

OFFICIAL

# Council Meeting

## Agenda

**24 November 2021 at 6:30pm**

**Council Chamber, Town Hall, Sturt Street,  
Ballarat**





The City of Ballarat acknowledges the Traditional Custodians of the land we live and work on, the Wadawurrung and Dja Dja Wurrung People, and recognises their continuing connection to the land and waterways. We pay our respects to their Elders past, present and emerging and extend this to all Aboriginal and Torres Strait Islander People.

This meeting is being broadcast live on the internet and the recording of this meeting will be published on council's website [www.ballarat.vic.gov.au](http://www.ballarat.vic.gov.au) in the days following the meeting.

Although every effort has been made to protect the privacy of the public, members of the public attending this meeting may be filmed. By remaining in the public gallery once the meeting commences, members of the public give their consent to being filmed, and for the recording of them to be made publicly available and used by council.

Information about broadcasting and publishing recordings of council meetings is available in council's Live Broadcasting and Recording of Council Meetings Procedure which is available on the council's website.

## **PUBLIC SUBMISSIONS**

- Due to COVID-19 restrictions, the following has been put in place.
- Public representations may be made on any items listed on the agenda in a Council Meeting apart from those listed in the confidential section.
- Members of the Public must be fully vaccinated to attend the meeting in person to make a submission on an agenda item.
- All attendees must register by 4:30pm on the day of the meeting to ensure Council adheres to the number of attendees permitted under its COVID-safe plan.
- If you do wish to attend the meeting in person to make a submission, please contact [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) or call 5320 5875 to register
- Members of the public who wish to make a submission on an agenda item but who are unable to attend the meeting in person may make a submission in writing:
  - Submissions must be submitted in writing to [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) by no later than 4:30pm on the day of Council meeting; and
  - limited to no more than 200 words that will be read out by the Chief Executive Officer or nominated delegate at the meeting prior to the matter being considered by Council.

**ORDER OF BUSINESS:**

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**The next Meeting of the Ballarat City Council will be held on Wednesday 22 December 2021.**

## 1. OPENING DECLARATION

**Councillors:** *"We, the Councillors of the City of Ballarat, declare that we will carry out our duties in the best interests of the community, and through collective leadership will maintain the highest standards of good governance."*

**Mayor:** *"I respectfully acknowledge the Wadawurrung and Dja Dja Wurrung People, the traditional custodians of the land, and I would like to welcome members of the public in the gallery."*

## 2. APOLOGIES FOR ABSENCE

## 3. DISCLOSURE OF INTEREST

## 4. MATTERS ARISING FROM THE MINUTES

## 5. CONFIRMATION OF MINUTES

## 6. PUBLIC QUESTION TIME

Note – all public representations will be heard before each item on the agenda.

### QUESTION TIME

- Question time has been altered for the City of Ballarat's 24 November 2021 Council meeting due to the COVID-19 restrictions.
- Members of the Public must be fully vaccinated to attend the meeting in person to ask a question.
- No person may submit more than two questions.
- Those members of the public who are unable to attend can still participate in question time by submitting their questions in writing:
  - Questions must be submitted via email to [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) by no later than 4:30pm on the day of the Council meeting; and
  - The questions must be in English, must be 75 words or less and not include a preamble, other additional material, or multiple parts.

## 7. CHIEF EXECUTIVE OFFICER REPORT

### 7.1. CHIEF EXECUTIVE OFFICER REPORT

**Division:** Executive Unit  
**Director:** Evan King  
**Author/Position:** Evan King – Chief Executive Officer

#### PURPOSE

1. The CEO's Operational Report highlights issues and outcomes affecting the organisation's performance as it delivers services and implements the Council's strategies and policy decisions.

#### BACKGROUND

2. The Council of the City of Ballarat is responsible for setting the municipality's strategic direction. The CEO of the City of Ballarat is the sole employee of the Council and is responsible for establishing the organisational structure and resource allocation to achieve the objectives set by the Council. This operational report provides greater detail about organisational activities and issues involved with service delivery.

#### KEY MATTERS

Key achievements, projects and events delivered

3. Domestic Animal Management Plan  
Community consultation was recently held on the City of Ballarat's Domestic Animal Management Plan. The document will play a critical role in management planning for the city's 13,814 registered dogs and 5711 registered cats, as well as several other key Ballarat Animal Shelter animal welfare services. The City of Ballarat is required to prepare and implement a Domestic Animal Management Plan every four years.
4. Circular Ballarat launch  
The City of Ballarat launched its Circular Ballarat Framework aimed at helping local businesses develop circular economy working models. The Circular Ballarat Framework aims to reduce waste while creating raw materials from rubbish that can then be used in manufacturing, rather than a linear "take-make-waste" system.
5. Draft Lands Strategy to support local industry  
The City of Ballarat is taking steps to ensure Ballarat has a sufficient future commercial and industrial land supply to help our economy grow and provide employment opportunities. To help meet the community's future needs, the City of Ballarat is undertaking a review of employment lands throughout the city to ensure Ballarat can support and grow local industry.



6. Bridge Mall reaches new milestone

The Bridge Mall Revitalisation Project moved into an important Design Development Phase. This included diverse community representatives working alongside the architects and designers from internationally renowned firm Hassell, ensuring their voices and visions are captured and integrated into the final designs.

7. Library designs reach new phase

Ballarat Central Library's re-development is set to catapult the building into a "library of the future" category. Concept design plans released by architects Studio Hollenstein reveal a modern, multi-functional hub with an emphasis on community space to cater for all generations. The \$7 million upgrade will maintain many of the library's unique circular features.

8. Call for Materials Recovery Facility support

The City of Ballarat is calling for support from the Victorian and Australian Governments to build a Materials Recovery Facility in Ballarat. The facility, which would be built as the centrepiece of a Circular Economy Precinct at the Ballarat West Employment Zone, would reduce the amount of recyclables going into landfill and support the local remanufacture of recyclables into new products.

9. Support for businesses as we follow COVID-10 roadmap recovery plan

The City of Ballarat is taking steps to ensure businesses can trade to maximum numbers as we follow the Victorian Government's roadmap out of COVID-19. The city has been actively working with community leaders, government and business operators through recent forums to determine what additional outdoor dining and retail trading opportunities Council could support over the coming weeks and months to keep businesses open. Ongoing Council support is also aimed at assisting all sectors impacted by COVID-19 including retail, hospitality and the fitness industry and includes:

- Waiving of fees to allow retail and hospitality businesses to trade on footpaths
- Provision of more outdoor dining infrastructure and in-kind support for businesses to extend the city's dining footprint into public spaces
- Free use of Council-owned venues and open space for fitness and exercise classes
- Continuation of the City of Ballarat's Community and Business Support Package throughout October

## Ongoing Community Consultation

10. Bridge Mall Precinct – Design Development

Bridge Mall design team Hassell have been working on the precinct's form and function. However, a physical streetscape change is not the final product. Ultimately the space needs to reflect and respond to how the community will use the space. You can share your stories and memories of Bridge Mall at the City of Ballarat's MySay page.

**OFFICER RECOMMENDATION**

**11. That Council:**

**11.1 Receive and note the CEO's Operational Report.**

**ATTACHMENTS**

1. Governance Review [7.1.1 - 1 page]

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**ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. The Chief Executive Officers report is in line with Council's commitment to transparent decision making as expressed in the Council Plan.

**COMMUNITY IMPACT**

2. The report is part of Council's commitment to ensuring the community is informed about key projects and initiatives delivered and ongoing, and community consultation being undertaken by the City of Ballarat.

**CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

3. No climate emergency and environmental sustainability implications have arisen from the preparation of this report.

**ECONOMIC SUSTAINABILITY IMPLICATIONS**

4. No additional economic sustainability implications have arisen from the preparation of this report.

**FINANCIAL IMPLICATIONS**

5. No additional financial implications have arisen from the preparation of this report.

**LEGAL AND RISK CONSIDERATIONS**

6. It is considered there are no legal and risk considerations associated with this report.

**HUMAN RIGHTS CONSIDERATIONS**

7. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

**COMMUNITY CONSULTATION AND ENGAGEMENT**

8. No community consultation and engagement was required.

**CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT**

9. Council Officers affirm that no general or material interests need to be declared in relation to the matter of this report.

OFFICIAL

## 8. OFFICER REPORTS

### 8.1. EX-POW MEMORIAL - INTERPRETIVE CENTRE

**Division:** Development and Growth  
**Director:** Natalie Robertson  
**Author/Position:** Natalie Robertson – Director Development and Growth

#### PURPOSE

1. The purpose of this report is to seek a formal decision on development of an interpretive centre and toilets for the Australian Prisoner of War Memorial located in the south Section of the Ballarat Botanic Gardens.

#### BACKGROUND

2. Earlier this year City of Ballarat met with the Australian Ex-Prisoner of War Association to discuss their proposal for an interpretative centre and toilets for the Australian Prisoner of War Memorial located in the south section of the Ballarat Botanical Gardens.
3. The Association sought an updated position of Council on the proposed location and a commitment was made to provide a report to Council to seek a formal position with regard to the development of the facility.
4. Located on the south side of the Ballarat Botanical Gardens beside the existing Ballarat Prisoner of War Memorial Wall, the structure proposed is for a Prisoners of War Story Centre.
5. The structure would comprise a display area, staff office and amenities, a storage area and female and male public amenities.

Subject Site: Ballarat Botanical Gardens Australian Ex-Prisoner of War Memorial, southwest corner

Zone: Public Park and Recreation Zone (PPRZ)

Overlays: Heritage Overlay – Schedule 13 (Ballarat Botanical Gardens)

Victorian Heritage Register – H2252 (Ballarat Botanical Gardens)



Fig 1: Subject site

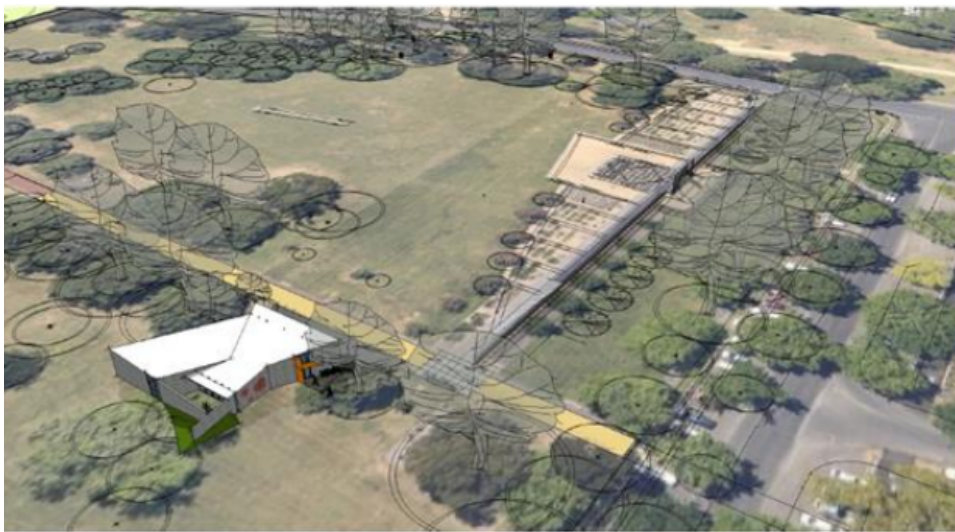


Fig 2: Proposed location of interpretive centre

### KEY MATTERS

6. The Botanic Gardens is a valued community asset. The site is divided into three distinct sections: the central botanic gardens and two areas of open parkland known as the north and south gardens with a pair of remnant bluestone gateposts marking the original entrances at either end of Wendouree Parade.
7. The large 40-hectare site is bounded by Lake Wendouree (originally Yuille's Swamp) to the east, the northern extension of St Aiden's Drive, The Boulevarde, Gregory Street, Gillies Street and Carlton Street along the south.

8. Although the area between Wendouree Parade and the lake is considered to be part of the lake surrounds, this section recognised as H2252 on the Victorian Heritage Register, is integral to the gardens and was included in the original 1885 reservation.
9. The Heritage Victoria Statement of Significance states that the boundary between the southern gardens and the main botanical gardens is marked by the old display glass house (1972), the Ballarat Fish Acclimatisation Society's trout hatchery (1873) and the Ballarat Vintage Tramway Museum. The extensive Australian Ex-Prisoner of War Memorial to honour 35,000 soldiers was constructed in 2004 adjacent to Carlton Street.
10. It further states:

*“The Ballarat Botanical Gardens are of aesthetic significance for the setting adjacent to Lake Wendouree and the relatively open areas to the north and south which act as a buffer to the central area of the gardens. This setting also provides contributory views from, and vistas within the gardens, as well as making a significant contribution to the broader Lake Wendouree landscape.*

*and*

*To the south of the Trout Hatchery is another open area of parkland used for sporting activities with the Australian Ex-prisoner of War memorial located adjacent to Carlton Street. The Park land north and south of the main gardens forms a critical buffer both in spatial and visual terms.”*

### **The Lake Wendouree Master Plan**

11. A Master Plan for Lake Wendouree was first developed in 1994. Since then, Ballarat's population has grown considerably, creating increasing development opportunities and pressures on the lake. In response to the 2015 Ballarat Strategy, the City of Ballarat commenced the process of developing a new Master Plan for Lake Wendouree. The Plan set out a long-term vision to help guide the management of Lake Wendouree toward 2040.
12. The Master Plan process was intended to review proposed community projects for the lake, identify and address issues relating to the Lake and environs, and create a strategic plan for the future development of the Lake Wendouree precinct.
13. The Prisoners of War Story Centre was one of thirteen project proposals for the masterplan and subject to community consultation and expert panel review.
14. Information derived from the community consultation process and Council's own policies were used to establish an evaluation criterion for the proposed projects. The evaluation criteria included:
  - a. Proposals contribute to a connected, accessible space available for use by special interest, sport and cultural groups, for a range of activities.
  - b. Proposals positively contribute to improved community health and wellbeing.
  - c. Heritage values are protected and enhanced, including storytelling relevant to the local area.
  - d. Natural environmental values are protected and enhanced.

- e. Proposals enable major events, tourism, water sports and recreational opportunities.
  - f. Proposals are economically and financially sustainable.
15. A summary of the Prisoner of War Story Centre against the evaluation criteria is as follows:
- a. The South Gardens location is considered an unsuitable site for another standalone building given its impact on the existing open parkland character and function.
  - b. Further consideration be given to models for communicating/interpreting the stories and presenting physical objects of Australia's prisoners of war, including potentially digital presentation (e.g., [rsvirtualwarmemorial.org.au](http://rsvirtualwarmemorial.org.au)) or the use/multi-use of existing memorial assets.
16. Although the proposed Prisoners of War Story Centre would not be located within the identified study area of the Lake Wendouree Master Plan it was recognised as one of thirteen projects proposed for consideration as part of the master planning consultation.
17. For the reasons discussed above the Prisoner of War Centre was assessed and ruled out as a project to incorporate into the Lake Wendouree Master Plan in 2017.
18. As late as 2019 City of Ballarat Officers sought a position from the Department of Environment, Land, Water and Planning for the Centre with a response that provided the following comments:
- “Heritage Victoria maintains similar concerns as the Masterplan. They relate to the appropriateness of this location for additional built form, given the open landscape character, view towards the Lake Wendouree and the landscape setting for the core area of the botanic gardens.”*
19. Whilst there is much focus on the Lake Wendouree Master Plan, it is the Heritage value of this location that would rule out the Centre being located there. Even without the Masterplan, an assessment of a proposal such as this would be unlikely to be approved. This is based on the strength of the specific comments in the Heritage Victoria statement of significance for the Ballarat Botanical Gardens that states the areas north, and in this case, the south of the main gardens forms a critical buffer both in spatial and visual terms and any buildings would disrupt this view.
20. Unfortunately, the subject site is not suited to the facility, and it is recommended that any application for development at this location should not be supported.

## OFFICER RECOMMENDATION

### 21. That Council:

- 21.1 Resolve to formally correspond with the Ex-Prisoner of War Association advising that Council resolves not to support the development of an Interpretive Centre and Toilets at the Botanical Gardens site.**
  - 21.2 Further advise that consideration may be given should the Ex-Prisoner of War Association identify alternative locations that are outside of the Botanical Gardens or surrounds.**
-

**ATTACHMENTS**

1. Governance Review [**8.1.1** - 1 page]
2. POWSC Concept Plan\_\_3 Ds hx 7 Cho Uf V 0 C 2 II Qp 0 UL Bk A [**8.1.2** - 11 pages]
3. Statement of Significance S 8 hu 6 Uy 2 n Euapzzec T Bu A [**8.1.3** - 12 pages]



## OFFICIAL

**ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. The report aligns with Council's Vision, Council Plan, Strategies and Policies.

**COMMUNITY IMPACT**

2. There are no community impacts identified for the subject of this report.

**CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

3. There are no climate emergency and environmental sustainability implications identified for the subject of this report.

**ECONOMIC SUSTAINABILITY IMPLICATIONS**

4. There are no economic sustainability implications identified for the subject of this report.

**FINANCIAL IMPLICATIONS**

5. There are no financial implications identified for the subject of this report.

**LEGAL AND RISK CONSIDERATIONS**

6. There are no legal and risk considerations considered for the subject of this report.

**HUMAN RIGHTS CONSIDERATIONS**

7. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

**COMMUNITY CONSULTATION AND ENGAGEMENT**

8. Community consultation and engagement of the Lake Wendouree Masterplan and subsequent adoption of the recommendations from the report have been considered in this report.

**GENDER EQUALITY ACT 2020**

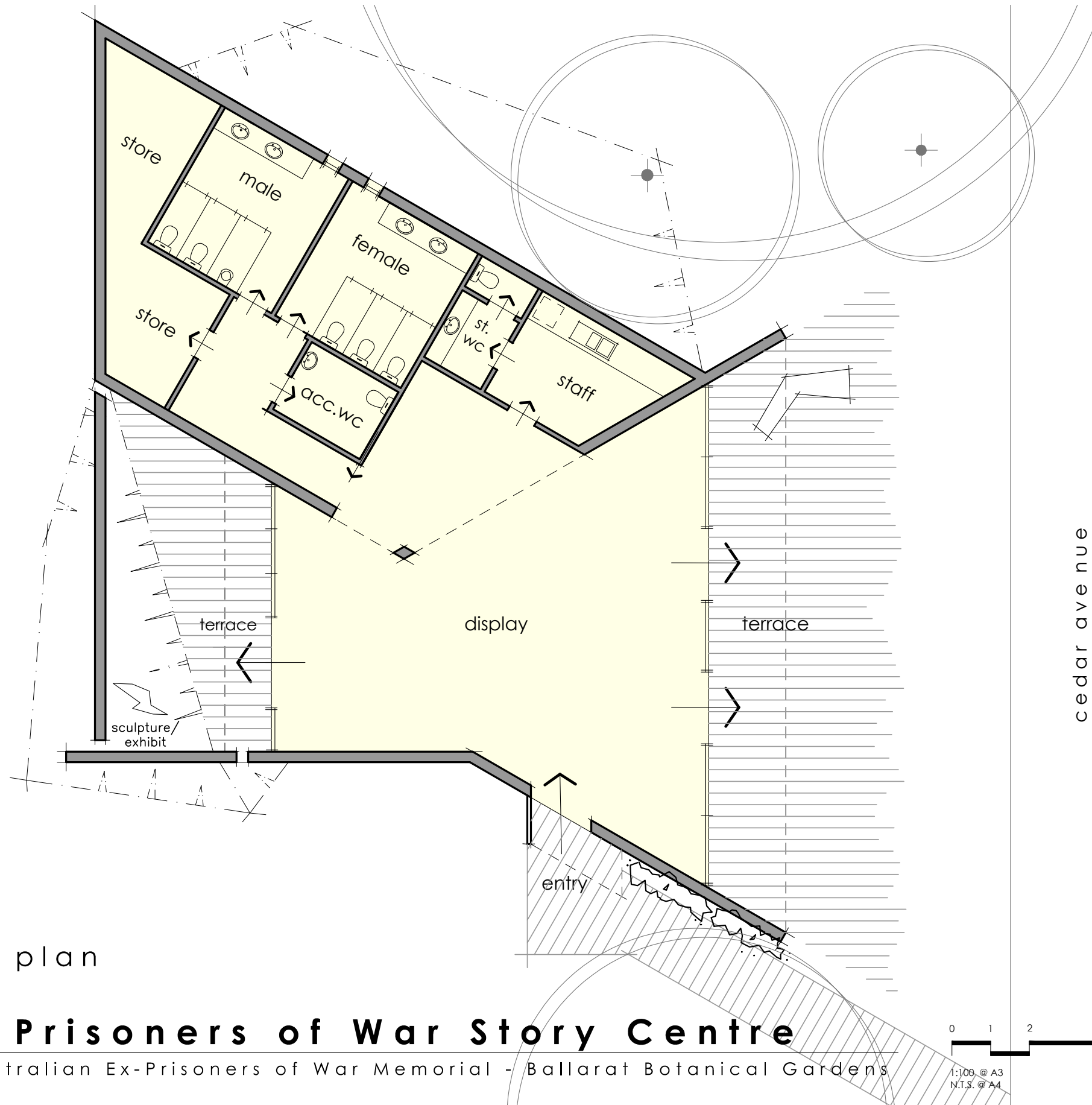
9. There are no gender equality implications identified for the subject of this report.

**CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT**

10. Council officers affirm that no general or material conflicts need to be declared in relation to the matter of this report.

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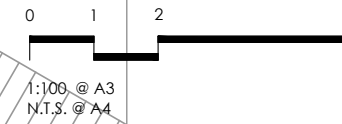
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floor plan  
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# The Prisoners of War Story Centre

The Australian Ex-Prisoners of War Memorial - Ballarat Botanical Gardens



cedar avenue

PRELIMINARY

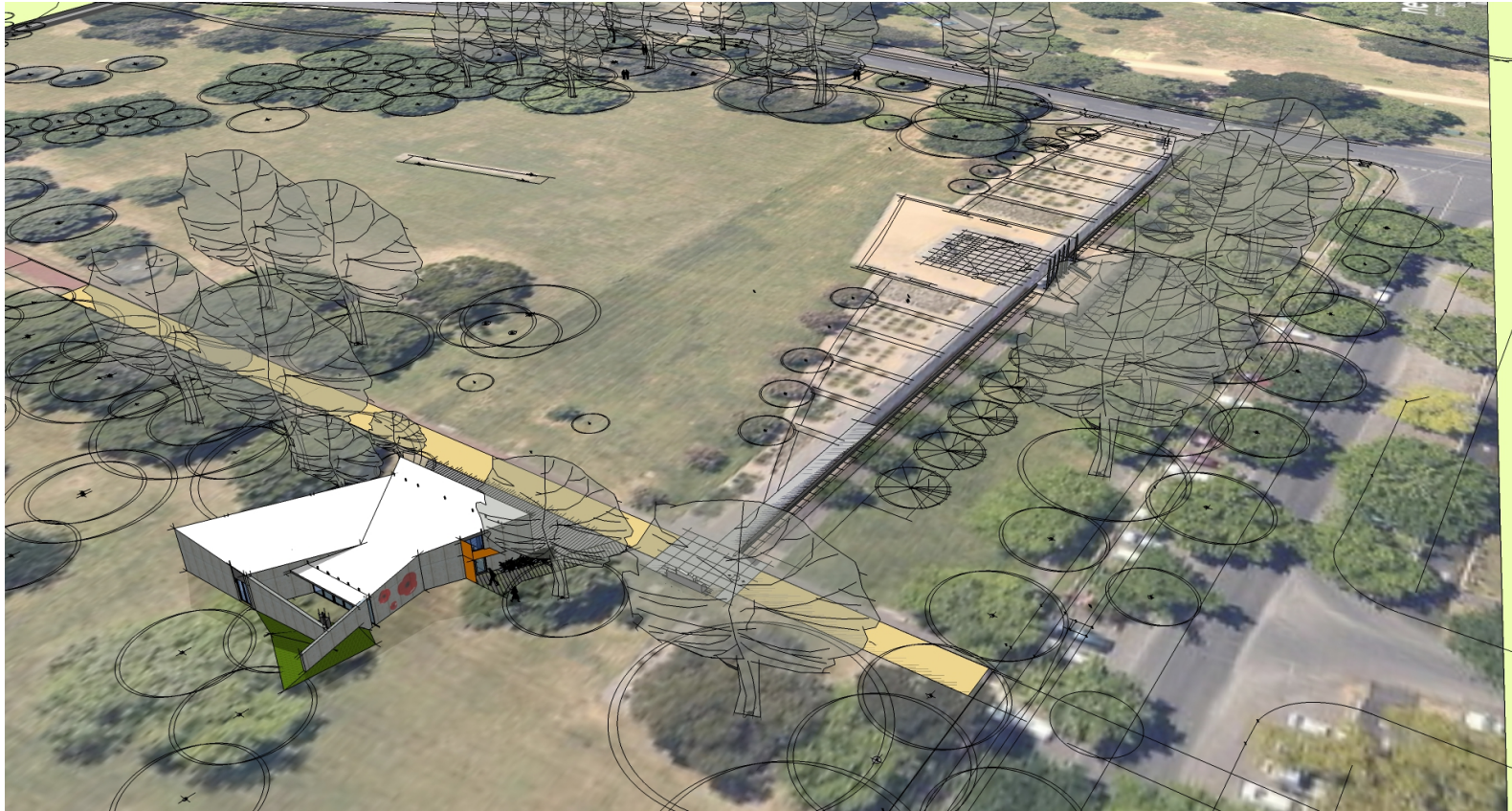
**mortondunn ARCHITECTS**

**Ballarat:** 424 Sturt Street (PO Box 772) Ballarat VIC 3350  
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Email: mail@mortondunn.com.au

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Phone: 03 5221 7885 Fax: 03 5221 7885  
www.mortondunn.com.au

floor plan	
N	job no. 14089
	date 20 June 2016
	drawing no. SK-02

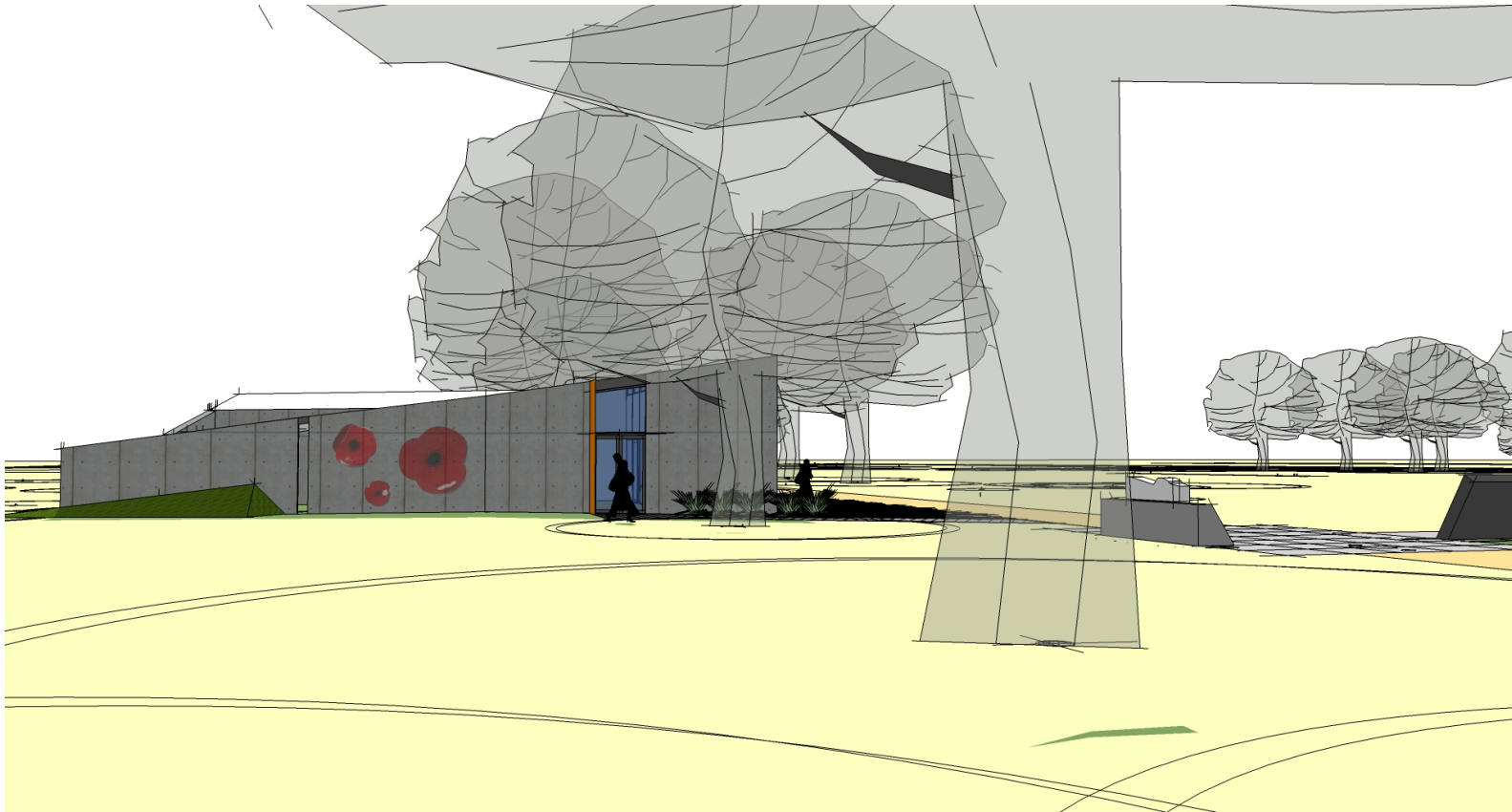




**The Prisoner of War Story Centre**

The Australian Ex-Prisoner Of War Memorial – Ballarat Botanical Gardens  
08 June 2016

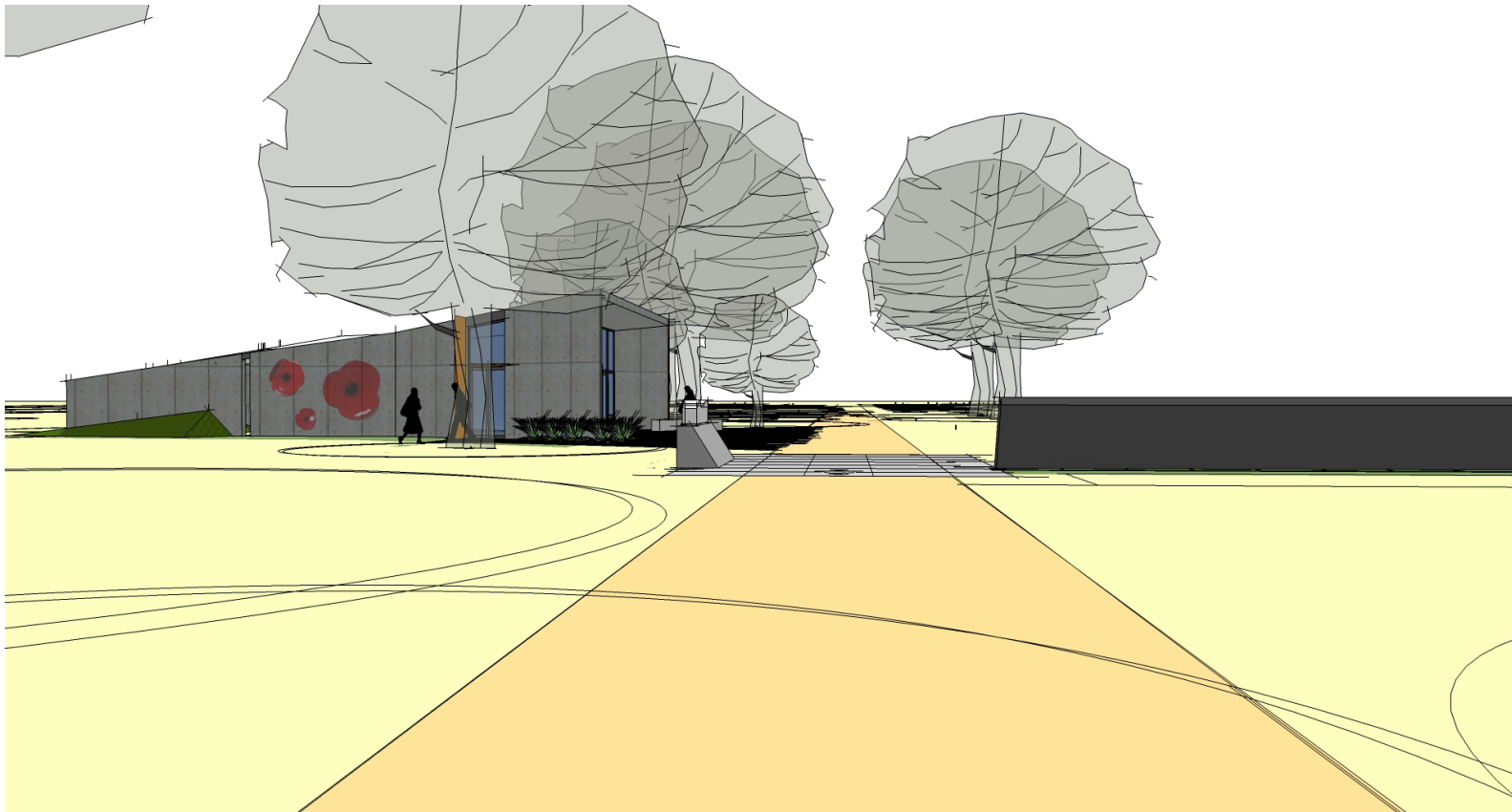




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08 June 2016

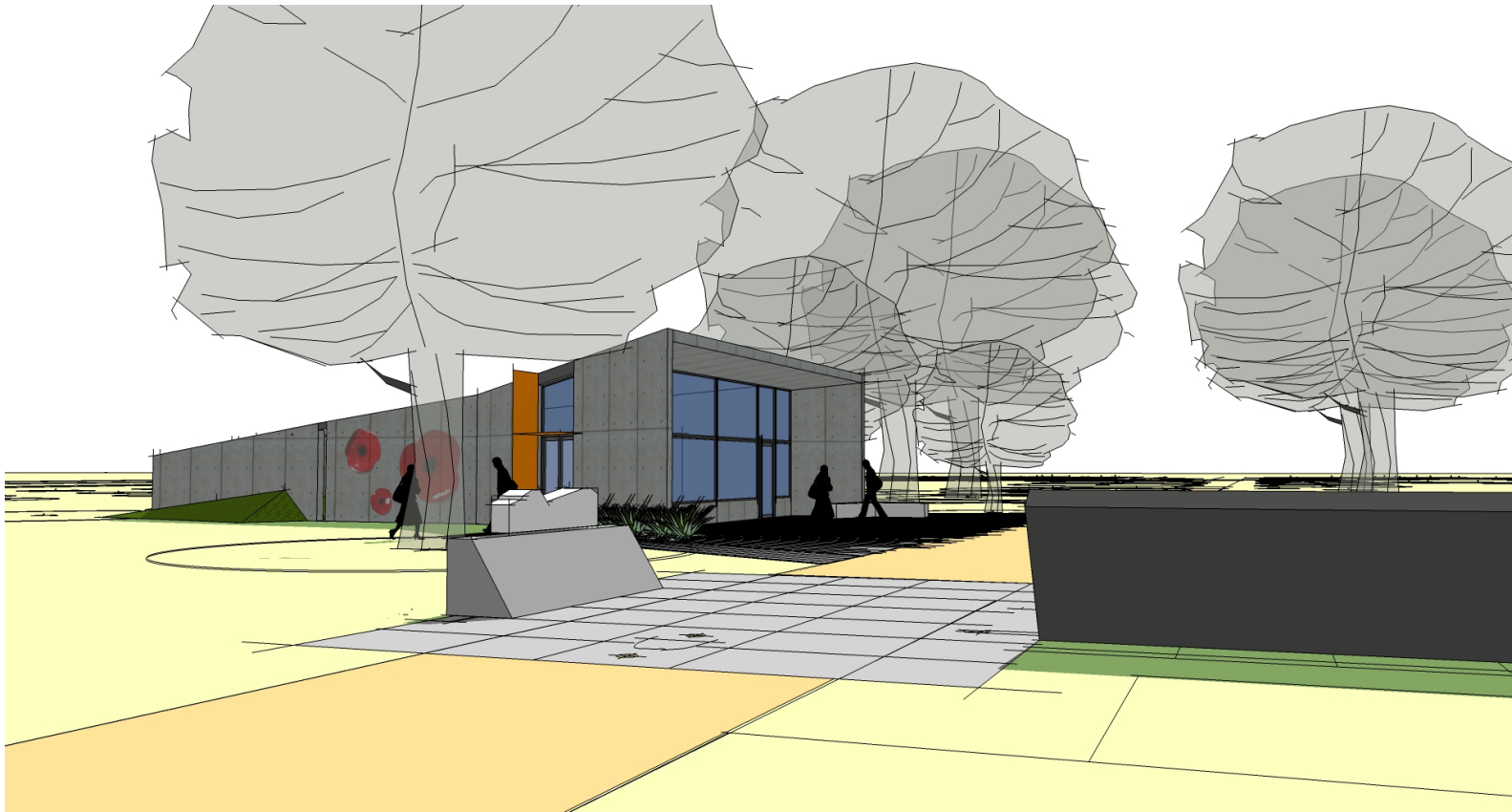




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08 June 2016

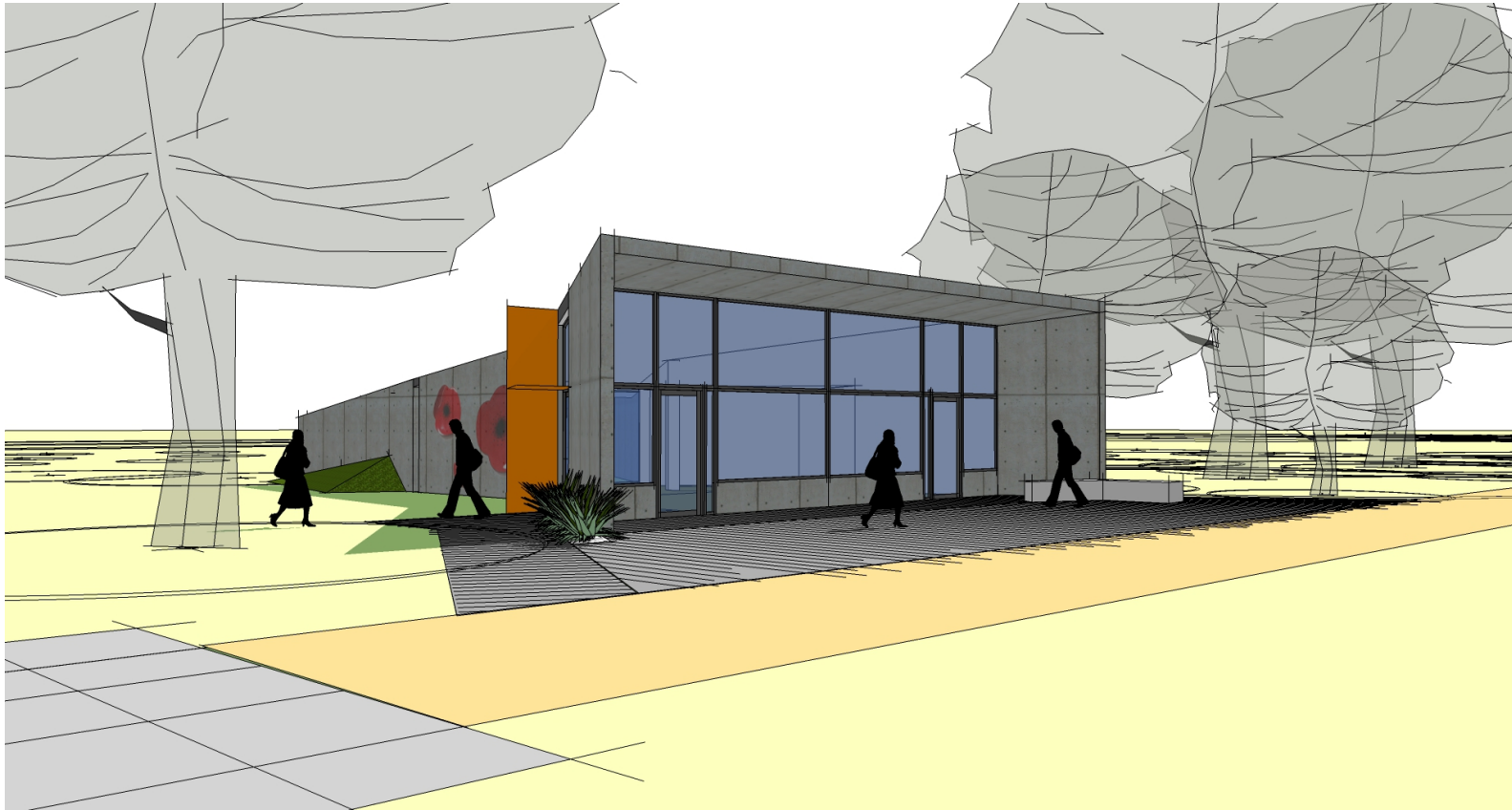




**The Prisoner of War Story Centre**

The Australian Ex-Prisoner Of War Memorial – Ballarat Botanical Gardens  
08 June 2016





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**The Prisoner of War Story Centre**

The Australian Ex-Prisoner Of War Memorial – Ballarat Botanical Gardens  
08 June 2016



## Victorian Heritage Database Report

Report generated 22/07/21

# BALLARAT BOTANICAL GARDENS



1761\_Ballarat Botanic Gardens\_19  
March 2010



1761\_Ballarat Botanic Gardens\_19  
March 2010



1761\_Ballarat Botanic Gardens\_19  
March 2010



1761\_Ballarat Botanic Gardens\_19  
March 2010



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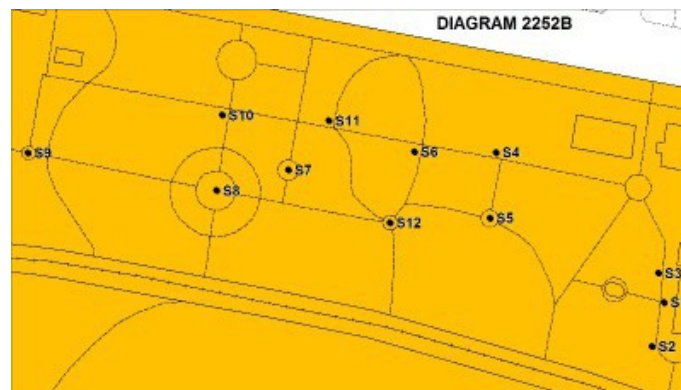
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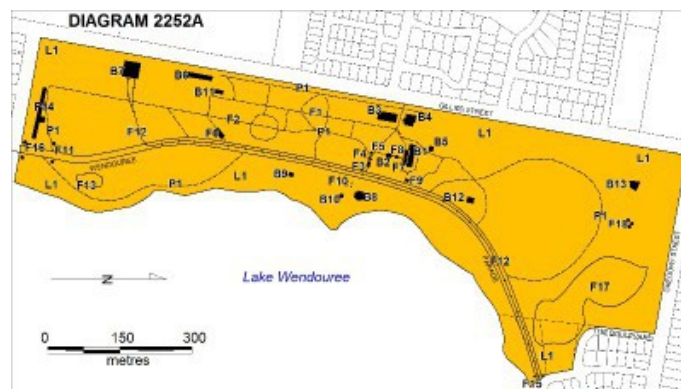
1761\_Ballarat Botanic Gardens\_19  
March 2010



1761\_Ballarat Botanic Gardens\_19  
March 2010



ballarat botanical gardens statues.jpg



ballarat botanical gardens plan.jpg

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**Location**

GILLIES STREET and WENDOUREE PARADE LAKE WENDOUREE, BALLARAT CITY

**Municipality**

BALLARAT CITY

### Level of significance

Registered

### Victorian Heritage Register (VHR) Number

H2252

### Heritage Overlay Numbers

HO13

### VHR Registration

September 9, 2010

### Heritage Listing

Victorian Heritage Register

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### Statement of Significance

Last updated on - May 17, 2010

What is significant?

The Ballarat Botanical Gardens, gazetted in 1857 and developed from 1858 on the old Police paddock site, is an outstanding example of a botanical garden. The large 40 hectare site is bounded by Lake Wendouree (originally Yuille's Swamp) to the east, the northern extension of St Aiden's Drive, The Boulevarde, Gregory Street, Gillies Street and Carlton Street along the south. Although the area between Wendouree Parade and the lake is considered to be part of the lake surrounds, this section is integral to the gardens and was included in the original 1885 reservation. This site is part of the traditional land of the Wathaurung people now known as the Wadawurrung..

In 1858 a design competition was won by Messrs Wright and Armstrong and the inaugural curator, George Longley, was appointed to implement the plans with early plant materials supplied by Baron von Mueller from the Melbourne Botanic Gardens and by Daniel Bunce from the Geelong Botanic Gardens. The main entrance on Wendouree Parade features the ornate cast ironwork Morey gates (1894) with timber pergola (1934) and two marble lions (c1894) either side of the path leading to the statue of Scottish hero Sir William Wallace (1888). The south-eastern McDonald gates (1921) feature a semi-circular form and ionic colonnade.

The site is divided into three distinct sections: the central botanic gardens and two areas of open parkland known as the north and south gardens with a pair of remnant bluestone gateposts marking the original entrances at either end of Wendouree Parade. The strong linear design of the central garden features four main north-south axes: Wendouree Parade, the Giant Redwood Avenue (*Sequoiadendron giganteum*) planted 1863-1874, the avenue of Horse Chestnuts (*Aesculus hippocastanum*) accommodating the Prime Ministers' Avenue (1940 - present) and a path along the western boundary.

By 1862 the first maze was built, but later removed, close to the site of the first fernery (1887), which after several alterations and additions, is still an outstanding feature of the gardens and enhanced by an adjacent water lily pond (1916). With the donation in 1884 by local stockbroker Thomas Stoddart of twelve Italian marble statues located throughout the gardens, and the construction in 1887 of the Statuary Pavilion to house the 'Flight from Pompeii' and four accompanying statues donated by James Thompson, the Botanical Gardens became a centrepiece of civic pride for Ballarat. From 1889 tuberose begonias were introduced into displays, beginning a

tradition highlighted by the annual begonia festival from 1953 until the present.

Developments catering for increasing tourism adjacent to the lake shore included the Lake Lodge (1891) for refreshments, adjacent cannons, Almeida Pavilion (1907) housing amusement machines and shelters such as the Picnic shelter (c1910) and replacement bandstand (1921). 'Fairyland' a wooded grove with bridges, ponds and walks on the western shore of Lake Wendouree, became a popular feature and a zoological section (1915-1959), replacing an earlier menagerie, was established in the northern gardens with the Adam Lindsay Gordon Cottage relocated nearby in 1934. Large and small bequests continued to enhance the gardens in the twentieth century such as the sundial (1912), avenue of Prime Ministers' busts (1940- ), and the Robert Clark Conservatory and Horticultural Centre (1995). The Ballarat Botanical Gardens retain an exceptional collection of conifer and exotic deciduous trees and a tradition of bedding and floral displays, a fernery and potted plants.

Other additions to the northern gardens included a Pavilion (1904), Sound Shell (1962), and a Wetland (2001). The boundary between the southern gardens and the main botanical gardens is marked by the old display glass house (1972), the Ballarat Fish Acclimatisation Society's trout hatchery (1873) and the Ballarat Vintage Tramway Museum. The extensive Australian Ex-Prisoner of War Memorial to honour 35,000 soldiers was constructed in 2004 adjacent to Carlton Street.

How is it significant?

Ballarat Botanical Gardens are of historical, scientific, aesthetic, and social significance to the state of Victoria.

Why is it significant?

The Ballarat Botanical Gardens are of historical significance as one of the best examples of a botanic garden in Victoria. Developed from 1858, they retain typical characteristics of the nineteenth century gardenesque style such as a remnant path layout, open lawn areas planted with mature specimen trees, formal avenues, bedding displays, horticultural buildings such as the fernery and conservatory, embellishments such as garden buildings, Lake Lodge, picnic shelters, fountains and statues, and a location in proximity to a township developed during the mid-nineteenth century.

The Ballarat Botanical Gardens are of historical significance for the association with Baron von Mueller who supplied initial plant materials from the Melbourne Botanic Gardens.

The Ballarat Botanical Gardens are of historical significance for the 1887 octagonal Statuary Pavilion, designed by local architect T.E. Molloy, one of the oldest surviving structures in the gardens. Featuring a segmented domed roof with top-lit central lantern, it continues to house the 'Flight from Pompeii' statue and four other statues.

The Ballarat Botanical Gardens are of scientific significance for the collection of cool climate plants and outstanding mature significant trees, especially conifers and deciduous trees which include some of the largest and rarest trees in Victoria. The Gardens also hold an important collection of elm species and cultivars. This includes the largest Exeter Elm (*Ulmus glabra* 'Exoniensis'), and rarely cultivated in Victoria, two rare *Ulmus x hollandica* 'Wredei', a large Horizontal Elm (*Ulmus glabra* 'Pendula'), and English Elm (*Ulmus procera*), Dutch Elm (*Ulmus x hollandica*), Weeping Elm (*Ulmus glabra* 'Camperdownii'), Golden Elm (*Ulmus glabra* 'Lutescens'), Chinese Elm (*Ulmus parvifolia*) and a young American Elm (*Ulmus Americana*). Other significant trees are the Sierra or Giant Redwoods, (*Sequoiadendron giganteum*) planted soon after the species was introduced into Victoria, Horse Chestnuts (*Aesculus hippocastanum*), English or Field Maple (*Acer campestre*) Bunya Bunya Pine (*Araucaria bidwillii*), Tasmanian Blue Gum, (*Eucalyptus globulus* subsp. *globulus*), Weeping Ash (*Fraxinus excelsior* 'Pendula'), Sitka Spruce (*Picea sitchensis*), Norway Spruce (*Picea abies*), Western Yellow Pine, (*Pinus ponderosa*), Turkey Oak, (*Quercus cerris*), English Oak (*Quercus robur*), Coast Redwood (*Sequoia sempervirens*) and Swamp or Bald Cypress (*Taxodium distichum*).

The Ballarat Botanical Gardens are of scientific significance for the close link with the acclimatisation and zoological gardens movement demonstrated by the earlier menagerie and zoo sections, of which remnant cages remain, and the continuous activities since 1873 of the Ballarat Fish Acclimatisation Society, the oldest in Victoria.

The Ballarat Botanical Gardens are of aesthetic significance for the mature avenues which enhance the linear layout of the gardens, particularly the Giant Redwood (*Sequoiadendron giganteum*), the Horse Chestnut (*Aesculus hippocastanum*) and English Oak (*Quercus robur*) avenues.

The extensive collection of statues is also of aesthetic significance as they are a major feature and focal point in the design of the gardens set among colourful bedding displays. These include the five within the Statuary



Pavilion, the twelve statues in the Stoddart collection scattered around the gardens, the twenty-six busts along Prime Ministers' Walk and several other single statues such as Sir William Wallace close to the main entrance gates.

The Ballarat Botanical Gardens are of aesthetic significance for the setting adjacent to Lake Wendouree and the relatively open areas to the north and south which act as a buffer to the central area of the gardens. This setting also provides contributory views from, and vistas within the gardens, as well as making a significant contribution to the broader Lake Wendouree landscape.

The Ballarat Botanical Gardens are of social significance as one of Victoria's best known and most visited regional botanic gardens, enhanced by events such as the Begonia Festival (since 1953). The location adjacent to Lake Wendouree provides a strong recreational link with the surrounding foreshore areas and, since the 1870s, has been a popular place for leisure activities for locals and visitors.

The Ballarat Botanical Gardens are of social significance as a reflection of the civic pride and prosperity of Ballarat, originally derived from the gold rush, particularly expressed through bequests such as the Stoddart bequest (twelve sculptures), the Thompson bequest (statuary Pavilion and five statues), McDonald bequest, (bandstand, entrance gates and pergola) and the Robert Clark Conservatory and Horticultural Centre.

### Permit Exemptions

General Conditions: 1. All exempted alterations are to be planned and carried out in a manner which prevents damage to the fabric of the registered place or object.

General Conditions: 2. Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of the place or object are revealed which relate to the significance of the place or object, then the exemption covering such works shall cease and Heritage Victoria shall be notified as soon as possible.

General Conditions: 3. If there is a conservation policy and plan endorsed by the Executive Director, all works shall be in accordance with it. Note: The existence of a Conservation Management Plan or a Heritage Action Plan endorsed by the Executive Director, Heritage Victoria provides guidance for the management of the heritage values associated with the site. It may not be necessary to obtain a heritage permit for certain works specified in the management plan.

General Conditions: 4. Nothing in this determination prevents the Executive Director from amending or rescinding all or any of the permit exemptions.

General Conditions: 5. Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits from the responsible authorities where applicable.

Minor Works: Note: Any Minor Works that in the opinion of the Executive Director will not adversely affect the heritage significance of the place may be exempt from the permit requirements of the Heritage Act. A person proposing to undertake minor works may submit a proposal to the Executive Director. If the Executive Director is satisfied that the proposed works will not adversely affect the heritage values of the site, the applicant may be exempted from the requirement to obtain a heritage permit. If an applicant is uncertain whether a heritage permit is required, it is recommended that the permits co-ordinator be contacted.

Landscape:

The process of gardening, mowing, hedge clipping, bedding displays, removal of dead plants and weed control, emergency and safety work and landscaping in accordance with the original concept.

The replanting of plant species to conserve the landscape character, rare and unusual species, exotic and native trees, planted in beds, shrubberies and as specimen trees in lawns.

Management and maintenance of trees including formative and remedial pruning, removal of deadwood, pest and disease control, cabling, mowing, weed control and mulching.

In the event of loss or removal of trees, replanting with the same species to maintain the landscape character identified in the statement of significance. Removal of tree seedlings and suckers but excluding herbicide use.

Management of trees in accordance with Australian Standard: Pruning of amenity trees AS 4373.

Management of trees in accordance with Australian Standard: Protection of trees on development sites AS 4970.

Removal of plants listed as Prohibited and Controlled Weeds in the Catchment and Land Protection Act 1994.

Repairs, conservation and maintenance to structures and hard landscape elements, memorial plaques, asphalt and gravel roads and paths, stone and concrete edging, fences and gates.

Installation, removal or replacement of garden watering and drainage systems beyond the canopy edge of listed trees.

Construction dates	1896,
Heritage Act Categories	Registered place,
Other Names	BOTANIC GARDENS, BALLARAT BOTANIC GARDENS, BALLARAT BOTANIC GARDENS STATUARY PAVILION, BALLARAT FISH HATCHERY,
Hermes Number	1761
Property Number	

## History

HISTORY:

References:

A very detailed history is contained in the *Ballarat Botanical Gardens: Conservation Analysis and Policy Vols 1 & 2*, Allom Lovell/John Patrick 1994 which together with the *Ballarat Botanical Gardens - Classification Report National Trust G13057* by Richard Aitken forms the basis of this summary.

Other References:

*Ballarat Botanical Gardens, Masterplan and Management Strategy*, John Patrick Pty Ltd, 1995.

*Oxford Companion to Australian Gardens*, R Aitken & M Looker, Oxford University Press, Australian Garden History Society, South Melbourne, Vic., 2002

*Lucky Country*, Westin Bate MUP 1978.

Website <http://www.ballarat.com/botanicgardens/gardens/index.htm>

Brochures from the Ballarat Botanic Gardens

## CONTEXTUAL HISTORY

From the mid nineteenth century, fuelled by the gold rush and colonial government policies, Victoria developed a tradition of botanic gardens in many of the larger country towns. This resulted in Victoria having the finest collection of regional botanical gardens of all Australian states. Most developed as landscaped gardens providing a sharp contrast with various municipal parks and gardens where an emphasis on floral displays and ornamentation tended to dominate, especially in the twentieth century

While some of the regional botanic gardens experienced a period of decline, eg Camperdown and Koroit, Ballarat has been maintained consistently at a high level. From the start the Council has continued to provide substantial funding to enable the development of attractions such as the Zoo, Fernery, Glasshouses, the Maze and the Pavilions which was enhanced by wealthy citizens making bequests and donations.

In the early twentieth century, Ballarat was forced to adjust to a new set of circumstances as the city pioneers

had died, its most important factories closed and there was a decline in mining. To retain Ballarat's position as one of Victoria's prominent regional towns, influential residents and groups promoted other features of the city to use tourism as a way of continuing prosperity.

#### HISTORY OF PLACE

1856 Grant of land requested for botanic gardens by newly constituted Municipal Council of Ballarat.

1857 An area of 102 acres (43 ha) was gazetted as a botanic gardens reserve. Located on the west side of Yuille's Swamp, this area was previously used as a police paddock. The swamp later became Lake Wendouree and Wendouree Parade was constructed c1858.

1858 A competition for the design of the gardens was won by Messrs Wright and Armstrong and the inaugural curator, George Longley, was appointed.

1859 Description of gardens on 29 November in *Ballarat Miner* reports seven acres (of an estimated sixty) fenced, some planting but progress slow.

1860 Some plants supplied from Melbourne Botanic Gardens, where Baron Von Mueller was Curator, and also from Geelong Botanic Gardens.

1862 First maze built in vicinity of the later Conservatory, new maze constructed in northern gardens in 1888, rejuvenated in 1922 and removed in the late 1950s with some remnant cages remaining.

1863 Grant of £1,000 from Victorian government and liberal funding from municipal council ensured progress of gardens. Two gate lodges constructed (northern one occupied by Curator Longley and the southern one by the gate keeper and swamp ranger).

1867 Residence constructed in gardens and watch house (tower) constructed in the maze.

1868 Plan of gardens

1873 'Plan showing proposed improvements to Lake Wendouree' drawn up based of 1868 plan.

1873 Pond constructed for Ballarat Fish Acclimatisation Society (established 1870) in southern part of gardens; Menagerie developed (on site of present Lake Lodge) with potential to be a main attraction of the gardens, but defunct by turn of the century.

1873 Visit by Viator (a reporter from the Australasian) who was critical of Lake Wendouree and curious about the philosophy of the gardens.

1877 First stage of fernery constructed; many additions in later years.

1884 Twelve marble statues, depicting classical and allegorical themes, were purchased by Thomas Stoddart at Carrara in Italy for over £2,000. These were the first works of art erected in the gardens.

1885 Permanent reservation of 98 acres for Botanic and Public Gardens Reserve; official allocation for Ballarat Fish Acclimatisation Society, new ponds constructed in the following decades.

c1887 Horse tramline extended to Gardens along Wendouree Parade. Electrified 1904-05 and re-laid in 1936 when the tracks were shifted about 0.5 metres closer to the lakeside making a wider carriageway.

1887 Statuary pavilion erected to house a collection of statues purchased in Italy with a bequest from James Russell Thompson. The central statue 'Flight from Pompeii' (designed by Professor Carlo Benzone and carved by Charles Francis Summers), has four accompanying statues 'Susannah', 'Ruth', 'Rebecca' and 'Modesty' (designed and carved by Charles Francis Summers). The octagonal pavilion designed by T. E. Malloy, is unusual for its top-lit central lantern and curved roofs enabling the statues to be seen to their best advantage in natural light.

1889 Sir Walter Wallace statue, sculpted by Percival Ball and funded by James Russell Thomson bequest, erected near main entrance.

1889 Earliest record of tuberous begonias being potted in Ballarat botanic gardens.

1890 Claxton Memorial erected to recognise the work and dedication of Frederick Moses Claxton, (Mayor 1872-77) in the gardens and the lake which were his 'pet hobby'.

1891 Lake Lodge constructed on lake shore as a refreshment room to eliminate debris left by picnickers. The

competition to design a building that was both 'ornamental and utilitarian' was won by local architect WH Piper. Now the Lake Pavilion restaurant and function room.

1894 Morey Gates donated by Councillor Hon. Morey MLC; altered in 1939 by addition of pergola with random coarse basalt piers.

1894 Pair of marble lions, situated behind Morey Gates, donated by Hon. D Ham.

1899 Site divided into two sections with separate curators; long-serving George Longley placed in charge of No1 section (d 1899, replaced by John Lingham) and Thomas Rooney in charge of the other; two sections re-united in 1912 under Rooney's charge.

1902 -3 Improvements included shifting old shed from centre of gardens to nursery, taking down dilapidated summerhouse, removal of old gums along the back fence of the gardens and replanting with acacias, creepers etc.

1903 Earliest records of tuberous begonias purchased from English nursery Blackmore and Langdon.

1904 Northern garden pavilion constructed with a steel frame concave iron roof and two large finials.

1906 The Keel House Conservatory was constructed on site of previous maze but replaced in 1959 with Glass House designed by Lohse and Carruthers, also removed for Robert Clark Conservatory in 1995.

1907 Almeida Pavilion constructed and originally housed an amusement arcade.

1908 Hedged frontage to Wendouree Parade replaced by light open-work fence.

c1910s Picnic Shelter with expansive terracotta tiled pitched roof erected in southern lake shore area as part of expansion of public recreation facilities.

1912 The sundial, constructed 1910, was presented to the gardens in 1912 by former Mayor Councillor. TT Holloway. The dial was prepared under the personal direction of the Government Astronomer, Mr P Sarracchi.

1911 Tuberous begonias successfully cultivated in the open air.

1912 Henry Ben Jahn bequest to establish a zoological section in the northern gardens with work commencing 1915, opening 1917 but closed in 1959 with most features removed.

1914 Thomas B Toop appointed curator, retired in 1945.

1916 Water lily pond constructed adjacent to Fernery.

1918 Rustic bridge added to 'Fairyland', a popular area of the gardens on the shore of Lake Wendouree.

1921-23 Honourable J.Y. Mc Donald Bequest funds erection of new bandstand (to replace wooden one), entrance gates and pergola.

1934 Weatherboard cottage inhabited by Adam Lindsay Gordon in the 1860s re-located from Craig's Hotel to the northern gardens near the fernery. Now a craft cottage.

1937 Some early paths grassed over; this work was continued through the 1940s.

1940 Prime Minister's Avenue inaugurated, busts funded by the Richard Crouch Bequest.

1947 Long serving curator Tom Beaumont appointed, retired 1978.

1953 Begonia Festival inaugurated and still continues.

1958-59 New curator's residence erected.

1962 Sound shell built in northern gardens.

1971 Tramline through gardens closed and Ballarat Tramways Preservation Society formed to run tourist service along edge of Gardens; new depot erected with services commenced in 1974.

1972 Extant glasshouse erected to replace two earlier glasshouses located at southern end of gardens but no longer in use.

1985 Victoria's 150th Project funded Alpine Rockery and plant identification.

1990 Substantial upgrading of nursery area following extensive hail damage to glasshouses.

1994 Detailed Conservation Analysis and Master Plan undertaken; proposal for new Horticultural Centre; demolition of former curator's residence and conservatory.

1995 Official opening of Robert Clarke Conservatory and Horticultural Centre, designed by Peter Elliot, and funded by a \$2million bequest from Bob Clark, grandson of Robert Clark, co-founder and proprietor of the Ballarat Courier.

1996 New Community Playground constructed.

2001 Wetlands created in northern gardens.

2004 Australian Ex-Prisoner of War Memorial designed by local sculptor, Peter Blizzard, honouring more than 35,000 Australian soldiers. The 130 metre long wall of polished black granite is engraved with the names of all Australian prisoners of war. At the centre of the monument stands six basalt obelisks etched with the names of the countries in which Australians were held prisoner.

### Assessment Against Criteria

The Ballarat Botanical Gardens, gazetted in 1857 and developed from 1858 on the old Police paddock site, is an outstanding example of a botanical garden. The large 40 hectare site is bounded by Lake Wendouree (originally Yuille's Swamp) to the east, the northern extension of St Aiden's Drive, The Boulevard, Gregory Street, Gillies Street and Carlton Street along the south. Although the area between Wendouree Parade and the lake is considered to be part of the lake surrounds, this section is integral to the gardens and was included in the original 1885 reservation. This site is part of the traditional land of the Wathaurung people.

The core of the gardens is contained in the area between the nursery/works area and Adam Lindsay Gordon cottage in the north, and the fish hatchery in the south. North of the central gardens is an open area with space for sporting activities surrounded by park-like plantings of predominantly conifers. This is also the site of the former zoological section, which retains some remnant cages and a wetlands area near The Boulevard. Closer to the works area, a road leads off Wendouree Parade to connect with Gillies Street and this passes a large and impressive picnic shelter (1904) with an elegant concave iron roof supported on slender columns.

To the south of the Trout Hatchery is another open area of parkland used for sporting activities with the Australian Ex-prisoner of War memorial located adjacent to Carlton Street. The park land north and south of the main gardens forms a critical buffer both in spatial and visual terms.

The layout of the main garden is governed by four main north-south axes; Wendouree Parade, the Giant Redwood Avenue, the Prime Minister's Avenue and a path running along the western boundary parallel to Gillies Street. The two central avenues provide strong visual elements with the massive redwoods forming one of the most prominent features of the gardens. The Prime Ministers' Avenue although far lower in scale, has a strong focus with its regularly spaced busts and avenue of chestnuts (*Aesculus hippocastanum* and *A. x carnea*). East-west links are made via the fernery, a path to the conservatory, a path at the head of the Giant Redwood Avenue, a path linking two circular features and a path with arbours near the fish hatchery. All these paths have different characteristics - the fernery is a winding path through the lathed buildings; the path to the conservatory runs through the open lawns area where bedding displays are prominent; the path at the end of the Giant Redwood Avenue is curved and marks the start of a more densely treed area; a further path joins two large circular beds, one for floral display and the other a Sensory Garden (1993); and the southern path runs below arbours clad with creepers. The garden has lawn set with trees, flower beds, statuary, structures and several dedicated display gardens such as the camellia garden, the azalea gardens and the conifer garden. Significant trees include the largest Exeter Elm (*Ulmus glabra* 'Exoniensis'), and rarely cultivated in Victoria, two rare *Ulmus x hollandica* 'Wredei', a large Horizontal Elm (*Ulmus glabra* 'Pendula'), and English Elm (*Ulmus procera*), Dutch Elm (*Ulmus x hollandica*), Weeping Elm (*Ulmus glabra* 'Camperdownii'), Golden Elm (*Ulmus glabra* 'Lutescens'), Chinese Elm (*Ulmus parvifolia*) and a young American Elm (*Ulmus Americana*). Other significant trees are the Sierra or Giant Redwoods, (*Sequoia giganteum*) planted soon after the species was introduced into Victoria, Horse Chestnuts (*Aesculus hippocastanum*), English or Field Maple (*Acer campestre*) Bunya Bunya Pine (*Araucaria bidwillii*), Tasmanian Blue Gum, (*Eucalyptus globulus* subsp. *globulus*), Weeping Ash (*Fraxinus excelsior*

'Pendula'), Sitka Spruce (*Picea sitchensis*), Norway Spruce (*Picea abies*), Western Yellow Pine, (*Pinus ponderosa*), Turkey Oak, (*Quercus cerris*), English Oak (*Quercus robur*), Coast Redwood (*Sequoia sempervirens*) and Swamp or Bald Cypress (*Taxodium distichum*).

The northern end of the central garden is dominated by the elegant octagonal Statuary Pavilion, the Robert Clark Conservatory, a striking glazed building with faceted panels set at an angle forming a long space of triangular cross sections and the large timber Fernery. Adjacent is the relocated small timber cottage, once home of the poet Adam Lindsay Gordon.

To the east of Wendouree Park is a strip of land which serves both lake and gardens. Adjacent to the main point of entry to the gardens is the Lake House Pavillion, a decorative brick refreshment room of cruciform plan still serving its original purpose. Slightly south is the Almeida Pavilion, originally for amusement machines but now an open shelter with four cannons located nearby. To the north is an area known as Fairyland, part of the lake margin with overhanging willows, narrow paths and an enclosed, intimate character (compared with the bold floral displays and wide expanses of lawn in the gardens). South of the Lake Lodge is a park-like area with a bandstand and other shelters and playground equipment and car parking areas. Wendouree Parade itself is entered at north and south through large stone pillars with a nearby single cannon and a tram runs along the roadway for the length of the gardens.

Draft - Not yet confirmed by Heritage Council

#### ASSESSMENT AGAINST CRITERIA

##### **a. Importance to the course, or pattern, of Victoria's cultural history**

Developed from 1858, the Ballarat Botanical Gardens are one of the best examples of a botanic garden in Victoria. Retaining typical gardenesque and botanical gardens characteristics, they include open lawn areas planted with mature specimen trees, areas of intensive horticultural interest, formal avenues, horticultural buildings such as a fernery and conservatory, fountains, statuary and close proximity to a township developed during the mid nineteenth century.

##### **b. Possession of uncommon, rare or endangered aspects of Victoria's cultural history.**

The Ballarat Botanical Gardens are important for the collection of plants characteristic of nineteenth and early twentieth century Victorian gardens, as well as representative of more specialised plant groups befitting the scientific role of a botanic garden. The planting includes many uncommon trees specimens now often only found in botanic gardens or historic landscapes.

##### **c. Potential to yield information that will contribute to an understanding of Victoria's cultural history.**

The Ballarat Botanical Gardens are one of Victoria's best known and most visited regional botanic gardens, enhanced by events such as the Begonia Festival (since 1953). The civic pride and prosperity of Ballarat, originally derived from the gold rush, continues to be reflected in the gardens which have been enhanced through bequests and donations enabling the addition of statues and significant buildings, such as the Robert Clark Conservatory. Also the location of the gardens adjacent to Lake Wendouree provides a strong recreational link with the surrounding foreshore areas and, since the 1870s, has been a popular place of leisure and recreation for locals and visitors.

##### **d. Importance in demonstrating the principal characteristics of a class of cultural places or environments.**

##### **e. Importance in exhibiting particular aesthetic characteristics.**

The retention of the north-south linear layout provides a strong visual aesthetic which is accentuated by mature avenue plantings of Giant Redwood, Horse Chestnuts and English Oaks. The setting of the Ballarat Botanical Gardens adjacent to Lake Wendouree to the east and the open areas to the north and the south provides significant views into and out of the gardens and a contrast to the more formal central section. The gardens provide a fine setting for the collection of nineteenth century statues including a dedicated Statuary Pavilion and an avenue of sculptures of Australian Prime Ministers.

f. Importance in demonstrating a high degree of creative or technical achievement at a particular period.

g. Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions.

h. Special association with the life or works of a person, or group of persons, of importance in Victoria's history.

### **Plaque Citation**

Developed from 1858, Ballarat Botanical Gardens are one of Victoria's most significant regional botanic gardens, retaining a gardenesque style characterised by mature trees, bedding plants, statuary, historic and contemporary architecture.

### **Extent of Registration**

EXTENT:

1. All the buildings and structures marked as follows on Diagram 2252A held by the Executive Director.

B1 Fernery

B2 Statuary Pavilion

B3 Robert Clark Conservatory

B4 Robert Clark Horticultural Centre

B5 Adam Lindsay Gordon Craft Cottage

B6 Ballarat Fish Acclimatisation Hatcheries

B7 Vintage Tramway Museum

B8 Lake House Pavilion

B9 McDonald Bandstand

B10 Almeida Pavilion

B11 Display Glass House

B12 Northern Picnic Pavilion

B13 Sound Shell

2. All of the features marked as follows on Diagram 2252A held by the Executive Director.

F1 Prime Ministers' Avenue including southern Chestnut Avenue

F2 Sequoiadendron Avenue including the southern pergola

F3 Morey Gates and pergola

F4 Two marble lions

F5 Sir William Wallace statue

F6 Mc Donald Gates and South Pergola

F7 Water Lily pond

F8 Sundial

F9 Claxton Memorial fountain

F10 Four Cannons

F11 Two Cannons

F12 Tram tracks

F13 Community Playground

F14 Australian Ex-Prisoner of War Memorial

F15 Northern Gate posts

F16 Southern Gate posts

F17 Wetlands

F18 Former Zoological Gardens remnants

3. S1-S12 Twelve Stoddart Statues as marked on Diagram 2252B held by the Executive Director.

4. All of the paths and roadways marked P1 on Diagram 2252 held by the Executive Director.

5. All the land marked L1 on Diagram 2252A and B held by the Executive Director, being all of the land in Crown Allotment 2023 and part of the land in Crown Allotments 2 and 2018, Township of Ballarat, and parts of the road reserve for The Boulevard and Wendouree Parade, Lake Wendouree.

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*This place/object may be included in the Victorian Heritage Register pursuant to the Heritage Act 2017. Check the Victorian Heritage Database, selecting 'Heritage Victoria' as the place source.*

*For further details about Heritage Overlay places, contact the relevant local council or go to Planning Schemes Online <http://planningschemes.dpcd.vic.gov.au/>*



## 8.2. ART GALLERY OF BALLARAT GOVERNANCE

**Division:** Community Wellbeing  
**Director:** Matthew Wilson  
**Author/Position:** Louise Tegart – Director Art Gallery of Ballarat

### PURPOSE

1. Positive Solutions and Harwood Andrews were engaged by Council in 2019 to undertake a Governance Review of the Art Gallery of Ballarat and develop new legal documentation.
2. The Governance Review recommended the merging of the Board and the Art Gallery Foundation. Council is asked to endorse the merger.

### BACKGROUND

3. The Art Gallery of Ballarat engaged Positive Solutions in 2019 to undertake a review of the Gallery governance structure. This came out of the Gallery's strategic plan 2019-2022 which had a priority 'Prepare the Gallery for the future'. Positive Solutions are a leading consultancy specialising in the cultural and non-profit sectors, with over 30 years' experience in Australia and internationally. They have worked on projects in Australia, New Zealand, the UK, Hong Kong, and Singapore, from planning cultural precincts to providing strategic advice to arts organisations and individual artists, tourism, mental health and community health support organisations, and a number of other non-profit organisations.
4. The Gallery has a complex governance structure: the Board is a company limited by guarantee of which the Council is the only shareholder. There is also a separate Foundation and a separate Gallery Association. These three separate bodies- of which the Gallery Director is the only common denominator- means that there is a lack of clear reporting lines, role clarity and strategic direction. In particular the fundraising capacity of the various bodies has not been maximised and fundraising, stakeholder management and donor stewardship has fallen to the Gallery staff. The relationship between the Board and the Council has not resulted in growth or promotion of the Gallery or realisation of the potential of the Gallery as identified in the Creative City Strategy, Traveller Experience Plan or Visitor Economy Strategy.
5. The Positive Solutions review recommends that the Board and Foundation merge to become a single entity, and for current Board members and Foundation trustees to step down. The recommendation fits within the Constitution of the Company. Following extensive stakeholder consultation over 2020 and 2021 the Board and the Foundation as well as the Association have endorsed this approach. Lawyers Harwood Andrews have been engaged to provide documents for the new Board including a new MoU between Council and the Board. New role descriptions, policies and a Board recruitment strategy have been written by Positive Solutions and recruitment for new Board members will commence once Council has endorsed the merger. The current General Services Agreement between Council and the Board has been extended until the end of 2021, so a final resolution needs to be made by Council.
6. The revised governance structure provides a number of opportunities: the Gallery Director will have a clear reporting framework; strategic directions will be determined

by one entity; a fundraising strategy with targets will be developed to be enacted by the Board and staff; Board members will be recruited to have a focus on strategy and fundraising and staff time on administration of two entities will be reduced.

7. Art Gallery of Ballarat Foundation (the Trustee for the Art Gallery of Ballarat Foundation Trust) was established by a deed dated 27 February 1998. Under the merger the Board will take control of the financial assets of the Foundation- comprising cash assets of \$94,000 and shares of \$2,192,369. These are tied bequests to the Gallery primarily for the purchase of artworks for the Gallery's collection. The fixed assets comprising 50 Lydiard Street North, 52 Lydiard Street and 52A Lydiard Street North will also be transferred.
8. The Governance Review has included extensive consultation with the Art Gallery of Ballarat Board, Foundation and Association. All parties are committed to completion of the Review to ensure greater outcomes and efficiencies for the Art Gallery. The Board accepted the MoU in September. Council have been briefed on the Review and MoU in August and October.

## KEY MATTERS

9. Endorsing the governance changes outlined in the report and enacted through the new MoU will support the long-term strategic management of the Gallery and improve its ability to fundraise. Merging the Board and the Foundation brings these two critical functions together in a way that is currently not in place in the Gallery governance structures.
10. It is important to note that the Company will become responsible for the assets of the Foundation, including the properties cited above, and therefore will incur costs with the ongoing management of these assets.
11. In addition to the above, a key consideration is that the current General Services Agreement between the Board and the Council ceases 31 December 2021, meaning that the new MoU needs to be endorsed by Council and formally signed by all parties prior to that date.

## OFFICER RECOMMENDATION

### **12. That Council:**

- 12.1 Endorse the merger of the Board of the Art Gallery of Ballarat and the Art Gallery Foundation including the Board taking authority over the assets of the Foundation.**
- 12.2 Endorse the new Memorandum of Understanding between Council and the Board.**
- 12.3 Endorse the expression of interest process to recruit new Board members under the terms of the new Memorandum of Understanding.**

**ATTACHMENTS**

1. Governance Review AGB November [**8.2.1** - 2 pages]
2. AGB Governance review report - final [**8.2.2** - 24 pages]
3. 024 Memorandum of Understanding Ballarat Art Gallery DRAFT 130921(13321872.5) [**8.2.3** - 22 pages]

## OFFICIAL

**ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. Council Plan- An environmentally sustainable future, A healthy, connected and inclusive community, A city that fosters sustainable growth, A city that conserves and enhances our natural and built assets, A strong and innovative economy and city, A council that provides leadership and advocates for its community
2. Community Vision 2031
3. Ballarat Prosperity Framework
4. Art Gallery of Ballarat Strategic Plan 2019-2022
5. Creative City Strategy
6. Creative Precinct Masterplan
7. Events Strategy
8. Traveller Experience Plan
9. Visitor Economy Strategy
10. Health and Wellbeing Plan 2021-2031
11. Financial Plan
12. Workforce Plan
13. Asset Plan

**COMMUNITY IMPACT**

14. A vibrant and effectively funded and managed Art Gallery is fundamentally important to every community and even more so to a city the size of Ballarat. The Council holds some responsibility for the arts and cultural prosperity for the local community and as the capital of Western Victoria, a significant regional population looks to the city as a leader in this sector. Therefore, it is important that the greatest outcome can be achieved from the available funding and resources.

**CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

15. There are no climate emergency and environmental sustainability implications.

**ECONOMIC SUSTAINABILITY IMPLICATIONS**

16. The new Board position descriptions will clearly define the role of the Gallery Board and will ensure that fundraising is part of their remit. A fundraising strategy is under development.
17. Long term financial stability of the Gallery including ethical management of bequests

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OFFICIAL

## OFFICIAL

**FINANCIAL IMPLICATIONS**

18. The new MoU will give the Gallery the ability to have assurance of their forthcoming budget in order to plan exhibitions up to three years in advance which is industry standard. In theory the GSA allows the Gallery to view the three year budget holistically and spend when exhibitions fall rather than working within an allocated annual budget.

**LEGAL AND RISK CONSIDERATIONS**

19. Harwood Andrews have been engaged to draft new governance documentation
20. Council taking on the assets of the Gallery Foundation- ongoing maintenance.

**HUMAN RIGHTS CONSIDERATIONS**

21. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

**COMMUNITY CONSULTATION AND ENGAGEMENT**

22. Extensive consultation has been undertaken with the Board, Foundation and Association. Other galleries undergoing similar reviews have also been consulted- Shepparton Art Museum and Murray Art Museum Albury.

**GENDER EQUALITY ACT 2020**

23. There are no gender equality implications identified for the subject of this report.

**CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT**

24. Council officers affirm that no general or material conflicts need to be declared in relation to the matter of this report.



# GOVERNANCE REVIEW FINAL REPORT

Art Gallery of Ballarat

11 September 2019



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## 1. INTRODUCTION

The Art Gallery of Ballarat is respected State-wide and nationally – and is a source of pride for the people of Ballarat. It has a significant role to play both in Ballarat’s *Creative City Strategy* and in *Creative State: Victoria’s first Creative Industries Strategy 2016-2020*.

Positive Solutions was engaged to assist the Art Gallery and the City of Ballarat with advice on the most effective governance arrangements for the Gallery, including the Board, Foundation and the Association.

The term ‘governance’ indicates the structures and systems by which an organisation is given direction and held accountable. It includes corporate structure, leadership, board composition and processes, strategic direction, policy settings, performance measurement and management, and reporting and accountability procedures. It is the overall framework within which an organisation directs its business, extending well beyond the issue of legal compliance.

This review focused on:

- > The current three-entity structure – its rationale, current operations and level of effectiveness
- > Board/ Trust/ Committee composition
- > Board/ Trust/ Association policies and procedures
- > Strategic direction, reporting and accountability arrangements

The Steering Committee expressed the intention that the review should also lead to:

- > Simplification of structure and communications, where possible
- > Greater clarity and alignment between the entities connected with the Gallery
- > Clear benefits for the Gallery

Key questions for the current review are whether the three separate entities, plus Council, remains the best arrangement for effective management and for fundraising/ development for Art Gallery of Ballarat; and whether the Gallery should remain a company limited by guarantee or be operated directly within Council.

This Report presents includes an overview of governance models at other galleries; a brief summary of governance arrangements currently at the Art Gallery of Ballarat; options for future governance arrangements, and a preferred development option.

## 2. REGIONAL GALLERIES GOVERNANCE

### 2.1 MODELS

The organisational models under which regional galleries operate comprise a number of elements:

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





### 2.1.1 THE BUILDING AND COLLECTION

As with Ballarat, the most common arrangement for ownership of the building and the collection is for local government to take responsibility for these core assets. However, the arrangements for acquisitions, day to day operations, fundraising, supporter or loyalty programs and operation of commercial activity (e.g. catering and retail) vary and evolve over time.

### 2.1.2 STAFFING AND OPERATIONS

In the case of staffing and the day to day operations the most common model has been for local government to take responsibility, within normal line management structures – typically with the Gallery Director reporting to Head of Community Services or similar. But this is not universal. City of Greater Shepparton, for example, is establishing the new Art Museum as a company limited by guarantee, partly because of the benefit of arms-length fundraising, and partly for the lower costs, operational autonomy, and greater flexibility with staffing arrangements. The Gold Coast's HOTA, a precinct which includes a major new gallery, has made the same choice.

### 2.1.3 SPONSORSHIP AND PHILANTHROPY

While corporate partnerships and sponsorships are unaffected by the different corporate arrangements for galleries, philanthropy and donations are affected. Some of the larger philanthropic foundations can only donate to registered charities – that is, non-profit entities that are listed on the Australian Charities and not-for-profit Commission (ACNC) register. Local governments cannot be charities, and this has led to the establishment of arms-length Foundations which provide an appropriate vehicle for receiving donations – and channelling them through to the gallery for purposes of acquisitions or towards program costs. In addition to ACNC requirements (and tax-deductibility pre-conditions), some galleries establish a Foundation in order to provide impetus behind the fundraising function, choosing Foundation board members or Trustees who have fundraising experience, useful networks or personal wealth.

### 2.1.4 FRIENDS

Friends organisations are often formed to provide a sense of connection and belonging for local supporters of a gallery. Typically, they undertake fundraising activities, but at a modest level – with more substantial and professionalised fundraising occurring under a Foundation which has been constructed for the purpose. From the Friends' perspective the key benefits are increased awareness of gallery activities and programs, social events, and the capacity to express moral support for the gallery. From the gallery's perspective, the key benefit is the ability to build a constituency of support.

Having several entities connected to the life of the gallery – operator, Foundation and Association (Friends) – presents some predictable, and common, challenges around role clarity and alignment of purpose and direction. For example, the Foundation may take a different view of the priorities for investment – including choices around specific acquisitions – from the Gallery Director or board (if there is one). Similarly, where a Friends has been long-established they may feel a strong sense of stewardship – even 'ownership' of the gallery – and regard the comings and goings of Directors and board members with a mild degree of cynicism. The implications of this are addressed below.

## 2.2 BENCHMARK GALLERY ARRANGEMENTS

Company status allows the gallery to register with the ACNC and gain DGR status to contribute to fundraising efforts. Many galleries also have an associated Foundation and Friends organisation which operate as separate legal entities and play a role in fundraising.

For regional galleries that are incorporated, there is the question of striking the right balance in fundraising efforts and implementing clear roles, responsibilities and expectations across all legal entities associated with the gallery. An acknowledged weakness across the benchmarked institutions is the duplication of fundraising effort, with the Foundation, Friends organisations and the Gallery all pursuing funding. Considering this, Bendigo Art Gallery recently wrapped up operations of its Foundation, with the Gallery Board now leading fundraising efforts. Geelong Gallery have investigated similar arrangements. Rockhampton are considering the option of reconfiguring their Philanthropy Board, possibly as a separate Foundation.



Table 1 | Summary of benchmark data

	ART GALLERY OF BALLARAT	BENDIGO ART GALLERY	CASTLEMALINE ART MUSEUM	GEELONG GALLERY	SHEPPARTON ART MUSEUM	ROCKHAMPTON ART GALLERY
Legal entity of the Gallery operator	Company limited by guarantee	Council - Operated by City of Greater Bendigo	Company limited by guarantee (recently incorporated)	Incorporated Association	Gallery - Company limited by guarantee (newly established)	Council - Operated by Rockhampton Regional Council
Gallery director reports to	Board and to Director of Development and Planning	Council	Board (monthly)	Board (Bi-monthly)	Board. Also reporting to Council during transition.	Council
Ownership of the building	Council	Council	Castlemaine Art Gallery and Museum Foundation	Council	Council	Council
Ownership of the collection	Works are acquired by the Board and owned by Council	Works are acquired by the Board and owned by Council	Foundation	Community of Geelong through the Incorporated Association	Council	Council
Foundation	Yes	No – recently wrapped up	Yes	Yes	Yes	No. Philanthropy Board sits within Council
Friends Association	Yes	Yes	Yes	No – Recently wrapped up	Yes	Yes
Fundraising leadership	Foundation, Gallery Board and staff	Gallery Board	Gallery Board	Gallery and Foundation	Foundation	Philanthropy Board
Approximate annual income from fundraising	\$40,277	\$359,234	\$52,245	\$75,000-95,000	New. Report not due yet	\$17,161

### 3. AGB CURRENT ARRANGEMENTS

#### 3.1 STRUCTURE AND ENTITIES

Asset management and operational responsibility for the Art Gallery of Ballarat was passed from the Association which had founded the Gallery to the City of Ballarat in 1978. At that stage, a Board was established, as a Sub-Committee of Council. In 1990 a Foundation was established to fundraise for two major building programs, and continued in existence. In 2007 a company limited by guarantee was set up, reflecting the need for a more arms-length operating arrangement from Council in order to meet funder/ philanthropic requirements. However, notably, the Director and staff continued to be Council employees, and Council also continued to operate the Gallery’s finance functions.

- > Both the Art Gallery of Ballarat company limited and the Art Gallery Ballarat Foundation are registered with the ACNC and have DGR status. The Ballarat Fine Art Public Gallery Association does not have DGR status.
- > The Foundation is provided with secretariat support by the staff of the Gallery, although this is not a mandated arrangement. The Foundation has a representative on the Board of the Gallery, as does the Association.



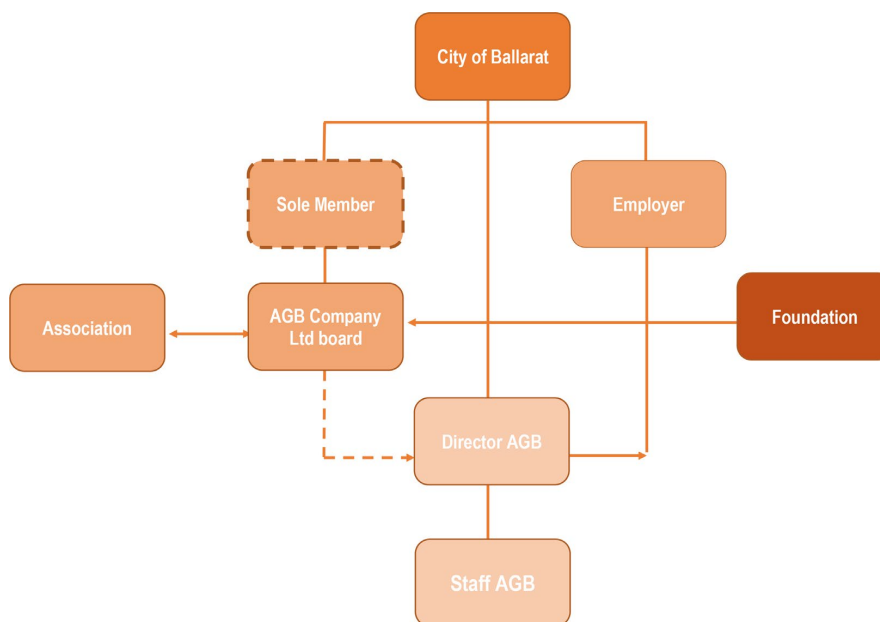
Table 2 | Entities of AGB

ART GALLERY OF BALLARAT ENTITIES			
	Art Gallery of Ballarat Ltd.	The Ballarat Fine Art Public Gallery Association	The Trustee for Art Gallery Ballarat Foundation
ACNC registered	Yes	Yes	Yes
Charity	Yes	Yes	Yes
DGR status	Yes	No	Yes
Public Ancillary Fund (PAF)	No	No	Yes

It is also noted that:

- > City of Ballarat is a key stakeholder and funder. There is a Service Agreement setting out obligations between the Board and the City
- > There is no formal Agreement between the Board and the Association or the Board and the Foundation
- > There is a Women’s Association. This is not an incorporated body, but has a separate bank account
- > The Guides are a significant stakeholder group, but are not an incorporated entity

Figure 1 | Art Gallery of Ballarat organisational diagram



### 3.2 PROCESSES

#### 3.2.1 OPERATIONS

Staff are employees of the City of Ballarat, which also provides financial administration. While the Gallery is a company limited by guarantee, the Board of this company is not in control of the organisation in the manner normally exercised under Corporations Law. The Gallery Director reports nominally to the Board, but line management to the City’s Director of Development and Planning is more significant, both because the City is owner and major funder of the Gallery, but also because the Director is a City employee. In these circumstances the Board of the company may be considered as closer to an Advisory Board than a Governing Board in its authority and impact.



In order to clarify the Board's powers, and its role in the ownership and management, of the Gallery, advice was sought from Harwood Andrews lawyers in 2018. Regardless of the detail of the advice received, the fact that these questions needed to be posed reflects the unusual position the Board finds itself in.

### 3.2.2 STRATEGY

The Gallery's Strategic Plan is intended to align closely with the Council Plan 2017-21. It is a high quality document – both in terms of content and presentation. Following formal adoption, further documents should be 'scaffolded' from the Plan – including annual Operational Plans which identify the specific tasks and targets for each year, and allocate responsibilities to Director, staff, Board, Foundation, Association, and City Council; and a 'One-Page Plan' which serves to communicate succinctly the key directions and messages for each stakeholder group.

Although the Foundation consulted with Frankie Airey of Philanthropy<sup>2</sup> in 2017 it is understood that there is no current Fundraising Strategy or Plan in place for either the Foundation or the Gallery. The Foundation has undertaken a number of cultivation events to build connections with potential donors, but this does not appear to be within the context of an agreed long-term strategy. It is noted that the Gallery's draft Strategic Plan includes an aspiration to 'Develop a holistic fundraising strategy for the Board, Association and Foundation'.

### 3.2.3 POLICY FRAMEWORK

The Gallery's operations and decision-making are framed by Council policies. Additionally, the Board has developed Gallery-specific policies. The alignment between Council policies and the Gallery Board's, and the completeness of the policy suite has not been examined within this Review – but this is an issue which ought to be addressed following decisions on the overall future structure and governance of the Gallery. The Foundation does not currently have a suite of approved policies to frame its work and decisions. While only a small number of policies may be necessary for the future, these might include fund allocation decision-making, media and communications, Trustee/ Board recruitment and one or two other areas where consistency, and alignment with the Gallery Board and Council, are desirable.

### 3.2.4 FUNDRAISING AND PHILANTHROPY

The Board, the Association and the Foundation all have a stake in fundraising as do the Gallery staff. This has led to a lack of clarity for all parties as well as for donors who can give to four different entities.

The Foundation has the role of being the vehicle for receiving significant donations – or those where a clearly arms-length route is needed. It has the role of actively seeking future philanthropic donations – increasing the corpus available to finance acquisitions and provide long-term support to the Gallery. And it has responsibility for investing and stewarding the corpus for the benefit of the Gallery.

The Association's role has evolved significantly since its early days. Unusually for such an entity, its history goes back to and was closely bound up with the founding of the Gallery. Currently, it serves as a loyalty program, maintaining a sense of connection between the Gallery and its supporters. It also organises social activities, and undertakes fundraising – focused on events rather than major donations as they are not eligible to receive donations.

The Gallery staff are actively involved in fundraising – they have the detailed program knowledge to support approaches to potential donors – as well as strong motivation. The fundraising income generated by the staff through grants, donations or philanthropy is either allocated to the Foundation or the Board accounts and therefore forms part of their income. The Service Level Agreement between the Gallery (Company) and Council places obligations on the Board to fundraise, although it is understood the Board is not currently active in doing so.

The funding provided to the Gallery from each of these sources in recent years is as follows:



Table 3 | AGB Fundraising

ENTITY		2015-16	2016-17	2017-18
The Trustee for Art Gallery Ballarat Foundation	Total Income incl. investment dividends, rent, fundraising and annual bequest payments	\$435,795	\$689,364	\$415,945
	Total Fundraising Income incl. Adopt an Artwork, Association member donations until 16/17.	\$54,111	\$89,923	\$130,610
	Total Bequest annual payments	\$206,598	\$270,008	\$98,000
	Dist. to Gallery	\$49,076	\$234,827	\$36,775
	Acquisitions	\$166,772	\$304,256	\$406,053
The Ballarat Fine Art Public Gallery Association	Total Income incl. memberships, City of Ballarat contribution, event revenue	\$118,411	\$123,086	\$113,885
	Total Fundraising Income	\$16,452	\$16,926	\$11,505
	Dist. to Gallery	NA	\$776.80	\$821.20
	Acquisitions	\$22,181	\$25,878	\$21,872
Art Gallery of Ballarat Board	Total Fundraising Income incl grants, philanthropic contributions	\$5,375	\$39,600	\$99,015

Sources: AGB Foundation Financial report 30 June 2016, AGB Foundation Financial report 30 June 2017, AGB Foundation Financial report 30 June 2018, AGB Association Annual report 2017-18, AGB Association Annual Report 2015-16, Board DGR Bank Account Funds Received (provided by Kelly Smith, Business Services Manager)

The City Council, not listed above, is the largest funder of the Gallery. Consequently, both elected members and officers have a keen interest in its welfare and its future directions.

It is noted that fundraising in the arts sector – as in other sectors – has become increasingly professionalised and strategic. The model of a group of wealthy or well-connected individuals taking it upon themselves to secure support through their networks is waning. It is being supplanted by professional development (fundraising) personnel, the adoption of evidence-based fundraising strategies (grounded in feasibility work), with the support of board members, especially in adding weight – or introductions – where this increases effectiveness.

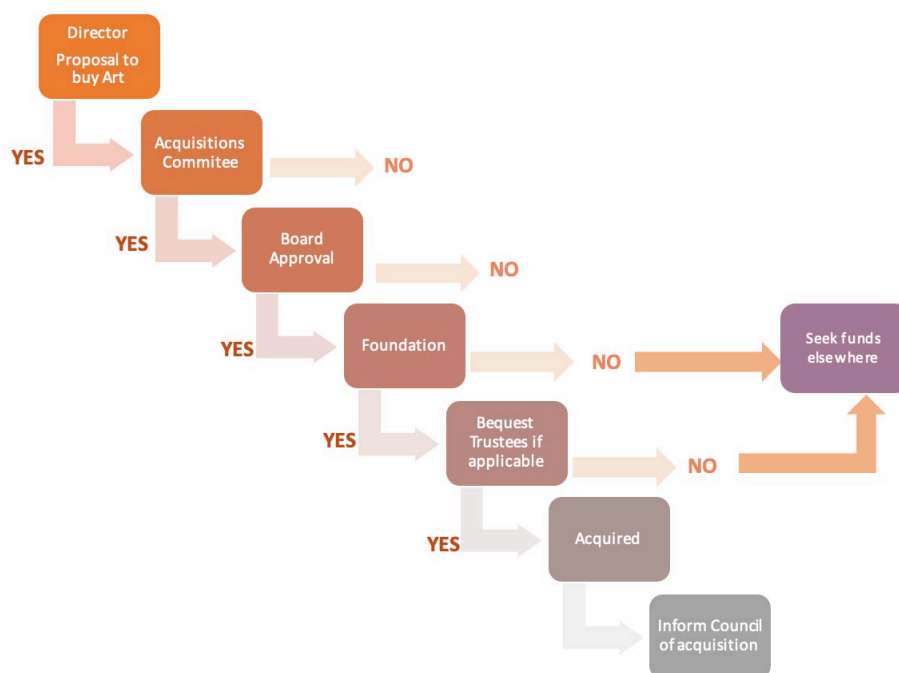
### 3.2.5 ACQUISITIONS

When ownership of the Gallery passed from the Association to City Council a majority of the members of the Acquisitions (Advisory) Committee was drawn from the Association – partly to protect against inappropriate de-accessioning of artworks but also to keep the historical tie to the Association. Following recent amendments the Association now has three nominees on the Acquisitions Advisory Committee, from a total of 13 members of the Committee.

The current arrangements, recently refined to strengthen the proportion of specialist expertise of the Committee, are for proposals for acquisitions (normally from the Director) to be put to the Acquisitions Committee. Subject to their approval the Board's endorsement is then sought, prior to a submission to the Foundation being made. If necessary, the Director then seeks approval from relevant bequest Trustees.



Figure 2 | Ballarat Art Gallery Acquisition Process



Reviewed positively, this provides a series of checks on over-hasty acquisitions. But it is also presents a lengthy chain of decisions between an opportunity and a purchase.

### 3.3 COMMENTARY

The following observations are derived from a review of governance-related documentation from each of the entities, and interviews with representatives from the Gallery’s Board, the Foundation, the Association and the City of Ballarat.

#### 3.3.1 RELATIONSHIPS AND COMMUNICATIONS

- > All parties are committed to the best interests of the Gallery and the benefits it brings to the people of Ballarat and to the local economy. However, there are different interpretations as to how these interests and benefits can best be secured
- > In an attempt to align the priorities and directions of the three Gallery entities a MOU was drafted in 2017, but was not executed. It is understood the Foundation feels it was not consulted appropriately during the preparation of the MOU, but it is not clear whether any effort was made to negotiate or redraft the MOU
- > The Chairs of each of the three entities do not appear to maintain regular communication to agree on priorities. This is contributing to a degree of misunderstanding, and even tension, between the entities – albeit the basic structural arrangements may be a greater factor
- > The Foundation Trustees are concerned to avoid the Foundation’s assets / corpus from being diverted into meeting operational costs or any other purposes than acquisitions. Council has a concern to ensure that any operating entity for the Gallery be under ultimate control of Council in light of its ownership and responsibility for the building and collection.



### 3.3.2 FINANCES AND PHILANTHROPY

- > There are informal arrangements in place such as an annual contribution from the Gallery operating budget to the Association (in lieu of door takings) and use of staff time for Association activities such as the magazine
- > City Council is keen to see philanthropic support maximised through active fundraising – and also wishes to see a clear and unified direction for the Gallery, with each entity in support of that
- > An approved, resourced fundraising strategy across the Board, the Foundation and the Association is needed to optimise philanthropy, sponsorship and other income streams in support of Gallery programs and acquisitions
- > Neither the Board nor the Foundation appear to be strongly proactive in securing new donations or corporate support currently, although both take their stewardship and their support responsibilities seriously

### 3.3.3 ACQUISITIONS

- > The last year of the previous Gallery Director's tenure was accompanied by above normal budget expenditure by the Foundation on acquisitions – a positive and encouraging farewell for a long-serving Gallery Director. The first year of the new Director's tenure, however, was accompanied by an early acquisition proposal being declined, on grounds of budget constraints. This could perhaps be avoided in the future if an agreed long-term budget strategy is adopted by the Foundation and understood by each of the stakeholder
- > Further clarification and streamlining of the acquisitions process would be prudent, given the number of decision points currently

### 3.3.4 ROLES

- > The Board currently meets 10 or 11 times per year. Papers prepared for the Board of the Gallery are substantial and detailed. However, the Board does not appear to be presented with significant items for decision. It is a governing board under Corporations law, but does not have the power to govern effectively as non-employer of the Gallery staff
- > In some quarters of the Association there may be resistance to change, and to any relinquishing of influence. The size of the Association's membership and its longevity represents a tremendous asset to the Gallery. Taking the Association on the journey of any organisational change and development will preserve this
- > The composition of the Gallery's Board and the Foundation's Board will merit review to ensure that future skills needs are met – especially the need for advocacy, marketing, fundraising and commercial expertise alongside arts, financial nous, governance and fair and firm Chair leadership



## 4. FRAMING AGB FUTURE GOVERNANCE

### 4.1 ASSUMPTIONS

In addition to the findings and commentary above, a range of assumptions has been adopted which informs the options available for future governance arrangements for Art Gallery Ballarat.

- > Council will continue to own the building and collection
- > Council wishes to retain its status as sole member of the company, including if the company and Foundation are brought into a single entity
- > Council will continue to operate the Gallery as the employer of Gallery Director and staff. While this arrangement merits periodic review, any change of employer will be disruptive and would likely involve an expensive transition. It is for later consideration
- > An Acquisitions Committee will maintain oversight of acquisitions
- > There is a strong desire to increase philanthropic support for the Gallery
- > The Association's legal status and role will not alter under each of the options following
- > Any new structural arrangements should not jeopardise the Gallery's charitable status
- > Any structural change should avoid an increase in the number of entities
- > It is desirable to grow the corpus held by the Foundation, while continuing to making annual contributions to the Gallery for acquisitions or other agreed purposes, through a more proactive fundraising strategy

It will be beneficial to streamline the acquisitions process – a key interactive element between the various entities – in order to speed decision-making and to provide a simplified framework for evaluation and approval of acquisitions.

If there are structural changes any transition should be clearly explained to all the stakeholders – including Association members and Gallery staff – to minimise misunderstanding

While no changes to current arrangements for the Association are proposed in this Report it is noted that the continuation of representative – rather than skills-based – board members is steadily declining in the arts and non-profit sectors. It is **recommended** that the Association take into consideration the need to support efforts to strengthen the skills needed by the board of the Gallery – notably in philanthropy and financial stewardship – when nominating board members from within its Committee, broader membership or otherwise.

### 4.2 OPTIONS

The objectives of the following options are to increase alignment and harmonious working between the Gallery entities, reduce any duplication of effort, and strengthen philanthropic support for the Gallery.

The primary structural options identified are:

1. Maintain the status quo, with improvements to communications, roles, protocols and a MOU
2. Merge the Company and Foundation into a new entity
3. Maintain the Company and Foundation but have a congruence of board membership of the two
4. Maintain the Company and Foundation, with the Company focused on increasing philanthropic support and the Foundation focused on stewardship of the corpus





Table 4 | Commentary on structural options

OPTION	RATIONALE	ADVANTAGES	DISADVANTAGES
<p>1. Maintain the status quo, with clarified roles and responsibilities</p> <ul style="list-style-type: none"> <li>• Company and its board continue</li> <li>• Separate Foundation</li> <li>• Finalise a MOU between the entities</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum cost and disruption</li> </ul>	<ul style="list-style-type: none"> <li>• Easiest option to implement. Avoids need for legal restructuring</li> <li>• Some communication and efficiency improvements can be made within the current structure</li> </ul>	<ul style="list-style-type: none"> <li>• Risk of little or no increase in philanthropic support</li> <li>• Leaves potential for further misalignment between entities at a later stage</li> <li>• Inefficient use of Gallery Director time, needing to liaise with Council and three other entities</li> <li>• Fails to adequately respond to issues which have been identified</li> </ul>
<p>2. Merge the Company and Foundation into a new entity</p> <ul style="list-style-type: none"> <li>• Could be existing company, possibly existing Foundation, or a new entity</li> </ul>	<ul style="list-style-type: none"> <li>• Eliminates communication and overlap issues</li> </ul>	<ul style="list-style-type: none"> <li>• Simpler structure</li> <li>• Less reporting and administration, fewer meetings</li> <li>• Eliminates any divergence of priorities</li> <li>• Opportunity to create an entity that is fit for purpose for current and foreseeable needs</li> </ul>	<ul style="list-style-type: none"> <li>• Potential risk to retaining charity status if the single entity were regarded as Council-controlled</li> <li>• Board composition needs to include skills appropriate to active fundraising and to stewardship</li> <li>• Change management processes, including management of company and Foundation stakeholder perceptions – sponsors, bequest Trustees</li> </ul>
<p>3. Maintain Company and Foundation but with congruence of board membership</p>	<ul style="list-style-type: none"> <li>• Avoids legal restructuring, but also eliminates communication and overlap issues</li> </ul>	<ul style="list-style-type: none"> <li>• Avoids need for legal restructuring</li> <li>• Aligns the priorities of the two entities</li> <li>• Avoids need for communication and liaison between the entities</li> </ul>	<ul style="list-style-type: none"> <li>• Potential risk to retaining charity status if the congruence of board members were regarded as an effective ‘merger’ bringing the Foundation under Council control through its power to appoint or remove board members</li> <li>• Retains time and cost of double reporting and accounting requirements</li> <li>• Board composition needs to include skills appropriate to active fundraising, with Foundation focusing on stewardship</li> </ul>
<p>4. Maintain Company and Foundation, with Company focused on philanthropic support and Foundation focused on stewardship</p> <ul style="list-style-type: none"> <li>• Activate the board’s fundraising capability through recruitment and clear strategy</li> <li>• Sustain the Foundation’s stewardship and investment capabilities</li> <li>• Agree a MOU between the entities</li> </ul>	<ul style="list-style-type: none"> <li>• Avoids legal restructuring, and provides for two groups with complementary skillsets</li> </ul>	<ul style="list-style-type: none"> <li>• Builds two boards which can specialise in their skillset</li> <li>• Limits opportunities for divergent views – addressing different agendas</li> <li>• Emphasises board role in activating philanthropy</li> </ul>	<ul style="list-style-type: none"> <li>• Retains time and cost of double reporting and accounting requirements</li> <li>• Further narrows the governance role of the Company Board. Requires clarification of its liabilities and indemnities</li> </ul>



### 4.2.1 PREFERRED OPTION

Each of the four options provides a possible way forward. However, the most efficient and effective option would be, Option 2, the merging of Company and Foundation into a single entity, and it is **recommended** that this option be adopted. The reasons for this are:

- > Full alignment of Gallery strategy, fundraising effort and acquisitions priorities
- > Eliminates reporting and meeting requirements, and ongoing compliance costs, for one legal entity
- > More efficient use of Gallery Director time

Alongside its governance responsibilities this option requires the development of a board which is capable in both fundraising and asset stewardship. However, the stewardship responsibilities could be largely handled by a small Sub-Committee of board members with accounting and investment experience, possibly supplemented by one or two non-board member specialists – leaving the focus of the main board to be predominantly on fundraising, and on aspects of governance as required under corporate law and agreed with Council.

The single entity could either be an adaptation of the existing company, or a newly created entity – while both of the current entities would be wound up. Adapting the current company and board as the single entity has the clear advantage that this entity is already established as a charity with the ACNC and has DGR status. It is **recommended** that further legal advice be taken on the viability of implementing Option 2.

The personal liability of the Trustees of a Foundation is likely to make the Foundation an unsuitable vehicle as the single entity.

Arrangements for forming the initial, consolidated board for the Option 2 entity will need further consideration. Once this board has been established it is **recommended** that the subsequent appointment of board members to the single entity's board be by co-option, notwithstanding that Council, continuing as sole member of the company, would retain the power to appoint or remove board members.

One of the disadvantages of this model is the possible risk to the Gallery's charitable status if the new board is regarded as Council-controlled. If this proves insuperable, the fall-back Option could be Option 3, while noting that this may present the same risk to charity status with regard to a controlled entity, if the congruence of board members were perceived as bringing the Foundation under Council control.

### 4.3 IMPLEMENTATION ISSUES

There is a range of other refinements to governance procedure which will enhance the efficiency and effectiveness of future company and/or Foundation boards. Most of these procedural improvements would also apply if the status quo continues. References to the 'Board' relate to whatever is the governing body or bodies.

- > The Board will normally meet no more than six times per year
- > Board agendas and papers will focus precisely on matters reserved to the Board, reviewing the scope of issues which can appropriately be delegated to the discretion of the Gallery Director. If the Board's role is more narrowly defined than full governance responsibilities (with regard to overall compliance and performance/strategic direction) the Board meetings and papers will be adjusted to reflect this
- > A new MOU will be negotiated to optimise cooperative working and planning. This will sit alongside a commonly agreed Strategic Plan and Fundraising/ Philanthropy Strategy. Council will be a signatory to the MOU, although the relationship with Council will be articulated through a Funding or Service Level Agreement, as currently
- > A shortlist of performance measures will be confirmed for the Gallery Board, the Foundation if it were to remain separate), and the Association, and these will be documented within the MOU
- > An appropriate policy suite will be completed for the Gallery Board, the Foundation (if separate) and the Association
- > A fundraising professional will be engaged, on at least a part-time basis, to develop and activate the Gallery's philanthropy strategy



- > Membership of the Board/s will be developed to best achieve their governance and philanthropic objectives
- > Meetings of the Chairs of the Gallery entities will take place on at least a quarterly basis to agree priorities and directions
- > Meetings of the Chairs with the City's Director Planning and Development will take on a six-monthly basis
- > The acquisitions procedure and decision-making points will be further refined and simplified
- > Membership of the Acquisitions Committee should not be tied to particular stakeholder groups but should be based on an open process to ensure it meets industry standards
- > The formal/ legal status of the Guides and Women's Association will be clarified, with Terms of Reference developed or amended accordingly
- > A more detailed implementation plan and schedule will be drafted, with appropriate legal advice, prior to proceeding with actioning the recommended structural changes





## APPENDIX 1: BENCHMARKS

### BENDIGO ART GALLERY

BENCHMARK DATA	
Data required	Notes/ Data
Gallery legal entity	Owned and operated by City of Greater Bendigo
Gallery Director reports to (board, specific officer within Council, other?)	The Gallery Director reports to Council on operational matters, links to Board on fundraising matters. The function of The Board is Advisory and it does not play a governing role. A second attempt at recruitment for a Director is currently underway.
Nature and frequency of reporting processes	Budget – monthly reporting, half-year, annual \$2.1m turnover Gallery Director reports to a Director (Strategy and Growth) and then to CEO Gallery Director does budget development
Gallery staffing and volunteers	10-11 FTE All staff are Council employees
Who owns the building	Council
Who owns the collection/s	Council
Who leads the fundraising ? Is there a fundraising committee, a separate Foundation ?	Board
Is fundraising for acquisitions only, or for other purposes. Please describe	The current Fundraising and development strategy involves pursuing high net worth individuals and philanthropy. This process is ongoing and takes time Council of Greater Bendigo is not responsible for the purchase of artwork. Acquisitions are the responsibility of the Board. When artworks are acquired they become the property of Council, and are insured by Council. Despite this, artworks are cared for by the Gallery. The Council cannot sell the collection as the Board is responsible for any deaccessioning. The Board receives gifts, purchase, invests money within the portfolio about \$7m currently (a safe set of investments.). The Annual Report that is published online is for this aspect of the business and does not represent Gallery operations At times the Board has assisted with the costs of building works. Ten years ago, when the extension to the Gallery was built, the Board gave \$1.4m for the building. (700k of their own, and 700k raised) The Board also funds some conservation of collection through fundraising.
Reasons for current structural arrangements – for Gallery and for Fundraising	Bendigo Art Gallery also has a separate Foundation with DGR2 status. The Foundation was initially established as an independent channel for fundraising. At the time, there were concerns about the closeness of the Gallery to Council. However donors do not appear to perceive this as an ongoing issue as they do not stipulate the manner in which their contributions are used and can see their contributions going directly to the Gallery  Bendigo Art Gallery is currently winding down their Foundation. Neither the Board nor the Foundation are very active in fundraising currently. Bendigo Art Gallery has no need for two entities with DGR status. The Board has closer connections to the donors and as the Foundation concludes its business, the Board will be activated as a major avenue for fundraising.  Over time, Trustees of the Foundation were persuaded that a new structure would be better. As the Foundation winds up, the Gallery is considering preserving the name 'Foundation' but will not uphold the current structure of the Foundation. The Gallery is currently taking advice on the use of 'Foundation' as a trading name of the Gallery.



BENCHMARK DATA	
	<p>An agreement was struck in 1995 establishing that the Council would own and operate the facility. Following this, the Board remained in place but not as a committee of management.</p> <p>The Board has DGR and ACNC registration and manages donations. The Board also has an investment portfolio. Council has a nominee on the Board, with voting rights. A Director from City of Greater Bendigo also attends Board meetings as an observer. However they are not controlled by Council.</p> <p>Gallery membership is needed to join the Board. There are currently over 1000 members. There are four Trustees of Foundation, two of whom are reps of the Board – and two of whom can come from elsewhere.</p>
Is there a Friends, Supporters, Members group	<p>Friends are an Incorporated Association. Positions are voluntary and they help promote gallery staff and plan social events. They have a low-key fundraising role.</p> <p>Guides group are a group of volunteers with no legal structure who help with admin. Their fundraising supports their group and does not necessarily go to the Gallery.</p> <p>A subscription-based membership scheme offers members discounts at café and shop, and invites to opening. Currently reviewing member benefits as some members want social benefits, some want discounts, some want info and connection</p>
Do the Friends and/ or Members operate under a separate legal entity/ structure	Yes



## CASTLEMAINE ART MUSEUM

BENCHMARK DATA	
Data required	Notes/ Data
Gallery legal entity	Castlemaine Art Museum is operating entity. Private NFP.
Gallery Director reports to (board, specific officer within Council, other?)	To Board, but it is a Gallery Manager currently
Nature and frequency of reporting processes	Monthly Board meetings
Gallery staffing and volunteers FT Other PT, Casual, Volunteer (number of each)	Part-time Gallery Manager and staff, Volunteers. In 'emergency' mode currently, as a result of financial constraints
Who owns the building	CAM Foundation
Who owns the collection/s	CAM Foundation (holds artworks, building and some bequests)
Who leads the fundraising ? Is there a fundraising committee, a separate Foundation ?	The Board is currently leading fundraising for the Gallery. The Foundation is not actively fundraising.
Is fundraising for acquisitions only, or for other purposes. Please describe	Fundraising is conducted to cover operational expenses. Museum bequests are tied to acquisitions. There is a current financial need for staff and programs.
Reasons for current structural arrangements – for Gallery and for Fundraising	There has been no recent changes to structure. The Museum Remains a private NFP as Mount Alexander Shire Council is not interested in owning the Gallery Gallery is also beneficiary of Stoneman Foundation (as well as Uniting church and Trinity College). As a condition of the Stoneman Foundation CAM was not to be incorporated. After CAM incorporated Stoneman was still able to contribute financially through the Foundation associated with the Gallery. Stoneman Foundation was also blocking operation by local Council
Is there a Friends, Supporters, Members group	Yes – Friends Association with aim of fundraising. 15-20 members.
Do the Friends and/ or Members operate under a separate legal entity/ structure	Friends Association in separately incorporated
Strengths and weaknesses of the current arrangements	The inactive Foundation is a weakness. While links to Stoneman Foundation are a strength they have restrictions around donating to an incorporated body
Other information you consider relevant	There is still temporary special funding which enables CAM to open four days a week. This special funding came from anonymous donor via Sotheby's. Sotheby's also support CAM with fundraising activities, including an annual dinner of Sotheby's clients in Castlemaine. This is now CAM's second largest funding source. The organisation has have stabilised, but there are still some potential risks. This is the second year of operating profit Four days a week opening hasn't constrained visitor numbers CAM has appointed a Gallery Manager which functions as equivalent to a Director. By using this title CAM is indicating that it is still operating in 'emergency' mode. CAM was able to participate in the 2019 Castlemaine State Festival which resulted in a rehang of the entire Gallery. Creative Victoria have been very supportive through a partnership approach, and providing extra grants for audience research, business planning/ strategic planning CAM will be seeking broader fundraising beyond Sotheby's. The Foundation has two elderly Trustees who are not fundraising actively and there has been no major bequest for a significant time. CAM has fundraising Committee of the Board, working on local



BENCHMARK DATA	
	<p>government, MacFarlane Foundation (but on hard time currently). Fundraising has not yet been very fruitful.</p> <p>The Downstairs Museum remains the same. There have been no physical changes to the building yet. CAM are currently Looking to integrate Museum and Gallery collections through thematic linkages</p> <p>Board composition has changed recently due to turnover. There was animosity and disenfranchisement from members when incorporation occurred. The Board has previously been considered exclusionary and when change occurred at the request of members, the 'older guard' considered it to be disrespectful. There was some loss of community support.</p> <p>CAM has focused on developing a skills-based Board e.g. architect, academic/ gallery expertise, finance, legal, business. There are no local artists on the Board at present, or fundraising expertise</p> <p>Interviewee has background in corporate strategic and change</p>





## GEELONG GALLERY

BENCHMARK DATA	
Data required	Notes/ Data
Gallery legal entity	Incorporated Association
Gallery Director reports to (board, specific officer within Council, other?)	No official link to Council Gallery director reports to the Board
Nature and frequency of reporting processes	Bi-monthly reports from senior management to the Board 3 Strategic planning sessions with the Board per year 9 Board meetings per year 6 Sub-committees established that meet 4-6 times per year
Gallery staffing and volunteers FT Other PT, Casual, Volunteer (number of each)	Over 100 volunteers involved in the Gallery everyday 14 FTE total 7 FT 15PT
Who owns the building	Council. Geelong Gallery lease the building at no cost
Who owns the collection/s	Community of Geelong through the Incorporated Association
Who leads the fundraising ? Is there a fundraising committee, a separate Foundation ?	Geelong Gallery Foundation is an Incorporated Association that was established in the mid-1980s and operates as a separate legal entity. In 2018 it was proposed to bring the Foundation into the Gallery's organisation, but this decision wasn't agreed upon by the two boards. Now both Geelong Gallery and Geelong Gallery Foundation have fundraising initiatives.
Is fundraising for acquisitions only, or for other purposes. Please describe	Fundraising is for capital for projects, building renovations and exhibitions. There are also bequests and acquisitions
Reasons for current structural arrangements – for Gallery and for Fundraising	See above. The Foundation was necessary before the Gallery received DGR. Now they are able to fundraise within their organisation, the change was proposed as staffing and resources could be shared. Both organisations are currently pursuing the same funding, so there is overlap.
Is there a Friends, Supporters, Members group	There is a membership program with 1000+ members. They are a benefits program for discounts and events. Geelong Contemporary, is a fundraising group of young people that operates as a separate entity as an Incorporated Association. Previously there was the Friends of Geelong Gallery which had been running for 38 years. Friends of Geelong Gallery resigned in 2018 due to changes at the Gallery that they did not agree with including online ticket sales, focus on digital communication and management of donations (Friends of Geelong Gallery would collect cash donations and bank them in a separate account prior to giving an annual donation to the Gallery. The Gallery wanted to handle the money raised, as the Friends group didn't have any legal entity or structure, but were collecting money on the Gallery's behalf)
Do the Friends and/ or Members operate under a separate legal entity/ structure	Geelong Contemporary - Incorporated Association Membership program initiated by Geelong Gallery Friends of Geelong Gallery – No legal entity or structure
Roughly how much has been raised per year over the past three years by: <ul style="list-style-type: none"> <li>• The Gallery</li> <li>• Foundation</li> <li>• Friends</li> <li>• Other</li> </ul>	Geelong Gallery Foundation - \$50-70,000 raised annually and \$140,000 donated annually (members contributions) Geelong Contemporary - \$25,000 per annum Friends of Geelong Gallery were raising about \$15,000 annually



BENCHMARK DATA	
Strengths and weaknesses of the current arrangements	There have been some recent positive changes for Geelong Gallery which will give it more room to grow and develop and appeal to wider audiences. It is challenging when volunteers and committee members are so invested and struggle with change. Nothing has changed with the Foundation despite the wishes of the Gallery Board. It is a doubling of resources. Two groups going after the same money. Messaging is not consistent across the two organisations which impacts marketing of the Gallery. Senior management were not involved in the negotiations to amalgamate the two organisations as they needed to maintain relationships across both entities.
Any specific issues (or benefits) that have arisen in recent years from the current arrangements	See above
Are you able to provide the documentation requested (above)	Yes – email a request so they can check with each organisation
Other information you consider relevant	There was a previous fundraising organisation, The Gallery Grasshoppers. They dissolved approximately 4 years ago as their members were aging and retiring. They went through a succession planning process and the result was establishing the Geelong Contemporary group, a group of young people to take the place of the Grasshoppers. There was a cocktail evening where both groups got to meet and exchange. It was a seamless and positive change over time. This has not been the case for the Friends organisation.



## SHEPPARTON ART MUSEUM

BENCHMARK DATA	
Data required	Notes/ Data
Gallery legal entity	Shepparton Art Museum Limited (limited by guarantee) A Board has been established with nine directors. Two of the Directors are Greater Shepparton City Council nominated positions, one Director is from the SAM Foundation and one is an indigenous representative. The Board was established in consultation with the Indigenous Community. They have already met three times and will have a Strategic Planning Day. Previously, SAM was Council owned and operated
Gallery Director reports to (board, specific officer within Council, other?)	The Director is appointed by the SAM Ltd Board and reports to them. Previously reported to a Council's Director of Community The Director also sits on the SAM Foundation Board (as a non-voting member).
Nature and frequency of reporting processes	SAM Ltd Board Report - once a month. Currently the Director is also reporting to Council (Director of Community) once every two weeks. This transition arrangement will continue until the end of the financial year 2020. SAM Foundation meetings - once a month Other meetings: Council Project Board meetings (managing the governance of the new SAM project, once a month) SAM Advisory meetings (community reps who meet to endorse acquisitions) SAM Friends meetings (is not a member and does not vote but attends, once a month)
Gallery staffing and volunteers FT Other PT, Casual, Volunteer (number of each)	8.7 FTE (10 staff members) Under the new SAM Ltd. A Business and Transition Manager has been appointed. Additional 1 FTE SAM Ltd. are currently in the process of digitising Council's collection and their new acquisitions and will be hiring an additional 1 FTE for this. The Director acknowledged the increased workload and the urgent need for additional staffing support. 15 Volunteers (with the view to develop this number)
Who owns the building	New SAM will be owned by Council but leased to SAM at very low cost. Previously the Gallery formed part of a Council owned building
Who owns the collection/s	Current collection is owned by Council and will be managed and maintained by the new SAM Ltd under an agreement. Any new acquisitions and collections that are developed will be owned solely by SAM Ltd to run side by side with the original collection. A major donation of a new Indigenous collection was one of the catalysts for building the new SAM. That collection will be owned by SAM Ltd.
Who leads the fundraising ? Is there a fundraising committee, a separate Foundation ?	The SAM Foundation Board leads fundraising. They are a company limited by guarantee. They have DGR status. The Gallery and its Director also raise funds through grants
Is fundraising for acquisitions only, or for other purposes. Please describe	The Foundation has been undertaking a capital drive for the construction of the new SAM. Once complete, it will continue to function as a means to grow funds to benefit the SAM collection and program. They are also managing an endowment which has been gifted to the museum – the interest of the endowment is directed towards acquisitions.
Reasons for current structural arrangements – for Gallery and for Fundraising	The Foundation was more successful at raising capital than Council would have been. Council procurements systems are good at managing funds but they don't have experience in large capital works fundraising (i.e. \$12 million for a gallery)



BENCHMARK DATA	
Is there a Friends, Supporters, Members group	Friends of SAM – Membership program
Do the Friends and/ or Members operate under a separate legal entity/ structure	They are an Endorsed Association.
Roughly how much has been raised per year over the past three years by: <ul style="list-style-type: none"> <li>• The Gallery</li> <li>• Foundation</li> <li>• Friends</li> <li>• Other</li> </ul>	<p>Council’s annual report has figures on the Gallery’s income.</p> <p>Over \$2m in funds raised through grants by the Gallery. These funds are being managed by the directorial team.</p> <p>Over \$5.6m has been raised by the Foundation for the new SAM building.</p> <p>Friends organisation is a membership program and does not raise funds.</p>
Strengths and weaknesses of the current arrangements	It was the recommendation of SAM Business Case to instigate the new SAM model and establish a Company limited by guarantee. Benchmarking has been undertaken throughout the transition process and it is still the recommended structure. The challenge moving ahead will be maintaining the relationship with Council regarding maintenance and ongoing support for the new building and previous collection. It is in everyone’s interest to make that working relationship a success and that commitment has been clear from the start of this process.
Any specific issues (or benefits) that have arisen in recent years from the current arrangements	There has been little change in staffing numbers since the transition period started, which has resulted in staff being spread thin to continue to deliver on the Gallery’s regular exhibition program and operations, while also delivering all the milestones for the establishment of the new SAM. Work has already began on the new SAM program and exhibitions and the Director currently reports to both the new Board and to Council. It is essentially twice the work.
Other information you consider relevant	<p>The build architecture competition has been completed with the design selected and construction commenced. The process started with a smoking ceremony and engagement with community stakeholders, which was an essential starting point. Estimated that the building will be completed July 2020 and opening in November of that year.</p> <p>Kaiela Arts is a key stakeholder in the new SAM and SAM Limited went through a vision alignment process which they will build upon over the next stage to accumulate in an Aboriginal Engagement Plan. This is a large undertaking and a central focus of the vision for the new SAM.</p> <p>SAM delivers 21 Exhibitions a year. Public Programs. 2 touring exhibitions with funding from Visions Australia. The touring program is a SAM initiated project and they instigated the support from Visions Australia. The touring program will conclude in 2020.</p>
What advice would you give Ballarat?	Being a company limited by guarantee with DGR status is ideal but have a good working relationship with City Council.





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**[UPDATED DRAFT 13 September 2021]**

**MEMORANDUM OF UNDERSTANDING  
ART GALLERY OF BALLARAT**

**BALLARAT CITY COUNCIL**

ABN 37 601 599 422

(Council)

- and -

**ART GALLERY OF BALLARAT**

ACN 145 246 224

(Company)

*30 June 2021*

*Prepared on the basis of discussions to date, and otherwise to correspond to the high-level governance framework agreed as the basis to proceed.*

*13 September 2021*

*Incorporating feedback from Gallery Board (see separate response to specific points) and Gallery Director*

Harwood Andrews  
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70 Gheringhap Street,  
Geelong 3220, Victoria, Australia  
DX 22019 Geelong  
PO Box 101 Geelong Vic 3220

T 03 5225 5225 F 03 5225 5222

**THIS DOCUMENT** is made on

**PARTIES:**

1. **BALLARAT CITY COUNCIL** ABN 37 601 599 422, also known as the **City of Ballarat**, of Sturt Street, Ballarat, 3350 in the State of Victoria;
2. **ART GALLERY OF BALLARAT** ACN 145 246 224 of 40 Lydiard Street North, Ballarat in the State of Victoria (**Company**).

**RECITALS:**

- R.1. By a deed of agreement made between the Ballarat Fine Art Public Gallery Association (**Association**) and Council dated 29 September 1978 (**Deed of 1978**), ownership of the gallery known as the Art Gallery of Ballarat (**Gallery**) and the art collection of the Gallery was transferred to Council.
- R.2. The Company was incorporated on 16 July 2010, as a company limited by guarantee, with Council as its sole member, in order to run the Gallery.
- R.3. The Company was established for the public charitable purpose of operating a public art gallery by acquiring and exhibiting works of art to the public at Ballarat and other places in Australia decided by the Board (**Purposes**). The Company is endorsed by the Australian Charities and Not For Profit Commission as a charitable institution and has deductible gift recipient status.
- R.4. Since incorporation of the Company, the Council and the Company have been parties to arrangements under which the Council agreed to provide the Company with funding, certain services, the Artworks and the Premises for the operation of the Gallery (**Prior Agreements**).
- R.5. The Art Gallery of Ballarat Foundation has agreed to transfer its assets to the Gallery for the Purposes.
- R.6. Council and the Company have agreed that in order to support the achievement of the Purposes, the parties will work together in relation to the governance and communications between the parties in accordance with this document.

**OPERATIVE PART:**

**1. DEFINITIONS**

- 1.1. In this document, unless the context otherwise requires:
  - 1.1.1. **Administration Activities** means the administration and support services necessary to support to operations of the Gallery and the Company, including those specified in Attachment C.
  - 1.1.2. **Annual Business Plan** means a business plan that complies with the requirements in Attachment D.
  - 1.1.3. **Art Gallery of Ballarat Foundation** means the Trustee for the Art Gallery of Ballarat Foundation Trust (ABN 99 573 605 410), established by a deed dated 27 February 1998.

- 1.1.4. **Artwork(s)** means the works of art listed in the Register of Artworks from time to time, excluding any Borrowed Artworks.
- 1.1.5. **Asset Management Activities** means the activities to be performed in respect of the Premises and Artworks set out in Attachments A and B.
- 1.1.6. **Borrowed Artworks** means any Artwork belonging to a third party which is borrowed, held or displayed by the Company.
- 1.1.7. **Board** means the Company's board of directors as appointed from time to time.
- 1.1.8. **Brand** means the name and imagery associated with the Art Gallery of Ballarat.
- 1.1.9. **Business Day** means a day on which trading banks in Ballarat are open for business;
- 1.1.10. **Business Planning Process** is described in clause 5.
- 1.1.11. **Confidential Information** means:
- 1.1.11.1. the terms of this document; and
  - 1.1.11.2. all secrets, ideas, know how, concepts, information, copyright, computer programs, manuals, precedents whether in writing or in any other form and all other information relating to the discloser and its affairs or businesses, sales, marketing or promotional information and includes any such information in the discloser's power possession or control concerning or belonging to any other party.
- 1.1.12. **Constitution** means the constitution of the Company, as amended from time to time.
- 1.1.13. **Commencement Date** means [#].
- 1.1.14. **Director** means the person employed by Council as the director of the Gallery;
- 1.1.15. **Dispute** means a dispute between the Parties, or a claim by one Party against the other Party, in connection with this document.
- 1.1.16. **Funding** means the amounts provided by Council each year to the Company determined through the Business Planning Process.
- 1.1.17. **Gallery** means the public fine art gallery known as the Art Gallery of Ballarat which the Company operates at the Premises.
- 1.1.18. **Gallery Revenue** means all revenue sources that will contribute towards the operation of the Company and the Gallery, including the Funding.
- 1.1.19. **Intellectual Property Rights** means the complete ownership of all rights now or in the future throughout the world and conferred under statute, common law or equity in, any:
- 1.1.19.1. images, logos, visual appearance, patents and inventions, designs, trademarks, trade secrets, domain names, business names, trading names, copyright and



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moral rights, all rights to have information (including trade secrets, know-how, operating procedures, technical information, source codes, computer programs, applications, rights in mobile applications and rights in the contents of any website) kept confidential and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967, whether or not those rights are registered or unregistered, the subject of an application for registration, or are registrable or unregistrable; and

- 1.1.19.2. goodwill, reputation or distinctiveness in connection with the supply of goods or services in trade or commerce, including, but without limitation business names, trade or brand names, get-up, presentation or appearance (including colours or combination of colours).
- 1.1.20. **Licence Fee** means \$1.00, if demanded.
- 1.1.21. **Notice** means any notice, demand, consent, approval or other communication given or made under this document.
- 1.1.22. **Premises** means 40 Lydiard Street North, Ballarat, Victoria.
- 1.1.23. **Purpose** means the public charitable object of operating a public art gallery by acquiring and exhibiting works of art to the public at Ballarat and other places in Australia decided by the Board.
- 1.1.24. **Staff** means persons employed or engaged by Council to provide the Administration Activities and includes volunteers and the Director.
- 1.1.25. **Strategic Plan** means a 3 to 5-year Strategic Plan for the Gallery, which recognises the Council's Arts & Culture Plans in force from time to time.
- 1.1.26. **Term** means the term of this document which is from the Commencement Date until terminated by either party in accordance with clause 15.

## 2. GENERAL UNDERSTANDING

### 2.1. General

The parties recognise it is important to achieve the Purposes and agree that:

- 2.1.1. the understanding between the parties described in this document provides a framework for the parties to work together for the success of the Gallery; and
- 2.1.2. each party will use their best endeavours to ensure clarity on the respective roles and responsibilities of each party under this document, and take such actions as are necessary to implement the agreements in this document

### 2.2. Principles

The parties agree that the principles on which this document is based are as follows:

- 2.2.1. There is a shared desire to ensure that the full extent of the current and future Artworks continues to be available, in perpetuity, for the benefit,

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enjoyment, education and fulfilment of the people of Ballarat and visitors to Ballarat;

2.2.2. The Council is committed to future support of the Gallery as one of Australia's leading regional galleries;

2.2.3. The Company commits to maximising the Gallery Revenue (other than the Funding) and supporting the Director to provide a rich and leading program of visual arts in Ballarat.

### 3. GALLERY BOARD

#### 3.1. Gallery Board

The Board will manage the Gallery pursuant to the terms of this document and the Constitution.

#### 3.2. Board composition

To the extent permitted by the Constitution, the composition of the Board will reflect the skills and expertise required to achieve the Purposes and having regard to any relevant Company policy in force from time to time.

#### 3.3. Gallery Policies

3.3.1. The parties will ensure that the policy framework applicable to the Gallery reflects the relationship of the parties and their respective responsibilities under this document

3.3.2. The Board:

3.3.2.1. will manage, operate and set policies for the Company and the Gallery in accordance with best practice for public art galleries in Australia; and

3.3.2.2. acknowledges that to the extent Council performs Asset Management Activities, Maintenance Activities and in relation to the Staff, relevant Council policies will apply to such activities.

#### 3.4. Support and guidance to Director

The Board:

3.4.1. will provide strategic guidance, advice and support to the Director;

3.4.2. may provide an advisory role in relation to the performance of the Administration Activities.

#### 3.5. Governance and strategic progress reporting

At least twice per year, the chair of Board will meet with Council to provide a report on:

3.5.1. the governance and strategic performance of the Gallery;

3.5.2. the Board's view of the effectiveness of this document;

3.5.3. an update on the Annual Business Plan; and

3.5.4. the results of any compliance audits.

#### 3.6. Monthly reporting

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The Company will, in conjunction with the Director, prepare and provide to Council a monthly report on the operations of the Gallery containing such information as agreed from time to time, including:

- 3.6.1. financial reporting on donated funds;
- 3.6.2. acquisition, sale, lending and borrowing of the Artworks;
- 3.6.3. reporting on the number of visitors to the Gallery;
- 3.6.4. feedback received from visitors to the Gallery; and
- 3.6.5. media and engagements, including public programs and education visitation

3.7. **Annual reporting**

The Company must produce an annual report and provide a copy to Council.

4. **STRATEGIC PLANNING**

4.1. **Strategic Planning**

The Board will have primary responsibility for strategic planning of the Gallery, having regard to:

- 4.1.1. the Purposes;
- 4.1.2. recommendations from the Director; and
- 4.1.3. Council priorities as communicated from time to time.

4.2. **Strategic Plan**

The Board will each year prepare or update the Strategic Plan as a precursor to the Business Planning Process.

4.3. **Council review and endorsement of Strategic Plan**

Upon receipt of a draft Strategic Plan, Council:

- 4.3.1. may request reasonable amendments to the draft Strategic Plan, in which case the parties will discuss any concerns and changes in good faith; and
- 4.3.2. must, subject to the reasonable satisfaction of any issues or concerns raised by Council, endorse the draft Strategic Plan, in which case the form endorsed will be the Strategic Plan for the purposes of this document.

5. **BUSINESS PLANNING PROCESS**

5.1. **Timeframe for budget planning**

The Council will provide the Company with the timeframes for its annual budgeting process, and the parties will conduct all planning in relation to the preparation and endorsement of the Annual Business Plan in accordance with that timeframe.

5.2. **Annual Business Plan**

The Board must, in consultation with the Director develop and submit to Council a draft Annual Business Plan and draft Budget that support the Strategic Plan.

5.3. **Budget**

The draft Budget submitted by the Gallery:

- 5.3.1. is primarily for the purposes of determining the Funding;
  - 5.3.2. will include all anticipated sources of Gallery Revenue;
  - 5.3.3. will include the anticipated expenses of the Company for the running of the Gallery, including those attributable to the Asset Management Activities and Administration Activities;
  - 5.3.4. will include a minimum of XX% of the current value of the Artworks specifically for maintenance and repair activities for the Artworks; and
  - 5.3.5. must be in the format reasonably determined by Council.
- 5.4. **Council review and endorsement of Annual Business Plan**  
In accordance with the timelines of the Council's budgeting process, Council:
- 5.4.1. may request reasonable amendments to the draft Annual Business Plan, in which case the parties will discuss any concerns and changes in good faith; and
  - 5.4.2. must, subject to the reasonable satisfaction of any issues or concerns raised by Council, by notice to the Board endorse the draft Annual Business Plan, in which case the form endorsed will be the Annual Business Plan for that year for the purposes of this document.
- 5.5. **Funding forecasts**
- 5.5.1. Subject to its obligations under the *Local Government Act 2020*, Council will at the commencement of each financial year provide the Board with a forecast four year rolling Funding commitment.
  - 5.5.2. The Council will provide the forecast Funding in good faith however is not bound by any forecast.
- 5.6. **Funding commitment**  
Council agrees to provide the Company with the Funding determined each year in accordance with the Business Planning Process.
- 5.7. **Payment of Funding**  
The Funding may be paid by Council:
- 5.7.1. as cash; or
  - 5.7.2. in kind by the performance of Administration Activities or Asset Management Activities,
- in accordance with the approved Annual Business Plan and Budget.
- 5.8. **Delivery of in-kind services**  
Where the Funding is paid by Council under clause 5.7.2, the Council must perform such Administration Activities or Asset Management Activities in accordance with the approved Annual Business Plan and Budget.
6. **ADVOCACY AND FUNDRAISING**
- 6.1. **Company to be responsible**  
The Company will be responsible for advocacy and fundraising to support the Gallery and the Purposes, including using reasonable endeavours to obtain funding for the Gallery from sources additional to Council, including philanthropic and other potential donors.

- 6.2. **Foundation assets**  
The Company acknowledges:
- 6.2.1. the important role played by the Foundation in the development of the visual arts in Ballarat; and
  - 6.2.2. its stewardship role in relation to any funds received from the Foundation and agrees that such funds will be quarantined for Artwork acquisitions in accordance with Gallery policies from time to time.
- 6.3. **Use of donated funds**  
Funds received by the Company from donors:
- 6.3.1. will be paid into the gift fund established by the Company pursuant to the Constitution; and
  - 6.3.2. may be accumulated by the Company; and
  - 6.3.3. must only be expended by the Company for the Purposes.

## 7. THE GALLERY DIRECTOR

- 7.1. **Delegation to the Director**  
The Director will act as the executive officer of the Company and the Gallery and the Board may delegate certain functions of the Board to the Director in accordance with Gallery policies in place from time to time.
- 7.2. **Key responsibilities**  
The parties agree that the key responsibilities of the Director will be set out in the duties statement of the Director and will include:
- 7.2.1. contribution to the Gallery Strategic Plan;
  - 7.2.2. direction of the Administration Activities, including leadership for Staff;
  - 7.2.3. planning and oversight of the Asset Management Activities;
  - 7.2.4. engagement with stakeholders of the Gallery, including the Council and the Association;
  - 7.2.5. Gallery program proposal development and oversight;
  - 7.2.6. Annual Business Plan and Budget preparation;
  - 7.2.7. preparation of Company policies; and
  - 7.2.8. collection and acquisition recommendations.
- 7.3. **Consultation in respect of Director**  
The parties will use reasonable endeavours to consult in respect of matters relating to the Director.

## 8. USE OF PREMISES AND ARTWORKS

- 8.1. **Ownership of Premises and Artworks**  
The parties acknowledge that the Premises and the Artworks are and will remain the property of Council.
- 8.2. **Licence to Premises and Artworks**

In consideration of the Licence Fee, and solely to further the Purposes and otherwise on the terms of this document, the Council grants to the Company for the Term:

8.2.1. an exclusive licence to hold, display and lend the Artworks; and

8.2.2. a non-exclusive licence to occupy the Premises.

8.3. **Acquisition and deaccession of Artworks**

The parties must ensure that any policies applying to the acquisition and de-acquisition of Artworks, are consistent with the best practices of Australian public art galleries, and:

8.3.1. Council agrees that the Company may acquire or dispose of Artworks in accordance with these policies, as amended from time to time.

8.3.2. the Company must provide copies of any amendments to these policies to Council within 14 days of the amendment;

8.3.3. the Company acts as agent of Council in relation to such acquisition or disposal of artworks; and

8.3.4. additional Artwork acquired for display at the Gallery in accordance with the accession policy of the Company:

8.3.4.1. vests on the date of accession in Council; and

8.3.4.2. is licenced to the Company under the terms of this document from the date of accession.

8.4. **No lease**

This document will not confer any right to exclusive possession upon the Company, give rise to any tenancy or create any estate or interest whatsoever in or over any of the Premises in favour of the Company.

8.5. **Use of Premises**

While in occupation of the Premises, the Company must not, and must not let anyone else:

8.5.1. use the Premises other than in accordance with the Purposes;

8.5.2. unreasonably do anything that may interrupt, interfere with or otherwise affect Council's operations;

8.5.3. use the Premises for any illegal, noxious or offensive activity;

8.5.4. do anything which might affect any insurance policy relating to the Premises;

8.5.5. keep or use chemicals, inflammable fluids, acids, or other hazardous things on the Premises except to the extent necessary for the Purposes, or create fire hazards;

8.5.6. do anything which might prejudicially affect the essential safety measures or the occupational health and safety or disability discrimination status of the Premises or the building; or

8.5.7. bring onto the Premises any object which by its nature or weight might cause damage to the Premises, without Council's written consent.

8.6. **Destruction of Premises**

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If the Premises is damaged so that the Premises cannot be used or accessed for the Purposes, Council must give notice to the Company within 30 days of such damage or destruction whether Council will, in its absolute discretion:

8.6.1. reinstate the Premises; or

8.6.2. terminate the licence by giving the Company 30 days written notice.

8.7. **No automatic right to sublicence**

8.7.1. **Council may authorise the Company in writing to sublicence any part (but not the whole) of the Premises from time to time on such reasonable conditions as the Council sees fit.**

8.8. **Borrowing Artworks**

The Company may enter agreements with third parties for Borrowed Artworks to hold at the Premises and display in the Gallery.

**9. ASSET MANAGEMENT AND ADMINISTRATION ACTIVITIES**

9.1. **Asset Management Activities**

The parties agree that the Asset Management Activities will be:

9.1.1. performed in accordance with best practice for Australian public art galleries;

9.1.2. planned and implemented to support the Strategic Plan; and

9.1.3. included in the Annual Business Plan and Budget.

9.1. **Administration Activities**

The parties agree that the Administration Activities will be:

9.1.1. performed in accordance with best practice for Australian public art galleries;

9.1.2. planned and implemented to support the Strategic Plan; and

9.1.3. included in the Annual Business Plan and Budget.

**10. RISK MANAGEMENT**

10.1. **Risk allocation**

As between Council and the Company, Council accepts and will retain all risk and liability for and in respect of:

10.1.1. the Artworks;

10.1.2. the Premises;

10.1.3. any Administration Activities or Asset Management Activities performed by or on behalf of Council; and

10.1.4. any other act or omission of the Staff.

- 10.2. **Staff training, induction and supervision**  
Without limiting clause 10.1, Council will ensure that the Staff are appropriately inducted, trained and supervised in relation to:
- 10.2.1. the risks associated with the provision of Administration Activities and Asset Management Activities;
  - 10.2.2. the procedures to manage those risks; and
  - 10.2.3. its health, safety and environment obligations under any relevant laws, standards and Council policies.
- 10.3. **Indemnity**  
Council indemnifies the Company and its officers against all losses and claims suffered or incurred by the Company in connection with:
- 10.3.1. the acts or omissions by or on behalf of Council;
  - 10.3.2. loss or damage to the Artworks or the Premises;
  - 10.3.3. personal injury, death or property loss or damage in connection with those Administration Activities and Asset Management Activities performed by or on behalf of Council (including due to the acts or omissions of the Staff),
- except to the extent such loss or damage is caused or contributed to by the Company or its officers.
- 10.4. **Council Insurance**  
Council will take out and keep current insurance for:
- 10.4.1. the Artworks for their full insurable value, in the name of Council, with a reputable insurer who specialises in providing insurance for works of art.
  - 10.4.2. any Borrowed Artworks at the Premises;
  - 10.4.3. the Premises for its full replacement value against all loss and damage by fire, explosion and all other usual and necessary risks to its full insurable value including costs of demolition and removal;
  - 10.4.4. public liability insurance in respect of the Premises and to a sum not less than \$20,000,000;
  - 10.4.5. workers compensation as required by law in respect of the Staff.
- 10.5. **Company Insurance**  
The Company must take out and keep current directors and officers insurance in favour of its officers from time to time.



**11. INTELLECTUAL PROPERTY****11.1. Ownership of Intellectual Property Rights**

The Company acknowledges and agrees that:

- 11.1.1. the Intellectual Property Rights are and will remain the property of Council;
- 11.1.2. where the Company is a necessary applicant for registration of any Intellectual Property Rights, the Company will either:
  - 11.1.2.1. assign all its rights to such registration or application to the Council; or
  - 11.1.2.2. apply in its own name for registration and then assign such registration or application to Council upon the expiration or earlier termination of this document.

**11.2. Licence**

Council grants an exclusive licence from the Commencement Date and for the Term, to the Company to:

- 11.2.1. hold and use any and all Intellectual Property Rights associated with the Gallery; and
- 11.2.2. modify, develop and improve the Intellectual Property Rights associated with the Gallery.

**11.3. Intellectual Property in Artworks**

- 11.3.1. If required by the Company or Council, the Company must arrange for the consent or notification of any owner of copyright or moral rights over any of the Artworks, to the licence to the Company, or Council of any rights in relation to the use or reproduction of the Artworks.
- 11.3.2. Council will remain responsible for payment of any royalties or licence fees (if applicable) associated with any copyright or moral rights owner of any of the Artworks.
- 11.3.3. If the Company becomes aware of any infringement of any copyright or moral right in relation to the Artworks then it will promptly notify Council in writing and comply with any reasonable directions of Council to prevent further infringement.
- 11.3.4. The Company must not do anything to infringe, or cause Council to infringe, any third-party copyright or moral rights in any Artworks.
- 11.3.5. Council consents to the Company's reproduction of any Artwork (including without limitation by authorising the publication of photographs of Artworks) in respect of which Council holds intellectual property rights for the Purposes.

**11.4. Company obligations**

The Company must use the Intellectual Property Rights in the Brand and the Gallery for the Purposes.

**11.5. Sub-licensing**

The Company may grant a sub-licence for the use of the Intellectual Property Rights in the Brand and the Gallery to a third party provided that it is an entity closely related to or associated with the Company, but restricted so that:

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- 11.5.1. the sub-licensee is not granted any rights which the Company does not have under this document;
- 11.5.2. the sub-licensee is subject to the same terms and conditions placed on the Company under this document;
- 11.5.3. the sub-licensee is prohibited from granting any sub-sub-license or rights with respect to the Intellectual Property Rights;
- 11.5.4. the sub-license ends immediately upon the expiration or termination of this document.

11.6. **Protection of the Intellectual Property**

If the Company becomes aware of any infringement of any Intellectual Property Rights associated with the Gallery it will promptly notify Council in writing and comply with any reasonable directions of Council to prevent further infringement.

**12. CONFIDENTIALITY**

Each Party must keep the Confidential Information confidential and must not disclose it to any third party or use it otherwise than:

- 12.1. for the purposes of this document;
- 12.2. as authorised in writing by the other Party;
- 12.3. as required by law; or
- 12.4. to that Party's professional advisers who have also agreed to keep the Confidential Information confidential.

**13. PUBLICITY**

The Company and Council will prepare a joint public announcement or press release relating to this document. Neither the Company nor Council will issue its own announcement.

**14. RELATIONSHIP WITH PREVIOUS AGREEMENTS**

This document supersedes all previous agreements in respect of their subject matter, namely the management and operation of the Gallery and the Premises and embody the entire agreement between the parties.

**15. TERMINATION**

- 15.1. This document may be terminated by either Party for any reason by giving 12 months' written Notice to the other Party.
- 15.2. This document may be terminated at any time by mutual agreement of the parties.
- 15.3. Either Party may terminate this document immediately by Notice to the other Party (**Defaulting Party**) if:
  - 15.3.1. the Defaulting Party commits a material, serious or substantial breach which is not capable of remedy;
  - 15.3.2. the Defaulting Party commits a breach of this document which is capable of remedy but:
    - 15.3.2.1. the Defaulting Party receives notice of the breach;

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- 15.3.2.2. the notice requires the Defaulting Party to remedy the breach within 40 Business Days; and
  - 15.3.2.3. the Defaulting Party fails to remedy the breach within that period or to invoke the dispute resolution procedure set out in clause 17;
  - 15.3.3. the Defaulting Party becomes insolvent or enters an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them or has an application filed or order made, a proceeding commenced, a resolution passed or proposed in a notice of meeting, an application made to a court, or any other step taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution.
- 15.4. Council may terminate this document immediately by Notice to the Company if:
- 15.4.1. the Company ceases to be a charity;
  - 15.4.2. the Company ceases to be endorsed as a deductible gift recipient under endorsed as a Deductible Gift Recipient (DGR) under items 1 & 4 of the table in section 30-15 of the Income Tax Assessment Act 1997; or
  - 15.4.3. the Constitution ceases to prohibit it from distributing income or property to any director of the Company, except as a bona fide payment for a service rendered to the Company or as reimbursement for an out-of-pocket expense.
- 16. CONSEQUENCES OF TERMINATION**
- If this document is terminated, then the Company will continue to properly operate the Gallery up until the date on which the termination takes effect, and then on that date must:
- 16.1. cease operating the Gallery;
  - 16.2. pass control of the Premises and Artworks, all documents and records relating to the Gallery, whether in physical or electronic form, to or as directed by Council;
  - 16.3. subject to law, transfer all funds relating to the Gallery to or as directed by Council; and
  - 16.4. do all other acts and sign all documents necessary to enable Council to maintain the Artworks in Ballarat for the benefit and enjoyment of the Ballarat community.
- 17. DISPUTE RESOLUTION**
- 17.1. If a Dispute arises, the parties shall seek, in good faith, to resolve the Dispute in accordance with this clause 17.
  - 17.2. If a Dispute arises a Party may serve upon the other Party a notice of dispute setting out the nature of the Dispute and requiring the parties to each appoint a suitably authorised representative to attempt to resolve the Dispute by negotiation.
  - 17.3. If a Dispute is unable to be resolved by the representatives of each Party appointed in accordance with clause 17.2, either Party may refer the Dispute to mediation before a person appointed by the Resolution Institute.

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- 17.4. The Party that refers a Dispute to mediation must give Notice to the other Party of the referral. The notice must contain full particulars of the Dispute.
- 17.5. The mediation will be conducted in accordance with the Resolution Institute's Mediation Rules (as amended from time to time).
- 17.6. A Party may only bring court proceedings regarding a Dispute if the Parties have attempted but have been unable to resolve the Dispute in accordance with clauses 17.2 and 17.3.
- 17.7. Notwithstanding anything contained in this clause 17, a Party may at any time commence proceedings in relation to any Dispute where that Party seeks urgent interlocutory relief.

**18. NOTICES**

Any Notice:

- 18.1. must be in writing and signed by a person authorised by the sender;
- 18.2. must be delivered to the intended recipient by prepaid post, by hand delivery, email or fax to the address or fax number specified for that recipient in this document or the address or fax number last notified by the intended recipient to the sender;
- 18.3. will be taken to be given or made:
  - 18.3.1. in the case of delivery in person, when delivered;
  - 18.3.2. in the case of delivery by post, one Business Day after the date of posting; and
  - 18.3.3. if sent by email upon production of a delivery confirmation report received by the sender which records the time the email was delivered unless the sender received a delivery failure notification; or

but, if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4:30pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

**19. ASSIGNMENT**

- 19.1. The Company will not assign its rights or obligations under this document without the prior written consent of Council, which may be withheld for any reason in Council's absolute discretion.
- 19.2. A purported assignment without written consent will be deemed to be void and convey no rights.
- 19.3. Council must arrange the consent or notification of any third-party owner of copyright or moral rights in the Artwork in relation to an assignment under this clause 20.
- 19.4. The Company must not sub-licence or encumber its rights and interests in this agreement.

**20. RELATIONSHIP OF THE PARTIES**

Unless specifically stated otherwise, this document is not intended to create a relationship of partnership, joint venture or agency between the parties.

**21. INTERPRETATIVE PROVISIONS**

- 21.1. **Variation**  
A variation of this document is only valid if in writing and executed by the parties in the same manner as they executed this document.
- 21.2. **Waiver**
- 21.2.1. No right under this document is waived or deemed to be waived except by notice in writing signed by the Party waiving the right.
- 21.2.2. A waiver by one Party of its rights as a result of a breach by any other Party under this document does not prejudice its rights in respect of any other breach by that other Party.
- 21.3. **Further steps**  
Each Party must do all things and execute all further documents necessary to give full effect to this document.
- 21.4. **Governing law**  
This document is to be governed by and interpreted in accordance with the law of the state of Victoria, which is the appropriate jurisdiction and forum for any dispute concerning this document.
- 21.5. **Costs**  
Council will bear the costs in relation to the preparation and execution of this document.
- 21.6. **Amendment**  
This document may not be amended modified or supplemented except by written agreement by the parties or persons duly authorised on behalf of the parties.
- 21.7. **Invalidity of any Clause**  
Notwithstanding anything to the contrary in this document, if any provision of this document will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

**EXECUTED AS AN AGREEMENT**

**EXECUTED by BALLARAT CITY COUNCIL**

by its authorised officer in the presence of

\_\_\_\_\_  
Authorised Officer

.....  
Signature of Witness

.....  
Full name of Witness

**EXECUTED by ART GALLERY OF BALLARAT**

**LIMITED** in accordance with Section 127 of the Corporations Act 2001:

.....  
Director

.....  
Director / Secretary

.....  
Full Name

.....  
Full Name

Date:

Date:

**ATTACHMENT A - ASSET MANAGEMENT ACTIVITIES - ARTWORKS****1. GENERAL**

The operation of the Gallery requires the maintenance and repair of the Artworks. This Attachment describes the general activities to be planned for and performed as part of the Gallery operations.

**2. LOCATION AND SECURITY**

2.1. Any Artworks not on display should be stored safely and securely.

2.2. Artworks should not be removed from the Premises without the prior written consent of the Chief Executive Officer of Council, except where

2.2.1. the temporary removal of the Artworks is necessary for storage, the restoration or conservation of the Artworks or related purposes,

2.2.2. or where the Company lends the Artworks on a temporary basis to another institution in accordance with established practices for the lending of artworks by art galleries.

**3. VALUATION**

A valuation of the Artworks will occur every five years by a properly qualified valuer approved by the Director

**4. REGISTER**

A register of Artworks must be maintained which will include sufficient detail to identify each Artwork and Borrowed Artwork and where possible include:

4.1. A photograph of each Artwork and Borrowed Artwork;

4.2. Where the Artwork or Borrowed Artwork is currently on display (whether in the Gallery, on loan to another location, or in storage);

4.3. The owners of any current third party intellectual property rights over any of the Artworks or Borrowed Artworks (if applicable) and

4.4. Any other information Council may reasonably require to be included,

**5. MAINTENANCE AND REPAIR**

5.1. There should be a program of inspection and maintenance in place for the Artworks to ensure they meet the requirements of this document.

5.2. The Artworks should be maintained in good repair and condition to the extent reasonable having regard to the condition the Artworks were when acquired.

5.3. Artworks should be displayed, maintained, protected, conserved and stored with due care and diligence consistent with industry best practice for public art galleries in Australia.

- 5.4. Any conservation, restoration or repair work required for the Artworks should use only qualified conservators or restorers or repair professionals approved by the Director.

## **ATTACHMENT B – ASSET MANAGEMENT ACTIVITIES – PREMISES**

### **1. GENERAL**

The operation of the Gallery requires the maintenance and repair of the Premises. This Attachment describes the general activities to be planned for and performed as part of the Gallery operations.

### **2. MAINTENANCE AND REPAIR**

- 2.1. There should be a program of inspection and maintenance in place for the Premises to ensure it meets the requirements of this document.
- 2.2. The Premises should be kept at all time in good and clean condition at all times, including:
  - 2.2.1. keep the Premises properly cleaned and free from rubbish;
  - 2.2.2. keep waste in proper containers and have it removed regularly;
  - 2.2.3. maintain any grounds and gardens of the Premises in good condition, tidy, free from weeds and well-watered.
  - 2.2.4. maintain and keep in good repair any heating, cooling or air conditioning equipment exclusively serving the Premises.
- 2.3. The Premises should be maintained such that:
  - 2.3.1. the structure (including the external faces and roof) of the building is watertight and in good repair;
  - 2.3.2. all plumbing, drainage, gas, electric, solar and sewerage installations are in working order;
  - 2.3.3. the Premises complies with all laws and the requirements of authorities relating to essential safety measures, occupational health and safety and disability discrimination relevant to the Premises.
- 2.4. Repairs to the Premises should be carried out within 14 days of being noted using suitably qualified persons approved by Council (acting reasonably).

### **3. NOTIFICATION OF ISSUES**

- 3.1. Each party will promptly make the other aware of any:
  - 3.1.1. damage to the Premises or of any defect in the structure of, or any of the services to, the Premises;
  - 3.1.2. receipt of a notice or order affecting the Premises;
  - 3.1.3. any hazards threatening or affecting the Premises; and



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- 3.1.4. any hazards arising from the Premises for which Council might be liable;

**4. ALTERATIONS FOR EXHIBITS**

- 4.1. Reasonable, non-structural alterations to the Premises include wall painting and other preparations that may be required for exhibitions or display of the Artworks may be made with the approval of the Director.

**5. SECURITY**

- 5.1. The Premises should be secure and its contents protected against theft, including by maintaining appropriate levels of security at the Premises at all times and keeping security cameras and alarms up to date and maintained.

**ATTACHMENT C - ADMINISTRATION ACTIVITIES****1. GENERAL**

The operation of the Gallery requires the performance of administrative and support services. This Attachment describes the general activities to be planned for and performed as part of the Gallery operations.

**2. ADMINISTRATIVE AND SUPPORT**

This includes the following services

- 2.1. Risk and Safety Management, including training, signage and preparation and implementation of relevant OH&S Policies and procedures.
- 2.2. Compliance services for reporting to the Australian Securities and Investment Commission, and the Australian Not for Profit Commission;
- 2.3. Curatorial services;
- 2.4. Marketing and public relations services.
- 2.5. Secretariat Support
- 2.6. Access to Intranet

**3. FINANCIAL MANAGEMENT**

This includes the following services

- 3.1. financial management, administration and assistance, including access to financial management systems;
- 3.2. accurately and transparently recording all income and expenditure associated with the operation of the Gallery;
- 3.3. recording relevant details in relation to donors to the Company;
- 3.4. managing and ensuring compliance with accounts into which donations are received by the Company; and
- 3.5. conduct all retail stock takes related to the operation of the Gallery.

**ATTACHMENT D - ANNUAL BUSINESS PLAN MATTERS**

The Annual Business Plan will include:

- 1.1 a Marketing and Communications Plan;
- 1.2 measurable KPI's for all aspects of the Gallery operations;
- 1.3 results of any audits and reviews conducted throughout the year in relation to quality management and operational systems;
- 1.4 the audit and monitoring cycle for the coming year on quality procedures and systems;
- 1.5 major changes to operational procedures;
- 1.6 a maintenance schedule review for the past 12 months;
- 1.7 a maintenance schedule proposal for the next 12 months;
- 1.8 recommendations for the Gallery for submission into Council's capital works program;
- 1.9 an asset management plan; and
- 1.10 an asset register review and update.
- 1.11 a structure for determining when fees and charges should be imposed on visitors and, if so, the level of those fees and charges;
- 1.12 income and expenditure proposals for the following year's Budget;
- 1.13 income and expenditure analysis by program areas;
- 1.14 exhibition program
- 1.15 staffing requirements;
- 1.16 special projects; and
- 1.17 business cases for any other programs or expenditure.

### 8.3. BAKERY HILL AND BRIDGE MALL - CONCEPT DESIGN PACKAGE

**Division:** Development and Growth  
**Director:** Natalie Robertson  
**Author/Position:** James Guy – Executive Manager Economic Growth

#### PURPOSE

1. To seek endorsement for the concept design package prepared for the redevelopment of Bridge Mall in the Ballarat CBD, and use that design direction to complete detailed design, cost planning and tendering for capital works.

#### BACKGROUND

2. At the 15 May 2019 Council Meeting \$15m was allocated for the rejuvenation of the Bridge Mall; on 30 October 2019 Council adopted the Bakery Hill and Bridge Mall Urban Renewal Plan to guide its long-term renewal; and on 24 March 2021 Council adopted a preferred Precinct Plan for the area.
3. The Precinct Plan has since been further developed into functional concepts which outline the look, feel, function and purpose for each space and maximise the contribution of the public realm to achieving the vision and objectives of the urban renewal plan.
4. The concept design package represents the culmination of both broad and targeted consultation and engagement with the wider community, traders, landowners and other special interest groups over an extended period.

#### Engagement and feedback during current phase

5. Bridge Mall, or originally Bridge Street, is a place of layered and complex history - as well as being a key local hub. The design work currently being undertaken by Hassell seeks to rejuvenate and establish a new form of destination in the middle of the CBD.
6. A central component of the design program has been the integration of community representatives into the process. Working closely with Hassell and their affiliate FreeState, a wide range of current and future users, traders and retailers, and special interest groups have been involved in research, interrogation and development of design solutions.

#### Format of the most recent community engagement in the design

7. The recently conducted community engagement in the design process followed a series of stages including:
  - ✓ Co-creation interviews: one-on-one interviews with current and potential future users
  - ✓ Community framework: a session held with representative Council officers responsible for different aspects of Council service delivery
  - ✓ Co-creation workshops: intensive three-day workshops between identified community members and the design team at Hassell
  - ✓ Implementation workshop: a sense-check of the design direction with special interest groups and representatives

8. Upwards of 30 different individuals and organisations were included in the latest community engagement program – capturing views from First Nations peoples (Wadawurrung Corporation representatives, Traditional Custodians and other Aboriginal and Torres Strait Islander groups); youth representatives; caregivers; parenting and family issues organisations; artists and creatives; musicians; sustainability and climate change groups; multicultural organisations as well as retail experts, behaviour change specialists, current traders and developers.

#### The essential Bridge Mall

9. The overarching feedback from the community engagement design program, balanced with wider research, revealed a desire to maintain the concept of an accessible and welcoming “town square” approach. What can be distilled from community input is the need to retain the essence of authenticity of Bridge Mall - supporting the current forms of trade, exchange, gathering, retail and swapping – but also ensuring it is set up with the infrastructure to support what this might look like into the future.
10. Whether this be Council operated services or affiliated health services, the area is viewed as an important location to become a destination to get things done and provides an opportunity to become a fundamental reason for people to visit. Community engagement also revealed an underlying request for the provision of services within the area, providing support for “life admin” or providing activations, events and activities.

#### **Distillation of common concepts into the design**

11. The community engagement revealed some critical elements which must be reflected in the final Bridge Mall designs. These included:
- ✓ First Nations: the design must embed Wadawurrung connection to Country, tell the story of Yarrowee (Yaramlok) and reference the land as it was prior to white settlement.
  - ✓ Water: given the location the design must communicate the city’s relationship to waterways and the natural environment, bringing an understanding of the river to the surface and back into the public realm. This can be included in a public art treatment.
  - ✓ Play: the design must include a strong element of play and discovery, permitting young people and families to linger.
  - ✓ Accessibility: accessibility was mentioned in a variety of contexts – whether that be ensuring improved ways for aged, infirm and the very young to enter and feel welcomed in the space. Additionally to remain accessible to the community who love the Mall as it is, and to resist the temptation to “design them out”.
  - ✓ Destination: the design cannot forget the importance of trade – whether that is bartering, swapping, exchanging, selling and retailing. The location has always been and is anticipated to remain a location of trade.

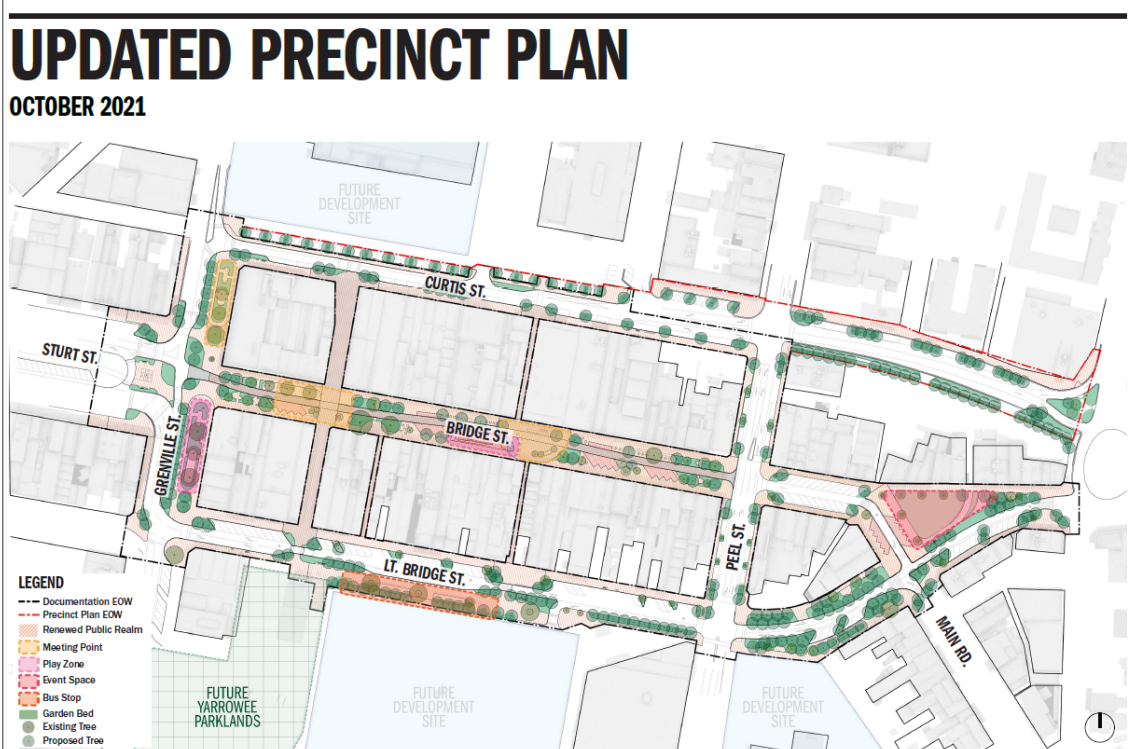
#### **Embedding community feedback into the Bridge Mall designs**

12. There was regular connection between FreeState’s research program and the designers. As narratives were revealed these were fed back into the design process, changing the shape and direction of the design concepts. For example, the close consultation and research with Wadawurrung and Traditional Custodians has directly led to significant developments in the design concepts – ensuring that First Nations stories are embedded in the heart of the final design.
13. The findings are now physically represented across the space.

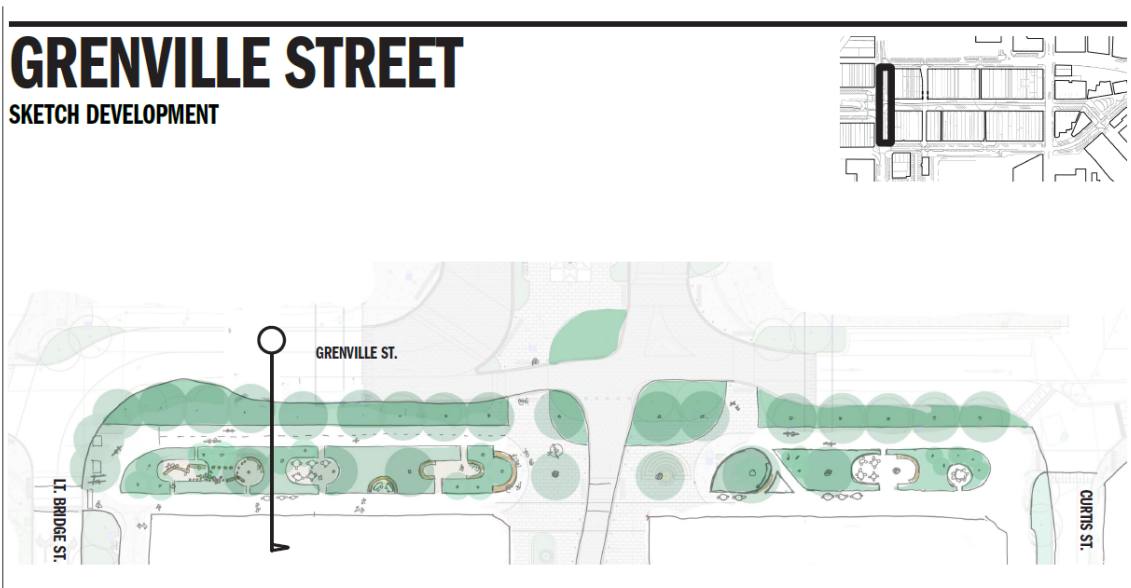
**KEY MATTERS**

The concept design package (refer attachment for full details) provides the concept and design intent for:

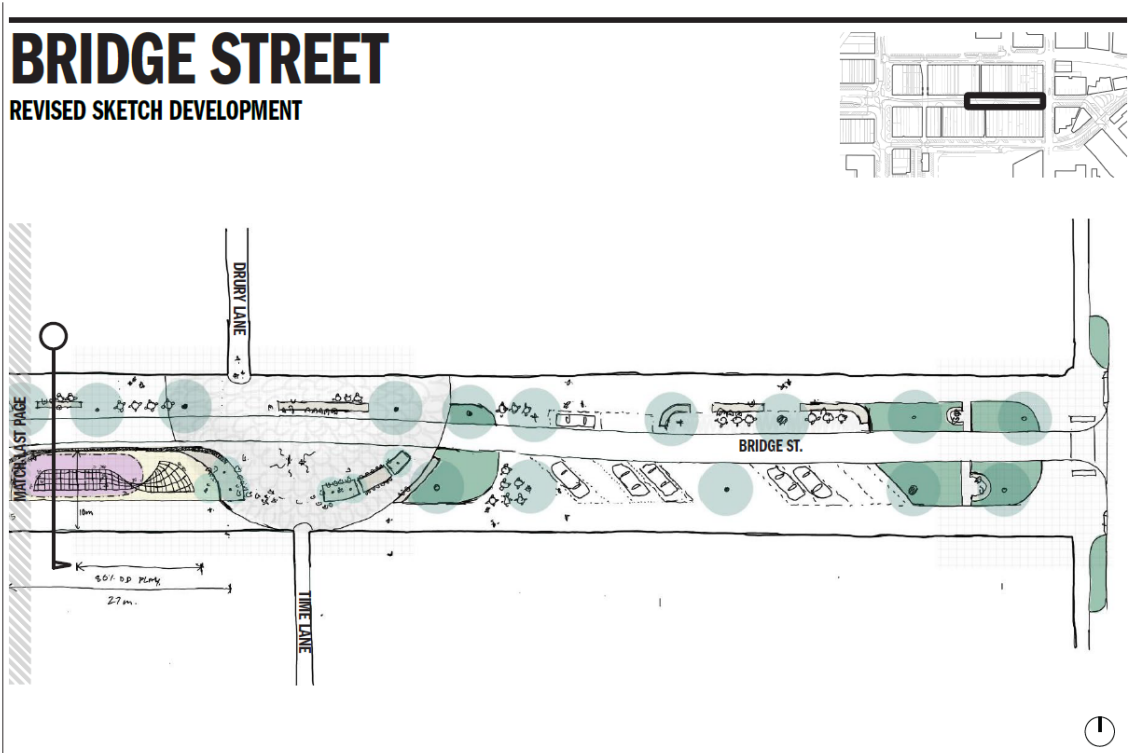
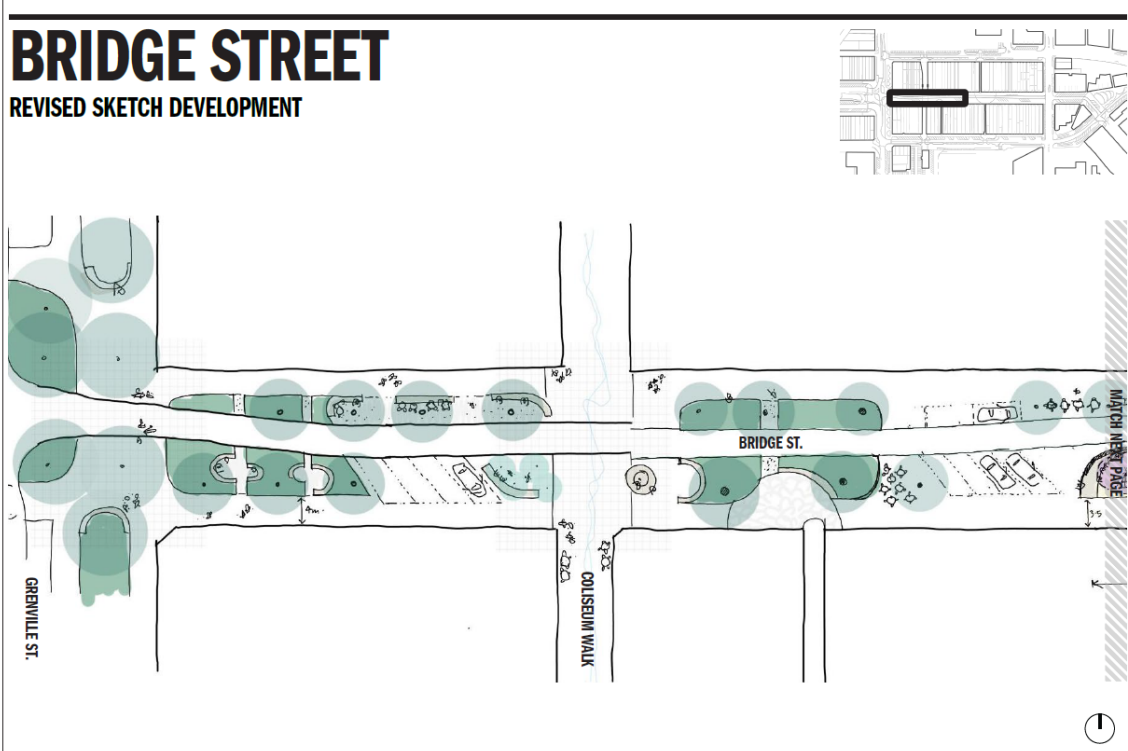
- 14. The overall precinct – providing a mix of targeted interventions that respond to the everyday needs and long-term aspirations for the current residents and visitors to Ballarat and future population which will live in the CBD over the medium–long term.



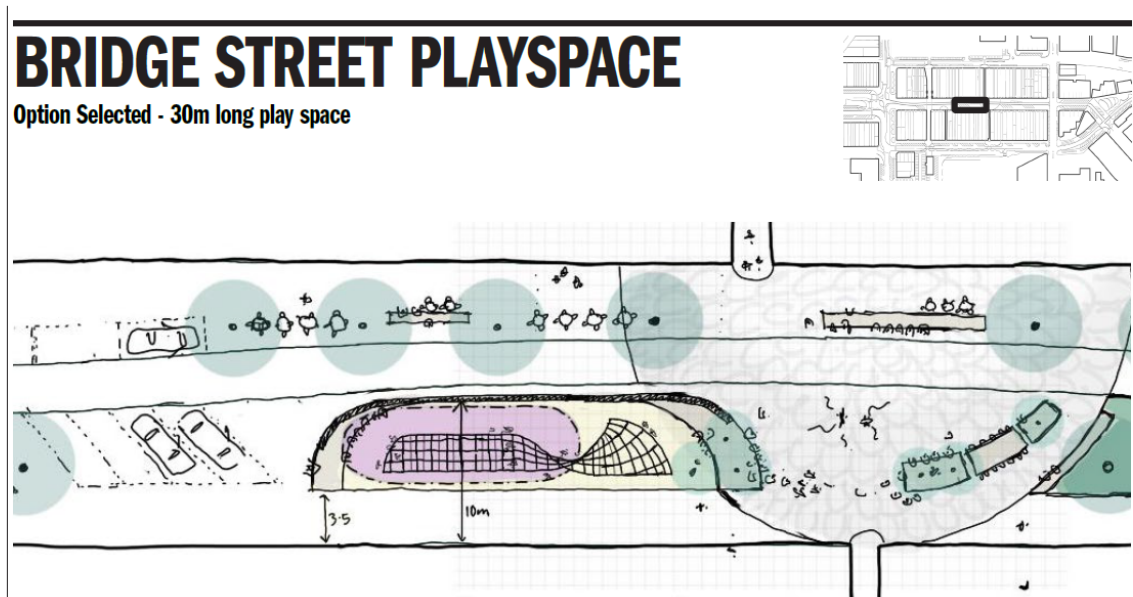
- 15. Grenville Street – extending the gardens of Sturt Street along Grenville Street – bringing a new north-south green spine to the CBD which connects the heart of the city with the Yarrowee River and Canadian Creek Trails and provides new places to sit, meet and enjoy.



- 16. Bridge Street – a fully flexible space for pedestrians, safe vehicle access at certain times when movement through the area helps encourage safety, extended trading hours, new businesses and hospitality. Quality finishes and adaptable spaces that can respond to the needs of businesses, community events and other users. Plenty of places to sit, eat, meet and enjoy.



17. **Playspace** – a new and upgraded 30m long play space on the southern side of the area will maximise sunlight and provide a focal point for families in this area. One of the key elements to be enhanced through the renewal. Detailed design to determine exact layout and play elements.



18. **Little Bridge Street** – significant new tree planting and landscaping, to extend the quality of Victoria Street through the heart of the CBD
19. **Coliseum Walk** – introducing an arbour styled covering, new shelter to encourage outdoor dining and trading. Improved quality of spaces to sit and dine.

## COLISEUM WALK

CANOPY OPTION SELECTED



20. **Expression** through the space includes deep referencing and inspiration from Wadawurrung shapes, connections and ideas, custom designed responses to Yarrowee River and materials selection that is truly of the place. Extensive and ongoing engagement with traditional owners is bringing expression throughout the design. Detailed materials palette to be confirmed.



21. **Lighting** – Precinct lighting strategy includes functional, façade, feature and event focussed opportunities. Bespoke feature lighting particularly focuses on facades and laneways, highlighting Ballarat’s architectural history and heritage, whilst adding interest into the evening and improving perceptions of safety and activity.

## PRECINCT LIGHTING

VIEW FROM GRENVILLE STREET



Sample illustration only

### OFFICER RECOMMENDATION

#### 22. That Council:

- 22.1 **Endorses the concept design package for the Bridge Mall redevelopment and use of this design direction to underpin detailed design, cost planning and tendering for the capital works.**
- 22.2 **Notes the physical works to Bridge Street are just one part of implementing the adopted Bakery Hill and Bridge Mall Urban Renewal Plan and a range of other complementary measures continue to be progressed to support components such as private sector investment, inner city housing and new parkland for the CBD.**

### ATTACHMENTS

1. Governance Review [8.3.1 - 2 pages]
2. Bridge Street Redevelopment - Concept Package [8.3.2 - 37 pages]

## OFFICIAL

**ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. Redevelopment of the CBD contributes to achieving all 5 key goals identified in the Council Plan 2021 – 2025, particularly Goal 5: A strong and innovative economy and city.
2. Project specifically responds to the Annual Plan objective 5.1 to facilitate increased vibrancy in the CBD and other key business precincts: continue to deliver the Bakery Hill Urban Renewal Plan, while assisting traders to take advantage of new opportunities.

**COMMUNITY IMPACT**

3. Investment in this core area of the Ballarat CBD is intended to kick-start and support private sector investment and renewal of the area, creating new jobs, vibrancy and opportunities for Ballarat.
4. During the formulation of the Bakery Hill Urban Renewal plan, three key themes emerged that have been used as a basis to give effect to the vision - Thriving, Connected and Distinctive.
5. Collectively, the integrating themes express the vision for what Bakery Hill will become. A thriving economy, supporting an engaged and resilient community. A community connected to people, place and local destinations. A place with a distinctive identity and story to tell. The integrating themes are used to frame this conceptual design and ensure it helps achieve the Bakery Hill vision

**CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

6. Design plans consider climate emergency and environmental sustainability issues and opportunities as they arise.

**ECONOMIC SUSTAINABILITY IMPLICATIONS**

7. The Bakery Hill renewal projects seeks to act as a catalyst to improving business and investor confidence in the area and create spaces and a plan for activation that encourages more people to the space and increases the number of people in and around the area into the future – translating into a higher performing area for traders and businesses.

**FINANCIAL IMPLICATIONS**

8. As per 15 May 2019 Council Resolution, \$15M is allocated to the project in the adopted Council budget.
9. Where possible, grant funding opportunities are being pursued to further provide investment into the area.

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OFFICIAL

## OFFICIAL

**LEGAL AND RISK CONSIDERATIONS**

10. Design - design phase will ensure the legal and compliance obligations are adhered to - eg relevant Australian Standards, statutory compliance, service authority requirements.
11. Operational Impact - works need to be conducted in a way that minimises the impact to the precinct and ensures safety of all workers and the general public. Coordination with the traders and users of the Mall will be an important aspect in the planning of the construction phase.

**HUMAN RIGHTS CONSIDERATIONS**

12. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

**COMMUNITY CONSULTATION AND ENGAGEMENT**

13. The preparation of the Bakery Hill Urban Renewal Plan (which guides this plan) provided for over 1000 consultations.
14. Specifically on the functional aspects of the design, consultation was conducted in June 2020 on designs for one-way traffic east and west bound and for two-way traffic. 146 responses were received.
15. Most recently, as outlined in the main report, there has been intensive engagement with special interest groups and key stakeholders to inform this conceptual design (refer main report)
16. Meetings, briefings and discussions have been held with the Bridge Mall Business Association (BMBA) throughout the project's tenure. Council's Business Engagement Officer is in regular contact with both the BMBA and traders. As the design develops to a more detailed level, this engagement will continue on specific implications for individual properties.

**GENDER EQUALITY ACT 2020**

17. There are no gender equality implications identified for the subject of this report.

**CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT**

18. Council officers affirm that no general or material conflicts need to be declared in relation to the matter of this report.

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OFFICIAL



# DESIGN STATEMENT

**Bridge Street Precinct will be reinstated as a meeting place.**

**It will draw on Ballarat's history as a place for discovery, a place where old meets new and stories are uncovered. A place to continually explore, to come back to.**

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# PROJECT OBJECTIVES

**THRIVING**

=

**DESIGN FOR  
FLEXIBILITY**

**CONNECTED**

=

**OPEN THE  
PRECINCT**

**DISTINCTIVE**

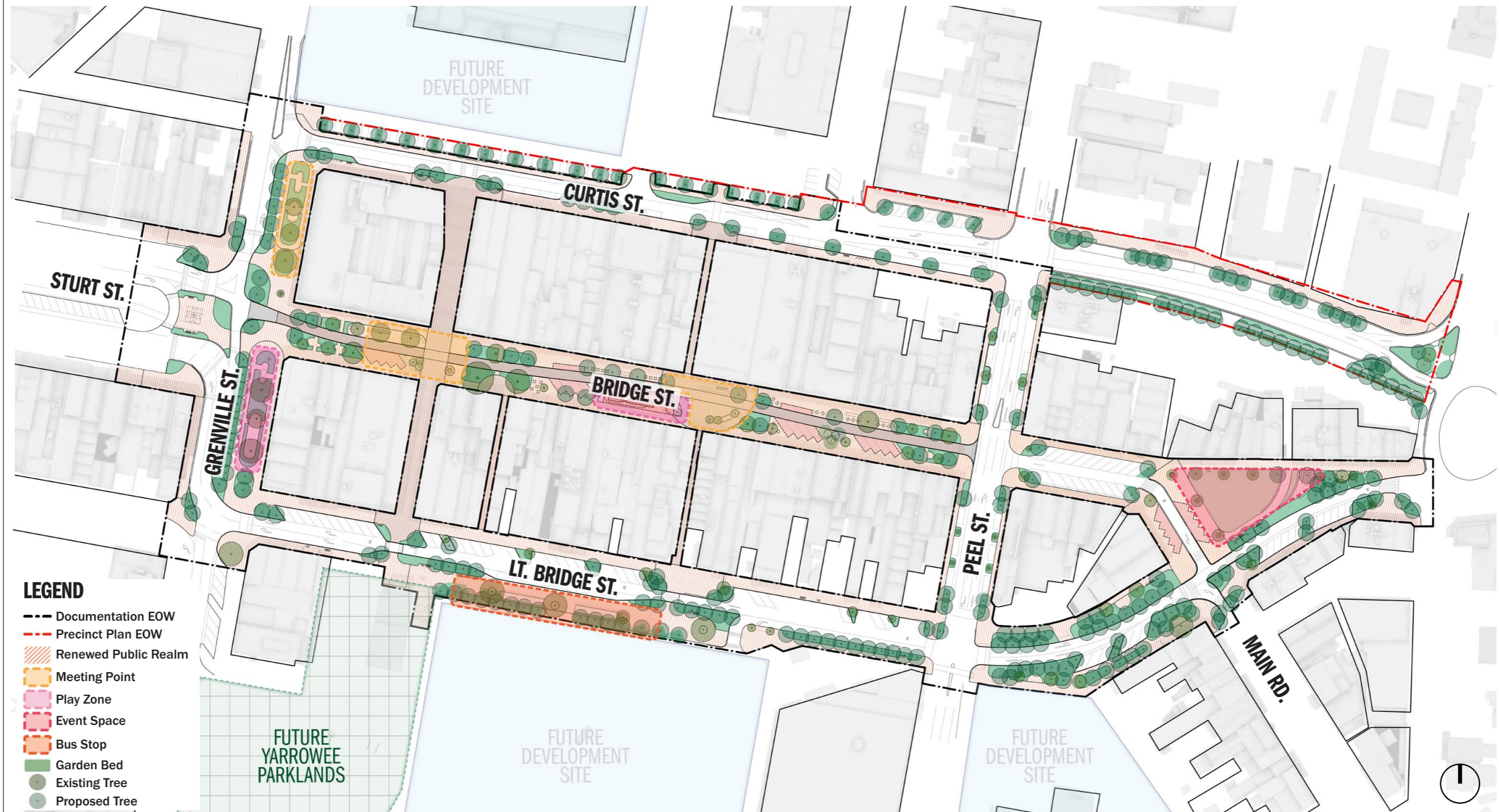
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**REFLECT  
LOCAL  
PEOPLE  
& PLACE**

# PRECINCT PLAN

# PRECINCT PLAN

OCTOBER 2021





# ILLUSTRATIVE CONCEPT PLAN

OCTOBER 2021

