



All communication to
GENERAL MANAGER

Our ref: EF11/79.CO12/4576

Your ref: John Eddy

Contact:

22 May 2012

Mr Graeme Kelly
General Secretary
United Services Union
Level 7, 321 Pitt Street
SYDNEY NSW 2000

By email: united@usu.org.au

'Without Prejudice'

Dear Mr Kelly

Richmond Tweed Regional Library (RTRL) Salary System (Your Ref 140512.cc.gs)

Thank you for your letter of 14 May 2012 in reply to our correspondence of 5 April (CO12/3593).

In response to the matters raised in your letter I offer the following comments.

1. Employees transferred from RTRL HQ to Lismore 'Admin Centre'

It is our view that employees that were transferred to the Lismore Council 'Admin Centre' from the RTRL underwent substantial changes to their roles when compared with most other RTRL employees at the time. These changes included:

- Reporting lines & titles
- Role expectations and subsequent grade changes
- New responsibilities to undertake work related to both RTRL & LCC
- Work location and working relationships

2. Our offer of 1 April 2011

It is disappointing that our offer has been rejected by your members. It is not our intention to review this offer at this stage.

We do however remain open to ongoing discussions between all member councils and the USU (on behalf of its members) to resolve this matter.

I would also like to advise that at the recent RTRL Committee meeting on 11 May 2012 it was resolved that the Administrative Council furnish a report to each constituent Council on this matter seeking their approval for LCC to negotiate an outcome.

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Lismore City Council acknowledges the people of the Bundjalung Nation, traditional custodians of the land on which we work.

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In this regard it may be helpful if the specifics of the claim for back pay be articulated by the USU as was asked in our correspondence of 6 December 2011 (ed11/36452 & CO11/11953 - extract reproduced below)

Council has provided specific protocols and developed documentation describing how the integration is managed based on 1 July 2011. It may assist in identifying and addressing the specific concerns if the USU could describe exactly what is meant by "payment of back pay to 1 July 2010" and how this interacts with the Award, Council's procedures and annual review processes, position descriptions, job evaluations, documentation and skills/progression assessments etc. I remain confident that Council has met its commitments as adopted by the Integration Project Implementation Team (albeit with some delays) and the annual progression requirements within the Award.

Should you require further information or if you wish to discuss this please contact John Eddy on 6625 0455.

Yours faithfully


Gary Murphy
General Manager

Copy: cchandler@usu.org.au



New South Wales Local Government, Clerical,
Administrative, Energy, Airlines & Utilities Union

Our Ref: 140512.cc.gs

14th May 2012

Mr Gary Murphy
General Manager
Lismore City Council
PO Box 23A
LISMORE NSW 2480

Facsimile: 6625 0400

Dear Gary

Re: Richmond Tweed Regional Library (RTRL) Salary System your Ref: (EF11/79:CO12/3593)

Thank you for your response to our correspondence dated 5th April 2012.

It is moving towards two years now since the integration of (RTRL) staff into Lismore City Council employment; the expectation of our members is that this matter will be resolved as a matter of urgency.

In relation to bullet points 10 and 11, we are advised that those RTRL employees who were transferred to Lismore Council 'Admin Centre' did not undergo substantial changes to their position descriptions, only changes to their starting locations. Those employees were back paid to 1 July 2010; therefore other RTRL staff who also transferred on 1 July 2010 feel they should receive the same treatment as the admin staff.

In relation to your offer of back pay to the 1st April 2011, our members have been consulted and have overwhelmingly rejected Councils offer.

In the interest of resolving this matter before we proceed to the Industrial Relations Commission, the Union requests that Council reconsider their offer (of the 1st April 2011).

If Council is prepared to put forward an alternative offer to the RTRL staff, the Union is willing to take that offer to mass meetings of members.

We look forward to your response to this proposal by close of business Monday 21 May 2012.

For any further information in regard to this matter please contact Northern Organiser Mr Craig Chandler, 0418 254477.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Graeme Kelly', written over a white background.

Graeme Kelly
General Secretary
Per: CC

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All communication to
GENERAL MANAGER

Our ref: EF11/79/0012/3563

Your ref: John Eddy

Contact:

26 April 2012

Mr Graeme Kelly
General Secretary
United Services Union
Level 7, 321 Pitt Street
SYDNEY NSW 2000

By email: united@usu.org.au

'Without Prejudice'

Dear Mr Kelly

Richmond Tweed Regional Library (RTRL) Salary System (Your Ref 050412.cc.gs)

Thank you for your letter of 5 April 2012 in respect to integration of the RTRL staff into the Lismore City Council salary system and associated background information.

My response, at this stage, will focus on the matters raised in your letter relating to bullet points 9 through 13.

In relation to bullet point 9 all RTRL staff have been transferred to the LCC salary system and have had their position descriptions reviewed and updated with an effective date of 1 July 2011. The assessment of each individual employee in terms of their skill step within the salary system is still progressing. It is acknowledged that this has taken longer than planned. The process is progressing well and it is anticipated that it will be completed in the very near future.

In relation to bullet point 10 and 11 it is correct that those RTRL employees that had substantial changes to their position expectations and location were back paid to a date of 1 July 2010. This is because such changes were effective from 1 July 2010. Other employees at RTRL had no such change in position expectation at that time and their positions continued without change.

In relation to the request for back pay to 1 July 2010 for all RTRL employees (your 12th bullet point) there has been previous communication on Council's position and reasoning based on a 1 July 2011 date. In the interests of resolving this protracted matter Council is willing to offer a compromise integration date of 1 April 2011. In term of skills progression eligibility will continue to be 1 July 2011 and 30 November 2011 as per the current Annual Skills and Performance Review Form documentation (ED11/33650).

I look forward to your response to the offer as proposed. Should you require further information or if you wish to discuss this please contact John Eddy on 6625 0455.

Yours faithfully


Gary Murphy
General Manager

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New South Wales Local Government, Clerical,
Administrative, Energy, Airlines & Utilities Union

Our Ref: 050412.cc.gs

5 April 2012

Mr Gary Murphy
General Manager
Lismore City Council
PO Box 23A
LISMORE NSW 2480

Facsimile: 6625 0400

'Without Prejudice'

Dear Gary

Richmond Tweed Regional Library Salary System

As you are aware the Union has compiled a file for Lismore City Council in relation to the issue of outstanding back pay for former employees of the Richmond Tweed Library Service.

For your information, the Union wishes to present you with some background information on this dispute:

- The salary system of the former employees of Richmond Tweed Regional Libraries (RTRL) had never been reviewed in the 15 years since its implementation in approximately 1997.
- The RTRL Salary System had only 21 grades; step 1 was used as entry level at a 2.5% increase, up to 3% in step 4.
- The Union and the LGSA recommended 21 grades, with 4 steps at 4% increase per step.
- The Union and the USU delegate had raised concerns in relation to the RTRL Salary System with the Director of Libraries, Mr Martin Field. Mr Field agreed with the Union and the delegate, that an urgent review of the RTRL Salary System should take place in 2008.
- Prior to the integration of RTRL with Lismore City Council, it was stated by the then General Manager, Mr Paul O'Sullivan, that they have always been Lismore City Council staff.
- All employees of RTRL Services with the consent of Tweed, Byron Bay, Ballina and Lismore Councils were integrated with Lismore City Council on 1 July 2010, before any review of the salary system could take place.
- The Union can therefore adequately argue that its members were disadvantaged and seek up to 6 years back pay from Lismore City Council and other Councils involved at that time.
- The RTRL Consultative Committee had already agreed to an urgent review of the RTRL Salary System.

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- On 1 July 2010, all staff of RTRL were transferred and integrated into employment with Lismore City Council. They were assured on a number of occasions, that they would be assessed and their position description reviewed and transferred across to the Lismore City Council Salary System by November 2011, and all positions finalised by June 2011. This process has still not been completed.
- The Union is aware that some employees who transferred to Lismore City Council Admin Centre, were assessed and transferred into Lismore City Council salary system and also back paid to the effective date of 1 July 2010.
- Council has seen its way clear to back pay some former employees of RTRL to 1 July 2010 (admin staff), our members are seeking the same treatment from Council.
- The Union, on behalf of its members, seek an agreement with Council that those employees who do receive a pay increase after transferring into the Lismore City Council Salary System are back paid to 1 July 2010, as the admin staff were.
- In the spirit of good industrial relations, the Union will work with Council to achieve an urgent resolution to this issue. Failing an urgent resolution, the Union will proceed with a dispute in the Industrial Relations Commission, seeking up to 6 years back pay for our members.

We understand that all General Managers affected by this dispute meet monthly, therefore we would appreciate a response to this correspondence by no later than 26 April 2012.

Should you wish to discuss, please feel free to contact USU Regional Official Craig Chandler on 0418 254477.

Yours faithfully



Graeme Kelly
General Secretary
Per: CC

Report No. 1. Library Services (Richmond Tweed Regional Library)
General Manager
File No: ADM601000 #1205121
Principal Activity: Library Services
Summary: This report provides Council with management's recommendations for the future of library services in Byron Shire.

RECOMMENDATION:

1. **Byron Council reconfirm its commitment to the delivery of library services on a regional basis.**
2. **That Council endorse:**
 - a) **that there is a need for the RTRL to obtain an independent audit of assets and liabilities to be undertaken to establish baseline information which can form the foundation of any future governance arrangements;**
 - b) **interim governance arrangements for the RTRL (subject to obtaining the necessary approval under s12A of the Library Act) being the continuation of the current model of operation under the 1970s agreements for an interim period of up to 12 months pending finalisation of future permanent governance model;**
 - c) **a County Council as Byron Shire Council's preferred permanent governance model;**
 - d) **the key steps (1 to 15) for attempting to establish interim and permanent governance arrangements as outlined in the body of this report (#1196191).**
3. **That Byron Shire Council request that Lismore City Council schedule an RTRL Committee meeting as a matter of urgency.**

Attachments:

- CONFIDENTIAL legal advice #1204670 [10 pages]..... **Annexure 33(a)**
- AEC Group Costs of Administrative versus County Council Model #1205141 [2 pages] **Annexure 33(b)**
- CONFIDENTIAL legal advice dated 29/7/11 #1119972 [5 pages] **Annexure 33(c)**
- CONFIDENTIAL legal advice dated 30/8/11 #1135420 [19 pages] **Annexure 33(d)**

This report is for submission to Ordinary Meeting Date of Meeting: 22 March 2012

Signed:
(EXECUTIVE MANAGER)

Signed:
(GENERAL MANAGER)

Report

Glossary

In this report:

RTRL means the Richmond Tweed Regional Library.

RTRL Committee means the Richmond Tweed Regional Library Committee convened in accordance with the 1970s Agreements.

1970s Agreement/s – means the binding agreements Lismore Council entered into with each of Ballina, Byron and Tweed Councils in the 1970s which established the current RTRL and which remain in force today.

Current Model of Operation means the RTRL model of operation established by the 1970s Agreements.

Lismore Proposed Administrative Council Model means the administrative council model currently being developed by Lismore City Council, in which Lismore proposes that it will provide services and administer the RTRL via four separate five-year Regional Library Agreements between Lismore and each of the other participating councils. Annual Service Level Agreements are proposed to be attached as Schedules to the proposed individual agreements. NB – this model is only proposed and significantly is not currently in force (the 1970s Agreements model remains in force).

Most Recent Byron Council Resolution

Council resolved on 8 September 2011:

11-723 Resolved:

1. *That Council note that Lismore City Council has requested that, before 13 September 2011, Byron Shire Council determine:*

Either:

- a) *its commitment to the delivery of a regional library service through the revised Richmond Tweed Regional Library Agreement and Service Level Agreement attached (Annexures 5(a) #1122894 and 5(b) #1115460).*

or

- b) *a preference to investigate other options afforded by the Library Amendment Act 2011.*

2. *That Council's preference is per 1(b) above, to investigate other options afforded by the Library Amendment Act 2011.*
3. *That Council note that Tweed Shire Council has endorsed the Administrative Council model (with the addition of an asset register), and has not indicated a preference to investigate other options afforded by the Library Amendment Act 2011.*
4. *That Council note that Ballina Shire Council has resolved that the matter be deferred until comparative information is received on a County Council model and an in-house model.*

5. *That Council authorise the General Manager to write to Lismore City Council requesting that the RTRL Committee be reactivated and resume regular meetings to properly conduct its affairs in accordance with the 1978 RTRL Agreement, which is still in operation.*
6. *That Council authorise the General Manager to advise Lismore City Council that its preference is for the RTRL Committee to be resumed to consider alternative options for the delivery of regional library services afforded by the Library Amendment Act 2011, including the County Council model.*
7. *That the report remain confidential and the two last annexures (5f and 5g) be made public.*

History of the RTRL

The history of this matter is well-documented and Council has been advised on the RTRL and its future on at least 10 occasions since 2009. Options for the future management of the RTRL were presented to Council on 3 December 2009 (Resn 09-1024), and subsequently throughout 2010 on the following dates:

1. 1 July (Res 10-553)
2. 2 December (Res 10-1019)

and in 2011 on the following dates:

1. 28 April (Res 11-347 and Res 11-353, two separate reports)
2. 9 June (Res 11-481 and Res 11-489, two separate reports)
3. 30 June (Res 11-532)
4. 8 September (Res 11-723)
5. 15 December (Res 11-1059).

The essential points underlying this issue are as follows:

1. The County Council Model has been the strong preference of all participating Councils for the governance of the Regional Library for the last two decades.
2. Inconsistencies between the Library Act 1939 and the Local Government Act 1993 had, up until the adoption of the Library Amendment Act 2011 in June 2011, made the 1978 library services agreement between Byron Shire Council and Lismore City Council non-compliant. This has been resolved via the adoption of the Library Amendment Act 2011.
3. The 1978 library services agreement between Byron Shire Council and Lismore City Council is a binding agreement and continues in the absence of the termination procedures outlined in that 1978 Agreement being actioned.
4. As indicated in the 1978 Agreement, Byron Shire Council has delegated some, but not all, of its functions to the RTRL Committee. Byron Shire Council has never delegated any of its functions to Lismore City Council.
5. The 1978 agreement contains limited provisions concerning the entitlement of each of the relevant Councils to the assets of the RTRL, and with respect to the level of exposure of each of the Councils to the liabilities associated with the RTRL.
6. Lismore City Council had received legal advice that its position as Executive Council to the RTRL Committee was tenuous and placed Lismore City Council at risk, because of the then existing (now rectified) inconsistencies between the Library Act 1939 and the Local Government Act 1993.

7. In response to the legal advice at the time, a report was prepared by the AEC Group on options for the future management of the library service. As a result of this review, the RTRL Committee then proposed that the Administrative Council Model be developed for further consideration by participating Councils and the RTRL Committee.
8. Byron Shire Council subsequently resolved (09-1024) to endorse the adoption of the proposed Administrative Council model at that time (which was the same qualification included in the relevant RTRL Committee resolution). Council also authorised the General Manager to develop in conjunction with the General Managers of the other member Councils the service levels to be incorporated into an Agreement for the provision of library services under the Administrative Council model.
9. The County Council model was explored but not pursued at that time as advice was received from the AEC Group that the County Council model would be marginally more expensive than other models; and also anecdotally that the State Government would not look favourably on the creation of further County Councils. These advices have subsequently been contested; however work on the Administrative Council model was, on the basis of the advice, prioritised and has proceeded.
10. In June 2011, the Library Act was amended which expanded the options available for the future management of the RTRL beyond the Administrative Council model preferred by Lismore City Council since 2009.
11. Byron Shire Council subsequently explored the possibility of establishing an independent library service for Byron Shire. It has also indicated its preference by resolution (11-723) to investigate options afforded by the Library Amendment Act 2011 for the delivery of regional library services - other than the Administrative Council model - including the County Council model.
12. All RTRL member Councils have agreed as recently as February 2012 at a meeting convened by Lismore City Council that there is a preference to continue with a regional service, provided it is compliant with the Library Act and Local Government Act.
13. While Tweed and Lismore Councils appear to be committed exclusively to the Administrative Council model being developed by Lismore, both Ballina and Byron Shire Councils have expressed openness to other models being explored.

Difficulties with governance under the current model of operation (the 1970s Agreements)

There were a number of difficulties with the current model of operation (the 1970s Agreements) as follows:

1. Inconsistency with the Library Act 1939 (now rectified by Library Act amendments)

Under the Library Act 1939, Councils could create a Library Committee (under s11) or delegate powers to another Council to provide a library service (under s12). The 1970s RTRL Agreements therefore represented a hybrid whereby an RTRL Committee was created, and the powers to provide a library service were said to be delegated to that Committee – rather than to another Council.

This difficulty has now been potentially rectified by the Library Amendment Act 2011 which created a third option of being able to seek the approval of the Minister for the Arts (with the agreement of the Minister for Local Government) for any other type of arrangements (under s12A). The Library Council of NSW also has a role to advise on proposed alternative arrangements prior to consideration by the Minister for the Arts.

As a result of the amendments to the Library Act, RTRL member councils could now seek the Ministers' approval for the current 1970s Agreement and could then continue with an arrangement which would be compliant with both the Local Government Act and the Library Act. However, management considers that this could only be considered as an interim arrangement because it would not address in the long term the other difficulties which have emerged through discussions on the RTRL, which are referred to in detail below.

There appears to be a concern held by some of the RTRL councils that alternative arrangements have to be put in place immediately or alternatively that moving to a County Council model would take too long. Therefore management recommends that Council consider the option of seeking s12A approval from the Minister for the Arts (with the support of the Minister for Local Government) for the current RTRL arrangements under the 1970s Agreement to continue as an interim arrangement. This could be proposed, for example, for an interim period of 12 months to allow the Councils involved time to move to a more robust governance structure for the long term continuation of the RTRL, such as a County Council model. Management also recommends that the transitional arrangements should be oversighted by the RTRL Committee, which should be reconvened as soon as possible as per the 1970s Agreement.

2. Difficulties with 'dual exercise of delegations' under the Local Government Act 1993

Under the current 1970s Agreements, RTRL member Councils (including Byron Shire Council) delegated powers and functions relating to the running of a library to the RTRL Committee to the fullest extent permissible under the Local Government Act. In Byron Shire Council's case, and it is assumed it was the same for the other Councils, the powers and functions were delegated to the RTRL Committee – not to Lismore City Council, Council, and it is assumed other member Councils:

- a. delegated powers and functions to the RTRL Committee to the fullest extent permissible under the LG Act 1993;
- b. retained powers and functions which could not be delegated under s377 of the Local Government Act 1993.

This 'dual exercise of LG Act delegations' could continue and be legally valid (subject to any required resolutions being passed by relevant member Councils to rectify past anomalies). However, it is clumsy, inefficient, and poses risks to the RTRL's long-term sustainability. The clumsiness and inefficiency comes about from having multiple entities all having to do the same or similar work.

The powers and functions which a Council cannot delegate to anyone are largely set out in s377 of the Local Government and, relevant to the provision of library services, include:

- i) the making of a charge or fixing of a fee;
- ii) borrowing of money;
- iii) voting money for expenditure on services or operations;
- iv) purchasing or selling property such as land or buildings (this doesn't include 'plant and equipment' such as books, computers or copiers etc);
- v) contracting where tenders would be required;
- vi) contributing money or granting financial assistance eg donations;
- vii) making an application or giving notices on behalf of any Council;
- viii) delegating the power to delegate.

A good case study example is the setting of fees and charges where the process under the current legally valid model appears to be:

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1. RTRL Committee made up of representatives from each of the member Councils sets standard fees and charges across the service, then
2. each individual Council should adopt those fees and charges, by resolution after public exhibition, as required by the Local Government Act because the setting of a fee or charge is a non-delegable power.

An exception has been for 2012/13, where Lismore City Council has apparently set RTRL fees and charges for member Councils' consideration independent of the RTRL Committee.

'Dual exercise of delegations' involves unnecessary duplication but also risk, for example risk if there is a discrepancy between the fees and charges one Council adopts compared to others and/or risks if one Council follows a different process for adoption of fees and charges than another Council does (as is currently the case with Tweed, Lismore and Byron Councils all having adopted fees and charges as part of their prescribed process but Ballina Council not having adopted any Library fees or charges).

Other risks that arise in models requiring the 'dual exercise of delegations' (which would include the proposed Lismore Administrative Council model) include risks to the long-term sustainability of the RTRL if any one of the Councils involved determined at any time not to exercise their non-delegable functions or exercised them in a way that was inconsistent with or detrimental to the continued operation of the RTRL, for example a Council did not adopt or adopted different fees and charges which could have adverse financial impacts on the RTRL or introduce inequities across the service etc.

3. Lack of accountability and transparency

This is not a criticism of the current or past personnel of the RTRL or Lismore Council. What this refers to is the potential lack of accountability and transparency built into the current model of service delivery under the 1970s Agreements. For example under those agreements there are:

- a. few or no provisions for accounting for assets or distribution of liability;
- b. no requirements for independent auditing, reporting or production of records etc;
- c. few or no provisions governing continuity of services or levels of services to be provided;
- d. few or no provisions for the distribution of assets upon termination of the agreement;
- e. few or no provisions regulating the conduct of the RTRL Committee, its powers and functions, its meetings etc;
- f. potential for cost shifting to the RTRL from the administering Council, in relation to the administering Council's usual support services such as IT, HR and finance administration costs.

The historical failure of the current model of service delivery is evidenced, in part, by the lack of records – for example, there are no records available prior to 1994/95. Another example could be the holding of significant real estate assets in the name of Lismore City Council only and the inclusion of those assets on the books of Lismore City Council and not the other Councils, creating potential for true ownership of those assets to be 'lost' with the passage of time and changing of Councillors and staff. In addition, the current high levels of uncertainty and disagreement, and the potential discontinuance of the service, more broadly highlight the risks from the lack of transparency. This is an issue for all member Councils and library service users, and also particularly for the library staff.

4. Efficiency and Long Term Sustainability

Some examples of duplication and inefficiency inherent in the current governance model are referred to above. In addition, historical information suggests high levels of uncertainty have

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also arisen at various times in the past, such as occurred in the mid 1990s and again in 2008/09 (when the County Council model was considered). Each time uncertainty has arisen, it appears that significant resources have had to be dedicated to attempting to resolve issues and, in some cases, issues have remained unresolved.

Uncertainty and possibilities for dispute between members of the RTRL has the potential to jeopardise the continuation of the regional alliance as has occurred in the past and as is again currently occurring. The current 1970s Agreement does not provide a governance structure that is sufficiently robust to protect against uncertainty and dispute over the long term and this indicates that even if the current concerns could be resolved, the long term efficiency and sustainability of this governance model is questionable.

Difficulties with governance under the Lismore proposed Administrative Council model

There are a number of difficulties identified with the proposed Lismore Administrative Council Model, and with the draft 2011 RTRL Agreement proposed by Lismore City Council. These include, but are not limited to:

- A. Some of the Difficulties with Proposed Lismore Administrative Council model
 1. Challenges arising from the 'dual exercise of delegations' under the Local Government Act 1993, are equally applicable to the proposed Lismore Administrative model, as set out above.
 2. The Lismore proposed Administrative model (and the draft 2011 RTRL Agreement) contemplates the Regional Library as being constituted by a number of different Councils, yet the proposed agreements are separate, and therefore there would be a separate and individual agreement between Lismore and Byron Councils. The potential for Lismore to move to substantively different agreements with each of the member Councils, with no opportunities for input by or requirement for approval from the other participating Councils generates potential for inequality, uncertainty and dispute.
 3. The proposed Administrative Council Model is not perpetual, which is a difficulty facing both the current model of operation and the Lismore proposed Administrative Council Model. Under the Lismore draft RTRL Agreement, the regional arrangement would continue for only 5 years and at the end of that period a new agreement or arrangement would have to be negotiated and put in place. The proposed 5-year lifecycle is very short relative to local government, and does not support a sustainable, long-term regional library service (eg there can be no certainty of continuity of services or levels of service beyond the initial 5 years and 5 years is too short a period for long term strategic and financial planning etc). In addition, the past and present difficulties in negotiating the future of the RTRL do not bode well for the administrative efficiency and effectiveness of an anticipated regular (5-yearly) re-negotiation of the service.
 4. Any agreement supporting an Administrative Council model creates only contractual arrangements, which are civil arrangements between the parties to the contract, in relation to which third parties cannot intervene. This means, for example, that members of the community would not be able to seek to enforce rights and obligations under the contractual agreements supporting the Administrative Council model as proposed. This is in contrast to a County Council arrangement whereby the community could seek to exercise third party enforcement rights under s674 of the Local Government Act. The Administrative Council model is therefore less accountable to the community than other models, such as the County Council.
- B. Some of the Difficulties with Proposed Lismore Draft RTRL Agreement

5. Under the draft 2011 RTRL Agreement, Lismore City Council would only be required to consult with Byron and other councils before it would be free to set the RTRL's annual budget as it saw fit. That is, while it would be obliged to consult, there would be no obligation to obtain agreement; to consider matters raised during consultation; or to act in accordance with that consultation. Once set at Lismore Council's absolute discretion, the RTRL budget would then inform how much Byron Council, and the other councils, would be required to contribute each year and what levels of service would be offered by the RTRL across the entire RTRL area. Examples of risks that this poses to Byron Shire Council residents' interests and assets include, for example:
 - (a) expenditure 'blow outs' unreasonably increasing the contribution payable by Byron Shire Council;
 - (b) fees and charges payable in one shire or geographical area, or for particular types of services offered in different areas, being set higher or lower than for other areas;
 - (c) services and/or levels of service provided to the Byron Shire community changing contrary to community or Byron Shire Council requirements or
 - (d) Byron Shire requests for changes in services not being implemented; etc.

6. In addition, under the RTRL Agreement proposed, the role of the RTRL Committee would be much reduced. Rather than providing the opportunity for each of the participating Councils' views to be presented and consensus decisions to be achieved, the Library Committee anticipated under the draft RTRL Agreement is proposed to be constituted as an Advisory Committee of Lismore City Council and, as such, "has no power to direct or control any aspect of the RTRL services, or the involvement of any Council in the RTRL Services". This is a significant departure from the current (1970s) RTRL Committee's role (and a fundamental difference compared with a County Council model) and removes an important 'check and balance' in relation to the management of the Byron Shire community's assets and interests.

7. Under the proposed draft RTRL Agreement a Council could still withdraw from the alliance by giving 12 months written notice of its intention to do so, as per the current 1970s Agreements. However, under draft clause 23.3 of the proposed 2011 RTRL Agreement, Lismore City Council would in future retain the sole discretion as to whether or not it 'defers' the distribution of the exiting Council's share of the assets. Further, it could defer that distribution for up to 2 years from the date of termination (not the date of notice of intention).

This could potentially result in Byron Shire Council not receiving its share of the book stock or other library assets for up to 3 years after it serves notice that it wishes to terminate the agreement, regardless of the imperatives for termination.

This could have unacceptable impacts on the Byron Shire community, who could be denied access to their share of books and other assets for up to 3 years. Taken to its theoretical extreme, in the case of all councils terminating their participation at the same time, in theory this provision of the draft 2011 RTRL Agreement could result in Lismore Council at its sole discretion keeping the entire RTRL book stock for use in Lismore Council's libraries for up to 3 years while Ballina, Tweed and Byron libraries have no access to their respective shares of the book stock (or to their financial interests in other assets) for all of that time.

8. Similarly, the draft 2011 Lismore RTRL Agreement appears to allow Lismore Council the sole discretion to determine which specific assets of the RTRL would be transferable to Byron Shire Council to satisfy the entitlement of Byron Shire Council to its share of RTRL assets upon termination. Consequently, Lismore City Council appears under the draft Lismore 2011 RTRL Agreement to have sole discretion as to:

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- a. the value of the specific assets of the RTRL; and
- b. decision on which of those assets would be transferred to Byron Shire Council or indeed to any of the participating councils on termination.

This poses obvious risks to Byron Shire Council and the Byron Shire community, and agreement to such an arrangement would again appear to be contradictory to Council's charter.

9. There also does not appear to be anything in the draft 2011 RTRL Agreement that would prevent Lismore Council from removing Regional Library assets from Byron Shire Council's Libraries in the event that the 2011 RTRL Agreement is terminated, while deferring the distribution to Byron Shire Council of its share of the assets of the Regional Library for up to 3 years.
10. In addition, there does not appear to be anything in the draft RTRL Agreement which outlines what Lismore's 'fee for administrative services' would be, or how their annual contribution to the RTRL might be calculated.
11. Under the draft RTRL Agreement Lismore Council would have complete discretion over staffing arrangements which in turn could have financial impacts on member Councils. This is again a significant departure from the current 1970s arrangements, whereby the RTRL Committee and each member Council, who are required to make recommendations, have clear roles in every staffing decision.

It is acknowledged that the RTRL is a group of Councils working together to provide services to all communities in the area and that risks associated with contracts between Councils should be less significant than those that may arise from contracts with private enterprise, due to the common legislative obligations imposed on Councils. But the risks are not removed, and each Council is obligated to ensure that its own communities' interests are served, which means that respective Councils' interests may not always be entirely aligned.

Management acknowledges that it is possible that Lismore City Council is not aware of the difficulties with particular parts of its proposed RTRL Agreement and did not intend for the proposed agreement to operate in some of the ways or with some of the effects that it could have. However, even if the proposed agreement were to be re-drafted to remove the offending provisions and to re-establish a genuine cooperative agreement, this would still not address the difficulties that the administrative model suffers from as referred to above.

Byron Council has taken legal advice on the draft Lismore RTRL Agreement – refer to confidential Annexures 33(c) and 33(d). Further advice has also recently been obtained – refer confidential Annexure 33(a). If it is necessary to discuss the confidential legal advice, Council should consider resolving into confidential session under s10A(2)(g) on the basis that the annexure contains privileged information and it would not be in the public interest to release that privileged information because it could compromise the position of Council in its dealings in relation to the RTRL.

Byron Shire Council's Requirements for a Robust Governance Structure

The current discussions over the past and future management options for the RTRL have exposed serious concerns about the RTRL's governance structure, accountability, and transparency.

This is not a reflection on RTRL or Lismore Council staff and must not be construed as being a criticism of any individual or any Council. All of Ballina, Byron, Lismore and Tweed Councils have been members of the RTRL and, while different levels of responsibility may be attributable to the different member Councils at different times, all must share some responsibility for the lack of governance, accounting and reporting from time to time.

It also has to be noted that the RTRL is not unique in experiencing difficulties associated with regional library governance. The State Library of NSW reports that 70 Councils (68 in country NSW) are party to s12 Agreements for regional library services. Indeed, the recent amendments to the Library Act directly resulted from acknowledgment that many of the regional library structures in place at that time did not accord with the Act, making change necessary.

Another example is the recent concerns raised between member Councils of the Clarence Regional Library relating to the non-expenditure of book votes and concerns about the transparency of accounting for contributions etc.

Finally, it must be stressed that despite the governance structure having been poor, the actual library services delivered have been of a very high standard. It will be important that the focus on excellent and equitable service delivery is not lost under any new governance structure.

Having recognised the flaws of the current model of operations, it is imperative that any new model ensures that history will not be repeated and also guarantees accountability and transparency, and reduction in risk and liability to all participating Councils for the long-term sustainability of the RTRL. As a starting point, it will be important to take stock of each member councils' joint and separate liabilities and assets in the RTRL, to be identified via an independent audit, before the RTRL is re-formed.

Possible Alternative – County Council Model

It appears a County Council was identified as the most suitable structure in a review conducted in 1994/95 in conjunction with the State Library of NSW and that at that time, it was apparently recommended that a new interim structure under the Library Act be created with the intent to subsequently transfer to a County Council structure when approval for a County Council could be obtained.

There has been some public comment that historically there was a concern that County Councils were not supported at State Government level. However, the Division of Local Government has recently reconfirmed its recognition of *"county councils as legitimate forms of local government collaborations"* in its *Collaborative Arrangements between Councils Survey Report* (June 2011). In February 2012, the Minister for Local Government also publicly articulated support for county council style models of cooperative management, subject of course to due process.

A County Council is a separate legal entity which covers a designated geographical area and provides particular services within that area. County Councils are convened under the Local Government Act and have all the rights, powers, obligations and duties that arise under that Act, as they are relevant to the services being provided, with some limited exceptions.

The key fundamental differences between Councils and County Councils are that the governing bodies of County Councils are made up of Councillors nominated from the Councils in the relevant area (ie they are not popularly elected to the County Council, unlike a Council) and County Councils cannot levy rates (but they can make charges and fix fees).

County Councils are established by proclamation by the Governor of NSW, on the recommendation of the Minister for Local Government. The proclamation can make provision for a variety of matters including the services to be provided, the geographical area the county council covers, the county council's functions, how many representatives from each council are to sit on the county council, the transfer of staff, the apportionment of assets, rights and liabilities, the delivery or retention of records, and the termination of things existing before the proclamation date etc.

The Local Government (State) Award 2010, as amended, applies equally to staff of County Councils. Similarly, County Councils are 'bodies politic' (not bodies corporate) under the Local Government Act and as such are governed by the State (and not the Federal) Industrial Relations system the same as Councils are. Therefore, there would be no change of Award or industrial system applying to the RTRL staff if the governance structure was changed to a County Council model. It should be noted that the transfer of staff from Lismore Council to a County Council, and terms and conditions of the transfer for example, could be matters addressed in the proclamation.

Under a County Council model a General Manager would be mandatory and the General Manager must be retained pursuant to the template 'General Manager Contract' issued by the Division of Local Government. There would be nothing, however, to prevent the General Manager also being the Regional Librarian for the RTRL and attending to both the governance and the library functions of the RTRL. The requirement to have a General Manager may not necessarily mean that an additional staff member is required under the County Council model if existing resources can be legally and practically reallocated.

Similarly, under a County Council model, financial and other annual reporting, together with statutory compliance, would be mandatory and therefore, it would be reasonable to assume that resources would be required to manage human resources/WH&S, information services and financial services.

A review of the RTRL organisation structure as contained in the 2008/2009 RTRL Annual Report shows that, at that time, the RTRL was already staffed with a Director (which could be the equivalent of a County Council General Manager), 3 staff in HR, 2 staff in IT and 3 administration staff (which would be likely to still be adequate under a County Council model). It is reported that previously financial services were provided by a contractor within the then set annual budgets and this too would appear to be likely to still be adequate under a County Council model.

The AEC Group report dated 2009 presented to the RTRL Committee indicated that a County Council model would cost approximately \$160,000 pa more than the Lismore proposed Administrative Council Model. As will be seen from the table at Annexure 33(b), a County Council model could in fact be cheaper than the Administrative Model, but in any event good governance not cost should not be the overarching determining factor. (NB all references to estimated costs are to those costs estimated by AEC Group and there has not been time to review those estimates for accuracy.)

Putting to one side the staffing issues of Finance, HR and IT officers (all of which parts of operations were formerly adequately managed within the pre-2010 RTRL structure), the main areas where costs are estimated to be different between the County Council Model and the Administrative Council Model (which could be called the 'governance costs'), are as follows:

1. Administrative Council model attracts a total estimated \$188,000 comprising:
 - (i) estimated \$134,000 "Dividend," or payment to the Administering Council, said to be for 'compensation for risk';
 - (ii) estimated \$40,000 for increased workers compensation premiums (because those premiums are calculated as a percentage of total payroll ie all of the Administering Council's total payroll not just the RTRL payroll);
 - (ii) estimated \$14,000 for negotiating service level agreements with each participating Council.
2. County Council model attracts a total estimated \$56,000 - \$98,000 comprising:
 - (i) estimated \$30,000 County Councillor fees;
 - (ii) estimated \$26,000 additional costs associated with retaining a General Manager;

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- (iii) estimated \$42,000 costs associated with ensuring Local Government Act compliance (if it is accepted that a new Compliance Officer position is in fact required).

Comments on the individual costs differences between the County Council and Administrative Council model identified in the AEC report, including the staffing issues, are as follows:

- a. The Administrative Council model introduces a new cost of \$14,000 pa related to the annual negotiation of proposed Service Level Agreements. The AEC report attributes this cost to both the County Council and Administrative Council models, however, this appears to be incorrect as there would be no need for service level agreements under a County Council model. That is, the additional new cost would apply to the proposed Administrative Council model only.
- b. A new General Manager est \$156,000. As noted above, the pre-existing position of Director could have fulfilled this role but there is no accounting for this in the report (eg there is no reduction in salaries costs by removal of the existing Director position which would be replaced by the General Manager position). Therefore, it would seem that the costs of a General Manager should at worst be only a small portion of the estimated \$156,000 and at best attract no additional cost at all, should the Regional Librarian role be combined. (It is noted that the AEC report has both the General Manager and the Regional Librarian responsible for 'coordination of service delivery' which reiterates that it should be possible for the one position to fulfil both roles without the estimated additional costs.)
- c. A new Local Government Compliance Officer est \$42,250. There does not appear to be any need for such a position. The RTRL did not operate in a vacuum and has always been required to be compliant with various statutory and contractual requirements. A move to a County Council model would increase some mandatory requirements, such as the need for management plans, auditing and annual reports. However, while they were not mandatory in the past, these were being undertaken previously by the RTRL within their then existing resources anyway. To the extent a Public Officer needs to be designated, the same as Finance Officer, there is no reason these designations could not rest with the General Manager position.

However, even if it is accepted that such a new Compliance/Public Officer position was required, an estimated \$42,250 pa spread across the four participating Councils appears to be a small price to pay for a robust and transparent governance structure.

- d. A new part time Finance Officer est \$42,250. Finance services were apparently previously provided to the RTRL by an external specialised contractor within the then existing working expenses of the RTRL with the Director being the designated Finance Officer. Under a County Council model, the RTRL would have the option of retaining external contractor services as it did before (ie same cost) or internalising those services (ie increased salaries but with a reduction in working expenses).
- e. A part time HR Officer est \$42,250. As noted above, the 2008/09 RTRL Annual Report shows it engaged an HR Officer, Payroll Officer and Payroll Assistant (although it does not identify which of those positions, if any, were part-time). Unless Lismore Council has subsequently made those positions redundant, they still exist and would be adequate to service a County Council model with no additional cost. As the AEC Group's report refers to the 'current HR Manager' it has to be assumed that the report is suggesting that an HR Manager and a part time HR Officer would both be required under a County Council model. Insufficient information about EFT and staff numbers is available to confirm whether or not this is the case. Even assuming that 1.5 EFT HR Officer would be required (which has not been demonstrated) the additional HR resources could then fulfil the duties of the existing payroll resources with resulting savings, however the report has not explored any other options.

- f. Different IT staff arrangements whereby it is said that the County Council IT staff would cost an additional \$39,000 pa. Again, unless Lismore Council has made the previously RTRL IT Manager and trainee positions redundant, those positions still exist and therefore there would be no savings with the Administrative Council Model until such time as the RTRL IT Manager position was made redundant or vacant.

The above comments are represented in tabular form as per the AEC Group report (as it relates to the potential County Council Administrative Council models) at Annexure 33(b).

There are any number of variations on Organisation Structures that could be implemented to support any of the various service delivery models considered for the RTRL. It would seem that the Organisational Structure reported in the 2008/2009 RTRL Annual Report would have been adequate to service and ensure statutory compliance in a County Council model, with the redesignation of Director as General Manager. As a proclamation creating a County Council can transfer staff into a County Council and deal with matters associated with the transfer, management believes that statutory compliance with the Local Government Act (as it relates to the appointment of staff) could be achieved through the proclamation.

The 2010/11 RTRL Annual report does not contain an organisation structure or information on EFTs. Council's request for information on current RTRL staffing, structure and salaries was not provided prior to preparation of this report. Given that there have been no recommendations from the RTRL Committee on staffing changes, it has to be assumed that, in accordance with the current contractual arrangements, there have been no changes to positions, appointments, remuneration, conditions etc, with the only exception being positions which may have become vacant and refilled through normal means.

Benefits of the County Council Model include:

1. Ensuring statutory compliance with both the Library Act (subject to approval under that Act) and the Local Government Act (subject to proclamation under that Act).
2. If forming part of the proclamation, and assuming there have been no significant staffing changes made unilaterally by Lismore Council, the ability to be able to transfer staff into the County Council, which would provide certainty of employment under the Local Government (State) Award and the state industrial system.
3. Being the most permanent and sustainable governance structure possible.
4. Guaranteeing accountability to the community as well as to the participating Councils, and increasing transparency.

For these reasons, the County Council model is the option recommended by management.

Other cooperative models have also been put forward by various members of the community and the other participating councils at various times over the last year, however, and these are also set out for Council's consideration below.

Possible Alternative – Cooperative Model (Status Quo)

It has been proposed that the participating Councils could consider a continuation of the RTRL model – as it was originally established by the 1970s agreements and as it was previously operating - as a possible alternative to the creation of a new legal structure.

This would involve seeking the approval of the Minister for the Arts (with the agreement of the Minister for Local Government) under s12A of the Library Act for the provision, control and management of the RTRL as it previously operated.

This would include the re-establishment of the RTRL Committee (guided by the individual resolutions of the constituent councils) with the power to direct Lismore as the Executive Council. The Committee would make decisions relating to staffing and services based on the recommendations of the constituent councils.

As noted above, however, management considers that there are inherent risks in this option given the challenges of dual exercise of delegations; potential for reduced accountability and transparency; and potential duplication and inefficiencies. This model may also put the onus more firmly on Lismore to assume a greater share of the responsibility for accountability and governance of the RTRL than for its partners in terms of the requirement to manage staff, and to support the meetings of the RTRL Committee.

For these reasons, if this option is preferred by Council, management would recommend that all of the financial and governance improvements suggested above (most particularly an independent audit of the RTRL's assets).

This is important so that all of the parties to the cooperative agreement are clear on their joint and individual rights, responsibilities, assets and liabilities from the commencement of the new arrangements, as well as on the methods for their distribution in the event that the cooperative is subsequently dissolved.

Possible Alternative – Hybrid Cooperative Model with Administering Council

Another option that has been canvassed in recent times is a hybrid cooperative model, involving an Administering Council; a representative committee with decision-making powers; and a fee for service arrangement.

Such a model would again involve seeking the approval of the Minister for the Arts (with the agreement of the Minister for Local Government) under s12A of the Library Act for the provision, control and management of a new hybrid cooperative model for the RTRL.

The State Library of NSW has recently conducted a cost-benefit analysis which found that outsourcing of certain functions (such as collection development management, processing and cataloguing) can generate returns, particularly in terms of improved purchasing power and economies of scale.¹ Based on the State Library's analysis, centralised service provision under a cooperative model (such as either the existing 1970s RTRL model, a hybrid, or the County Council model as suggested above) offers a range of benefits – providing that any savings are redistributed back into the library cooperative to enhance service quality.

In a hybrid cooperative model, for example, the Administering Council could support an independent cross-Council RTRL Committee with delegated powers (to the extent possible), but would also have some certainty of income and expenditure through a fee-for-service arrangement for some services. This may include, for example, the provision of IT services, collection development and management, procurement and acquisitions, processing and cataloguing, events, programs and customer service etc. Strategic/policy decisions would remain within the domain of the cross-Council RTRL Committee.

If this option is selected, management again recommends that all of the financial and governance improvements suggested earlier in this report (including the independent audit at two points in time) are implemented so that all of the parties to the cooperative agreement are clear on their joint and individual rights, responsibilities, assets and liabilities, as well as on the methods for their distribution in the event that the cooperative is dissolved.

¹ State Library NSW (2010) *A benefit cost analysis: Outsourcing of Acquisitions, Cataloguing and Processing in NSW Public Libraries*, Library Council of NSW, Sydney.

Next steps

At all stages in this matter the affected staff and employee associations will need to be consulted extensively and given opportunities to provide input and seek information etc.

In addition, meetings and discussions with State Government should also continue, such as the meeting of the Mayors of all RTRL Councils which has been called by the Hon Don Page MP, Minister for Local Government and Minister for the North Coast, currently scheduled for 5 April 2012 in Ballina.

It is recommended that the following steps be considered. Many of the steps can occur concurrently.

Audit & Baseline Position on Assets and Liabilities (can be occurring concurrently with Steps 5 – 7)

Step 1 RTRL Committee be re-convened with a meeting to be called as a matter of urgency.

Step 2 RTRL Committee prepare a brief and retain contractors to undertake an audit of assets and potential liabilities as at 2009 (when Lismore began to make changes to the RTRL's operating arrangements) and presently, including detailed analysis of staffing issues.

Step 3 RTRL Committee makes recommendations as to the assets, rights and liabilities of each of the Executive and constituent Councils under the current (1970s) Model of Operation to be used as a baseline for the ultimate governance model.

Step 4 Each of the Executive and constituent Councils obtain their own advice, as they require, and consider the outcomes of the audit and recommendations of the RTRL with a view to reaching a consensus on their respective assets, rights and liabilities under the Current (1970s) Operating Model. Upon reaching an agreement, each Council adopt the agreed position on assets as a baseline foundation for all future negotiations and the ultimate governance model (can be occurring concurrently with Steps 2 – 3 as well as Steps 5 – 7).

These steps are critical to establishing a base for the future and should be completed as a matter of priority.

Interim Arrangements - Approval under s12A to Continue with the Current (1970s) Model of Operation for an interim period (12 months) pending finalisation of future governance model (can be occurring concurrently with Steps 1 – 4 & 8 – 14.)

Step 5 RTRL Committee prepares and recommends a business case for seeking approval under s12A for the Current (1970s) Model of Operation to continue on an interim basis for a period of up to 12 months from the date of approval.

Step 6 Each Council adopts the business case and resolves to seek approval under s12A for the Current (1970s) Model of Operation to continue on an interim basis for a period of up to 12 months from the date of approval.

Step 7 Executive Council (via the RTRL Committee) makes application for approval, responds to any enquiries or requests for further information and keeps other Councils informed of progress with application via regular meetings of the reconvened RTRL Committee.

These steps are critical to immediately providing statutory compliance while permanent future governance model is established. These steps are necessary regardless of what governance model may be ultimately adopted. While the process under s12A is new, the need for this action is well known and support from state government continues to be offered, so it would be hoped that approval could be granted within a very short time after the RTRL prepared the business case.

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Future County Council Model (can be occurring concurrently with Steps 5 – 7)

- Step 8 RTRL Committee develops a proposal for a County Council model including, without limitation:
- (a) name;
 - (b) constituent councils and geographic area of operations;
 - (c) number of members from each constituent Council to be elected to the County Council board;
 - (d) functions;
 - (e) proposals with regard to staff (including any interim arrangements pending implementation of the new structure);
 - (f) draft terms of proclamation dealing with transfer or apportionment of assets and liabilities, transfer of staff and/or cessation of 1970s Agreements and preservation of any rights to liabilities arising the 1970s Agreements etc;
 - (g) business case for the proposed model;
 - (h) identification of which Council will be responsible for seeking the necessary approvals and proclamations on the collective behalf of constituent councils; etc.
- Step 9 RTRL Committee resolves to recommend the proposed County Council model to member Councils.
- Step 10 Each member Council resolves to agree to the proposed County Council and the business case and to authorise applications for approval under both the Library Act and the Local Government Act.
- Step 11 The proponent Council applies for approval under s12A of the Library Act (must occur before application under Local Government Act, as consequences could flow if Library Act application is denied).
- Step 12 Upon receipt of approval under the Library Act, proponent Council to put business case to Minister for Local Government seeking creation and proclamation of the new County Council.
- Step 13 Minister must advertise any proposal (for 28 days) and consider submissions before determining the terms of any proposed proclamation.
- Step 14 If application proceeds after public submissions, Minister for Local Government applies to Governor for proclamation creating the County Council.
- Step 15 County Council is proclaimed and commences on the date identified in the gazetta.
- If s12A approval can be obtained for interim arrangements, this would provide all the Councils, staff, employee associations and State Government, 1 year in which to implement a County Council model which should be adequate with commitment and support from all stakeholders.

Financial Implications

The costing information contained in the AEC Group report has been relied upon as noted above.

It is possible, as noted above, that a County Council model could in fact be cheaper than an Administrative Council model. Even if it were to be more expensive (up to the \$160,000 previously estimated) it would still be considered to be more 'cost effective' given the intangible benefits the Councils and the communities would derive from improved governance, accountability, transparency and sustainability.

Council should be aware that there could be potential financial implications if Lismore City Council has unilaterally made changes to the structure or staffing which could not be predicted as, while requested, no information on this has been provided by Lismore City Council as yet. This should not impact which governance model is ultimately adopted, but it could potentially impact one-off costs of changing governance models for individual Councils.

The costs of an independent audit of RTRL assets and liabilities will depend to a degree on the scope of the terms of reference which will need to be set by the RTRL Committee with subsequent endorsement from all participating Councils. An estimate of possible costs has not been obtained at this time.

Statutory and Policy Compliance Implications

Governance Models

It is correct that the RTRL as previously operated was not compliant with the requirements of the Library Act or the Local Government Act. No action can be taken to rectify this.

It is also the case that the current operation of the RTRL via unilateral decisions of Lismore City Council without recommendations from the RTRL Committee is not compliant with either the Library Act, the Local Government Act nor current contractual obligations.

However, with correct delegations and correct exercise of non-delegable functions and with s12A approval, the Current (1970s) Model of Operation of the RTRL could continue and comply with both the Library Act and Local Government Act as an interim arrangement. It is likely this could be achieved very quickly and management believes this should be pursued as a matter of urgency.

In terms of permanent governance arrangements, subject to approval under s12A:

1. A County Council model would be compliant with both the Library Act and Local Government Act without reservation.
2. An Administrative Council Model will be compliant with both the Library Act and Local Government Act only if:
 - (a) each RTRL Council delegates their respective delegable functions and powers to the Administering Council and then, in addition, continues to exercise their respective non-delegable functions and powers consistently with the remainder of the RTRL Councils; or
 - (b) each RTRL Council contracts all aspects of library services to the Administering Council absolutely ie gives up all participation and decision-making entirely such that no delegations or exercise of non-delegable duties is necessary.

Table of Comparison of Costs Estimates of County Council and Administrative Council Governance Models

Item – AEC Group Report comments	Item - Comments this Report	County Council		Administrative Council	
		AEC Est	Est this Report*	AEC Est	Est this Report*
Constant Operational Costs					
Administration	These costs may indeed vary depending on how operations (including variable operating costs) are managed. Eg if financial services change to internal then working expenses could be reduced. No details provided as to what was included so cannot comment.	97,900			
Salaries and overheads	No details provided so cannot comment.	3,211,047			
Travelling expenses & subsidies	No details provided so cannot comment.	16,800			
Expenses of providing services	No details provided so cannot comment.	140,500			
Library service working expenses	No details provided so cannot comment.	226,510			
Publications	No details provided so cannot comment.	260			
Computer processing centre expenses	No details provided so cannot comment.	185,700			
Fixed assets/capital expenditure	No details provided so cannot comment.	925,399			
Transfers to restricted assets	No details provided so cannot comment.	100,962			
Variable Operating Costs					
Increased Work Cover Contributions. Additional costs incurred by Council as employer compared to RTRL. Premium calculated as percentage of payroll.		0	0	39,743	39,743
SLAs – Service Level Agreements between service provider and service taker ...	This would not be required for a County Council model where service levels are set by the County Council not by contractual agreements	14,000	0	14,000	14,000
Dividend – Additional payment above service delivery costs required by service provider to be compensative for risks		0	0	134,303	134,303
General Manager – "responsible for coordinating the whole library service including both service delivery and support" ...	General Manager/ Regional Librarian – The General Manager and Regional Librarian could be one and the same position (as was the case with the former Director position in the RTRL). If additional cost of GM added, a commensurate reduction in Regional Librarian costs	156,000	156,000	0	0

Item – AEC Group Report comments	Item - Comments this Report	County Council	Administrative Council
Regional Librarian – "responsible for the coordination of service delivery ..." Local Government Compliance Officer – "responsible for ensuring all processes are fully compliant with the requirements of the Department of Local Government" Finance Officer – "responsible for management of Library finances."	See comments above, functions could be undertaken by General Manager Compliance/Public officer not considered necessary but included for sake of comparison exercise Previous use of external expertise (costs of which are already included in expenses of service provision in 'constant costs' above) could continue with no additional resource required. Existing HR Officer and payroll staff under current RTRL model sufficient and could continue with no additional cost.	0 42,250 0 42,250	130,000 0 0 0
HR Officer - "responsible for all library HR requirements"		0	0
IT Officer – "responsible for all IT services including in branch services..." County Council meeting attendance costs – payments to County Councilors	Existing IT resources could continue (ie this is not an additional cost but a continuation of an existing cost)	165,750 30,000	126,750 0
Constant Operating Costs	Disagree these are constant. These could be reduced if certain Variable Costs increase and vice versa.	4,905,078	4,905,078
Variable Operating Costs		394,000	444,796
		622,500**	444,796

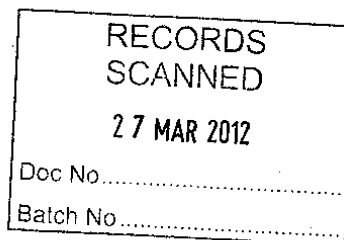
* The AEC Group Report's estimates have been carried forward without review and the comments do suggest agreement or otherwise with the adequacy of the estimates.

** The AEC Group Report gave the total variable operating costs at \$605,161 which appears to be an error.



Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

21 March 2012



Richmond-Tweed Regional Library

Dear Mr Hickey,

I am writing in response to your letter of 24 February 2012 which asked that the State Library clarifies its position on the Richmond-Tweed Regional Library.

The State Library notes the ongoing deliberations between the four councils about the continued operations of the regional library service and supports a resolution of the matter.

With regards to involvement of Mr Cameron Morley, Manager Funding and Advisory Services, here at the State Library, I wrote to you in December 2011 stating that a further report was unlikely to provide your council with significantly more information.

Our understanding at that time was that the Byron, Ballina and Tweed councils remained in dialogue with Lismore City Council on the matter of an administrative model. Given the advice already provided by the Library on the proposed new administrative model agreement and the thorough understanding of the administrative model that was evident in your council's business papers (supplied with your letter of 25 November 2011), we do not believe that input from Mr Morley is required.

I am advised that, following the meeting of the four councils on 7 February 2012 and the Lismore Council meeting of 12 March 2012, the councils will continue to work together to establish a model for regional library services.

I suggest that, in the first instance, the councils agree in principle on a model or models that may be suitable. Following this agreement, if the proposed model requires approval under s12A of the Library Act 1939, the State Library and the Division of Local Government will work with delegated council representatives on the submission process. I enclose a copy of the advice that we previously sent to all councils on the operation of s12A.

I am pleased to note that the library services from all branches and the mobile library have continued to operate during this period and that the 2010/11 statistics reported to us from the regional library indicate that the library service continues to operate effectively.

Yours sincerely,

Frances Sims
Director, Public Library and Community Learning Services
State Library of NSW

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100% RECYCLED PAPER



Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina
NSW 2478

19 October 2011

Dear Mr Hickey,

Library Act 1939 section 12A

I am writing to inform you that a process for the operation of the new s12A of the Library Act 1939 has been agreed upon with the NSW Department of Premier and Cabinet, Local Government Division.

You will be aware that the NSW Government has created additional flexibility in the operation of regional public library services through the introduction of the new Section 12A into the Library Act 1939. Section 12 of the Act enables councils to agree to provide library services regionally, that is across more than one council area. Such arrangements are termed "regional libraries". At present 70 NSW councils are party to s12 agreements for library services.

Prior to the amendment, councils entering into such arrangements needed to adopt an executive council model as detailed in Section 12(1) or (12)2 of the Act. This involved one council accepting the responsibility for the management and provision of the library (or an aspect of the library service) on behalf of the other council or councils. The other council or councils also needed to delegate their library management to the executive council.

The new s12A enables councils that wish to operate regional library services using alternative arrangements to propose the arrangements that suit their situation. Please note that no Council is required to enter into arrangements under section 12A.

Such proposals need to be approved by the Minister for the Arts with the agreement of the Minister for Local Government. This will ensure that alternative arrangements for regional libraries meet the Library Act and Local Government Act requirements and Government policies.

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Section 12A proposals by two or more councils are to be made to the Minister for the Arts. The proposal assessment process will include advice from the State Library and the Local Government Division, Department of Premier and Cabinet.

Please contact Cameron Morley, Manager, Funding and Advisory Services, State Library of NSW on 02 9273 1483 for further detail.

Yours sincerely,

Frances Sims
Director, Public Library and Community Learning Services



Brief for Audit of Richmond Tweed Regional Library Assets and Liabilities

Below are suggested points for consideration as to represent a scope to a proposed audit of Richmond Tweed Regional Library (RTRL):

Background

During the 2009/2010 financial year, the financial operations and financial position of RTRL were incorporated and consolidated into the financial records of Lismore City Council as the administering Council of RTRL. This transition appears to have occurred commencing 1 July 2009 and for the 2009/2010 and 2010/2011 financial years, a special purpose financial report has been prepared that has not been audited.

Audit Scope

Byron Shire Council seeks to track the changes over the 2009/2010, 2010/2011 and 2011/2012 financial years of the financial operations of Richmond Tweed Regional Library to identify the following:

- **Assets**

That the property, plant and equipment of Richmond Tweed Regional Library in existence at 30 June 2009 is still recorded in the financial records of RTRL at 30 June 2012 unless there has been a disposal, derecognition, or subsequent new acquisition. This will require an audit of the complete asset register in terms of physical asset records and monetary values for all asset classes for the 2009/2010, 2010/2011 and 2011/2012 financial years.

That the Cash and Cash Equivalents on hand at 30 June 2009 for RTRL is still in existence at 30 June 2012 with the exception of movements relating specifically to RTRL operations over the last three financial years.

- **Liabilities**

That majority of liabilities relate to provisions for staff entitlements. To verify the balances stated at the end of each financial year it would be necessary to review the detailed calculations for the entitlements by staff member to ensure movements in the provisions can be traced and only relate to RTRL employees. This should form part of financial statement working papers each financial year.

- **Staffing Levels**

Review of the staffing structure of RTRL at 1 July 2009 as the base and then review the staff structure each financial year up to 30 June 2012 to identify whether RTRL positions have been consistently carried through each financial year. A reconciliation of staff positions will need to be carried out to identify if there are additional positions or deleted positions and whether positions are only undertaking RTRL activities. Records required to review include staffing structures, and detailed budget documents for salary/wage calculations.

- **Revenue**

10.11 Richmond Tweed Regional Library - Industrial Dispute.DOC

The major funding source of RTRL comes from the annual contribution from member Council of RTRL. To verify the annual contribution each financial year a review of the work papers determining the annual contribution for each member Council is required.

- **Expenditure**

The major expenditure item for RTRL is employee costs. A review of these expenses by accessing general ledger transactions to ensure transactions relate purely to RTRL staff. In addition a review of the administrative charges by Lismore City Council allocated to RTRL.

Documentation required for a proposed Audit

- RTRL Financial Statement work papers for 2009/2010, 2010/2011 and 2011/2012.
- RTRL Budget work papers for 2009/2010, 2010/2011 and 2011/2012.
- Reconciliation of the closing balances of RTRL at 30 June 2009 and their backing information transferred to the financial records of Lismore City Council on 1 July 2009.
- Detailed asset registers for each asset class for 2009/2010, 2010/2011 and 2011/2012.
- Access to general ledger accounts and transactions of RTRL for 2009/2010, 2010/2011 and 2011/2012.
- Staffing structure details of RTRL for 2009/2010, 2010/2011 and 2011/2012.
- Details of bank reconciliations and register of investments for 2009/2010, 2010/2011 and 2011/2012.



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Confidential

27 November 2008

Our ref: LMT01

The General Manager
Lismore City Council
43 Oliver Avenue
Goonellabah NSW 2480

Attention: Rino Santin

Email

Dear Sir

Advice re Richmond Tweed Regional Library

Introduction

- 1 The Council seeks my advice on whether the *Executive Council* arrangements involving Lismore City Council relating to the Richmond Tweed Regional Library (**Library**) comply with the *Local Government Act 1993 (LGA)*.
- 2 I am specifically asked not to give advice on whether those arrangements comply with the *Library Act 1939* or other legislation.
- 3 The relevant facts and background is as follows:
 - 3.1 The Library operates within the local government areas of the City of Lismore and the Shires of Ballina, Byron and Tweed.
 - 3.2 The Ballina, Byron and Tweed Shire Councils have each entered into a separate agreement with Lismore City Council relating to the provision of Library services in their areas (**Library Agreement**).
 - 3.3 I have read a copy of the agreements between Lismore City Council and Ballina Shire Council dated 14 December 1973 and Lismore City Council and Tweed Shire Council dated 5 November 1973, which are materially the same.
 - 3.4 I have not read a copy of the agreement between Lismore City Council and Byron Shire Council but assume it is also in materially the same terms.
 - 3.5 The Library Agreements are expressly stated to be made *in pursuance of the Library Act 1939*.
 - 3.6 The relevant provisions of the Library Agreement are as follows:
 - 3.6.1 the express intention of the parties is to provide adequate library facilities for the residents of their areas,

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- 3.6.2 for that purpose, the Richmond Tweed Regional Library is declared to be constituted by the Library Agreement,
- 3.6.3 Lismore CC is to appoint a *Richmond Tweed Regional Library Committee (Library Committee)*,
- 3.6.4 the Library Committee is to consist of:
- (a) 2 members appointed by each of the parties to the Agreement, and
 - (b) 2 members appointed by any other Council that enters into a similar agreement with Lismore City Council, and
 - (c) the *Town Clerk* of Lismore City Council who is to be the *Executive Member* of the Library Committee,
- 3.6.5 with specified exceptions, the parties are to delegate to the Library Committee their *control of libraries and library services* in their areas,
- 3.6.6 the parties are to pay contributions to the Library Committee,
- 3.6.7 the Library Committee is to bank the contributions and any other money it receives into a bank account,
- 3.6.8 the Library Committee is to appoint an *Executive Sub-Committee* that is empowered to act on behalf of the Library Committee,
- 3.6.9 the bank account is to be operated only by resolution of the Library Committee or, in *contingent circumstances*, the Executive sub-Committee,
- 3.6.10 the Library Committee is to nominate library staff on the recommendation of the Council in whose area the staff will be principally *employed*,
- 3.6.11 the Library Committee is to provide an annual report to the parties that includes details of the Committee's activities over the previous 12 months including relating to *book purchases and stock*,
- 3.6.12 Lismore City Council is appointed *Executive Council*,
- 3.6.13 the Executive Council is required to employ all library staff.
- 3.7 I am instructed that, in practice, Lismore City Council undertakes the following in relation to the Library as the Executive Council:
- 3.7.1 employment of the Director but not the incurring of the cost of his pay,
 - 3.7.2 provision of premises for the Library's headquarters,
 - 3.7.3 provision of motor vehicles used for the purposes of the Library, and
 - 3.7.4 tendering relating to the Library.
- I am further instructed that:
- 3.7.5 Lismore City Council does not manage the Library from day to day,
 - 3.7.6 the Library is managed from day to day by Library staff independently of the Council under the purported direction and control of the Library Director,
 - 3.7.7 no delegation exists from the Council's General Manager to the Library Director relating to the day to day management of the Library,
 - 3.7.8 the Library also purports to employ its own staff.



- 4 I have not been instructed whether Lismore City Council, as the Executive Council, owns other property used for the purposes of the Library.

Summary of Advice

- 5 The Library Agreement is valid under the LGA except the provision relating to delegations by the participating councils.
- 6 The Library Committee is intended to be the governing body of the Library and is responsible for providing, managing and controlling the Library and Library services in the areas of the participating Councils.
- 7 Lismore City Council, as the Executive Council, is responsible for implementing the decisions of the Library Committee and undertaking the day to day management of the Library.
- 8 The Library Committee is validly established by Lismore City Council but is not a Committee as defined in clause 231 of the *Local Government (General) Regulation 2005 (Regulation)* and therefore Part 10 of the Regulation does not apply to it.
- 9 The terms of the delegation given to the Library Committee by Lismore City Council and the other participating councils under the Library Agreement contravene s377(1) of the LGA.
- 10 The delegation provision of the Library Agreement must be amended to comply with the LGA.
- 11 The delegation given to the Library Committee by Lismore City Council and the participating Councils must be revoked and replaced by delegations that comply with s377(1).
- 12 The delegation provision of the Library Agreement must also be amended so that the review of delegations by a council required by s380 can be undertaken by the participating Councils without contravening the Library Agreement.
- 13 The contributions paid to the Library Committee by the participating Councils under the Library Agreement and deposited into the bank account of the Library Committee are money and property received by Lismore City Council within the meaning of s409 of the LGA.
- 14 Therefore, that money must be held in Lismore City Council's funds in accordance with Division 1 of Part 3 of Chapter 13 of the LGA and must be accounted for and audited in accordance with Divisions 2 and 3 of that Chapter.
- 15 In my opinion, because the contributions paid to the Library Committee by the participating Councils are in fact held, audited and accounted for in the Library's funds, and not Lismore City Council's funds, the Council to this extent is in breach of s409 of the LGA.
- 16 Where the Library Committee wishes to invite tenders, the tendering process must be undertaken by Lismore City Council on its behalf in accordance with the applicable provisions of the LGA.
- 17 The day to day management of the Library and the employment of staff are functions required to be carried out by Lismore Council. In fact these functions purport to be undertaken by Library staff independently of the Council under the purported direction of the Library Director who has no delegation from the General Manager of Lismore City Council to do so. In my opinion this is in breach of the Library Agreement.

Advice

Provision Library services under the LGA

- 18 The Library Agreement is expressly stated to be entered into under the *Library Act 1939*.



- 19 However, I do not think that the *Library Act 1939* prevents a council providing library services in the absence of adopting the provisions of that Act. In my opinion, a council has a discretion whether to provide library services in accordance with the Library Act or otherwise.
- 20 I make no comment on whether Library Agreement was validly entered into under the *Local Government Act 1919*, which was in force at the time the Library Agreement was entered into, or whether it remains binding on the parties.
- 21 In my opinion, the terms of the Library Agreement and the functions performed by Lismore City Council under it are authorised by the LGA for the reasons that follow.
- 22 Section 7 of the LGA specifies the purposes of the LGA, which include the following:
- ...
- (b) *to regulate the relationships between the people and bodies comprising the system of local government in New South Wales,*
- ...
- (d) *to give councils:*
- *the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public*
- 23 A council's charter under s8 of the LGA includes the following:
- ...
- *to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively*
- 24 A council has functions:
- 24.1 conferred or imposed on it under the LGA (s21, LGA),
- 24.2 conferred or imposed on it by or under any other Act or law (s22, LGA), and
- 24.3 permitting it to do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions (s23, LGA).
- 25 Section 24 of the LGA allows a council to *provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to this Act, the regulations and any other law.* In my view, this covers the provision of library services.
- 26 A council is constituted as a body corporate under s220 of the LGA and is therefore a statutory corporation.
- 27 Section 50 of the *Interpretation Act 1987* provides that, as a statutory corporation, a council:
- ...
- (d) *may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and*
- (e) *may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions*
- 28 Section 357 provides that a council may exercise its functions within its area or outside its area, but may exercise its regulatory functions under Chapter 7 only within its area.



- 29 In my opinion, these provisions permit the Library Committee and Lismore City Council to exercise functions relating to the provision of Library services in the areas of the participating Councils as provided for in the Library Agreement.

The Library Committee

- 30 The Library Agreement does not expressly state the overall role of the Library Committee.
- 31 However, in my opinion, the terms of the Library Agreement indicate that parties intended it to be the governing body of the Library responsible for providing, managing and controlling the Library and Library services in the areas of the participating Councils.
- 32 My instructions reveal that Lismore City Council, as the Executive Council, is responsible for implementing the decisions of the Library Committee and undertaking the day to day management of the Library.
- 33 However, I am instructed that Lismore City Council does not undertake the day to day management of the Library, nor does it employ Library staff. Rather these functions purport to be carried out by Library staff independently of the Council under the purported direction of the Library Director who has no delegation from the General Manager of Lismore City Council. In my opinion this is in breach of the Library Agreement.
- 34 In my view, the Library Committee is not a Committee as defined in clause 231 of the Regulation because it is not *a committee established under clause 260 or the council when it has resolved itself into a committee of the whole.*
- 35 Therefore, Part 10 of the Regulation does not apply to the Library Committee.
- 36 In my opinion, the LGA does not prevent Lismore City Council appointing the Library Committee under the Library Agreement nor does it prevent that Committee having members nominated by other councils in accordance with the Library Agreement.
- 37 Therefore, in my opinion, the Library Committee is validly established under the LGA.
- 38 I make no comment on whether, under the *Local Government Act 1919*, it was necessary for the Library Committee to be established by Lismore City Council rather than jointly by the participating Councils or whether it was necessary or desirable for the Committee to be established by one participating Council for purposes of the *Library Act 1939*.
- 39 However, in my opinion, the LGA does not require the Library Committee to be established by one participating council in order for that Committee to operate under the Library Agreement in the manner envisaged by that Agreement.
- 40 I also make no comment on whether the Library Committee was validly established at the time the Library Agreement was entered into or whether it has validly continued in force since then.

Delegations to the Library Committee

- 41 The Library Agreement provides that the parties are to delegate to the Library Committee *all and any of their powers and duties in relation to the provision, management and control of libraries and library services, except any power to borrow money, to make and/or levy a rate, to execute a deed or contract or any agreement under the Library Act...or to institute proceedings at law or in equity on behalf of the respective Councils*
- 42 Section 377(1) of the LGA permits a council to delegate its functions to the general manager or any other person or body.



- 43 In my opinion, the Library is a relevant body for the purposes of s377(1) and, therefore, may be given delegations by the participating Councils under the Library Agreement.
- 44 In my opinion, the delegation given to the Library Committee by Lismore City Council and the other participating councils under the Library Agreement contravenes s377(1) of the LGA.
- 45 This is because the exceptions to the delegation given by the participating Councils as specified in the Library Agreement fall short of the exceptions to a council's power to delegate under s377(1).
- 46 For this reason, in my opinion, the delegation given to the Library Committee by Lismore City Council and the participating Councils is beyond power must be revoked and replaced by delegations that comply with s377(1).
- 47 In order to enable this to occur without Lismore City Council and the other participating Councils contravening the Library Agreement, the relevant provision of the Library Agreement must be first amended.
- 48 Section 380 requires a council to review all its delegations during the first 12 months of each term of office. I have no instructions whether the participating Council have complied with this requirement.
- 49 In any event, the Library Agreement as presently drafted does not, in my opinion, accommodate the possibility of the review required by s380. The delegation given under the Library Agreement is expressed as a once and for all delegation with no express provision for review.
- 50 The relevant provision of the Library Agreement must be amended so that the review required by s380 can be undertaken by the participating Councils without contravening the Library Agreement.
- 51 It should be noted that s380 does not, in my opinion, operate to invalidate a council's delegations if the council breaches the requirement in s380 to review its delegations.
- 52 Therefore, if the delegations specified in the Library Agreement have not been reviewed in accordance with s380, it is my view that the delegations remain in force although the council concerned will have breached the LGA.

Contributions paid to the Library Committee

- 53 In my opinion, the effect of Lismore City Council establishing the Library Committee is that the contributions paid to the Library Committee by the participating Councils under the Library Agreement and deposited into the bank account of the Library Committee are money and property received by Lismore City Council within the meaning of s409 of the LGA.
- 54 Therefore, that money must be held in Lismore City Council's funds in accordance with Division 1 of Part 3 of Chapter 13 of the LGA and must be accounted for and audited in accordance with Divisions 2 and 3 of that Chapter.
- 55 I am instructed that the contributions paid to the Library Committee by the participating Councils are in fact held, audited and accounted for in the Library's funds, and not the funds of Lismore City Council. As a result, in my opinion Lismore City Council to this extent is in breach of s409 of the LGA.
- 56 The Library Agreement provides that the bank account of the Library Committee is to be operated only by resolution of the Library Committee or the Executive sub-Committee.
- 57 I am instructed that the Library Committee does not pass resolutions to make payments to Lismore City Council to enable it, as the Executive Council, to pay library staff, purchase books, motor vehicles and other stock and equipment of the Library



and discharge any debts and other liabilities incurred by it in the day to day operation of the Library.

Tendering arrangements

- 58 The delegation given to the Library Committee by Lismore City Council and the other participating Councils under the Library Agreement includes the function of tendering.
- 59 I am instructed that Lismore City Council, in its role as Executive Council, undertakes tendering in relation to the Library on behalf of the Library Committee.
- 60 In my opinion, this complies with the tendering provisions of the LGA involving bodies established by a Council.
- 61 Section 55A(1) of the LGA provides that *a council must comply with the requirements of section 55 (including any regulations made under that section) even though the contract to which that section applies involves something being done to or by an entity that the council has formed or participated in forming.*
- 62 Section 55A(3) defines an *entity* to mean *any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.*
- 63 The Library Committee is an unincorporated body established by Lismore City Council in accordance with its obligations under the Library Agreement.
- 64 The Regulation does not exclude an entity such as the Library Committee from the application of s55A(1).
- 65 Therefore, where the Library Committee wishes to invite tenders, the tendering process must be undertaken by Lismore City Council on its behalf in accordance with the applicable provisions of the LGA.
- 66 I trust this advice is of assistance.

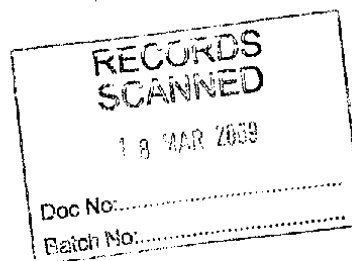
Yours sincerely,

Dr Lindsay Taylor

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Confidential

23 February 2009

Our ref: LIS00208

The General Manager
Lismore City Council
43 Oliver Avenue
Goonellabah NSW 2480

Attention: Rino Santin

Email

Dear Sir

Advice re Richmond Tweed Regional Library

Introduction

- 1 Lismore City Council (**LCC**), as the Executive Council, and on behalf of the Richmond Tweed Regional Library (**Library**), seeks my advice on 2 options for the ongoing operation and management of the Library being:
 - 1.1 the creation of a county council, and
 - 1.2 amendment of the agreement entered into between Council and Ballina, Byron and Tweed Shire Councils (**Participating Councils**) in the early 1970s relating to the provision of Library services in their areas (**Library Agreement**).
- 2 I understand that the Participating Councils are generally happy with the manner in which the Library is currently operated, despite the fact that this gives rise to some breaches of the *Local Government Act 1993 (LGA)*. As a result LCC has sought advice on:
 - 2.1 The implications of each option for the manner in which the Library is currently operated and managed; and
 - 2.2 The advantages and disadvantages of each option from the point of view of the Library, the Executive Council and the Participating Councils established under the Library Agreement.

Provisions of the Library Agreement

- 3 The relevant provisions of the Library Agreement are as follows:

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- 3.1 the express intention of the parties is to provide adequate library facilities for the residents of their areas,
- 3.2 for that purpose, the Richmond Tweed Regional Library is declared to be constituted by the Library Agreement,
- 3.3 LCC is to appoint a *Richmond Tweed Regional Library Committee (Library Committee)*,
- 3.4 the Library Committee is to consist of:
 - 3.4.1 2 members appointed by each of the parties to the Agreement, and
 - 3.4.2 2 members appointed by any other Council that enters into a similar agreement with Lismore City Council, and
 - 3.4.3 the *Town Clerk* of LCC who is to be the *Executive Member* of the Library Committee,
- 3.5 with specified exceptions, the parties are to delegate to the Library Committee their *control of libraries and library services* in their areas,
- 3.6 the parties are to pay contributions to the Library Committee,
- 3.7 the Library Committee is to bank the contributions and any other money it receives into a bank account,
- 3.8 the Library Committee is to appoint an *Executive Sub-Committee* that is empowered to act on behalf of the Library Committee,
- 3.9 the bank account is to be operated only by resolution of the Library Committee or, in *contingent circumstances*, the Executive Sub-Committee,
- 3.10 the Library Committee is to nominate library staff on the recommendation of the Council in whose area the staff will be principally *employed*,
- 3.11 the Library Committee is to provide an annual report to the parties that includes details of the Committee's activities over the previous 12 months including relating to *book purchases and stock*,
- 3.12 LCC is appointed *Executive Council*,
- 3.13 the Executive Council is required to employ all library staff.

Current operation and management of the Library

- 4 I am instructed that, in practice, LCC undertakes the following in relation to the Library as the Executive Council:
 - 4.1 Co-ordinates the employment of the Director and is a party to the Director's contract of employment, but all salary related payments are paid directly by the Library,
 - 4.2 Has the legal ownership of the Library's headquarters, but all ownership, operating and maintenance costs are paid directly by the Library,
 - 4.3 Registers and insures all motor vehicles used for Library purposes, but all ownership, operating and maintenance costs are paid by the Library, and
 - 4.4 Assists in the preparation of some tender specifications, but formally adopts all tenders on behalf of the Library.
- 5 I am further instructed that:
 - 5.1 LCC does not manage the Library from day to day,



- 5.2 the Library is managed from day to day by Library staff independently of LCC under the purported direction and control of the Library Director,
 - 5.3 no delegation exists from LCC's General Manager to the Library Director relating to the day to day management of the Library,
 - 5.4 the Library also purports to employ its own staff. However, I note that the report to the Library Committee dated 28 November 2008 (**Report**) states that LCC actually employs the staff although this arrangement is *invisible*,
 - 5.5 the Library prepares its own annual budget and strategic planning documents;
 - 5.6 the Library maintains bank and investment accounts, pays creditors, issues tax invoices, remits and claims taxes and prepares annual financial reports.
- 6 I have not been instructed whether LCC, as the Executive Council, owns other property used for the purposes of the Library.

Discussion of Options

County Council Model

Provisions of the LGA regarding county councils

- 7 Part 5 of Chapter 12 of the LGA relates to county councils.
- 8 Section 387 of the LGA permits the Governor to establish a county council, after consideration of a proposal to do so by a council or other local authority.
- 9 The proclamation establishing the county council may include facilitating provisions of the type contemplated by section 213 of the LGA in relation to councils. They include provisions relating to the transfer of assets, rights and liabilities, and the transfer of staff.
- 10 A county council may perform any one or more of the functions of a council under the LGA or any other act or law.
- 11 A county council has a governing body, which is comprised of members elected by each *constituent council*, being each council whose area lies wholly or partly within the county council's area of operations. The *constituent councils* would be the Participating Councils.
- 12 The members of the governing body must be councillors of the *constituent councils*.
- 13 A county council has the legal capacity and powers of an individual, but is not a body corporate and is constituted by the number of persons to be elected by each constituent council to the county council's governing body.
- 14 The members of the county council must elect one of its members as the chairperson. The chairperson holds office for 12 months, presides at meetings of the county council and exercises such other functions of the county council as the county council determines.
- 15 Section 394 of the LGA provides that a council may not undertake any of the functions conferred on a county council whose area of operations covers the whole or part of that council's area, subject to anything in the regulations, and any provisions of the proclamation establishing the county council.
- 16 Section 395 provides that a county council must appoint a general manager who exercises the functions which a general manager of a council exercises in relation to a council.
- 17 A county council must meet 4 times a year.



- 18 The constituent councils may make contributions to the county council.
- 19 The majority of the provision of the LGA apply to county councils, except for:
 - 19.1 Part 1 of Chapter 9, regarding council's areas;
 - 19.2 Divisions 1 and 2 of Part 2 of Chapter 9 regarding the constitution of a council and the mayor;
 - 19.3 Chapter 10, regarding how people are elected to civil office;
 - 19.4 Section 265 regarding how often a council must meet; and
 - 19.5 Chapter 15 regarding the making and levying of ordinary rates.

Application of provisions of the LGA to the Library

- 20 The Participating Councils could put a proposal to the Minister for Local Government for the creation of a county council to provide library services within the Participating Councils' areas. The county council could perform the functions currently performed by the Library.
- 21 The governing body of the county council would essentially operate in the manner in which the Library Committee is intended to operate under the Library Agreement in that it would make decisions and direct and control the activities of the county council. The General Manager of the county council would most likely perform the role that the current Library Director performs.
- 22 LCC would be precluded from exercising any functions in relation to the Library, such as those listed in paragraph 4 above, unless the proclamation creating the county council specified that such functions were to be carried out by LCC. In the county council model, LCC would have no role, other than to have one or more of its councillors sit on the governing body of the county council.
- 23 The proclamation creating the county council could provide for the transfer of staff from LCC (provided that staff are in fact employed by LCC), and the transfer of any assets and liabilities which LCC currently has in relation to the operation of the Library, to the county council.

Discussion of implications for the current operation and management

- 24 The governing body of the county council may have a similar constitution to the Library Committee.
- 25 However, I understand that at present, the Library Committee performs very few functions, as the day to day management of the Library is generally effected by the Library's staff.
- 26 Under the county council model, the county council could delegate many of its functions (other than those which cannot be delegated as a result of s377 of the LGA) to the General Manager of the county council.
- 27 That person could operate in a very similar manner to the current Library Director.
- 28 The remainder of the staff of the Library, who would become staff of the county council, would continue to operate under the day to day direction of the General Manager of the county council.
- 29 Alternatively, there is no reason why the governing body of the county council could not delegate its functions to some other person or body, such as a committee established by the county council for that purpose. However, the county council itself would be the entity which would hold property, bank accounts, insurances and would employ staff.



- 30 Therefore, whilst the governing body of the county council would have ultimate control of the Library, the county council would be an autonomous body which, on a day to day basis, would operate and manage the Library.
- 31 The advantage of the county council model in this regard, is that it would have power to hold funds on its own account, to employ staff, to take out all relevant insurances, to tender on its own behalf, and to hold property. However, it would also remain a local authority, which has certain benefits.
- 32 It would also mean that any liability arising from the operations of the library would ultimately rest with the entity with day to day management and control of the operations of the library, which is appropriate.
- 33 The most significant implication of the establishment of the county council is that all functions would have to be exercised in accordance with the provisions of the LGA, including the various constraints contained in the LGA. However I note that whilst the Library currently does not comply with the LGA in many respects in terms of its day to day operations (and see my discussion below in this regard), the Library should, under the current Library Agreement, operate through the Executive Council (LCC), and therefore the exercise of functions by the LCC should comply with the LGA. Therefore, the need for a county council to comply with the LGA does not impose any greater restriction on the Library's operations than the law currently imposes.
- 34 I do not have sufficient information regarding the detail of the manner in which the Library currently performs its functions to know whether the requirements of the LGA would impose any significant constraints on the manner in which the Library currently performs its functions.
- 35 However, I note the following provisions of the LGA which would impact upon the county council's operations:
- 35.1 The provisions of Chapter 11 of the LGA regarding staffing would apply. This would require the county council to determine an organisation structure, and nominate positions which are senior staff positions. The members of the governing body would have to be consulted in relation to the appointment and dismissal of senior staff.
 - 35.2 Section 377 of the LGA would limit the functions which could be delegated by the county council;
 - 35.3 All of the requirements of the LGA in relation to annual reports, management plans and annual financial reports would need to be complied with;
 - 35.4 The county council itself would be required to hold all necessary insurances in accordance with the LGA;
 - 35.5 The provisions of Part 3 of Chapter 13 of the LGA would apply to the county council's financial management; and
 - 35.6 The code of conduct which applies to councillors would apply to members of the county council.

Implications for LCC

- 36 If a county council were established, LCC would have significantly reduced control over the Library operations. LCC's control over the Library would be limited to having one or more of its councillors sit on the governing body of the county council, along with councillors from the other Participating Councils.
- 37 LCC's role would be reduced to be on an equal footing with the other Participating Councils.



- 38 Whilst LCC's control would be reduced, the advantage for LCC would be that it would also have reduced liability as it would not need to own land, employ staff or hold insurances in relation to the Library's operations.
- 39 This would be a significant advantage for LCC, as currently LCC would have liability for some day to day functions over which it might not currently be exercising significant control.
- 40 This is not desirable. For example, if LCC does not have control of employment and staff, then it may not be in a position to ensure that all staff are properly trained in occupational health and safety matters. This could lead to increased exposure to liability in the event of any workplace accidents.
- 41 Similar concerns apply in relation to control of premises, and control over financial management.

Implications for Participating Councils

- 42 The Participating Councils other than LCC would have equal standing with LCC in terms of their ability to influence decisions of the county council through their elected members who serve on the governing body of the county council.
- 43 This is presumably considered appropriate given that LCC does not contribute any greater funds towards the Library than the other Participating Councils.
- 44 However, all Participating Council would have reduced powers from those contemplated in the Library Agreement, as the Library Agreement, for example, contemplates that the Participating Councils will nominate staff who will be principally employed in their local government areas.
- 45 However, under the county council model, the General Manager of the county council would employ staff, without recourse to the Participating Councils (except in relation to the concurrence role for senior staff positions).
- 46 I note that whilst this reduced power in relation to staff is a reduction in the power the Participating Councils have under the Library Agreement, in practice, there may be no real reduction in power as it appears the Library (or LCC) employs staff without recourse to the Participating Councils.

Implications for the Library

- 47 As the Library is not technically a separate legal entity, the implications for the day to day management and operation of the Library, are effectively the implications for the Library itself.
- 48 I note that the Library Committee would cease to exist under this model, although, as noted above, the governing body of the county council would effectively perform the function of the Library Committee and have similar membership.
- 49 There may also be implications for funding under the *Library Act 1939 (Library Act)*.
- 50 I have previously advised the Library that provided that the Library is operated in accordance with section 10 of the Library Act, it is still entitled to a subsidy under that Act, even if it is not a library established in accordance with section 12 of the Library Act. I understand that the Crown solicitor has a different view.
- 51 I have not looked into this issue in detail for the purposes of this advice. However, my preliminary view is that if the Library was a county council, it would continue to fall within the definition of *local library* in the Library Act which is a *library in an area, provided, controlled or managed by a local authority*.



- 52 *Local authority* is defined in the Library Act as a council within the meaning of the [LGA].
- 53 In my view, a county council would fall within this definition. However, if the Library were a corporation, clearly it would not.

Amendment to the Library Agreement

Discussion of implications for the current operation and management

- 54 The Library Agreement could be amended to reflect the current operations and management of the Library.
- 55 However, there is one major difficulty with this approach, which is that the Library is not a separate legal entity, and the agreement cannot create it as such. Therefore, the Library could not hold real property, employ staff, or take out insurance policies.
- 56 Therefore, amendment to the Library Agreement would need to be complemented by the creation of the Library as a separate legal entity, if it was intended that the Library be able to employ staff and control its own affairs.
- 57 Possible options for creation of the Library as a separate legal entity (other than the county council option discussed above) would be creation of the Library as a corporation or creation of a trust.
- 58 However, I note from the Report that those options have been rejected on the basis that they would not meet the requirements of the Library Act and that the Library would not, as a result, be eligible for a subsidy under the Library Act. In addition, the Department of Local Government has indicated it would not approve the creation of a corporation.
- 59 This means that any amendment to the Library Agreement would have to retain the Executive Council so that the Executive Council can perform certain functions which cannot be performed by the Library.
- 60 I am therefore of the view that if the objective of any restructure is to provide greater autonomy to the Library, this cannot be achieved through amendment of the Library Agreement.
- 61 One of the major concerns with the Library not being a separate legal entity, is the uncertainty this creates in relation to insurances.
- 62 I understand that insurances are held in the name of the Library. This includes workers compensation insurance, and presumably also public liability insurance.
- 63 In relation to workers compensation insurance, the actual employer of the Library staff is LCC.
- 64 Therefore, any workers compensation insurance should be held in the name of LCC. The fact that it is not raises the following issues:
- 64.1 Whether the insurance policy actually protects LCC from claims;
- 64.2 If not, whether LCC is in breach of any legislative requirements to the effect that it should hold workers compensation insurance; and
- 64.3 If the insurer did not consider LCC to be covered by insurance in the event of a claim by a Library staff member, whether LCC would be solely liable for any damages sustained by that person, or whether that person, under the Library Agreement, could claim against the other Participating Councils.
- 65 It should be of significant concern to both LCC and the other Participating Councils that they could be uninsured in relation to workers compensation claims.



- 66 Similar concerns relate to the holding of public liability insurance. Again, LCC primarily, and possibly also the other Participating Council could be exposed to significant damages claims if an insurer refused to respond to a claim due to the insured being the Library, as opposed to LCC.
- 67 In order for the Library Agreement to comply with the LGA, it would need to be amended in the following respects:
 - 67.1 The delegation to the Library Committee would need to be amended so that no functions which section 377 says cannot be delegated by a council are delegated to the Library Committee. The Library Agreement would also need to provide for a review of any delegations in accordance with section 380 of the LGA; and
 - 67.2 Any contributions paid by the Participating Councils to the Library Committee would need to be properly treated as money and property received by LCC within the meaning of section 409 of the LGA. As a result that money must be accounted for and audited in accordance with Divisions 2 and 3 of Chapter 13 of the LGA.
- 68 Any functions performed by the Executive Council under the Library Agreement would need to be performed in accordance with the LGA.
- 69 Therefore, if the Library Agreement option is to be pursued, the current operations and management of the Library cannot continue to the extent that they are inconsistent with the LGA.
- 70 It is therefore not legally possible to maintain the current operations and management under this model.

Implications for the Executive Council

- 71 If the current operations and management were retained, the Executive Council would continue to have obligations and liabilities which may not be commensurate with its degree of control over the day to day operations of the Library.
- 72 However, the Library Agreement could either be amended to align control over operations and liability, or to transfer a proportion of liability to the other Participating Councils.
- 73 This may not be satisfactory to the other Participating Councils, given their lack of control on a day to day basis.
- 74 If the original Library Agreement remained on foot, then:
 - 74.1 The Executive Council would be exposed to liability in relation to:
 - 74.1.1 The employment of staff including occupational health and safety claims, wrongful dismissal claims, and discrimination claims; and
 - 74.1.2 Any accidents which occur on Library premises owned by the Executive Council, and any damage to Library property owned by the Executive Council.
 - 74.2 The Executive Council would have to perform its functions in accordance with the LGA, and would be the entity responsible for any breach of the LGA (see below in relation to this issue);
 - 74.3 The Library Committee (subject to delegations being amended to be consistent with the requirements of the LGA) effectively controls the operations of the Library (although I note this may not be the case in practice) but the Executive Council remains liable as outlined above; and



- 74.4 The Library Director would be subject to the direction and control of the General Manager of the Executive Council, except to the extent that that function might be considered to have been lawfully delegated to the Library Committee.
- 75 If the Executive Council is the employer of Library staff, then the Executive Council should have a greater degree of control over the staff to ensure that it can appropriately reduce its exposure to liability. Also, the Executive Council must comply with the provisions of the LGA regarding employment of staff. The current operations may not comply with the LGA.
- 76 Likewise if the Executive Council is to hold insurances and own real property used for the Library, then these roles attract potential for liability which, again, the Executive Council cannot mitigate without a greater degree of control over the day to day operations of the Library.
- 77 As discussed above, there are serious concerns regarding the validity and effectiveness of insurances held in relation to the above areas of liability.
- 78 In relation to the holding of funds, as stated above, in order to comply with the LGA any funds contributed by the Participating Councils should be held by the Executive Council and accounted for and managed in accordance with the LGA.
- 79 The Executive Council will be in breach of the LGA if it does not do so.
- 80 The amendment of the Library Agreement to comply with the LGA, and to retain the Executive Council will impose additional obligations on the Executive Council under the LGA.
- 81 However, the Executive Council would retain a greater degree of control over the Library operations than under the county council model.
- 82 In my view, the misalignment of control and liability should be of concern to the Executive Council, particularly given the uncertainty surrounding the insurances.
- 83 I note that the Library Agreement allows LCC to withdraw from the Library Agreement on 12 months notice. In my view, if the current issues with the Library Agreement as set out in this letter are not addressed, then it would not be unreasonable for LCC to consider withdrawing from the Library Agreement to protect its interests.

Implications for Participating Councils

- 84 I understand that one of the concerns of the Participating Councils is the degree of control the Executive Council has under the Library Agreement, which is considered to be inconsistent with the financial contribution which the Executive Council makes to the Library.
- 85 Amendment of the Library Agreement could address this by altering the contributions to be paid. However, as stated above, there is an assumption of risk, and additional obligations imposed on the Executive Council, to which the other Participating Councils are not subject. It may therefore be appropriate that, if the Executive Council assumes those additional responsibilities and liability, it should contribute a lesser amount financially.
- 86 The Library Agreement could retain the Library Committee, and the Participating Councils would therefore retain some control over the Library. However, if it were possible for the Library Agreement to be amended to reflect the current autonomy of the Library, then that control would be further reduced. As noted above, however the Library cannot be given greater autonomy under this model without it being created as a separate entity such as a corporation.



- 87 Also, as discussed above, there is uncertainty surrounding the degree to which the Participating Councils could be liable for any incidents which might occur if insurances issued in the name of the Library cannot be relied on.

Implications for Library

- 88 As the Library is not technically a separate legal entity, the implications for the day to day management and operation of the Library, are effectively the implications for the Library itself.
- 89 Amending the Library Agreement to comply with the LGA will reduce the degree of autonomy that the Library currently has in a practical sense, unless the Library is created as a separate entity.

Conclusion

- 90 As a result of the above discussion, I recommend that the Library pursue the option of creating a county council to provide library services to the areas of the Participating Councils.
- 91 This has the advantage of all Participating Councils having equal participation in, and representation on the governing body of the county council.
- 92 The county council could delegate functions to a General Manager, who would perform the role currently performed by the Library Director,
- 93 The proclamation creating the county council could include facilitating provisions to ensure the transfer of assets, liabilities and staff from LCC to the county council.
- 94 The new county council would operate autonomously, albeit under the direction and control of its governing body, comprised of councillors from the Participating Councils.
- 95 The county council would have to operate in accordance with the LGA. However, this is necessary under the Library Agreement in any event, give the role of the Executive Council.
- 96 The entity which would have obligations in relation to the day to day management of the Library would also be the entity which has liability for its operations, which is appropriate. It would also be clear who the insured party ought to be under any necessary insurance policies.
- 97 Given that the Library Agreement cannot be amended to give the Library the autonomy it currently enjoys, that option is not recommended. Amendment of the Library Agreement would need to retain the Executive Council as the entity with ultimate responsibility for Library operations. The current operations would therefore need to be modified and many of them performed by the Executive Council.
- 98 Retaining the Library Agreement, and the current approach to operation of the Library produces inequitable results for the Executive Council, particularly in relation to its liability for employment of staff and ownership of property.
- 99 The fact that insurances are currently issued in the name of the Library might leave the Executive Council, and potentially also the other Participating Councils, exposed to significant damages claims in the event of injury to an employee or member of the public.
- 100 I would be happy to advise further on the procedures to be followed to put together a proposal for the creation of a county council.



101 I trust this advice is of assistance.

Yours sincerely,

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