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Options for the delivery of Te Manawataki o Te Papa development project by a council controlled organisation

Introduction

1. My August 2022 report *“Te Manawataki o Te Papa – The potential role of a CCO or other subsidiary entity in the redevelopment of the Tauranga civic precinct”* contained the following summary and recommendations:

“There is a good case for considering the creation of a company structure CCO to manage the redevelopment of the Tauranga civic precinct. The potential benefits of a more commercial approach to project governance and management, greater confidence from potential funders and other stakeholders, and the ability to structure a CCO to enhance project certainty, lead me to that conclusion.

The case for considering a CCO is even stronger, if the CCO is not set up solely for the civic precinct project but rather continues to exist beyond that time to deliver other significant Tauranga City Council (TCC) projects.

However, the potential benefits of a CCO structure can only be realised if the CCO is established in a manner that empowers it to deliver them. Great care will need to be taken in the design of the constitution of the CCO and the structure of the relationship between it and TCC, if a decision is made to proceed, to ensure that the CCO can deliver to its potential.

The report recommended:

1. *That TCC proceed to a detailed implementation investigation into the establishment of a company structure CCO to deliver the civic precinct redevelopment project and other major TCC sponsored community amenity projects.*
2. *That TCC make a final decision on the establishment of a CCO following consideration of the detailed implementation investigation.”*

2. The TCC Commissioners have already supported these recommendations. This report addresses the first of the two recommendations set out above and should be read in conjunction with the earlier report.
3. A project team approach has been taken to the development of the conclusions in this report. Those involved in this project team are listed in Appendix 1.
4. The key assumption that underpins this report and its conclusions is that the key drivers for establishing a CCO for this project are:

- To establish a capable delivery vehicle for large scale TCC community facilities;
- To create greater confidence amongst the community, funders and other stakeholders in TCC's ability to successfully deliver large scale community facilities.

Summary and recommendation

5. The project team considered three CCO models to evaluate their appropriateness for implementation as a delivery vehicle for the civic precinct redevelopment project. These included one that was purely a governance model and two that were governance and delivery models with varying degrees of separation from TCC. The preferred option is the governance model as that was considered to be superior to the other CCO options and also superior to the status quo or any other internal TCC structure that could be created, in terms of project outcomes that could be achieved.
6. **Recommendation**
That TCC commence the implementation process to establish a company structure CCO to govern the delivery of the civic precinct redevelopment project.

Project background information

The scope of the redevelopment

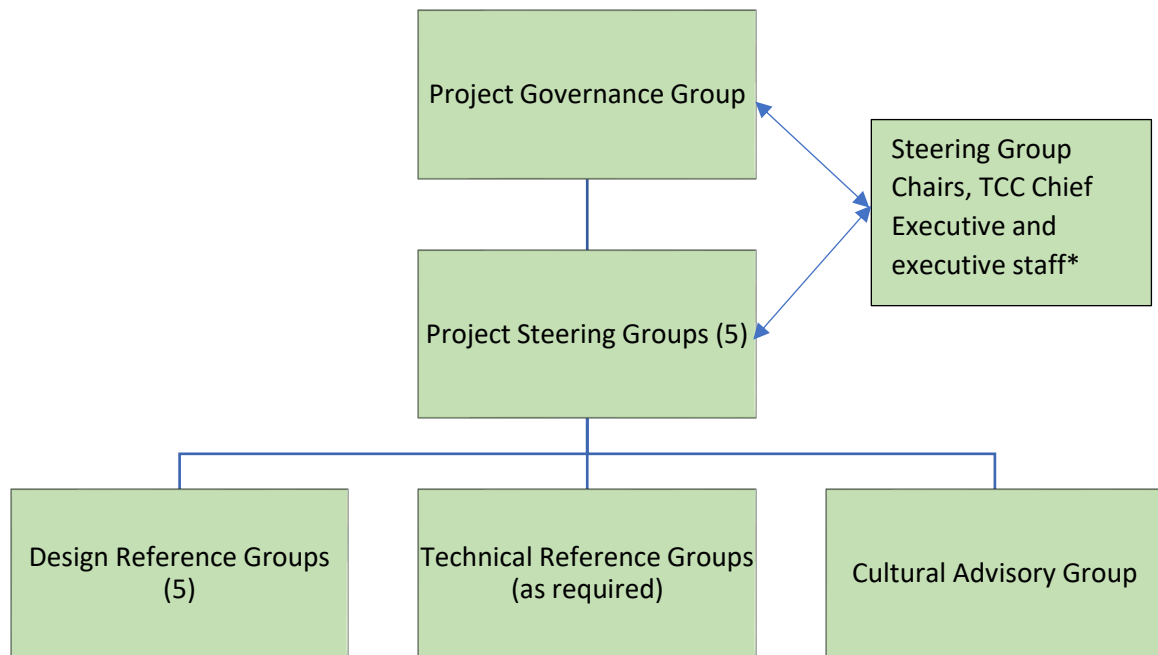
7. The proposed redevelopment is described in the document "Te Manawataki O Te Papa (Civic Precinct) Masterplan (Refreshed 2021)". A plan showing the masterplan site layout is attached at Appendix 2.
8. TCC will be responsible for undertaking the development of the portion of the masterplan site bounded by Willow, Durham, Wharf and Hamilton Streets, as well as Masonic Park and the sections of Willow Street, The Strand and the Waterfront Reserve shown on the site plan (sites A and C).

Funding

9. Total capital funding of \$303M has been provided for this project within the TCC 2021 – 2031 Long Term Plan. The approved funding is subject to achieving 50% of the funding from sources other than rates funded debt.

Governance of the project

10. TCC currently has a Project Governance Group in place to oversee the delivery of the project. The Project Governance Group consists of nine members including an independent chair. The remaining membership consists of: Three TCC executive members; the TCC Director of Civic Development; a mana whenua representative; a property development consultant; a Willis Bond representative; an independent Tauranga based accountant.
11. The project governance structure is shown in the following diagram:



*This team exercises a day to day decision making role.

12. This structure is largely advisory in nature with authority to make decisions about the project being exercised by the Commissioners, TCC executive or the Civic Development Team.
13. The operational project delivery function is undertaken by TCC's Civic Development Team which forms part of the Council's City Developments and Partnership Group.
14. TCC has appointed Willis Bond as development manager for the project and also to undertake preliminary design of all the facilities on Site A (the site bounded by Willow, Durham, Wharf and Hamilton Streets). TCC has also approved preferred suppliers for professional services and physical construction on this site.

Council controlled organisations

15. TCC already has a number of CCOs in place and accordingly is not a stranger to this form of governance structure and how it operates. However, it is still useful to set out some information about CCOs to provide context to this report.
16. A CCO is an entity in which one or more local authorities control 50% or more of the voting rights or appoint 50% or more of the members of the governing body. A CCO can be a company, trust, partnership, incorporated society, joint venture, or other similar profit-sharing arrangement.
17. There can be many reasons for establishing a CCO. For example, the 2015 report of the Controller and Auditor General (OAG) "*Governance and accountability of Council Controlled Organisations*" identified the following reasons that had been given by councils for establishing CCOs:
 - *improved commercial focus – that is, operating a company with a professional board of directors with the objective of achieving greater operating efficiency;*

- *ring-fencing financial risk, by using an incorporated structure to insulate a local authority from financial liability for an activity or venture involving other parties;*
- *empowering local communities – that is, creating a trust with a set budget funded by a local authority but managed by members of the community for a specific purpose such as maintaining a community centre;*
- *tax-effectiveness – local authorities can derive tax credits from commercial subsidiaries that pay dividends;*
- *independence – separation from political direction;*
- *streamlining bureaucracy, enabling nimbleness and agility – CCOs have less “process” to follow in making decisions than local authorities;*
- *economies of scale, where shared services CCOs combine several local authorities’ similar activities;*
- *the ability to recruit and retain high-quality board members and staff who might not be available to be members or employees of a local authority;*
- *access to a wider range of funding sources – a trust or similar entity with community representatives can get donations and contributions for significant community projects and may be eligible for funding that local authorities are not.*

18. While a CCO is an arms-length organisation, the council remains accountable to the community for the CCO’s performance.

Other potential project delivery vehicles (non-CCO)

19. Since any arms-length entity that is established by TCC will be a CCO if it controls 50% or more of the voting rights or appoints 50% or more of the members of the governing body, other potential project delivery vehicles are likely to be limited to either a subsidiary “council organisation” or some form of internal structure within the TCC organisation.

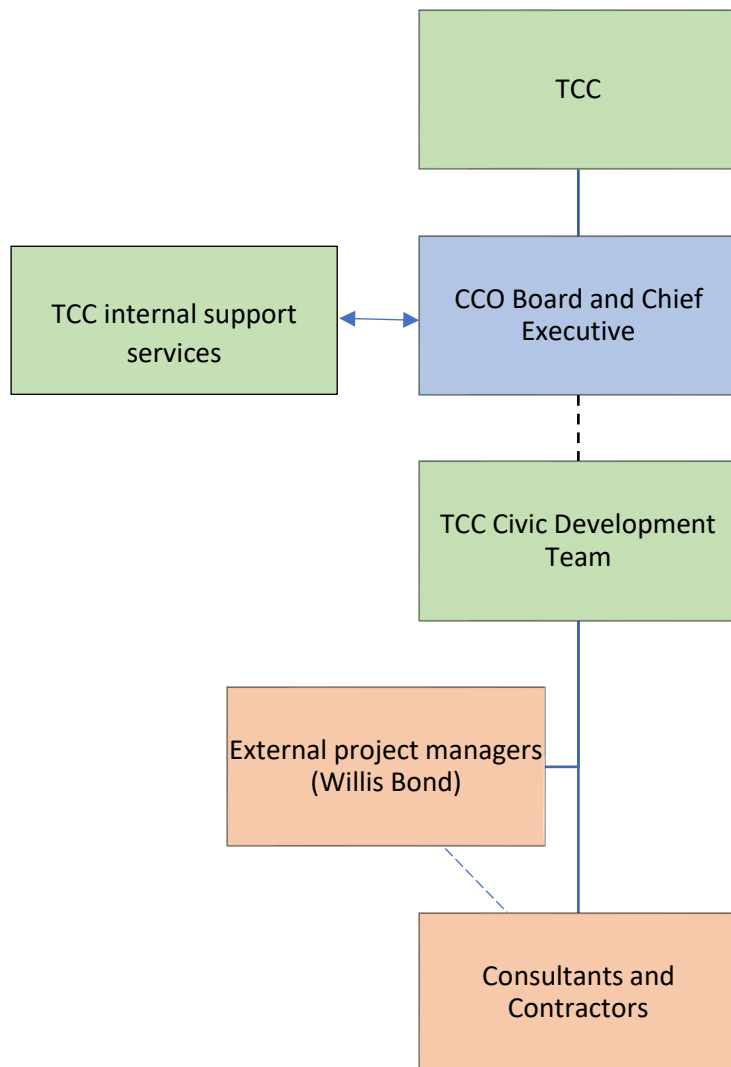
20. A “council organisation”, as referred to in the preceding paragraph, is an entity in which a local authority has an ownership interest that does not meet the threshold to be a CCO. It seems so improbable that TCC would establish an organisation in which it held only a minority shareholding to develop the civic precinct, that I have not considered it further in this report.

21. An In-house business unit could be established to develop the civic precinct with project governance delegated to a “project board”, the membership of which was selected using similar criteria to the appointment of directors to a CCO. The difference between this and the existing situation is that in this scenario the project governance board is likely to have greater vertical construction industry experience and also have a level of decision making authority that allows it to leverage of that knowledge base. This scenario is considered as the modified status quo option in the evaluation section later in the report.






Consideration of CCO options

22. The project team identified three CCO models for further consideration and evaluation. These are described on the following three pages.

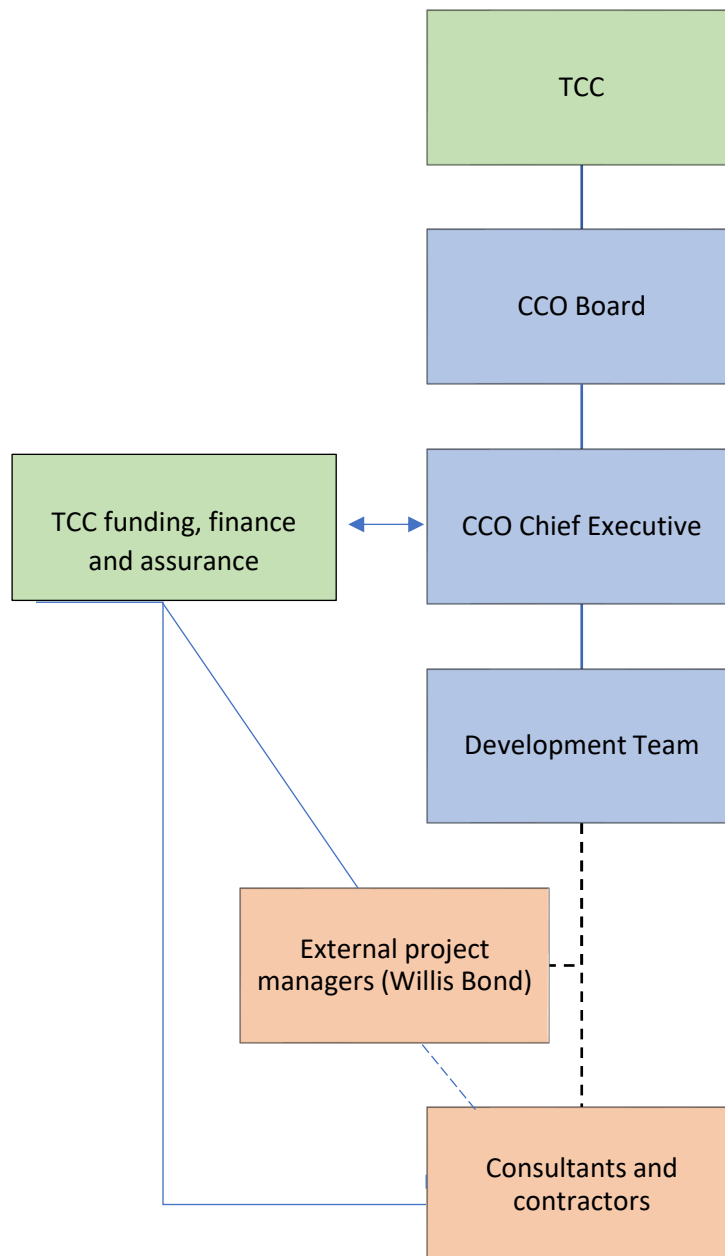
23. **Option 1 - Project Governance CCO.** This model creates a separate entity to govern project delivery. Actual operational delivery is by way of resources either employed by or contracted to TCC, but which report to the Chief Executive of the CCO through the exercise of delegated authority. TCC is the principal to all project development contracts with suppliers and the employer of the project management team.



Key

TCC resources	
CCO resources	
Consultants & contractors	
Principal relationship	
Delegated relationship	

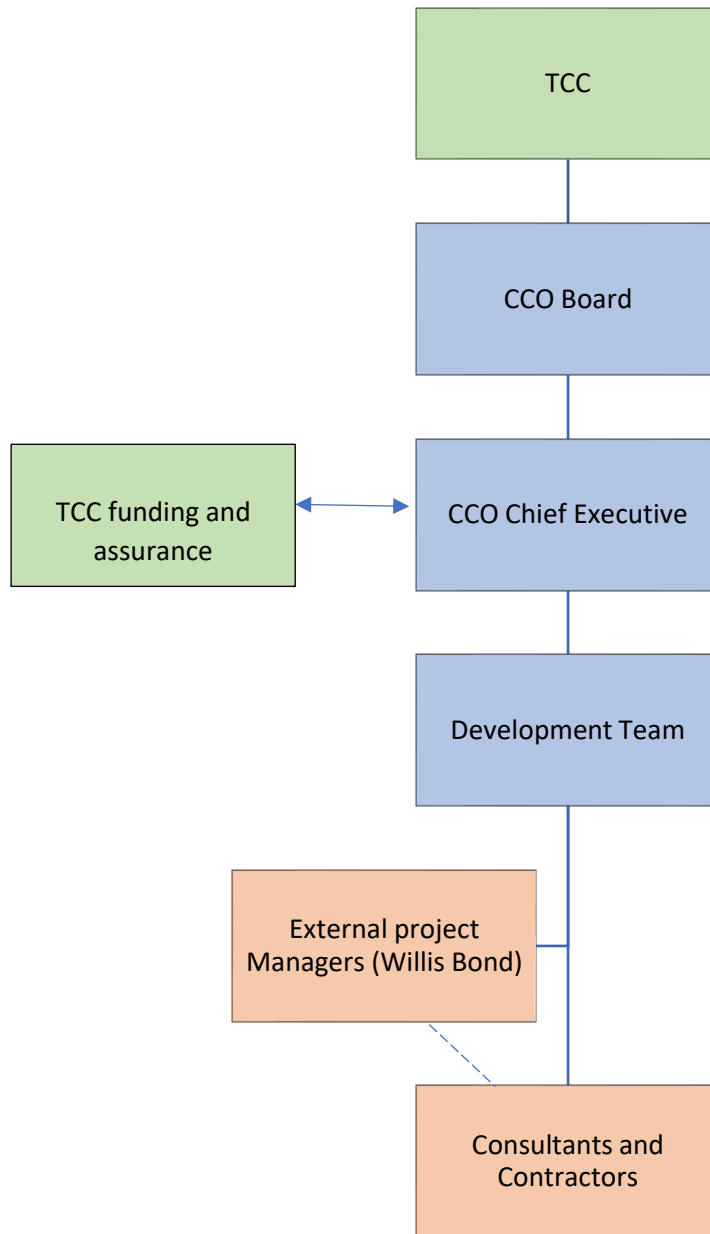
24. **Option 2 - Project Delivery CCO.** This model creates a separate entity to govern project delivery. Operational project management resources are employed by or contracted to the CCO. Physical project delivery resources are contracted to TCC, but report to the CCO through the exercise of delegated authority. TCC is the principal to all project delivery contracts with suppliers.



Key

TCC resources	
CCO resources	
Consultants & contractors	
Principal relationship	
Delegated relationship	

25. **Option 3 - Project Delivery CCO v2.** This model creates a separate entity to govern and deliver the project. The CCO is the principal to all project development contracts with suppliers and the employer of all project management personnel. Contracts and delegations are in place to enable effective project delivery by the CCO.



Key

TCC resources	
CCO resources	
Consultants & contractors	
Principal relationship	
Delegated relationship	

26. The following matrix provides a high-level analysis of the three CCO options and compares them against the status quo and modified status quo options already described in this report.

The comparison criteria have largely been taken from the earlier report *“Te Manawataki o Te Papa – The potential role of a CCO or other subsidiary entity in the redevelopment of the Tauranga civic precinct”*

Criteria	Status quo	Modified status quo	CCO Option 1. Project Governance CCO.	CCO Option 2. Project Delivery CCO.	CCO Option 3. Project Delivery CCO v2.
Independence from political direction	Neutral	Neutral	Positive	Positive	Positive
Commercial focus	Neutral	Slightly positive	Positive	Positive	Positive
Decision making agility	Neutral	Slightly positive	Positive	Positive	Positive
Recruitment – exec project management / governance	Neutral	Neutral	Positive	Positive	Positive
Project certainty	Neutral	Neutral	Slightly positive	Slightly positive	Slightly positive
Stakeholder confidence	Neutral	Neutral	Slightly positive	Positive	Positive
Access to funding sources	Neutral	Neutral	Slightly positive	Slightly positive	Slightly positive
Tax effectiveness	Neutral	Neutral	Neutral	Dependent on detail of CCO/TCC relationship structure.	
Risk management	Neutral	Neutral	Neutral	Slightly negative	Slightly negative
Additional organisational costs	Neutral	Slightly negative	Slightly negative	Negative	Negative
Establishment costs	Neutral	Neutral	Slightly negative	Negative	Negative
Impact on existing TCC staff	Neutral	Neutral	Slightly negative	Negative	Negative
Transitional impact on project delivery	Neutral	Neutral	Neutral	Negative	Negative

Key

Slightly positive	Slightly positive
Positive	Positive
Neutral	Neutral
Slightly negative	Slightly negative
Negative	Negative

27. Preferred CCO option

The project team considered that **Option 1 - Project Governance CCO** was the most appropriate CCO model for TCC to utilise for the delivery of the civic precinct redevelopment project. The reasons for this conclusion are:

- It provides the means to establish an entity with a governance board and executive that has the mix of the commercial, construction and other skillsets necessary to successfully deliver a complex vertical construction project such as the civic precinct redevelopment project. This contrasts with TCC which does not have depth of experience in the delivery of vertical build projects of this scale;
- It provides the means to create greater credibility and confidence in TCC's ability to successfully deliver complex community facilities through the utilisation of an independent entity with specialist construction governance/management skills and experience. This is likely to provide potential funders with greater confidence in the project;
- It provides a good balance between applying commercial disciplines and the management of risk. On the one hand it creates sufficient separation from political and bureaucratic processes to enable a commercial focus and agile decision making by the CCO but on the other hand TCC retains a degree of ultimate control through its role as principal to project contracts;
- The separation of the project from political processes is likely to result in greater project stability;
- It would enable the appointment of board members to govern the project who have skills and experience unlikely to be found in the local government sector;
- It is likely to have the lowest net costs of the CCO options;
- It is the simplest of the options to implement as it does not require the establishment of a full new corporate structure, due to its continued use of existing TCC resources and systems. It would also have the lowest impact on existing staff;
- There should be no new income tax liability created for TCC through the creation of the CCO. That advice is predicated on the assumptions that the CCO would not have any income other than the grant funding from TCC that covers its operating expenditure, and that the CCO would not own assets;
- The introduction of this model is expected to have minimal transitional impact (if any) on project delivery timeframes.

Successful implementation of this option, and indeed any of the other options, is dependent on TCC delegating sufficient authority to the CCO to enable it to realise the potential benefits from the commercial skills and experience residing in the entity.

28. Another factor that influenced the preference for this CCO model was the ability to investigate a working example of this governance structure. That example is *Te Kaha Project Delivery Ltd (Christchurch)* which is the CCO that Christchurch City Council has established to deliver its new \$680M multi-use stadium. *Te Kaha Project Delivery Ltd (Christchurch)* is considered to be working effectively and productively by Christchurch City Council management and by the CCO itself. Both organisations consider that the commercial approach of the CCO is providing positive outcomes that could not have been achieved by the Council if it were directly governing the project.

29. It is expected that establishment costs for setting up the CCO would be less than \$100,000 with the major cost elements being the preparation of foundation documents and recruitment of the

directors and chief executive for the new entity.

30. It is expected that on-going governance and executive costs of operating the new CCO would be in the order of \$500,000 per annum. These would form part of overall project costs. Other operating costs would be absorbed into existing TCC cost structures. It is not possible to accurately quantify resulting potential benefits from establishing the CCO in dollar terms but it is worth noting that the cost of the CCO over the eight year project development timeframe is less than 1.5% of the estimated project cost. Creating an additional 1.5% of project value would not seem an ambitious target for a competent commercially focused board.
31. The greater degree of separation of the CCO from TCC in options 2 and 3 may create slightly greater stakeholder confidence than the preferred model but the difference is unlikely to be great if sufficiently empowering delegations to the CCO are put in place. The difference does not out-weigh the other advantages of option 1.

Implementation of the preferred model

32. There is a substantial amount of work to be undertaken to implement the CCO if the decision is made to proceed. The following are the key actions required:
- **Preparation of foundation documents**

These include:

 - the company constitution;
 - the letter of expectation to clearly define what TCC requires the CCO to do. This should include the delegations of authority to act from TCC to the CCO. The delegations would include dealing with things such as day to day project decision making; control of the project team; the CCO's role in the approval of contracts and variations; the CCO's role in the authorisation of payments to suppliers etc;
 - contractual arrangements between TCC and the CCO, if any are required over and above the standard LGA accountability instruments;
 - a grant funding agreement between TCC and the CCO to provide funding of governance costs
 - Any required taxation instruments.
 - Once the CCO is established, it will be required to prepare a statement of intent (SOI) for review by TCC. Although this document is prepared post implementation, and by the CCO rather than by TCC, it is as important a strand in the accountability of the CCO as the foundation documents listed.
 - **Consultation**

This includes:

 - meeting the requirements of the Local Government Act 2002;
 - obtaining input from mana whenua;
 - communication with other key partners such as potential external funders.
 - **Appointment of directors**

This process is guided by Local Government Act requirements and any applicable TCC policy. This will be one of the most important aspects of the establishment of the CCO. Ultimately the skills and experience of the directors in the delivery of large scale construction projects will be a critical determinant of the success of the new entity.
 - **Existing contractual arrangements**

Existing contracts with suppliers will need to be reviewed to determine if any amendments

are needed or whether the CCO will need to be appointed as agent for TCC in relation to any contractual requirements or powers.

- **External funding**

Any agreements with funders or applications for funding will need to be reviewed to determine if any notification of the change in project governance arrangements is required.

- **TCC support services**

The provision of support and accommodation for the CCO will need to be integrated into existing financial and corporate services systems.

- **Implications for TCC Civic Development Team staff**

The existing Civic Development Team should continue in its present form during the transition to the CCO governance model. The structure should then be reviewed with CCO involvement to ensure that it is fit for purpose to achieve optimal project outcomes. The CCO's role in the review is important, as shaping the appropriate capacity and capability needed in the project management team is a fundamental element of what the CCO can bring to the table. The CCO should be delegated some level of authority in this regard. The review also needs to provide TCC with the project assurance that it will require going forward.

33. It also needs to be decided if the CCO is being set up solely to undertake the civic precinct redevelopment project or whether it will have a wider project development role.

34. **Implementation timeframe**

I expect that that the CCO could be implemented within a timeframe of six months from commencement. However, that would require efficient timeframe management to be achieved and perhaps eight months is more realistic. Consultation will likely have the greatest impact on timeframes. For example, in TCC's most recent CCO consultation process, 14 weeks elapsed between the respective meetings to initiate consultation and resolve the outcome.

Max Pedersen

4 November 2022

Appendix 1.

Project Team

Marty Grenfell, TCC Chief Executive

Alastair McNeil, TCC General Manager: Corporate Services

Paul Davidson, TCC Chief Financial Officer

Max Pedersen, Consultant

