

An External Governance Structure for the Nelson Arts Festival: Recommendations and Transition Considerations

**Nelson Arts Festival Transition Group
23 January 2017**



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The Transition Group sincerely thanks all those who contributed their time to inform this report and the Council staff who supported the Transition Group, in particular Shanine Hermsen and Chris Ward.

1. Introduction

The Nelson Arts Festival Transition Group (the “Transition Group”) was established in May 2016 with the purpose of providing Council with recommendations and a Transition Plan relating to the governance and provision of the Nelson Arts Festival (including the Masked Parade and Readers and Writers Programme). The aim is to advance Council’s Long Term Plan 2015-2025 commitment to “*move the Nelson Arts Festival to an independent governance structure*” (p125, Nelson City Council Long Term Plan 2015-2025).

This report summarises work completed by the Transition Group to assess structure options and provides recommendations and transition considerations to establish the operation of the Nelson Arts Festival with an independent governance structure. The transition will need to be resourced by Council and project managed by a suitably qualified person. If this was progressed in 2017 the new structure could be in place to deliver the 2018 Nelson Arts Festival.

Over the period July to December 2016 the Transition Group met with a number of stakeholders to inform the development and consideration of various structure options. This included:

- Current Nelson Arts Festival staff
- Light Nelson Board members
- Director of the Suter Gallery
- Christchurch Buskers Festival
- Director of the Wanaka Festival of Colour
- Creative New Zealand
- Chief Executive of the Nelson Regional Development Agency

Members of the Transition Group attended a variety of events during the 2016 Nelson Arts Festival and had the opportunity to see behind the scenes to understand the challenges and complexity in realising a successful Festival.

This report is informed by work undertaken in two previous reviews commissioned by Council – “*Governance Report on Options for Nelson City Council Festivals*”, HG Consulting, September 2014 and “*Nelson Festivals Review*”, Brink, September 2011. The Transition Group also considered an internal review document prepared for a Council workshop in November 2014 (“*Review of Nelson Arts Festival*”, A1255847). These documents should be considered in conjunction with this report to provide relevant background information.

The following sections of this report cover the structural options considered, provide a recommended structure and detail the initial transition considerations to enable Council to make decisions on the next steps.

2. Governance Structure Options for the Nelson Arts Festival

Current arrangements clearly deliver a Festival enjoyed by many Nelsonans and visitors, however there is considerable scope to build on these achievements. In line with the Council’s mission statement “*to make Nelson and even better place*”, the key question informing our analysis of alternative options was: ***Would this make for an even better Festival?***

We concluded the principal weakness with the current structure is the lack of governance oversight and strategic vision that is able to be provided within the current Council-owned structure of the Festival. In the absence of effective governance, the Festival operates with relatively little accountability or continuity of strategic vision. This weakness is compounded by the limited funding options available to the Festival, and difficulty identifying true operation costs.

Structural options were therefore considered in terms of the extent to which they would improve upon the current arrangements in respect of these four key criteria:

- Governance
- Accountability
- Funding
- Cost

And overall the extent to which we concluded that a better Festival would be possible.

Reviewing how different options would improve (or not) on the status quo, our deliberations produced two viable choices (excluding the status quo): a Council Controlled Organisation (CCO); and an independently Governed Body (IGB)¹. See Appendix i for further background of these structures.

We undertook a SWOT analysis focused on the two preferred options as summarised in **Table 1**. In both cases (i.e. a CCO or an IGB) we made two underlying assumptions:

- The new body would be established as a Charitable Trust.
- Council’s funding of the Festival would continue at least at its present levels, in the case of the IGB at least for the period of the current long term plan.

¹ We rejected a third option that imagined an “enhanced” status quo (internally delivered, but with a sub-committee of Council) as not substantively changing the core weaknesses we perceived in the exiting arrangement.

Table 1

	Council Controlled Organisation	Independently Governed Body
Strengths	<ul style="list-style-type: none"> • Readily linked to Council policies (Arts, Events, Economic Development). • Prospect of attracting sponsors and benefactors. • Likely greater financial stability. • More readily reversible to status quo. 	<ul style="list-style-type: none"> • Prospect of attracting sponsors and benefactors. • Freedom to link to non-Council strategies and initiatives.
Weaknesses	<ul style="list-style-type: none"> • Reliant on a clear and coherent Statement of Intent to provide certainty of purpose. • Compliance costs associated with LGA requirements (e.g. specific Audit requirements and Council reporting). • Quality of Board subject to Council appointment policy. 	<ul style="list-style-type: none"> • Less readily reversible to status quo. • Less readily linked to Council policies (Arts, Events, Economic Development). • Can be beholden to priorities and preferences of sponsors.
Opportunities	<ul style="list-style-type: none"> • Flexibility on staffing (e.g. guest directors). • Increased scope for artistic direction. • Possible extension of Council ownership to include Tasman District and Marlborough District Councils. • Allows for increasing future autonomy (i.e. wholly independent). 	<ul style="list-style-type: none"> • Independence of vision. • Greater flexibility on staffing (e.g. guest directors). • Greater scope for artistic direction. • A new and wholly independent body could be more attractive to high calibre trustees.
Threats (Risks)	<ul style="list-style-type: none"> • May be captured by “history” of the Festival in its purpose and direction. • Underestimating current operational costs (e.g. overheads, compliance costs, health and safety). • Failure to attract quality candidates for Board. • Ability to attract and retain quality staff. • Withdrawal or reduction of Council funding. 	<ul style="list-style-type: none"> • Underestimating current operational costs (e.g. overheads, compliance costs, health and safety). • Failure to attract quality candidates for Board. • Withdrawal or reduction of Council funding. • Failure to attract and/or retain sponsors and benefactors. • Ability to attract and retain quality staff.

3. Recommended Structure

Our recommendation is for the establishment of a Council Controlled Organisation (CCO). In our view, the aggregate strengths and opportunities of a CCO outweigh those of an Independent Governing Body (IGB), and the weaknesses, threats and risks are more able to be controlled or mitigated.

In particular, we concluded that as a CCO the Festival would have the opportunity to:

- Build synergy with Council's cultural, social and economic policies whilst enjoying sufficient independence to create its own distinct identity.
- Optimise the opportunities to extend the range of funding options available underpinned by continued financial support by Council.
- Provide the best opportunity for the Festival to develop creatively and sustainably.

Council will need to initiate a process for establishing the new CCO, and for transitioning to this new structure. Although the Terms of Reference provided for the Transition Group to develop a detailed transition plan, too many factors - including employment status and the development of a detailed transition budget - were outside our authority and/or capacity to investigate or determine. Further, we note the mechanics of establishing a CCO are prescribed by the Local Government Act and the actual process will be underpinned by the statutory requirements that apply.

In a report produced in September 2015², the Office of the Auditor General (OAG) stated that for CCOs to be successful it was essential that a local authority carried out its statutory functions well, to provide the foundations for an effective relationship. In particular, the OAG remarked that the local authority needs to appoint the right people to govern a CCO, and be clear about its purpose. We would strongly concur with both these observations.

We believe the benefits to Council of maintaining a close relationship with the Festival through the CCO option outweighs the potential additional costs of operating a CCO (being the potential remuneration of board members and audit costs). Recommendations for mitigating the potential additional costs of a CCO are included in Appendix ii.

² Governance and Accountability of Council-Controlled Organisations; Office of the Controller and Auditor General, September 2015. <http://www.oag.govt.nz/2015/cco-governance>

4. Establishment and Transition to Council Controlled Organisation

Our recommendation is that Council takes the following steps to establish a CCO and transition the Festival to that CCO:

- Establish a charitable trust as the CCO vehicle (drafts and executes trust deed, obtains charitable status). Given our recommendation of a CCO, the majority of trustees will be Council appointed but we note that a minority may be appointed by a complimentary process. This could ensure a balanced skill set of board members.
- Appoint a chair of the CCO.
- Develop a detailed transition plan via an internal transition team. As a part of this detailed transition plan, the financial ramifications of disestablishment and transition to CCO including a detailed operating budget for the first two years of transition/operation are prepared by Council in consultation with the new Chair.
- Establish a shared service plan to enable orderly transition to begin.
- Agree initial Statement of Expectation and Statement of Intent in conjunction with new Chair.
- Appoint remainder of the Board.

In addition, transition will need to adhere to the legislative requirements with respect to the establishment of an external governance structure.

It is our view that transition must be resourced appropriately both from a financial and personnel point of view to ensure overall success of the Festival. This includes establishing clear lines of communication and reporting between Council and the new CCO so the relationship between the two entities is and remains positive. In our view this is critical to the long term viability of the Festival.

Further observations regarding the transition are included in Appendix ii.

Appendix i

Structure options: structural background on IGB and CCO

1. Independently Governed Body (IGB)

An independently governed charitable trust governed by a trust deed. The trust is its own legal entity - much like a company is; it can open bank accounts, enter into contracts, employ staff, hold insurance etc.

The entity is independent of Council or anyone else. The trust deed sets out the process for trustee appointment and this is independent of Council (at least post initial set up). For example, it could be that the trustees appoint their successors or that there is an appointments board/ recruitment firm involved.

2. Council Controlled Organisation (CCO)

A charitable trust governed by a trust deed. In many respects exactly the same as an independent trust BUT where the trust deed sets out the process for appointment of trustees, it provides that [more than] half are appointed by Council³. This means trust is regulated at least in part by the Local Government Act ("the Act") including for example how the organisation is audited, and how it sets its strategy (via a Statement of Expectation (SOE) with Council).

The definition from the Act is:

“council-controlled organisation means a council organisation that is—

(a) a company—

(i) in which equity securities carrying 50% or more of the voting rights at a meeting of the shareholders of the company are—

(A) held by 1 or more local authorities; or

(B) controlled, directly or indirectly, by 1 or more local authorities; or

(ii) in which 1 or more local authorities have the right, directly or indirectly, to appoint 50% or more of the directors of the company; or

(b) an [[entity]] in respect of which 1 or more local authorities have, whether or not jointly with other local authorities or persons,—

³ We understand Council's current policy is to appoint all board members of its CCOs, taking as an example the Bishop Suter Trust. However the legislation allows Council to appoint a majority of trustees and the remainder to be appointed by a process the same as with an IGB. A key advantage of allowing a minority of trustees to be appointed by a non-Council process is speed of appointment and flexibility.

(i) control, directly or indirectly, of 50% or more of the votes at any meeting of the members or controlling body of the [[entity]]; or

(ii) the right, directly or indirectly, to appoint 50% or more of the trustees, directors, or managers (however described) of the [[entity]]”

Appendix ii

Further observations, considerations and risks

1. Transition Plan

The Transition Plan will need to include the short, medium and long term actions associated with transition. In our view this must be done within Council as the shared services currently utilised by the Festival - including marketing, IT, Festival staff - cannot be identified and dis-established from Council (whether fully or as an identified shared service) without substantial Council input. The chair of the CCO should be consulted throughout this process.

2. CCO accountability requirements in the LGA

Council should investigate, as part of establishing the CCO, whether there are options under the Local Government Act 2002 to exempt the CCO from the full scope of audit requirements, in order to reduce the ongoing compliance costs of a Festival CCO structure.

3. CCO Board

Recruiting board members with the right attributes and to achieve a balanced skill set will be key to establishing a successful Festival CCO. In particular an experienced Chair will be integral to a successful transition and the ongoing operation of the Festival. Experience from other festivals we spoke with is that board members must be committed, have connections within the wider community and be prepared to contribute to the work that is required. Our thoughts on the composition of the board are that it includes a majority of trustees experienced in governance, and that other key skill sets that must be present amongst the appointees are: people management, empathy with the arts, financial capability, fund raising ability (sponsorship and benefactors), vision and strategy. Event management would be advantageous.

4. Payment of Board Members

We understand that Council currently pays all appointees to CCOs. We note this is not a regulatory requirement. Payment does not necessarily equate to commitment, and indeed we met with a number of IGBs with highly capable and committed board members who do not receive payment. But we also note that payment may allow consideration of a wider pool of board candidates than an unpaid board. We also note that remuneration of board members can vary substantially in the not for profit sector. Our recommendation is that board members do receive a small annual payment but the level of payment is a matter for Council.

5. Access to External Funding Sources

A clear message from those we spoke to in the preparation of this report is that the sourcing of sponsorship, donors and benefactors can have a considerable impact on the Board's time. This has clear links to ensuring the right people with the right skills are recruited to the CCO Board, especially in relation to benefactors and donors as potential new revenue options that has not been possible under the current festival structure.