
MEMORANDUM OF UNDERSTANDING
SOUTHERN GRAMPIANS SHIRE COUNCIL &
HAMILTON GALLERY BOARD

Memorandum of Understanding (“MoU”)

Between

Southern Grampians Shire Council

and

Hamilton Gallery Board Ltd

1 Parties

Southern Grampians Shire Council (“Council”) owns and operates Hamilton Gallery (“HG”) as a public art gallery.

Hamilton Gallery Board Ltd (“Company”) is a charitable company limited by guarantee established with the support of the Council with a highly respected and skilled board of directors.

2 Objectives and intention

The objective of this MoU is to set out the understanding between the parties as to their respective roles in the ongoing operation and development of HG.

Both parties intend to work together to achieve a new building for HG, located at Lake Hamilton, to increase the profile and visitor numbers to HG and promote the arts in the region. The parties share this common intention and have agreed to work collaboratively to achieve:

- A shared funding strategy for this purpose;
- An agreed timeline and responsibilities which will be reviewed and agreed regularly in order to meet the shared intention;
- A shared vision for the design of the new building;
- Additional activities to educate and promote the arts;
- Operation of HG in the new building by the Company.

3 Definitions and interpretations

In this MoU:

The Resolution Institute means the independent association of dispute resolvers of that name;

ROCO means the Register of Cultural Organisations. The ROCO assists qualifying cultural bodies to attract support by enabling them to offer donors the incentive of a tax deduction.

4 Roles of the parties

The parties acknowledge that they each have the following roles with respect to HG during the period prior to the completion of the new building for HG:

Council:

- owns HG and its assets, including the collection of artworks it holds;
- manages and operates HG while it is situated in the current building;
- employs the staff of HG, at its cost, and directs their activities;
- allocates funding to HG in its annual budget to defray HG's operating costs including the costs of organising and hosting exhibitions and displays;
- works with the Company to agree a funding strategy and seeks funding for the design and construction of the new building for HG in accordance with the agreed strategy;
- works with the Company to agree the design of the new building;
- consults with the Company's board and takes into consideration its recommendations in recognition of the skills and experience of the board;
- engages builders and is ultimately responsible for the decision making regarding the construction of the new building.

Board:

- maintains a board of directors of appropriately skilled and experienced people;
- supports HG through its expertise and by fundraising and raising awareness of HG and its collection and exhibitions;
- promotes the arts in the region in consultation with the Council and in a manner consistent with the Council's Arts Strategy;
- works with the Council to agree a funding strategy and seeks funding for the design and construction of the new building for HG in accordance with the agreed strategy;
- contributes its expertise to design of the new building;
- works with the Council on agreeing activities in connection with HG during design and construction of the new building;
- submits an annual report to Council concerning its operation of the Foundation.

After completion of the new building it is intended that the Company will take over the management and operation of the HG and the ownership of the building and the collection and other assets will remain with the Council. Prior to the completion of the

new building a more detailed agreement covering the operation of HG once it is in the new building will be entered into by the parties.

5 Financial arrangements

The Company is responsible for

- raising and managing funds to enable the Company to pursue its stated purposes;
- administering the Company and its activities at its own cost; and
- management of the Company's finances.

The staff of HG will assist in the fund raising in accordance with the funding strategy agreed by the Council and the Company, at the Council's cost.

6 Communication

The parties agree that:

- Council's CEO (or his or her delegate) and a representative of the Company will meet formally on a quarterly basis to review the parties' respective roles in relation to HG; and
- any written communication between the Company and Council staff employed in the operation of HG must be copied to the Council's Director, Planning and Development (or his or her delegate).

7 Confidentiality

The parties acknowledge that this MoU and all information relating to or incidental to this MoU supplied to or obtained by one party ("the recipient") from the other ("the disclosing party") is confidential (except to the extent that it is already in the public domain).

The recipient will take all reasonable steps to ensure that they, their employees, advisers and agents do not disclose the contents or any part of this MoU to any person or body corporate without the prior written consent of the disclosing party.

This obligation of confidentiality will remain in force for as long as necessary to give effect to it.

8 Marketing and publicity

The parties will work together to develop a marketing and publicity protocol in line with Council's HG brand guidelines.

9 Settlement of disputes

If a dispute arises out of this MoU ("Dispute") neither party shall start arbitration or court proceedings (except proceedings seeking interlocutory relief) unless it has complied with the following process:

- a) a party claiming that a Dispute has arisen must notify each other party to the Dispute in writing giving details of the Dispute;
- b) for a 28 day period after a notice is given ("Initial Period") each party to the Dispute ("Disputant") must use its best endeavours to resolve the Dispute; and
- c) if the Dispute remains unresolved at the end of the Initial Period, it must be referred for mediation at the request of a Disputant to:
 - d) a person agreed on by the Disputants; or
 - e) if agreement is not reached within seven days after the end of the Initial Period, a mediator nominated by the then Chairman of The Resolution Institute or the Chairman's nominee

The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

Any information or documents disclosed by a Disputant under this dispute resolution process:

- f) must be kept confidential; and
- g) may not be used except to attempt to resolve the Dispute.

Each Disputant must bear its own costs of complying with this dispute resolution process and the Disputants must bear equally the costs of any mediator engaged.

After the Initial Period, a Disputant that has complied with this dispute resolution process may terminate the dispute resolution process by giving notice to each other Disputant.

EXECUTION

SIGNED on behalf of the **SOUTHERN**)
GRAMPIANS SHIRE COUNCIL by)
)

CHIEF EXECUTIVE OFFICER
Michael Tudball

EXECUTED in accordance with section)
127(1) of the Corporations Act 2001 by)
HAMILTON GALLERY BOARD LTD)
)
)

Signature of Director:

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)