was a question posed when the model included a lease from State to Council. Will now only be relevant if a Lease is proposed as the governance model.

Appendix 2 – Strategic links:

1. Community Strategic Plan 2022:

Objective 1	We have infrastructure, transport and services which meet our expectations
Strategy 1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard
Action 1.2.7	Optimise Council's property portfolio
Activity: 1.2.7.3	Investigate Byron Bay Hospital development options

2. Community Solutions Panel Key Considerations:

- Panel encourages, supports and facilitates shared ownership of community issues.
- Panel supports investment into infrastructure that generates a return.
- Panel's requires organisational and individual responsibility, accountability and transparency.

3. Community Led Governance Principles (Res18-176):

- Have courage to take informed risks to bring about change.
- Be community-led, make space for community to take action themselves and respond positively to local initiatives.
- Empower citizens through participatory democracy eg community boards.
- Ensure local needs are met through joined-up planning and services.
- Forge local and regional partnerships that address issues and drive change at community, state and federal levels.
- Promote local networks, co-design, co-production and maximum use of public spaces.

4. Supporting Partnerships Policy Objectives:

- Develop partnerships that demonstrate transparency, probity, accountability and consistency from their inception.
- To enable the development of partnerships that can achieve quadruple bottom line outcomes (economic, social, environmental, civic leadership) and deliver recurrent revenue to Council.
- To identify and engage with social impact investment opportunities and engage with potential investors.
- To assist Council, retain and manage public land in a financially sustainable way delivering quantifiable and demonstrable benefit of the Community, where it is in the best interest of the community to do so.

<https://www.byron.nsw.gov.au/Council/Your-right-to-Council-information/Policies-publications/Supporting-Partnerships-Policy>

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External sources:

- Office of Local Government – Anita Gambhir, Council Engagement Officer
- Old Beechworth Goal -
- Abbotsford Convent -
- Port Stephens Council (Newcastle Airport) – Tony Wickham, Governance Officer
- Camden Council – Debbie Roberts CEO Camden Region Economic Taskforce
- Campbelltown City Council -
- Online:
 - Fed Square Pty Ltd Annual Report
 - Reimaging Public Private Partnerships PwC
 - Shared services in local government NSW Audit Office, 21 June 2018