

Attachment 3 – Features of different Economic Development delivery models

Features	Company limited by Guarantee (PBA model)	Company limited by Guarantee (PP&VA model)	In-house with expert panel (PDAP model)
What is it?	A type of Public Company incorporated pursuant to a Commonwealth Act (Corporation).	A type of Public Company incorporated pursuant to a Commonwealth Act (Corporation).	A Committee of Council and employment of staff or consultants; advised by an expert external panel.
Branding	A new brand would be required, as the PBA could operate as a competitor to any new entity established.	A new brand would be required, as the PBA could operate as a competitor to any new entity established.	<i>New West</i> is an established sub-brand of <i>Penrith is Here</i> .
Where can it operate?	Anywhere in Australia. For example if the entity decided to hold meetings or conferences or attract investment from locations in other states.	Anywhere in Australia. For example if the entity decided to hold meetings or conferences or attract investment from locations in other states.	Only in NSW.
Regulatory Body	ASIC (Commonwealth body)	ASIC (Commonwealth body)	Council / Office of Local Government
Separate Legal Entity	Is a separate legal entity capable of suing and being sued. Has perpetual succession.	Is a separate legal entity capable of suing and being sued. Has perpetual succession.	A Committee would have delegated functions of Council or the General Manager, if an officer is employed. Any action or function exercised by the committee is in the name of Council.
Directors Duties	The duties and liability of board members, and the fines and penalties imposed, are potentially more onerous compared to the other types of entities.	The duties and liability of board members, and the fines and penalties imposed, are potentially more onerous compared to the other types of entities.	Committee members would be obliged to comply with the Code of Conduct and <i>Local Government Act 1993</i> .
Rules / Constitution	A Company has greater flexibility as to what to include in its Constitution. A Company is not required to obtain ASIC's approval to any changes to its Constitution	A Company has greater flexibility as to what to include in its Constitution. A Company is not required to obtain ASIC's approval to any changes to its Constitution	A Committee would have restraints from the <i>Local Government Act 1993</i> , government guidelines and council adopted policy. Some argue that this structure is less flexible than a corporate structure.
Composition of Members	Members are identified in the Constitution. All members are the directors. Any amendment to the Constitution can only be made by special resolution (75% of members agreeing). The law only requires 1 member.	Members are identified in the Constitution, which is agreed to by Council. All members are the directors. Any amendment to the Constitution can only be made by special resolution (75% of members agreeing) and Council agreement. A corporation carries a significant business status and can attract a high calibre of member / director. The law only requires 1 member.	The composition of the committee would be set out in the Council resolution. In the past, there has been reluctance to sit on a Council Committee whilst there is some attraction to being a Director.

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Employment Relationships	The Corporation would be responsible for employing staff and be responsible for staff liabilities. Council could contractually require (as part of a funding agreement) that any recruitment panel for vacant positions must consist of equal Council representation, and that any proposed contractual terms be agreed to by Council.	The Corporation would be responsible for employing staff and be responsible for staff liabilities. However, Council would have a controlling interest on the Board.	Council would be responsible for employing staff and be responsible for staff liabilities.
External relationships / status attached to entity	A company carries greater status than a cooperative or association. The 'business to business' connection is seen as a benefit. For others (eg international investors) a local government connection is more important.	A company carries greater status than a cooperative or association. Depending on the office bearers, it should be able to establish and develop the business relationships required to achieve its outcomes.	A local government connection can be important. Competent staff would be able to establish and develop the business relationships required to achieve outcomes.
Time to Establish	Requires Ministerial approval (experience suggests this can take 12 months from the date of application). A company can be incorporated by ASIC within 24 hours after ministerial approval.	Requires Ministerial approval (experience suggests this can take 12 months from the date of application). A company can be incorporated by ASIC within 24 hours after ministerial approval.	Would take limited time to establish, subject to Council resolution.
Liability	Members liability is limited generally to the amount identified in the Constitution.	Members liability is limited generally to the amount identified in the Constitution.	Council would be liable for any debts incurred.
Financial / Membership Records	Has strict reporting and recording requirements to its members and ASIC, including audited financial statements.	Has strict reporting and recording requirements to its members and ASIC, including audited financial statements.	This information would fall under the Council's current financial recording and reporting obligations.