

## **Attachment 2**

### **Foundation structural options**

Council endorsed at the 28 January 2016 Ordinary Meeting the officer's recommendation that "the Sunshine Coast Arts Advisory Board establish an *independent* Sunshine Coast Art Foundation that is closely *aligned to the Caloundra Regional Gallery*".

This briefing provides structural options to establish an *independent* Sunshine Coast Art Foundation with each option to have the same Objectives as agreed by the SCAAB, which provide *alignment to the Caloundra Regional Gallery* while also allowing the ability to impact the artistic landscape of the region.

The goal of the Sunshine Coast Art Foundation is to engage with national and international donors as well as Sunshine Coast donors to secure funds to support the vision of the Gallery and the development of visual art, artists, collections and spaces across the region.

#### **Option 1 - Do not establish a Foundation (i.e. do nothing)**

Council could choose not to pursue the creation of a new Foundation, but could instead look to explore opportunities to engage with community members and other stakeholders, including the existing Friends of the Gallery organisation.

All activities would continue to be run through Council or in conjunction with external stakeholders, organisations, and individuals where the strategic direction may not necessarily align.

#### **Option 2 - Council as a minority member (no reserve powers)**

Another option would be where Council would hold a passive and minor stakeholder interest as a member at the same level of membership as all other members of the organisation (which could be comprised of the other board members, for example).

Council, through its nominated 'corporate member representative' would vote along side all other members on the appointment of directors, but would have no additional or special rights or powers over and above the other members.

Council would not be entirely independent of the company from a governance perspective and would (through its corporate member representative) attend general meetings and have rights as a member under the Corporations Act 2001 (Cth). Council would need to consider who would be the other members, e.g. strategic stakeholder body corporates or other directors.

Council could also enter into sponsorship funding contracts with the Foundation through which it may receive reports and visibility of operational matters.

Subject to the final contractual terms, Council would be unlikely to be characterised as controlling the Foundation on this basis – although it would not be entirely independent.

#### **Option 3 - Council as the Founding Member with special reserve powers**

As an alternative option, Council would maintain a stakeholder interest as a member, but where Council holds limited 'reserve powers' for certain key decisions, e.g. Council must approve any special resolution to amend the company constitution or wind up the Foundation, etc. Council would need to consider who would be the other members, e.g. strategic stakeholder body corporates or other directors.

Council would not be entirely independent of the company from a governance perspective and would presumably attend general meetings (through its corporate member representative) and have rights as a member under the Corporations Act 2001 (Cth).

Council could also enter into sponsorship funding contracts with the Foundation through which it may receive reports and visibility of operational matters.

Subject to the reserve powers in the constitution and broader contractual arrangements, Council would be unlikely to be characterised as controlling the Foundation on this basis – although it would not be entirely independent.

**Option 4 - Contractual arrangement**

A final option could be where the Foundation has an entirely independent governance structure where, for example, the members of the organisation are also board members. Council could receive reports and direct visibility on operational matters as required through funding contracts.

In this instance, Council would not directly appoint or vote to elect board members. The directors instead would seek to attract, recruit, and retain a skills-based board. Council could, however, be invited to sit on an advisory panel or nominations subcommittee, but the decision of appointment would be entirely independent.

Subject to the final contractual arrangements, Council would not be characterised as controlling the Foundation, thus ensuring its independence.