Attachment D

Delivery and Operating Model

1. **<u>Delivery and Operating Model 1</u> –** The Territory provides a grant to RSPCA to facilitate design and construction of the Facility. The Territory retains control of the New Site as the Crown lessee. The ownership of the Facility is retained by The Territory whilst the RSPCA operates the Facility.

   Grant of Crown lease to Territory.

   Subleasing to RSPCA and Commercial Use:

   - The Territory plans to sublease all or part of the Facility to the RSPCA.
   - The Territory may retain control over parts of the Facility intended for commercial use (e.g., cafes, retail establishments) and either operate these itself or sublease them to other commercial entities. Alternatively, the RSPCA could sub lease to generate revenue for their operations.

   Legal Framework:

   - Any lease to the RSPCA or subsequent subleases would be governed by the *Leases (Commercial and Retail) Act 2001 (Leases Act).*
   - Implications include the Territory bearing ongoing financial responsibility for ongoing costs for structural repairs, replacement of services and other requirements to ensure the premises remained fit for purpose.
   - Depending on how this model is structured, it is likely that it would be considered a procurement under the *Government Procurement Act 2001* (GPA) which would have compliance and potential financial implications for the RSPCA and the Territory.

   Financial Responsibilities:

   - The Territory will be responsible for all capital costs associated with the Facility during the sublease term.
   - Since the RSPCA will pay nominal rent, these capital costs cannot be recovered from the RSPCA's sublease income.
   - Rent from commercial tenants might help offset some of these costs.

While the Territory can sublease parts of the Facility to the RSPCA and commercial entities, it will bear the responsibility for significant capital costs, which cannot be passed on to the RSPCA due to legal restrictions. Income from commercial tenants might help mitigate these expenses.

2. **<u>Delivery and Operating Model 2</u> –** The Territory provides a grant to RSPCA to design and construct the Facility. The Territory owns the and subleases to RSPCA on a long-term lease. The RSPCA owns the facility.

   Sublease of Unimproved Land:

   - The Territory would sublease the New Site to the RSPCA as serviced but otherwise unimproved land.
   - The RSPCA would build the Facility on this land. Even though the Facility would be attached to the land, it would legally remain separate from the land.

   Legal Separation of Building and Land:

   - Normally, buildings attached to land are considered part of the land. However, it's possible to legally separate the ownership of the building from the land through an explicit agreement.
   - In this model, the RSPCA would own the Facility, while the Territory would own the land.

   Practical Challenges:

   - Despite the legal separation, the Facility is fixed to the Territory-owned land and cannot be removed or used independently.
   - If the RSPCA's right to occupy the land ends, they would have to either demolish the Facility or surrender it to the Territory.
   - This makes separate ownership impractical, as it doesn't provide any real advantage over a standard sublease.

   Due to these practical issues, this model is not recommended.

3. **<u>Delivery and Operating Model 3</u> –** The Territory constructs the Facility on the New Site in accordance with RSPCA specifications and subleases the New Site to RSPCA for a nominal rent. This would include a provision for RSPCA to sublease parts of the building for income generating purposes.

   Construction and Sublease:

   - The Territory will build the Facility instead of the RSPCA.
   - The RSPCA will lease the entire Facility and can sublease parts of it to other businesses, like cafes.

   Legal and Financial Considerations:

   - The same legal issues mentioned earlier (about the Leases Act and capital costs) apply here and need to be considered.

- Since the RSPCA will lease the whole Facility, the Territory won't benefit from the commercial rent, which would go to the RSPCA.

This model involves the Territory constructing the Facility and leasing it to the RSPCA, who can then sublease parts of it. However, the Territory won't be able to use the rent from commercial tenants to offset costs, as that rent will go to the RSPCA. In this model the Territory would not have the opportunity to benefit from goodwill and existing relationships the RSPCA have with the construction and development sector to reduce costs.

4. **Delivery and Operating Model 4 (Recommended model) –** The Territory provides a grant to RSPCA to design and construct the Facility. The Territory then grants a Concessional Crown Lease to the RSPCA in respect of the New Site.

   Concessional Crown Lease:

   - This would address the requirements to provide RSPCA long term occupancy of the New Site and allow it to own the Facility while ensuring that it can only be used for the purposes set out above (subject to those purposes being consistent with both the Territory Plan and the requirements for a concessional lease.
   - This would give the RSPCA long-term occupancy and ownership of the Facility, but the Facility must be used for specific purposes as outlined in the Territory Plan and the requirements for a concessional lease.

   Granting a Concessional Lease:

   - The Territory Planning Authority (TPA) can grant concessional leases to community organisations with the Executive's approval.
   - The Executive must ensure the lease will benefit the community and that direct sale is the best method to achieve this. Executive will be required to publish reasons for this decision.
   - It is likely that the RSPCA's activities on the New Site may qualify as a "community activity centre," which is defined as providing social wellbeing to the community. There is also scope to prescribe another use through regulations that better aligns to the activities being undertaken by the RSPCA.

   This model involves granting the RSPCA a concessional lease for the New Site, allowing them to own and operate the Facility for community purposes. However, commercial activities like cafes would need to be incidental to the primary community lease use and will require approval of the Territory Planning Authority.