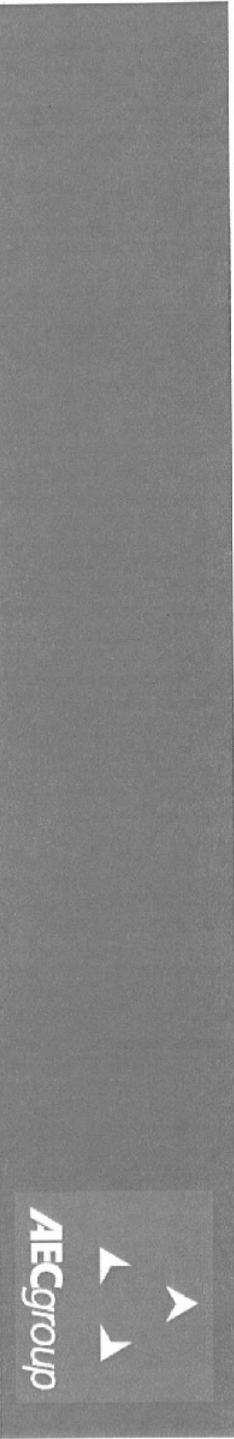



10.9 Richmond-Tweed Regional Library



**Richmond Tweed Regional Library Service**

November 13<sup>th</sup> 2009

**Project Findings and Recommendations**

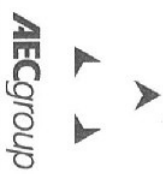


|                                   |                               |                                    |                             |
|-----------------------------------|-------------------------------|------------------------------------|-----------------------------|
| Economics, Planning & Development | Community Research & Strategy | Information & Knowledge Management | Business Strategy & Finance |
| Design, Marketing & Advertising   |                               |                                    |                             |

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## Presentation Structure

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- The need for change
- Description of the options under review
- Assessment of the options under review
- Recommendations
- Next Steps
- Questions

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## Need for change

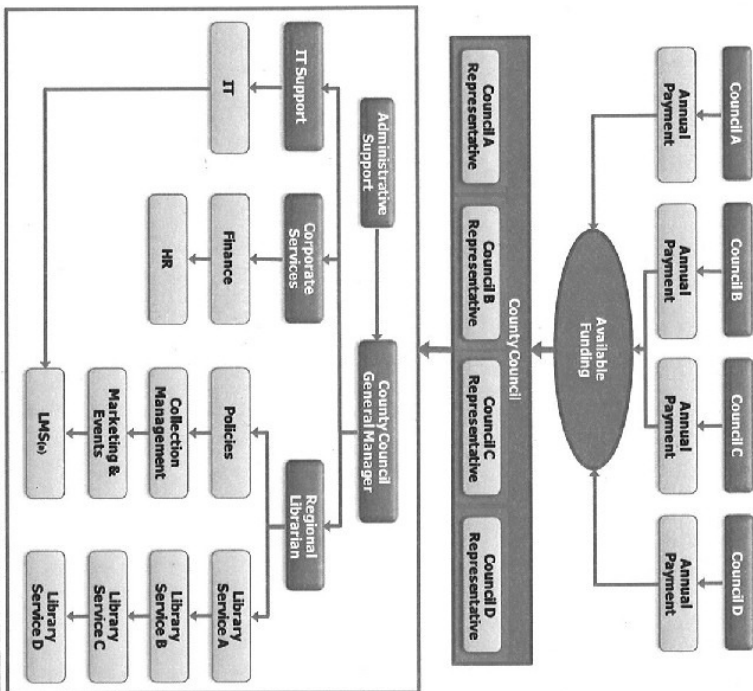


Before considering the available options it is vital to understand:

- The current library agreement cannot be amended to reflect the current operations and management of RTRL as RTRL is not a legal entity.
- Advice from the Minister for Local Government has also ruled out the option of a company limited by guarantee.

# County Council Model

Potential Implementation Structure



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## County Council Model

Key Issues



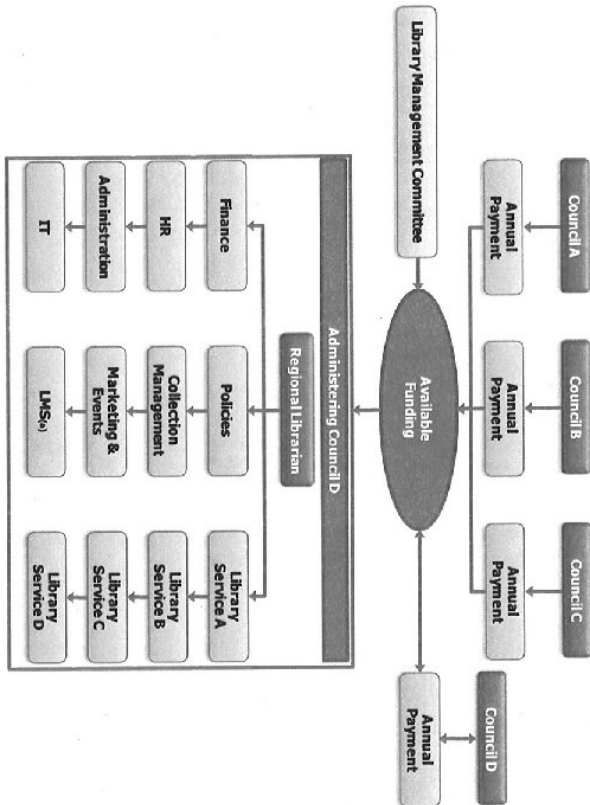
- Maintains the current structure and autonomous operating style
- Retains key role for Library Committee
- Unlikely to be approved at State Government level in the short-medium term (at least three years)
- Uncertainty about payment of library subsidy
- Would establish a permanent entity
- Limited support amongst member Councils

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# Administrative Council Model

Potential Implementation Structure



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## Administrative Council Model

Key Issues



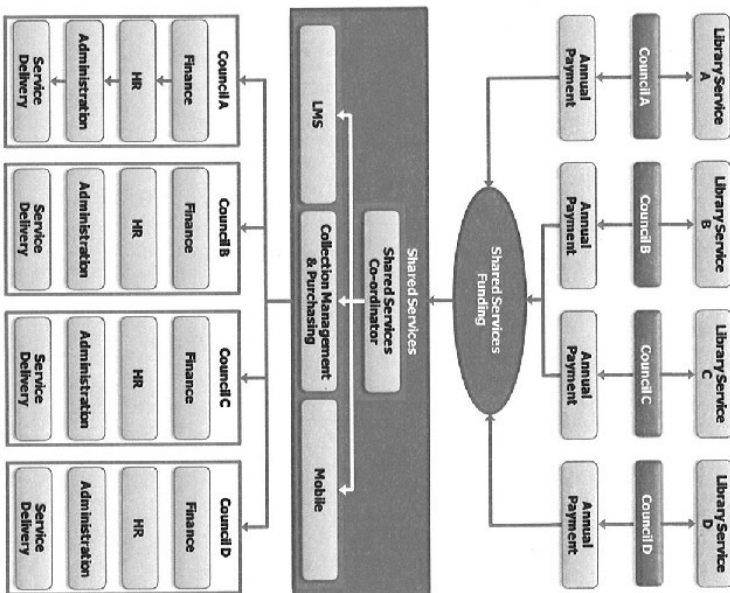
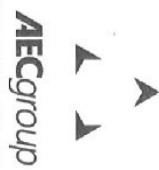
- Would maintain the current regional structure
- Changed role for library committee
- Dependent one Council being willing to act as administering Council
- Would require minimum 5 year commitment from each Council
- Could be implemented more quickly than other models
- Would comply with all relevant legislation

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# Shared Services Model

Potential Structure



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## Shared Services Model

Key Issues



- Would result in dissolution of current regional structure
- Reliant on one Council being willing to 'host' some services
- Could be implemented quickly
- Would comply with all relevant legislation
- Represents the biggest change from current structure
- Requires agreement on which services to share



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## Financial Assessment



- Biggest costs are staff and books and these costs stay the same
- County Council likely to be most expensive because it requires additional administrative body
- However, administrative Council and shared services costs would increase significantly if Council are unable to deliver efficiency savings
- Estimated total costs 2009-10:
  - County Council \$5.5 million
  - Administrative Services \$5.3 million
  - Shared Services \$5.3 million

## Recommendations



- Current business model is not a viable option
- If a Council is willing to act as Administering Council, this option should be pursued
  - Quickest to establish
  - Resolves risks associated with current approach
  - Maintains regional structure
  - Potential role for library committee
  - Could develop into County Council in the longer term
- If no Council willing to act as Administering Council, pursue shared services
  - Would result in break up of region
  - Still requires an administering Council

## Questions & Discussion

---



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# Richmond Tweed Regional Library Service

November 13<sup>th</sup> 2009

## Project Findings and Recommendations



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## **Richmond Tweed Regional Library Agreement**

**Lismore City Council  
and**

**[Insert Name] Shire Council**

**[Insert Date]**

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## Richmond Tweed Regional Library Agreement

### Summary Sheet

#### Administering Council:

**Name:** Lismore City Council

**Address:** 43 Oliver Avenue, GOONELLABAH NSW 2480

**Telephone:** 1300 87 83 87

**Facsimile:** 02 66 250 400

**Email:** council@lismore.nsw.gov.au

**Representative:** General Manager - Paul O'Sullivan

#### Participating Council:

**Name:** Ballina/Byron/Tweed Shire Council

**Address:** [Insert Details]

**Telephone:** [Insert Details]

**Facsimile:** [Insert Details]

**Email:** [Insert Details]

**Representative:** [Insert Details]



## Richmond Tweed Regional Library Agreement

### Parties

**Lismore City Council** ABN 60 080 932 837 of 43 Oliver Avenue, GOONELLABAH NSW 2480 (**Administering Council**)

and

**[Insert Name] Shire Council** ABN [Insert Details] of [Insert Details] (**Participating Council**)

### Background

- A The Administering Council and the Participating Council have each adopted the Act.
- B The Participating Council is willing to allow the Administering Council to undertake the function of providing, controlling and managing the libraries, library services and information services of the RTRL in its Area.
- C The Administering Council is willing to undertake that function.
- D The Parties wish to enter into this Agreement under s12(1) of the Act to give effect those arrangements.

### Operative provisions

#### Part 1 - Preliminary

##### 1 Definitions & interpretation

- 1.1 In this Agreement the following definitions apply:

**Act** means the *Library Act 1939*.

**Administering Council's Assets** means Net Assets at the commencement of this Agreement used for the provision of the RTRL Services other than the Council Assets and the Shared Assets.

**Adopted Budget** means a budget adopted under clause 19.5.

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.

**Approved Rate** means the rate specified from time to time by the Minister administering the LG Act by notice published in the Gazette under s566 of the LG Act.



**Area** has the same meaning as in the LG Act.

**Commencement Date** means the date of this Agreement.

**Council** has the same meaning as in the LG Act.

**Council Assets** means assets used for the provision of RTRL Services listed in Column 1 of the Table in Schedule 1 that are owned by the Councils listed in Column 2 of that Table opposite the assets.

**Delegation** means the delegation contained in clause 3.1.

**Executive Officer** means the General Manager of the Administering Council or his or her nominee.

**Financial Year** means the period commencing on 1 July in a year and ending on 30 June in the following year.

**Function** has the same meaning as in the LG Act.

**LG Act** means the *Local Government Act 1993*.

**Library Committee** means the committee referred to in s11 of the Act and constituted in accordance with clause 16.1 of this Agreement.

**Library Council** means the Library Council of New South Wales.

**Net Assets** means the value of all assets less the value of all liabilities.

**Other Participating Council** means the party to a Similar Agreement other than the Administering Council.

**Participating Council's Contribution** means the monetary contribution for the RTRL Services payable by the Participating Council to the Administering Council in respect of a Financial Year specified in the applicable Adopted Budget.

**Participating Council's Premises** means any part of a building or land within the Participating Council's Area that is used for the provision of the RTRL Services only in the Participating Council's Area.

**Party** means a party to this agreement, including their successors and assigns.

**Regional Library Manager** means the person appointed in accordance with clause 7 of the Agreement, with the functions and duties set out in clause 18.

**Regulation** means the *Library Regulation 2005*

**RTRL** means the Richmond Tweed Regional Library.

**RTRL Services** means the libraries, library services or information services of the RTRL provided, controlled and managed by the Administering Council.

**Service Level Agreement** means the service level agreement entered into by the Administering Council and the Participating Council which is contained in Schedule 2 to this Agreement, or any amended or replacement agreement entered into by the Parties, in writing from time to time.

**Shared Assets** means Net Assets created and accumulated during the Term for the purpose of the provision of the RTRL Services.

**Similar Agreement** means an agreement relating to the RTRL on similar terms to this Agreement between the Administering Council and a Council other than the Participating Council.



**Term** means the period commencing on the Commencement Date and ending on the Termination Date, subject to clause 2.3.

**Termination Date** means 5 years after the Commencement Date subject to clause 2.3.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
  - 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing is to be done on the next business day.
  - 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
  - 1.2.5 A reference in this Agreement to a \$ value is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
  - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
  - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
  - 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
  - 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
  - 1.2.15 Any schedules, appendices and attachments form part of this Agreement.



1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

## **2 Term**

- 2.1 This Agreement commences on the Commencement Date and ends on the Termination Date.
- 2.2 Not later than 12 months before the Termination Date, each Party is to notify the other Party in writing whether it wishes to extend the Term of this Agreement for a specified period of not less 5 years.
- 2.3 If the Parties agree in writing to an extension under clause 2, the Term is extended accordingly and the Termination Date is the last day of the extended Term.

## **3 Delegation**

- 3.1 Pursuant to s12(1) of the Act and s377 of the LG Act, the Participating Council delegates to the Administering Council all of the Participating Council's functions in relation to the provision, control and management of libraries, library services and information services except:
  - 3.1.1 any function that cannot be delegated under s 377(1) of the LG Act or any other law,
  - 3.1.2 the power to enter into agreements or other arrangements on behalf of the Participating Council, and
  - 3.1.3 the power to institute proceedings at law or in equity on behalf of the Participating Council.
- 3.2 The Administering Council is to lawfully exercise functions delegated to it under clause 3.1.
- 3.3 The Parties acknowledge that the Participating Council is required by s380 of the LG Act to periodically review its delegations and nothing in this Agreement prevents it from revoking or failing to renew the delegation referred to in clause 3.1 upon such a review.
- 3.4 This Agreement terminates on the date on which any revocation or non-renewal of the delegation referred to in clause 3.1 takes effect.

## **Part 2 - The Administering Council's responsibilities**

### **4 Termination of previous agreement**

- 4.1 Any previous agreement entered into between the Parties relating to the RTRL Services is terminated with effect on the Commencement Date.
- 4.2 Anything done or agreed by the Parties under an agreement terminated under clause 4.1 remains validly done or agreed or may continue to be done, as the case may be, unless it is contrary to this Agreement or anything done or agreed by the Parties under this Agreement.



## 5 Provision of RTRL Services

- 5.1 The Administering Council is to deliver the RTRL Services within the Participating Council's Area in accordance with the Service Level Agreement and otherwise according to law.
- 5.2 The Administering Council is to provide administrative services in connection with the RTRL Services including:
  - 5.2.1 keeping and auditing all records and accounts in accordance with all relevant legislation and by-laws,
  - 5.2.2 managing funds and reserves to maximise income,
  - 5.2.3 signing all contracts and agreements relating to the RTRL Services, and
  - 5.2.4 setting the employment conditions of all staff employed in connection with the provision of the RTRL Services.
- 5.3 The Administering Council is to develop, implement, maintain, and monitor the implementation of, a management plan for the provision of the RTRL Services in the Participating Council's Area.
- 5.4 The Administering Council is to prepare policy statements on relevant aspects of the RTRL Services and regularly review policies in order to improve the provision of library services for residents of the Participating Council's Area.
- 5.5 The Administering Council is to use reasonable endeavours to obtain the full benefit of grants and subsidies available for the RTRL Services from the governments of the Commonwealth of Australia and the State of New South Wales and from any other government agencies.
- 5.6 The Administering Council is to use reasonable endeavours to co-operate with libraries and library systems in the wider library network for the benefit of the RTRL and to enhance the provision of the RTRL Services.
- 5.7 The Administering Council is to distribute minutes from Library Committee meetings to the Participating Council as soon as reasonably practicable after the minutes are produced.

## 6 Reporting on delivery of RTRL Services

- 6.1 By not later than 30 November in each year, the Administering Council is to submit to the Participating Council in respect of the previous Financial Year:
  - 6.1.1 an audited financial statement that discloses the share of the Administering Council's Assets and Shared Assets attributable to the Participating Council and each Other Participating Council,
  - 6.1.2 details of the activities of the Administering Council in relation to the provision of the RTRL Services including, but not limited to, statistics of purchases for the library collection, and
  - 6.1.3 a report outlining:
    - (a) the size, age and distribution of the collection,
    - (b) the number of borrowers and items borrowed,
    - (c) the number of library visits,
    - (d) the number and type of value-added services, and



- (e) an assessment of the quality of the RTRL Services provided to the Participating Council by comparison to NSW Public Library Statistics published annually by the State Library of NSW.

6.2 In November, February and May in each year, the Administering Council is to provide a report to the Participating Council on the delivery of RTRL Services in the Participating Council's Area in the immediately preceding period.

## 7 Staffing

- 7.1 For the purposes of providing the RTRL Services, the Administering Council may engage staff, including a Regional Library Manager.
- 7.2 Staff referred to in clause 7.1:
  - 7.2.1 are to be engaged:
    - (a) in accordance with the LG Act, and
    - (b) having regard to the Library Council of NSW Standards and Guidelines for NSW Public Libraries as amended from time to time,
  - 7.2.2 are employees of the Administering Council,
  - 7.2.3 are subject to the direction and control of the general manager of the Administering Council.
- 7.3 The Regional Library Manager is to be a librarian recognised by the Australian Library and Information Association.
- 7.4 The Regional Library Manager is to report to the Executive Officer.
- 7.5 Staff referred to in clause 7.1, other than the Regional Library Manager, are to report to the Regional Library Manager.

## 8 Assets

- 8.1 The Administering Council owns all Administering Council's Assets and Shared Assets and is responsible for managing and maintaining those assets.
- 8.2 The Administering Council is to maintain a register of all Administering Council's Assets and Shared Assets.
- 8.3 Except as provided by clause 8.4, the Participating Council's share of the Administering Council's Assets is [Drafting Note. Insert No.]%.
- 8.4 The Participating Council is entitled to [Drafting Note. Insert No.]% of the following Administering Council's Assets:
  - 8.4.1 the RTRL headquarters land and building, and
  - 8.4.2 mobile library vehicles used to provide the RTRL services.
- 8.5 The Administering Council may not, without the prior written agreement of the Parties and any Other Participating Councils, sell or otherwise dispose of any of the Administering Council's Assets referred to in clause 8.4 that it does not intend to replace.



- 8.6 The Participating Council is entitled to the net proceeds of any sale or disposition referred to in clause 8.5 in accordance with the share referred to in clause 8.4.

## 9 Administering Council's insurances

- 9.1 The Administering Council is to hold, during the Term, and the Participating Council may request that the Administering Council produce within 14 days of a written demand, evidence that the Administering Council holds:
- 9.1.1 building insurance for any Administering Council's Assets and Shared Assets which are buildings,
  - 9.1.2 contents insurance for all Administering Council's Assets and Shared Assets contained in the Participating Council's Premises,
  - 9.1.3 public liability insurance for at least \$20,000,000.00 for a single occurrence,
  - 9.1.4 workers compensation insurance in relation to all staff engaged for the purposes of providing the RTRL Services, and
  - 9.1.5 any other insurance required by law.

## Part 3 - The Participating Council's responsibilities

### 10 Participating Council's Contribution

- 10.1 The Participating Council is to pay the full amount of the Participating Council's Contribution to the Administering Council for each Financial Year.
- 10.2 The Participating Council's Contribution is to be paid in quarterly instalments on the first days of July, October, January and April in the Financial Year to which the payment relates.
- 10.3 Interest on any amount payable under this Agreement that is not received within 28 days of the date on which it is required to be paid accrues interest at the Approved Rate until the date it is deposited in accordance with clause 10.2.

### 11 Changes to services or resources

- 11.1 The Administering Council may, with the agreement of the Participating Council, provide RTRL Services to the Participating Council that are not covered by or otherwise not in accordance with the Service Level Agreement.
- 11.2 The Participating Council is to reimburse the Administering Council for the cost of providing RTRL Services referred to in clause 11.1 not later than 30 days after receiving a tax invoice from the Administering Council for the provision of those services.
- 11.3 The Participating Council is to give the Administering Council not less than 6 months prior written notice of any requirement for the RTRL Services to be reduced and is to reimburse the Administering Council for the cost of reducing





the services including legal, administrative and staffing costs, not later than 30 days after receiving a tax invoice from the Administering Council for so doing.

## 12 Participating Council's Premises

- 12.1 The Participating Council is responsible for, and is to bear the costs of, the following relating to the Participating Council's Premises:
  - 12.1.1 the provision, maintenance, furnishing, equipping, cabling, lighting, cleaning, security, air-conditioning, of the premises,
  - 12.1.2 electricity, gas and other services for the premises,
  - 12.1.3 building signage for the premises,
  - 12.1.4 all rates, charges, taxes and other costs relating to the premises.
- 12.2 The Participating Council is to provide sufficient resources to support and maintain the Participating Council's Premises so as to ensure the effective and efficient operation of the RTRL Services from the premises.
- 12.3 The Participating Council is to consult with the Regional Library Manager in relation to any refurbishment of the Participating Council's Premises.
- 12.4 The Participating Council is to give the Administering Council 12 month's prior written notice of its intention to withdraw the Participating Council's Premises or any other Council Asset of the Participating Council from use in relation to the provision of the RTRL Services.
- 12.5 The Participating Council's Premises is to comply with all relevant laws, including occupational health and safety laws and the Building Code of Australia, at all times during the Term.

## 13 New or Additional Premises

- 13.1 The Participating Council is to consult with the Regional Library Manager in relation to any new or additional premises that the Participating Council proposes to use in relation to the RTRL Services in its Area.
- 13.2 Premises referred to in clause 13.1 become Participating Council's Premises when the Regional Library Manager notifies the Participating Council in writing that the premises may be used in relation to the RTRL Services in its Area.
- 13.3 The Participating Council is to bear any additional costs incurred by the Administering Council in providing the RTRL Services resulting from any new or additional Participating Council's Premises.

## 14 Inspection and rectification of Participating Council's Premises

- 14.1 The Administering Council is to inspect all Participating Council's Premises at least once in each year.
- 14.2 The Administering Council may give the Participating Council notice in writing that it requires works to be carried out to the Participating Council's Premises.



- 14.3 The Administering Council may only give a notice referred to in clause 14.2 if it considers that the works the subject of the notice are reasonably required:
  - 14.3.1 to ensure that the Participating Council's Premises comply with any relevant law, or
  - 14.3.2 to enable the Participating Council's Premises to be used for the provision of the RTRL Services in accordance with this Agreement.
- 14.4 Not later than 21 days after receiving a notice referred to in clause 14.2, the Participating Council may give the Administering Council notice in writing that it objects to the notice specifying the grounds of the objection.
- 14.5 The Administering Council is to consider the Participating Council's objection and is to give the Participating Council a further notice in writing stating whether the notice referred to in clause 14.2 is affirmed or varied and, if varied, specifying the details of the variation.
- 14.6 The Participating Council is to comply with a notice issued under clause 14.2 as affirmed or varied under this clause.

## 15 Participating Council's Insurances

- 15.1 During the Term, the Participating Council is to hold:
  - 15.1.1 building insurance for the Participating Council's Premises, and
  - 15.1.2 any other insurance required by law.
- 15.2 At any time during the Term, the Administering Council may give the Participating Council a written request to produce to it evidence that the Participating Council holds the insurances referred to in clause 15.1.
- 15.3 The Participating Council is to comply with a request made under clause 15.2 not later than 14 days after it receives the request,

## Part 4 - Library Committee and Regional Library Manager

### 16 The Library Committee

- 16.1 A Library Committee is constituted for the RTRL by this Agreement and any Similar Agreement.
- 16.2 The Library Committee is comprised of two members appointed by each of the Administering Council, the Participating Council and any Other Participating Council.
- 16.3 Pursuant to s11 of the Act, the Administering Council may delegate functions to the Library Committee from time to time, but may only do so with the agreement of the Participating Council and any Other Participating Council.
- 16.4 The Library Committee is subject to the direction and control of the Administering Council and has no power to direct or control any aspect of the RTRL Services except in accordance with a delegation given to it by the Administering Council in accordance with this Agreement.



- 16.5 The Parties are each entitled to appoint two persons to be members of the Library Committee and one alternate person who may attend meetings of the Library Committee if one or both members cannot do so.
- 16.6 A majority of the members of the Library Committee are to be present at a meeting in order to constitute a quorum.
- 16.7 Each member of the Library Committee present at a duly convened meeting at which a quorum is present may cast one vote of equal value in relation to any matter to be decided by the Library Committee.
- 16.8 The majority of votes cast by members of the Library Committee in relation to a matter constitutes a decision of the Library Committee.
- 16.9 The members of the Library Committee are to elect the chairperson of the Library Committee.
- 16.10 The Library Committee may only be dissolved or reconstituted by agreement between the Parties and any Other Participating Councils.
- 16.11 Except as provided by this Agreement, the Library Committee may determine the procedure for the calling of meetings, the conduct of those meetings, and the regularity of those meetings.

## **17 Functions of Library Committee**

- 17.1 The functions of the Library Committee are:
  - 17.1.1 to monitor and advise the Parties on the content and implementation of the Service Level Agreements,
  - 17.1.2 to represent the Parties' respective library service requirements,
  - 17.1.3 to act as the primary liaison between the Parties in relation to the RTRL Services,
  - 17.1.4 to develop a management plan for the RTRL Services,
  - 17.1.5 to monitor and review current policies relating to the RTRL Services to ensure that they are consistent with the management plan,
  - 17.1.6 to contribute to the development of new policy relating the RTRL Services,
  - 17.1.7 to assist in the prioritisation of projects relating to the RTRL Services,
  - 17.1.8 to identify emerging library developments relevant to the RTRL Services,
  - 17.1.9 identify potential funding and partnership opportunities relevant to the RTRL Services, and
  - 17.1.10 to exercise such other functions as may be delegated to it by the Administering Council.

## **18 Functions of the Regional Library Manager**

- 18.1 The functions of the Regional Library Manager are:
  - 18.1.1 to develop, maintain and implement a management plan for the RTRL Services in each Council's Area, in consultation with the relevant



- Council, any other staff employed in the branch library in that Area and the Administering Council,
- 18.1.2 to provide advice to the Administering Council on all matters relevant to the policy, planning and development of the RTRL Services,
  - 18.1.3 to implement or assist in the implementation of decisions made by the Administering Council upon matters delegated to it under this Agreement,
  - 18.1.4 to provide advice and support to the Library Committee in order to assist it to properly exercise its functions,
  - 18.1.5 to manage the resources necessary for provision of the RTRL Services in a cost-effective manner,
  - 18.1.6 to select and purchase library books and materials in accordance with a management plan adopted by the Administering Council for the RTRL Services,
  - 18.1.7 to advise the Parties on the operation and staffing of branch libraries in their Areas,
  - 18.1.8 to act at all times in a professional and competent manner,
  - 18.1.9 to manage staff,
  - 18.1.10 to develop and implement a training plan for all staff and volunteers engaged in the provision of the RTRL Services,
  - 18.1.11 to provide reports to the Executive Officer on the management of the RTRL Services and implementation of the management plan, and
  - 18.1.12 such other duties as determined by the Executive Officer from time to time.
- 18.2 The management plan referred to in clause 18.1.1 is to be consistent with the relevant Service Level Agreement, and is to include objectives for:
- 18.2.1 collection development,
  - 18.2.2 service development and delivery,
  - 18.2.3 staff training and development,
  - 18.2.4 staff evaluation and performance measures, and
  - 18.2.5 building maintenance and improvement.

## **Part 5 - Finance and budgeting**

### **19 Adopted Budget**

- 19.1 Not later than 31 March in each financial year, the Administering Council is to give the Participating Council a copy of the proposed budget for the RTRL Services for the following financial year.
- 19.2 The proposed budget referred to in clause 19.1 is to include the amount of the Participating Council's Contribution for the following financial year calculated in accordance with Schedule 3.



- 19.3 The Participating Council's Contribution in the proposed budget referred to in clause 19.1 is to be determined consistently with the Service Level Agreement.
- 19.4 The Administering Council is not to adopt the proposed budget referred to in clause 19.1 unless it has consulted with the Participating Council about the Participating Council's Contribution to be included in that budget
- 19.5 The proposed budget referred to in clause 19.1 is adopted for the purposes of this Agreement when the Administering Council signs and serves a copy of it on the Participating Council which shall be no later than 30 June each year.

## Part 6 - Termination, Distribution of Assets and Disputes

### 20 Termination on notice

- 20.1 Either Party may terminate this Agreement after providing 12 months prior written notice to the other Party of its intention to do so, or on such shorter period of notice as is agreed between the Parties.
- 20.2 If the Participating Council terminates this Agreement under clause 20.1, it bears all costs reasonably incurred by the Administering Council as a result of the termination, including legal, administrative and staffing costs.
- 20.3 Clause 20.2 has effect after the date of the termination until all such costs are paid by the Participating Council.

### 21 Termination due to default of a Party

- 21.1 If a Party to this Agreement considers that the other Party is in breach of any obligation under this Agreement, it may give the other Party notice in writing requiring the breach to be rectified to its satisfaction.
- 21.2 A notice referred to in clause 21.1 is to allow the Party to whom it is given not less than 28 days to rectify the breach or such further period as the Party giving the notice considers reasonable in the circumstances.
- 21.3 If a notice referred to in clause 21.1 relates to a breach of clause 5.1, 10.1 or 14.6 and is not complied with, the Party who gave the notice may terminate this Agreement after giving a further 14 days notice in writing to the other Party of its intention to do so.
- 21.4 Clause 24 does not prevent notices being given under clause 21.1 or 21.3 and does not apply to such a notice or the circumstances relating to the giving of the notice, and any procedure commenced under clause 24 ceases to apply when the notice is given.

### 22 Costs incurred as a result of default

- 22.1 This clause applies if a Party terminates this Agreement due to default by the other Party and incurs costs in relation to the default.



- 22.2 Any costs referred to in clause 22.1 that are incurred by the Administering Council or Participating Council may be recovered as a debt due in a court of competent jurisdiction.

## 23 Distribution of Net Assets on termination

- 23.1 Upon termination of this Agreement, the Participating Council:
- 23.1.1 is entitled to the shares of the Administering Council's Assets provided for in clause 8,
- 23.1.2 is entitled to the share of the Shared Assets that equates to the proportion that the Participating Council's Contributions bears to the sum of similar contributions made by:
- (a) the Administering Council under this Agreement and any Similar Agreements, and
- (b) Other Participating Councils under Similar Agreements, during the period starting on the Commencement Date and finishing on the date at which the Agreement is terminated.
- 23.2 The composition of any distribution of the Participating Council's shares of the Administering Council's Assets and Shared Assets under clause 23.1 is to be determined by the Administering Council in consultation with the Participating Council so as to minimise the impact of any such distribution on the continuing delivery of RTRL Services.
- 23.3 The Administering Council may defer any distribution of the Participating Council's shares of the Administering Council's Assets and Shared Assets under clause 23.1 for a period of not more than 2 years from the date of termination of this Agreement, but if it does so the value of the Participating Council's shares accrues interest at the Approved Rate during the period of the deferral.
- 23.4 If all Similar Agreements are terminated before the period referred to in clause 23.3 expires, on termination of the last Similar Agreement, the Administering Council is to distribute the Participating Council's shares of the Administering Council's Assets and Shared Assets calculated in accordance with clause 23.1.
- 23.5 Nothing in this clause 23 affects the ownership of the Council Assets.
- 23.6 If the Agreement is terminated, the Participating Council is liable for the Participating Council's share of the liabilities, including contingent liabilities, of the Administering Council relating to the provision of the RTRL Services, including in relation to termination of staff, at the date of the termination.
- 23.7 This clause 23 continues to apply after the termination of this Agreement.

## 24 Dispute Resolution

- 24.1 A dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 24.2 If a notice is given under clause 24.1, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.



- 24.3 If the dispute is not resolved within a further 28 days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee, to select a mediator.
- 24.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 24.5 Notwithstanding anything else in this clause, under s12(5) of the Act, if a Party applies to the Library Council for settlement of a dispute under this Agreement, that dispute is to be settled by arbitration by an arbitrator appointed by the Library Council.

## **Part 7 - Other Provisions**

### **25 Assignment**

- 25.1 No party can transfer, assign, novate or otherwise transfer its interest under this Agreement.

### **26 Notices**

- 26.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 26.1.1 delivered or posted to that Party at the address set out in the Summary Sheet, or
- 26.1.2 faxed to that Party at the fax number set out in the Summary Sheet, or
- 26.1.3 emailed to that Party at the email address set out in the Summary Sheet
- 26.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed or emailed to the latest address or fax number or email address.
- 26.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 26.3.1 delivered, when it is left at the relevant address,
- 26.3.2 sent by post, 2 business days after it is posted, or
- 26.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or



- 26.3.4 sent by email, if the sender does not receive a delivery failure message from the sender's internet services provider in relation to the email within a period of 48 hours of the email being sent.
- 26.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 26.3.4 expires, on a day that is not a business day or after 5pm on a business day, it is to be treated as having been given or made at 9am the next business day.

## **27 Approvals and Consent**

- 27.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 27.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **28 Costs**

- 28.1 The Parties are to bear their own costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement.

## **29 Entire Agreement**

- 29.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 29.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## **30 Further Acts**

- 30.1 Each Party is to promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

## **31 Governing Law and Jurisdiction**

- 31.1 This Agreement is governed by the law of New South Wales.
- 31.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 31.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.





### **32 Joint and Individual Liability and Benefits**

- 32.1 Except as otherwise set out in this Agreement:
- 32.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
  - 32.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

### **33 No Fetter**

- 33.1 Nothing in this Agreement is to be construed as requiring any Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

### **34 Representations and Warranties**

- 34.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement is not to result in the breach of any law.

### **35 Severability**

- 35.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it is to be read in the latter way.
- 35.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

### **36 Modification**

- 36.1 No modification of this Agreement is to be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

### **37 Waiver**

- 37.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 37.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.



- 37.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

### 38 GST

- 38.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 38.2 Subject to clause 38.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply is to also pay the GST Amount as additional Consideration.
- 38.3 Clause 38.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 38.4 No payment of any amount under this clause 38, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 38.5 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, is to exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 38.6 This clause continues to apply after expiration or termination of this Agreement.



**Schedule 1**

(Clause 1.1)

**Part A**

**Council Assets**

| Asset | Council Owner |
|-------|---------------|
|       |               |
|       |               |

[Drafting Note. Insert details of assets used for RTRL Services which are owned by the Participating Council, Other Participating Council or the Administering Council and which are not intended to be distributed amongst the Councils on termination].



## Schedule 2

(Clause 1.1)

### Service Level Agreement

[Drafting Note. Annex Service Level Agreement with Participating Council]

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### Schedule 3

(Clause 19.2)

#### Participating Council's Contribution

The Participating Council's Contribution is based on the Participating Council's share of:

1. branch costs,
2. mobile library costs,
3. book stock costs,
4. computer systems costs, and
5. headquarters costs.

##### Branch Costs

The Participating Council is to pay all direct staffing costs associated with the provision of RTRL Services in its Area.

##### Mobile Library Costs

The Participating Council is to pay a percentage of all costs associated with the mobile library.

The percentage is calculated as follows:

$$\text{Total Mobile Library Costs} \times \left( \frac{\text{Number of Mobile Library Opening Hours in Participating Council's Area}}{\text{Total Number of Mobile Library Opening Hours in the Areas of the Parties and Other Participating Councils}} \right)$$

##### Book Stock Costs

The Participating Council is to pay a percentage of all RTRL costs associated with book stocks.

The percentage is calculated as follows:

$$\text{Total Book Stock Costs} \times \left( \frac{\text{Estimated Population in Participating Council's Area}}{\text{Total Estimated Population in the Areas of the Parties and Other Participating Councils}} \right)$$

##### Computer Systems Costs

The Participating Council is to pay a percentage of all costs associated with the computer systems.

The percentage is calculated as follows:

$$\text{Total Computer System Costs} \times \left( \frac{\text{Number of PCs for Participating Council's Area}}{\text{Total Number of PCs for the Areas of the Parties and Other Participating Councils}} \right)$$



**Headquarters Costs**

Each Council is to pay a percentage of all costs associated with headquarters.

The percentage is calculated as follows:

Total Headquarters Costs x (Estimated Population in Participating Council's Area/Total Estimated Population in the Areas of the Parties and Other Participating Councils)

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## Execution

Executed as an Agreement

Dated:

\_\_\_\_\_  
Executed on behalf of Lismore City Council

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Witness/Name/Position

\_\_\_\_\_  
Executed on behalf of [Insert name] Shire Council

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Witness/Name/Position

ERROR: undefined  
OFFENDING COMMAND: '~

STACK: