
REPORT 4
(1215/52/IM)

**ESTABLISHMENT OF THE ARTS CENTRE TRUST:
ADOPTION OF THE STATEMENT OF PROPOSAL**

1. Purpose

To report on the submissions that were received during the special consultative procedure to establish the Arts Centre Trust, and recommend that this committee recommends to Council that the proposal is adopted.

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Council approved the “Statement of Proposal” and initiated the special consultative procedure to establish the Arts Centre Trust (required under ss56(1) and 88(2) of the Local Government Act 2002) at its meeting on 10 February 2005.*
2. *Note that the proposal to ‘Establish the Arts Centre Trust’ was publicly notified on 20 April 2005 concurrent with the 2005/06 Draft Annual Plan consultation process.*
3. *Note that 27 submissions were received on the proposal to establish the Arts Centre trust, and that 74% (20 out of 27) of the submissions were in favour of the proposal.*
4. *Note that the Residents’ Satisfaction Survey of May 2005 resulted in 59% of respondents being in favour of the proposal with 29% neutral and 13% opposed.*
5. *Recommend to Council that it adopts the proposal to establish the Arts Centre Trust.*
6. *Note that there are a number of further steps to be taken to document and establish the Trust and that the expected timing for completion of those steps is February 2006.*

3. Background

Background to the establishment of the Arts Centre Trust is contained in the “Statement of Proposal” attached as “Appendix 1”. Prior to the approval of the Statement of Proposal by Council on 23rd February 2005 the proposal had been considered by the Strategy and Policy Committee on 10th February 2005.

3.1 Consultation

After the Council resolution the Statement of Proposal was then made available for public consultation in accordance with the Special Consultative Procedure. This included the following processes:

- Inclusion of the “Statement of Proposal” (pages 20 and 193 to 197) in the 2005/06 Draft Annual Plan
- A public notice in the Dominion Post on 20th April 2005
- An information pack about the proposal at Council reception and at the Council Service Centre
- Inclusion of the “Statement of Proposal” on the Council’s website

3.2 Summary of Submissions

A total of 25 submissions were received on the proposal to establish the Arts Centre Trust. Of these submissions 16 were in support and 7 were against, while 2 offered conditional support.

The submissions in support expressed broad support for the proposal without reasons. Seven of them stated they support this funding – even though there is no cost involved in the proposal. This suggests that much of the comment relates to the Arts Centre, rather than the proposal of a Trust.

The conditional supporters would prefer to see the Arts Centre establish a sound track record under Council management before making any transition to a CCO.

The 7 submissions against the proposal gave the following reasons:

- 3 opposed the funding (see above – no funding is involved), one of these suggested it was a vehicle to hide subsidies
- 2 prefer an independent entity, that is not council controlled (a co-operative or a trust that is not council controlled)
- 1 prefers that it is run by a Council officer
- 1 submitter is concerned about competition with their entity (see attached appendix II: letter to Wellington Performing Arts Centre)

Copies of the submissions were available to the Strategy and Policy Committee when it heard the submissions. No new issues were raised when the submissions were heard by the Strategy and Policy Committee between 1 and 7 June 2005.

3.3 Summary of Survey

The Residents Satisfaction Survey asked respondents if they supported the establishment of a charitable trust – The Wellington Arts Centre Trust – to run the Arts Centre. 59% were in favour, 29% were neutral, and 13% were opposed.

3.4 Discussion & Recommendation

The reasons to support the proposal were considered by the Strategy and Policy Committee leading up to the approval of the Statement of Proposal and initiation of the Special Consultative Procedure. The reasons for the proposal and the assessment against the other options considered (including the status quo option of the continuation of management of the Arts Centre by the Council) are described in the Statement of Proposal.

No new information has been brought out through the consultation process that might cause a rethink on the proposal. As the majority of community support has favoured the establishment of a trust, it is recommended that the Council establish the Arts Centre Trust.

3.5 Next Steps

For the remainder of 2005, and as anticipated in the Statement of Proposal, the Arts Centre will be managed within the Council. This is to enable the operation to be established, tenanted and for the teething issues that inevitably arise to be resolved. During this time the remaining processes required for establishing the Trust will be completed. These include:

- The draft Trust Deed for the Arts Centre Trust is submitted to Inland Revenue for review
- Approval by Council of the Trust Deed
- Appointment of Arts Centre Trustees

Subject to the above steps it is envisaged that the new Arts Centre will be established by February 2006.

4. Conclusion

Given the level of expressed support for the Arts Centre Trust it is recommended that the Council agrees to establish the Arts Centre Trust, with effect from early 2006.

Supporting Information

1) Strategic Fit / Strategic Outcome

The project supports Council's overall vision of Creative Wellington – Innovation Capital. It is also aligned with the economic development strategy, and with the strategic goals:

- Attraction of talented people and jobs*
- Maintaining Wellington's creative edge (as the centre of arts)*

The policy supports Council activities as a funder of arts partnerships, and will contribute to Council meeting the outcome of being New Zealand's arts and cultural capital.

2) LTCCP/Annual Plan reference and long term financial impact

The project is contained in the Annual Plan under the Culture & Arts KAA

Opex project C605

Capex project CX483

No changes are indicated in the coming year as a result of this report.

3) Treaty of Waitangi considerations

No Treaty issues have been identified.

4) Decision-Making

This report does not meet the significance threshold.

5) Consultation

a) General Consultation

The Council is required under legislation (LGA 2002) to consult on this matter. All materially interested parties have been consulted in the preparation of this report, and their views are reflected in this report, as appropriate.

b) Consultation with Maori

Mana whenua will be consulted as part of any consultative procedure.

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

There is no policy relating to the establishment of CCO's. This report follows procedures required by legislation, and is consistent with current practise.

Statement of Proposal

Arts Centre Trust

Statement of Proposal to establish a new Council Controlled Organisation

Introduction

This proposal seeks to establish a new council controlled organisation, in the form of a charitable trust to be known as the Arts Centre Trust. The purpose of the Trust will be managing the Wellington Arts Centre.

Council officers have held discussions with representatives of various interest groups over the past three years about the proposal to establish a new Arts Centre. The Council has funded a feasibility study which identified sufficient demand for this facility to justify its establishment. The Council now proposes to establish a new trust to manage the facility, with trustees appointed by Wellington City Council. The Trust will work closely with the key stakeholders.

Under the Local Government Act (LGA), before establishing a new council controlled organisation Wellington City Council is required to prepare a detailed statement of the proposal and consult on it in accordance with a special consultative procedure.

Reasons for the proposal

As part of the 2004/05 Draft Annual Plan the Council consulted on the proposal to establish an Arts Centre, to gauge public support for the initiative. With the physical Arts Centre presence now being established, this proposal relates to governance options.

Council officers have proposed that a separate entity be established to focus on managing the Arts Centre. This entity would work with key stakeholders, such as the tenants, arts organisations and practitioners, potential funding partners, and the Council.

The objectives of the entity would include:

1. To manage, administer and operate the Wellington Arts Centre for the benefit of the people of Wellington and the public generally, with the aim of achieving key benefits:
 - a. To build on the strengths of Wellington's cultural infrastructure;
 - b. To materially assist arts organisations and individuals to develop their skills
 - c. To attract arts organisations and individuals
2. To promote and co-ordinate fundraising to assist the operation and further development of the Wellington Arts Centre.

Options considered

In the preparation of this proposal Council officers have considered a number of different management options and these can be distilled down to four reasonably practicable options. The following is a summary of these options including an assessment of the relevant benefits and costs of each option and other matters that are considered to be relevant.

Establish a new Council Controlled Organisation in the form of a charitable trust

This is the preferred long term option. The benefits include:

Benefits

- Provides the best prospects for fundraising from other sources
- Ensures that focus is retained on meeting objectives and achieving outcomes
- Is tax efficient, provided charitable status is approved by IRD/Charities Commission¹
- Allows a broad range of interests and skills to be represented
- Does not unduly restrict future options

Disadvantages

- One-off establishment costs required (legal, tax and other consulting)
- On-going governance or compliance costs (e.g. for monitoring and reporting)
- Administratively more complex to set up and operate (public consultation is required; legal and IRD/Charities Commission processes and approvals required)

Contribution to community outcomes

The Council has not yet established its community outcomes (as defined under section 91 of the LGA). Until these are established, it is considered appropriate to refer to the outcomes listed under relevant key achievement areas in the Council's Annual Plan.

The ultimate goal for the Arts Centre is to contribute to increasing the level and quality of participation of Wellington residents in the arts, and to attract artists to the city. Through this, it will contribute to the following outcomes:

¹ The Charities Bill establishing the Charities Commission is expected to be passed in early 2005. Preliminary provisions in relation to the Charities Commission will come into force the day after the Act receives Royal assent. The remainder of the Act, including provisions relating to registration, will come into force on a date to be appointed by the Governor-General by order in Council. The Select Committee has recommended that the Inland Revenue retain responsibility for the administration of the approved donee regime with the Commission being responsible for determining whether an entity qualifies for registration as a charitable entity.

- Arts and cultural capital (provision of strong and supportive infrastructure)
- Quality of life (access to the arts)

This proposal is not about the operation of the Arts Centre, but is considering the most appropriate governance structure for managing and operating the Arts Centre. It is assumed that the better the governance that can be applied, the greater will be the prospects of successfully achieving the goals and outcomes for the Arts Centre.

This option is considered to offer broadly the same contribution to achieving these outcomes as each of the other options.

The impact on the Council

The impact on the Council is neutral, when compared to the other options. Support from the Council will be provided under each of the options up to an equivalent level. This level of funding and support will not have a material effect on Council's ability to meet its present and future needs.

Any other relevant matters

It is important to obtain buy-in from all key stakeholders. This is best achieved by having commitment to the concept which translates to high levels of use. An independent entity will ensure that all users and stakeholders have an opportunity to participate and be heard, and will help overcome any resistance to Council involvement.

The proposal is subject to the proposed trust obtaining tax and donee exempt status from the IRD (or Charities Commission).

Wellington City Council to manage the entity internally

This option has been considered but is not the preferred long-term solution. It would involve the Council's Recreation business unit taking over responsibility for the daily operations.

Benefits

- Administratively the simplest to set up and operate (consultation not required; no establishment costs)
- Tax efficient (although no tax issues have been identified)
- Lowest cost: able to utilise existing Council resources; no additional governance or compliance costs (e.g. for monitoring and reporting)
- Does not restrict future options

Disadvantages

- Artists may be reluctant to engage with the Council directly
- Fundraising efforts will be hampered
 - External agencies reluctant to give funding to the Council
 - Creates an expectation that the Council will “foot the bill”
- Some difficulties in retaining focus due to diverse range of activities undertaken (the arts sector is not core business for the Council)

Contribution to community outcomes

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The ultimate goal for the Arts Centre is to contribute to increasing the level and quality of participation of Wellington residents in the arts, and to attract artists to the city. Through this, it will contribute to the following outcomes:

- Arts and cultural capital (provision of strong and supportive infrastructure)
- Quality of life (access to the arts)

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The impact on the Council

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Any other relevant matters

The Council’s Recreation business unit will manage the entity as an interim measure, while this consultation process is being undertaken.

Wellington Museums Trust (an existing CCO) manages the entity

This option has been considered but is not favoured. It would involve the Council negotiating a suitable arrangement with the Wellington Museums Trust (WMT) to manage the facility.

Benefits

- WMT is in a similar business and has a sound administrative and management structure
- Better fundraising prospects (as a charitable entity)

Disadvantages

- Some difficulties in retaining focus due to need to manage six existing facilities
- Insufficient resources (financial and personnel) and could need to incur additional cost if taking on the facility
- May not support the current objects of the Trust – more complex to amend the Trust deed

Contribution to community outcomes

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The ultimate goal for the Arts Centre is to contribute to increasing the level and quality of participation of Wellington residents in the arts, and to attract artists to the city. Through this, it will contribute to the following outcomes:

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- Quality of life (access to the arts)

This proposal is not about the operation of the Arts Centre, but is considering the most appropriate governance structure for managing and operating the Arts Centre. It is assumed that the better the governance that can be applied, the greater will be the prospects of successfully achieving the goals and outcomes for the Arts Centre.

This option is considered to offer broadly the same contribution to achieving these outcomes as each of the other options.

The impact on the Council

The impact on the Council is neutral, when compared to the other options. Support from the Council will be provided under each of the options up to an equivalent level. This level of

funding and support will not have a material effect on Council's ability to meet its present and future needs.

Any other relevant matters

There are no other relevant matters.

Premises Management Trust (an existing CO) manages the entity

This option has been considered but is not favoured. It would involve the Council negotiating a suitable arrangement with the Premises Management Trust (PMT) to undertake the management of the facility.

Benefits

- PMT is in a related business – understands the requirements and has some established relationships
- Better fundraising prospects (as a charitable entity)

Disadvantages

- Some difficulties in retaining focus due to need to manage Te Whaea
- Insufficient resources (financial and personnel) and could need to incur additional cost if taking on the facility
- More complex to set up – requires changes to the Trust

Contribution to community outcomes

The Council has not yet established its community outcomes (as defined under section 91 of the LGA). Until these are established, it is considered appropriate to refer to the outcomes listed under relevant key achievement areas in the Council's Annual Plan.

The ultimate goal for the Arts Centre is to contribute to increasing the level and quality of participation of Wellington residents in the arts, and to attract artists to the city. Through this, it will contribute to the following outcomes:

- Arts and cultural capital (provision of strong and supportive infrastructure)
- Quality of life (access to the arts)

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The impact on the Council

The impact on the Council is neutral, when compared to the other options. Support from the Council will be provided under each of the options up to an equivalent level. This level of funding and support will not have a material effect on Council's ability to meet its present and future needs.

Any other relevant matters

There are no other relevant matters.

Funding of the Trust

The operating cost of the Arts Centre is estimated to be \$1.2 million in 2005/06, with this funding to be revisited in the following years. This includes a small allowance for governance costs such as trustee fees and expenses. The Council has previously resolved to provide funds of \$606,000 with most of the remainder to be generated from tenants and other facilities users.

The Trust would be expected to source further external funding, whether to assist with operating expenses, or for expansion. This might be achieved through a mixture of grants, sponsorship and donations.

How Would the New Trust operate?

- It is proposed that the new trust is established as a charitable trust. Its objects are as noted in the background section:
 - To manage, administer and operate the Wellington Arts Centre
 - To promote and co-ordinate fundraising to assist the operation and further development of the Wellington Arts Centre.
- It is proposed to have up to eight trustees on the new Trust – all appointed by WCC. Candidates will be selected that offer appropriate skills and that broadly represent the key stakeholders.
- The proposed new Trust will be a Council-Controlled Organisation and subject to the establishment, governance and accountability provisions set out at Part 5 of the Local Government Act 2002. The trust would be required to report to the CCO Performance Subcommittee.
- Assuming the proposal is adopted and the documentation finalised in time the new Trust will become effective from 1 January 2006.

Process Required to Establish the Trust

The steps required to establish the new Trust are:

- A special consultative process must be completed and the Council must consider any submissions made on this proposal before making a decision to adopt this proposal.
- The Inland Revenue Department and the Charities Commission (in due course) will be required to approve the draft Trust deed to confirm the Trust's charitable status before the trust is established.
- Development of terms of engagement between the new trust and the Council.
- Recruitment and appointment of Trustees.

Conclusion

The Council is proposing the establishment of the Wellington Arts Centre Trust (a Council Controlled Organisation in the form of a charitable trust) to manage, administer and operate the Wellington Arts Centre. This is considered to be the best option for ensuring the success of the new facility, which is envisaged as an important contributor to Wellington's continued identity as the arts capital.

14 June 2005

Response to Wellington Performing Arts Centre submission on the 2005/06 Draft Annual Plan (Submission #546)

1 Introduction

The Wellington Performing Arts Centre (WPAC) is a privately owned organisation in Wellington city that is a provider of:

- Performing arts diplomas at a tertiary-level, drawing on Central government funding from the Tertiary Education Commission as a Private Training Establishment (PTE). About 75% of WPAC's business is derived from its tertiary education activities
- A variety of performing arts classes at a vocational level, such as vocal, dance and acting lessons
- Rehearsal and performance space – the WPAC hires its facilities to external groups when not in use for its core purposes.

The WPAC has three main concerns about Council's intentions in respect of its Arts Centre (currently termed the Wellington Arts Centre)

- **Name** - That the current name "Wellington Arts Centre" should be changed, as WPAC consider that "Wellington Arts Centre" can too easily be confused with the "Wellington Performing Arts Centre"
- **Unfair competition** - That activities at the new Arts Centre will or may duplicate services already provided by the WPAC, thus undermining the viability of its operations. WPAC consider that the use of Council funding to support its Arts Centre represents unfair competition. WPAC also requests that any new Trust deed for Council's new Arts Centre should restrict its activities away from those provided by WPAC
- **Inadequate Statement of Proposal** – that Council's Statement of Proposal to establish a CCO Trust to govern the Council's new Arts Centre is inadequate, because it did not include a copy of the Trust Deed, and the proposed objects for the trust incorporated in the statement of proposal do not reflect the narrow scope of the proposed objects of the new arts centre set out in the business case adopted by the Council on 17 June 2004.

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This paper provides a response to those claims of concern, and a brief progress update of the establishment of the Council's new Arts Centre.

2 Council's New Arts Centre

The Council approved funding for the new Arts Centre in the 2004/05 Annual Plan, and in October 2004 secured a long-term lease on two adjacent buildings (the old Education Board buildings) in Abel Smith Street as the site for the new Arts Centre.

The primary function of the new Arts Centre is to support Wellington's emerging artists, by providing affordable access to critical facilities and services, such as artists studios, rehearsal spaces, music practice rooms, gallery/ exhibition space, and productive and administration spaces for emerging creative enterprises and arts organisations.

The Arts Centre also provides for access to the arts for the wider community, through art workshops and classes.

As well as holding the head lease on the premises (and thereby playing the role of taking the 'risk' on behalf of the emerging artists), Council will be providing for about 30% - 40% of the day to day operational costs associated with the Centre. The remainder of funding comes from rentals and users charges.

3 Council Response

Officers have been in discussions with the WPAC throughout the development of the Council's new Arts Centre project. The following sections outline officer's response according to each of the three main areas of concern to the WPAC.

3.1 *Name confusion*

Council's new Arts Centre is currently called the "Wellington Arts Centre" or sometimes "Wellington's new Arts Centre". While the Council has operated a Wellington arts centre for the best part of 15 to 20 years, it has generally been a fairly small operation, most recently located in the Band Rotunda on Oriental Parade.

During the development phases of the new Arts Centre, the project was referred to as the ArtsCubator – a name developed to communicate its core purposes of supporting emerging artists and incubating the arts in Wellington. When Council voted to adopt the project formally through its 2004/05 Annual Plan, the name was changed to the more generic "Wellington Arts Centre", in response to views that the Centre had a broader ambit than emerging artists.

The WPAC consider that this new name causes confusion for its (current and future) clients. Officers working on the Arts Centre project are not aware of any confusion over the names from its clients.

While there do not appear to be any legal grounds that require the Council to change the name of its Arts Centre, there are practical grounds that argue for a name change:

- It has long been the view of officers that a new name should and would be developed by the users of the Arts Centre. It is reasonably likely that, without intervention from the Council, users and tenants of the Arts Centre would develop a colloquial name to refer to the new facility. While the "Wellington Arts Centre" is not an unreasonable name for the new facility, it is perhaps less than inspiring
- If the WPAC is correct that its clients are confused over the names, the Council could remove at least this concern by changing the name of its new Arts Centre
- The 'trading name' for any organisation is an important element of its identity and branding. Officers note that – for marketing, promotional and identity reasons – a formal exercise to develop the brand, or trading name, would have been a responsibility of the new Trust (albeit in conjunction with users as above). Any decision was therefore being deferred until the Council's decision on whether to establish a Trust. Note that the trading name is a wholly separate issue from the name of the proposed Trust.

Because of the immediacy of WPAC concerns, and the fact that many of the new tenants of Council's Arts Centre will be ordering stationary shortly that relates to the brand of the

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Wellington Arts Centre, there is a degree of urgency that perhaps over-rides the desire to allow a new name to develop rather more organically, over time.

Officers recommend that they develop a new name for the Centre in the immediate future, in consultation with current users and tenants.

3.2 *Unfair competition*

WPAC's submission seems to be centred on the use of space in the new arts centre for performing arts activities; in particular (community) classes, and also rehearsal hire facilities in general. WPAC seems to suggest that it is somehow unfair for the Council to offer rehearsal studio space for hire within the new arts centre, the rental for which may be at a lower level than other studio space, given a Council subsidy element.

Officers are confident that from a legal perspective, the Council is well within its rights to operate the facilities at Arts Centre, including any reference to the Commerce Act (section 36) regarding unfair competition from a person with a substantial degree of power in a market.

The question posed by the WPAC is realistically one of policy. Every activity of Council is, in pure terms, an intervention in the market for the purpose of achieving a public good. The purpose of local government is to promote the social, economic, environmental and cultural wellbeing of communities. A local authority is required to give effect to that purpose and, in performing its role, a local authority must act in accordance with the principles set out in section 14 of the Local Government Act 2002 (LGA). Section 14 principles include giving effect to its identified priorities and desired outcomes in an efficient and effective manner, and taking into account the cultural wellbeing of people and communities in taking a sustainable development approach.

The Council's long term community plan (2003/2004), and Annual Plan (2004/2005) include a culture and arts strategy (strategy 3). There is no doubt that the establishment of an arts centre is a legitimate strategy for the Council to pursue (provided that LGA decision making requirements are met in that regard). Similarly, the funding of an arts centre is a legitimate means of the Council achieving its aims.

From a practical perspective, officers consider that the 'threat' of rate-payer subsidised competition to WPAC is extremely low, for the following reasons:

- Council does not itself run performing arts classes. It allows its three workshop spaces to be hired by private tutors, who may run classes (subject to some quality

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assurance procedures). Any profit/loss is borne by the private tutor. WPAC is able to run courses from the Wellington Arts Centre if it so chooses

- There are currently, and historically, very few performing arts classes run by private tutors from the Arts Centre. Visual arts classes have always outnumbered performing arts classes in Council's Arts Centre operations
- The prices charged for attending classes at both the Wellington Arts Centre and the WPAC appear to be broadly similar – it is unlikely that prospective clients will be attracted away from WPAC on the basis of price
- The WPAC is itself a significant recipient of public funding, receiving tax-payer funding through the Tertiary Education Commission for its role as a Private Training Establishment (which comprises 75% of its business).

3.2 *Inadequate Statement of Proposal*

The proposal to establish a new council-controlled organisation requires, under the LGA, that the Council undertakes a Special Consultative Procedure. The requirements for this form of consultation are set out in the LGA, and officers consult with specialist advisors – particularly our legal advisors – when drafting these consultation documents. As a result, officers are confident that the statement of proposal adequately meets with LGA requirements, and further that it provides a suitable level of information for ratepayers to make an informed submission.

There is no need, and little point, in including a draft Trust deed in a statement of proposal. These documents are largely technical, and might thus obscure the key points that should be considered.

WPAC suggests that the objects in the statement of proposal are not as narrow as previously reported. It is important to note that the Council needs to consider the long term objectives of the Trust. This includes ensuring that the Trust does indeed have a charitable purpose, and has the ability to undertake activities that reasonably fit with this purpose.

As noted earlier, the Council is seeking to establish an entity that will make a positive contribution to the arts sector in Wellington, in particular by filling an identified gap.