

# Options for Future Governance Structure

Discussion Paper – October 2019

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## 1. Executive Summary

The Bundoora Homestead Board of Management has made an excellent contribution to securing a healthy future for the Bundoora Homestead Arts Centre. Board members have contributed great expertise, energy, time and creativity to help steer the gallery.

However, the governance structure for the Board will probably need to change. Darebin Council has been carrying out a review of its advisory committees. It's a good time to consider the future governance structure of the Bundoora Homestead Board of Management.

In addition, likely changes to the Local Government Act will affect the membership and conduct of meetings of the Board (along with changes to many other governance matters such as conflict of interest requirements).

This discussion paper sets out four potential options for the future:

- A: Continue as a special committee/delegated committee with powers to make decisions, with updated delegation and charter and some changes to operations.
- B: Transition to becoming an advisory committee providing advice and recommendations.
- C: Wind up the Board and establish an independent Friends of Bundoora Homestead Arts Centre organisation (for instance, as an incorporated association).
- D: Wind up (not recommended).

## 2. Background

### Establishment of board

The Homestead opened to the public in August 2001. Although originally Darebin Council had proposed to establish a Company Limited by Guarantee to manage the homestead, this was set aside.

In June 2002, Darebin Council established a Special Committee under Section 86 of the Local Government Act, called the *Bundoora Homestead: Federation Centre for the Arts Board of Management*.

Subsequently, in 2006, the committee was changed to the *Bundoora Homestead Board of Management*. At this point the board's membership was one Councillor, one Council officer, one representative of LaTrobe University and four other external members with relevant skills and experience.

Historically, Darebin Council has tended to constitute all its committees one year at a time. The most recent resolution to establish Bundoora Homestead Board of Management was on 3 December 2018, when Council resolved to constitute the Board for 12 months or until such time as Council makes a further resolution.

## Current status as a special committee

Bundoora Homestead Board of Management is currently a special committee (or “Section 86 Committee”) of Darebin Council. This means neither the board nor the gallery is a legally separate entity from Council, but instead the Board acts on behalf of the Council.

A special committee has the power to make decisions only where Council has delegated the specific power to make that decisions. This is similar in some ways to how certain staff have delegation to make decisions on behalf of Council.

The Bundoora Homestead Board of Management has a terms of reference, and an instrument of delegation authorised by the Council.

Being a special committee brings various obligations (including public notice of meetings, holding the meetings in public, statutory returns from committee members, conflict of interest requirements, and various other governance requirements etc).

Under the current Local Government Act, if a Council wants to give decisionmaking power to a group this can only occur if the group is established as a special committee, with the obligations and duties this brings.

A Council can delegate decisionmaking power to a special committee, but not to other types of groups.

## Current charter

See the attached Charter.

Membership of the Bundoora Homestead Board of Management is currently:

- Three Councillors
- One Council officer
- Between 5-11 people with relevant skills, experience and expertise.

The Chair is currently approved by the Board itself, from among the Board’s members.

## 3. Discussion

### Local Government Act changes

The State Government is planning to introduce the Local Government Bill 2019 before the end of 2019, which (if passed) would replace the existing Local Government Act 1989. This is likely to affect the Bundoora Homestead Board of Management.

The 2019 Local Government Bill has not been released yet, but is expected to include the provisions of a 2018 Local Government Bill which lapsed. If it does, and if the new Bill is passed through Parliament, then the new legislation will replace the concept of “special committees” with “delegated committees”.

Here is an extract from the Local Government Bill 2018:

*s. 61 Delegated committees*

*(1) A Council may make a delegation under section 11 to the members of a delegated committee.*

*(2) A delegated committee—*

*(a) must include at least 2 Councillors; and*

*(b) must be chaired by a Councillor appointed by the Council or the Mayor; and*

*(c) may include any other persons appointed to the delegated committee by the Council who are entitled to vote.*

*(3) Subject to any express variations specified in the Council's Governance Rules, section 59 (other than subsection (1)) applies to a meeting of a delegated committee as if the members were Councillors. [relates to quorum, voting and casting vote]*

If these provisions are adopted by Parliament, this would mean the following changes to the Bundoora Homestead Board of Management:

- A Councillor must chair the board/committee, appointed by the Council;
- At least two Councillors must be on the board/committee;
- Quorum for the board must be an absolute majority, that is, the board would not be able to meet unless more than 50% of the board were present. (For instance if membership is 15 people, quorum would be 8 members);
- Known as a delegated committee rather than a special committee;
- Changes to conflict of interest and possibly other governance responsibilities which apply to all Councillors and delegated committee members.

## Delegation

The current delegation from Darebin Council to Bundoora Homestead Board of Management is attached.

As part of a review of all Council's delegations, a governance consultant has recently recommended that the charter (terms of reference) and delegation be a single document, and the wording updated. See attached. This would apply only if Bundoora Homestead Board of Management continued as a special committee (or delegated committee).

## Deductible Gift Recipient Fund

Legal advice obtained in 2018 confirms that the Australian Tax Office (ATO) endorsed City of Darebin as a Deductible Gift Recipient (DGR) effective 1 July 2003., for the purposes of operating a public art gallery.

The legal advice confirms that, provided that Council complies with legislation and ensures the Bundoora Homestead Arts Centre continues to meet ATO requirements, the ATO is not concerned with Council's internal decision-making arrangements. That is:

*"Whether or not financial decisions are made by Council (via Council resolution, by delegation to staff or by delegation to a section 86 special committee) is of no concern to the ATO."*  
(Advice from Maddocks, 20 March 2018).

## 4. Options

### Option A: Continue as “special committee” (delegated committee)

The Board would continue to hold delegated powers in relation to the Bundoora Homestead Arts Centre.

Probably a new delegation would need to be drawn up to reflect recent advice.

If the new Local Government Bill is adopted, then probably the Board would have to be chaired by a Councillor. New quorum rules would apply so that an absolute majority of members would need to be present for a meeting to occur.

### Option B: Transition to an “advisory committee”

The Board would be dissolved and an advisory committee created.

Advisory committees have few legal requirements or restrictions. They have no legal power to make decisions. Their role depends on their terms of reference or charter.

An advisory committee can make recommendations. Recommendations are then considered by staff or by the elected Council, depending on who is making the decision. Advisory committees also generally contribute to strategy and direction.

### Option C: Establish Friends of Bundoora Homestead Art Gallery

The Board could wind up and current members could establish an independent Friends organisation, as a separate legal entity (e.g. as an incorporated association.)

This would need to be supported and organised by the members of the Friends group.

This would enable the group to raise funds while also participating in providing feedback to the Bundoora Homestead Arts Centre.

### Option D: Wind up altogether

This option is not recommended.

### Table: Brief comparison of Options

Overleaf is a preliminary comparison. The Board is invited to discuss these options and identify further positives, negatives, opportunities and risks.

Preliminary comparison of Options

Option	Potential positives/ opportunities	Potential negatives/ risks
<b>A. Continue as special committee/ delegated committee</b>	<ul style="list-style-type: none"> <li>• Continue the Board’s history of leadership and strategic direction</li> <li>• High profile board attracting strong interest in participating from the arts sector locally and beyond</li> </ul>	<ul style="list-style-type: none"> <li>• Significant governance requirements for Board members</li> <li>• Meeting governance may need to be strengthened in order to meet Local Government Act requirements</li> <li>• Quorum will need to be increased which may be a problem</li> <li>• Any changes to budget still require Council approval.</li> <li>• Effectively, staff manage the Centre in most ways – staff are implementing the key strategic documents developed by the Board and previously approved by Council.</li> </ul>
<b>B. Transition to advisory committee</b>	<ul style="list-style-type: none"> <li>• Continue strong contribution to strategic direction for the Bundoora Homestead Arts Centre</li> <li>• Committee members can continue involvement in gallery openings, events, engagement etc</li> <li>• Fewer governance responsibilities for committee members.</li> <li>• Committee does not need strict majority quorum</li> <li>• Some saving in staff resources</li> <li>• Cost saving as meetings do not have to be advertised</li> </ul>	<ul style="list-style-type: none"> <li>• Committee no longer has decision-making powers</li> <li>• Loss of the name “Board” may be seen as a loss</li> <li>• Uncertain whether this would impact on members’ ability to participate in fundraising</li> </ul>
<b>C. Wind up Board and set up Friends group</b>	<ul style="list-style-type: none"> <li>• Group can operate independently with its own Chair</li> <li>• Group has freedom to focus on fundraising if they wish, or not</li> <li>• May have increased ability to fundraise independently</li> <li>• Group members can still contribute to Bundoora Homestead strategy and direction</li> <li>• Some saving in staff resources</li> <li>• Cost saving as meetings do not have to be advertised</li> </ul>	<ul style="list-style-type: none"> <li>• Friends members would need to have responsibility for governance requirements (such as requirements of an incorporated association)</li> <li>• Friends Group would collaborate with gallery staff but would need to take responsibility for their own operations – potential increased burden for members.</li> <li>• Current board members may not wish to focus on fundraising.</li> </ul>
<b>D. Wind up</b>	<ul style="list-style-type: none"> <li>• Less time burden on Board members</li> <li>• Some saving in staff resources and cost of advertising</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of contribution of independent and sector expertise and energy</li> <li>• Loss of relationships with community and arts sector.</li> </ul>

## 5. Timelines & Next Steps

- Board members are invited to provide feedback in person at the Board meeting on 31 October; or anytime up until 14 November 2019. This feedback will be reported to the elected Council.
- It's proposed that Council will consider a report on this at its **13 December 2019 Council** meeting (the meeting where Council would usually decide which committees are operating for the coming year). This item would be expected to be dealt with in public session and any member of the community can make a verbal submission at the meeting.
- Potentially, any decision about the governance structure could have a phased implementation.

## Attachments

1. Bundoora Homestead Board of Management Charter (current)
2. Bundoora Homestead Board of Management Delegation (current)
3. Legal Advice from Maddocks about Gift Fund (March 2018)