

10 June 2003

REVIEW OF REGIONAL LIBRARY BOARD AGREEMENT

Division City Assets and Services

Presenter Sue Morrell, Group Manager Community Services

Purpose

To:

- present the recommendations of the Yarra-Melbourne Regional Library Corporation Joint Special Committee established to review the Regional Library Agreement (RLA), following its review and consideration of submissions pursuant to Section 223 of the *Local Government Act 1989* (“the Act”);
- recommend the endorsement and adoption of the recommendations contained in Table 2 to this report: and
- to recommend that the Council approve the sealing of the amended Regional Library Agreement.

A similar report was presented to the May cycle of the Yarra Council and the recommendations of the Joint special committee were endorsed.

Time Frame

The Review process commenced in December 2002 and was completed in March 2003.

Finance

The costs associated with conducting the review were shared between the City of Melbourne and the City of Yarra. There are no additional costs to the City of Melbourne as a result of the review. Yarra-Melbourne Regional Library Corporation annual funding and service issues are managed through a three year Funding and Service Agreement that is currently being reviewed and will be presented to Council as a separate report.

Legal

The recommendations of the Joint Special Committee have been the subject of a public submission process in accordance with section 223 of the *Local Government Act 1989* (“Act”). Pursuant to clause 15 of the RLA, amendments to the RLA are not operative unless approved by the two Councils and the Minister in accordance with the Act.

Sustainability

The provision of library services contributes to the social capital within the community and therefore social equity outcomes. It supports environmental goal by creating efficiencies in resources use.

Connected and Accessible City

The provision of library services makes some contribution to ensuring that the information and communication infrastructure is world standard. The proposed action ensures that library services serves the community needs.

Inclusive and Engaging City

The provision of library services makes a major contribution to achieving social equity outcomes. The proposed actions support public institutions that contribute to sustaining social capital.

Innovative and Vital Business City

The provision of Library Services contributes to Melbourne's reputation as a smart and progressive 'Knowledge City' in particular for its liveability.

Environmentally Responsible City

The provision of library services makes a limited contribution to environmental outcomes. Library services contribute to efficiencies in resource use and waste reduction.

Recommendation

That the Finance, Corporate Services and Governance Committee recommend that Council:

- endorse and adopt the following amendments to the Regional Library Agreement, as recommended by the Joint Special Committee:
 - 4.1 (d) Provision for the Board to appoint up to two other persons to the Board;
 - 4.2 (b) Amend 'board' to 'Board'; and
 - 10.1 (a) Recognise in the Agreement the Council's agreed amounts for the rental of properties occupied by the Regional Library as follows:
 - In clause 10.1 (a)(iv) delete "and";
 - Insert a new clause 10.1 (a)(v) as follows:

"10.1 (a)(v) the Council's agreed amounts for the rental (actual or notional) of properties occupied by the Regional Library"; and
 - Renumber existing 10.1 (a)(v) to 10.1 (a)(vi);
- authorise Council Officers, in conjunction with Officers of the City of Yarra, complete the administrative requirements necessary to implement the revised Regional Library Agreement;
- affix the Common Seal of the Council to the revised Regional Library Agreement, as approved by Council; and
- dissolve the Joint Special Committee established by the member Councils to review and receive submissions in relation to the Review of the Regional Library Agreement.

Attachment:

1. Draft Regional Library Agreement Incorporating Recommended Amendments 31/03/03

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 - 1.2 recommend the endorsement and adoption of the recommendations contained in Table 2 to this report: and
 - 1.3 to recommend that the Council approve the sealing of the amended Regional Library Agreement.
2. A similar report was presented to the May cycle of the Yarra Council and the recommendations of the Joint special committee were endorsed.

Background

3. The Yarra-Melbourne Regional Library Corporation (YMRLC) was established in September 1995 pursuant to the RLA between the City of Yarra and the City of Melbourne, to provide library services in the two municipalities.
4. The RLA establishes the framework for the operation of these services and also provides that the Councils shall review the operation of the RLA at least once every three years.
5. The RLA was previously reviewed in October/November 1999, with proposed amendments considered and approved by both Councils in December 1999 and approval by the Minister in accordance with the Act gazetted 23 March 2000.
6. In December 2002 the Melbourne and Yarra Councils established a Joint Special Committee pursuant to Section 86 of the Act to conduct a further review of the RLA.
7. The Joint Special Committee formally met on 19 February 2003 to consider a report on the review of the RLA and resolved to give public notice of the Review in accordance with Section 223 of the Act and make an Explanatory Statement regarding the review available for public inspection.

8. The Explanatory Statement and RLA were made available for public inspection and public notice advertised in the Melbourne Leader, Yarra Leader, Melbourne Times and Emerald Times in the week commencing 24 February 2003.
9. Submissions regarding the RLA were required to be received by 21 March 2003 for consideration by the Joint Special Committee pursuant to Section 223 of the Act.

Issues

10. Two (2) submissions were received and considered by the Joint Special Committee.

Time Frame

11. The Review process commenced in December 2002 and was completed in March 2003

City Plan 2010 / Municipal Strategic Statement

12. In the context of City Plan 2010 commitment to an “Inclusive and Engaging City”, strategic direction 3.2 refers to the provision and delivery of services which support those living in, visiting and working in the City.

Relation to Council Policy

13. The provision of library services is an identified role of Council.

Consultation

14. At the close of the submission period, two (2) submissions had been received from:
 - 14.1 Ms. Ruth Cameron of Richmond; and
 - 14.2 (b) Ms. Gail Rockman, Chairperson Yarra/Melbourne Regional Library Corporation Advisory Committee (RLCAC).
15. The Joint Special Committee met on 31 March 2003 to receive and consider submissions. The submission on behalf of the RLCAC was supported, in person, at the meeting by Ms. Judith Biddington as Acting RLCAC Chairperson.
16. A summary of the submissions considered by the Joint Special Committee is set out in Table 1 below:

Table 1: Summary of submissions to the Joint Yarra-Melbourne Special Committee

Details of Submitter	Key Points of Submission
<p>Ruth Cameron <i>Richmond Resident and Regional Library Board Member</i></p>	<p>Membership of the Board:</p> <p>4.1 (c) It is crucial to continue to have a community representative on the Board but the issue seems to be the current and limited makeup of RLCAC.</p> <p>4.1 (d) The “other person/s” need to be differentiated from the community representative in the current agreement.</p> <p>Submission further suggests Board Membership should reflect a “community group” rather than RLCAC.</p>
<p>Gail Rockman <i>Chairperson Regional Library Community Advisory Committee</i></p>	<p>Membership of the Board:</p> <p>Submission supports proposed change to 4.1 (d), makes no comment regarding proposed change to 10.1(a) regarding agreed amounts for rental of Council properties and further suggests:</p> <p>4.1 (c) increasing community representation from one to two, at least one of whom shall be nominated by the RLCAC.</p> <p>4.2 (a) removing the provision for Senior Officers to deputise for Councillor Board Members.</p> <p>10.1(a) substituting reference to “Council” in sub-clause (iv) regarding State Government library subsidies and grants, with “Regional Library Corporation”.</p>

17. A summary of the proposed amendments to the RLA following the Joint Special Committee’s consideration of submissions pursuant to Section 223 of the Act is set out in Table 2.

Table 2: Summary of proposed changes to the Regional Library Agreement

Item	Reference (Clause)	Existing Provision	Proposed Provision	Notes
1.	4.1 (d) 4.2 (b)	The agreement provides that the Board may appoint one other person to the Board. Existing provision refers to “board” rather than “Board”	Provide that the Board may appoint up to two other persons to the Board. Amend “board” to “Board”	This proposed change provides the Board with greater flexibility in making its appointments to the Board and improved capacity to ensure the skills mix of Board members matches the needs of the Board.
2.	10.1 (a)	The agreement recognises the major budget items which are exceptions to the per capita contributions made by each Council. These are <ul style="list-style-type: none"> - Special Projects, - Board operating expenses, - State Government subsidies - Grants and funds received from other sources but omits the recognition of both actual and notional rents.	Recognise in the Agreement the Council’s agreed amounts for the rental of properties occupied by the Regional Library, as follows: 10.1 (a)(iv) Delete “and” Insert new: 10.1 (a)(v) the Council’s agreed amounts for the rental (actual or notional) of properties occupied by the Regional Library; and Renumber existing 10.1 (a)(v) to 10.1 (a)(vi)	This proposed change remedies an omission in the Agreement.

18. A copy of the revised RLA incorporating the Joint Special Committee recommended amendments in bold type is attached as Attachment 1.

Government Relations

19. There is a requirement under the *Local Government Act 1989* to review Regional Library Agreements. The public notice of the Review and the Joint Special Committee's receipt and consideration of submissions meets the requirements of Section 223 of the Act.

Options

20. Council may:
 - 20.1 endorse the Joint Special Committee's recommended amendments to the RLA as set out in Table 2;
 - 20.2 propose alternative and / or further amendments to the RLA for consideration by the JSC; or
 - 20.3 defer the matter.

Conclusion

21. In addition to changes arising from the submission process there are minor editorial changes recommended in this Agreement as outlined in Table 2.
22. Following consideration of the submissions the major change recommended by the JSC is to increase the Board's ability to appoint up to two other persons to the Board. The current Agreement provides that the Board may only appoint one other person to the Board. The proposal is that the Board would consist of one Councillor appointed by Yarra, one Councillor appointed by Melbourne, a Senior Officer appointed by each Council, one community representative nominated by the RLCAC, and two other persons.
23. There are no direct costs associated with amending the Agreement as Yarra-Melbourne Regional Library Corporation annual funding and service issues are managed through a three year Funding and Service Agreement that is currently being reviewed and will be presented to Council as a separate report.

Proposal

24. It is proposed that Council endorse the Joint Special Committee's recommended amendments to the RLA as set out in Table 2.

Recommendation

25. That the Finance, Corporate Services and Governance Committee recommend that Council:
 - 25.1 endorse and adopt the following amendments to the Regional Library Agreement, as recommended by the Joint Special Committee:
 - 25.1.1 4.1 (d) Provision for the Board to appoint up to two other persons to the Board;
 - 25.1.2 4.2 (b) Amend 'board' to 'Board'; and
 - 25.1.3 10.1 (a) Recognise in the Agreement the Council's agreed amounts for the rental of properties occupied by the Regional Library as follows:
 - 25.1.3.1 In clause 10.1 (a)(iv) delete "and";
 - 25.1.3.2 Insert a new clause 10.1 (a)(v) as follows:

"10.1 (a)(v) the Council's agreed amounts fro the rental (actual or notional) of properties occupied by the Regional Library"; and
 - 25.1.3.3 Renumber existing 10.1 (a)(v) to 10.1 (a)(vi);
 - 25.2 approve the recommended amendments (refer 'Proposed Provision in Table 2) to the Regional Library Agreement by the Joint Special Committee be approved;
 - 25.3 authorise Council Officers, in conjunction with Officers of the City of Yarra, complete the administrative requirements necessary to implement the revised Regional Library Agreement;
 - 25.4 affix the Common Seal of the Council to the revised Regional Library Agreement, as approved by Council; and
 - 25.5 dissolve the Joint Special Committee established by the member Councils to review and receive submissions in relation to the Review of the Regional Library Agreement.

MELBOURNE CITY COUNCIL

and

YARRA CITY COUNCIL

REGIONAL LIBRARY CORPORATION AGREEMENT

DRAFT INCORPORATING RECOMMENDED AMENDMENTS

31 MARCH 2003

TABLE OF CONTENTS

1.	DEFINITIONS	1
2.	TERM	3
3.	CREATION OF THE REGIONAL LIBRARY	3
4.	MEMBERSHIP OF THE BOARD	4
5.	PROCEEDINGS OF THE BOARD	5
6.	CHIEF EXECUTIVE OFFICER	5
7.	EQUITY AND OPERATING COSTS	6
8.	STRATEGIC PLANNING	6
9.	ANNUAL BUDGET	7
10.	ANNUAL FINANCIAL CONTRIBUTIONS	7
11.	REPORTING AND ACCOUNTS	8
12.	ENTRY AND EXIT OF ALL PARTIES	8
13.	DISSOLUTION OF REGIONAL LIBRARY	9
14.	DISPUTE RESOLUTION	10
15.	AGREEMENT AMENDMENT	11
16.	AGREEMENT REVIEW	11
17.	CONDITIONS PRECEDENT	11

THIS AGREEMENT is made

BETWEEN

**MELBOURNE CITY COUNCIL of Swanston Street, Melbourne, Victoria
("Melbourne")**

AND

YARRA CITY COUNCIL of 333 Bridge Road, Richmond, Victoria ("Yarra")

RECITALS:

- A. The Councils hereby terminate the Regional Library Agreement entered into on **23 March 2000**.
- B. The Councils desire to enter into a new agreement to ensure the continuation of a regional library to service the Melbourne and Yarra municipal districts and with the intention that section 196 of the *Local Government Act 1989* will apply.
- C. The Regional Library will operate in accordance with a Strategic Plan, an Annual Service Plan and a budget which have been approved, in writing, by each Council.
- D. The Councils have agreed that they will provide certain assets for the use, or transfer certain assets to the ownership, of the Regional Library. These assets will be identified in accordance with the procedure specified in clause 7.
- E. The Councils have agreed to contribute certain sums of money annually for the purposes of the Regional Library.

THE PARTIES AGREE

1. DEFINITIONS

In the interpretation of this Agreement, including the Recitals, except where the context otherwise requires:

- (a) the following words shall have the following meaning:

"Act" means the *Local Government Act 1989*;

"Agreement" means this Agreement and any variation to this Agreement entered into between the parties;

"Annual Service Plan" means a document prepared each year by the Chief Executive Officer containing a programme for the delivery of services, with defined objectives and strategies for their achievement;

"Budget" means the annual budget of the Regional Library which has been approved by each Council in accordance with clause 8.3;

“Chief Executive Officer” means the person appointed to be the Chief Executive Officer of the Regional Library in accordance with the Act, who is appropriately qualified according to the determination of the Board;

“Corporation” means the **Regional Library Corporation established under this Agreement;**

“Council” means a party to this Agreement;

“Council’s Collection” means the collection made available by a Council including books, audio visual materials, periodicals and other readable formats for the Regional Library to use as the collection may be maintained, replaced and repaired by or for the Regional Library;

“Council’s Per Capita Proportion” means the proportion which is calculated in accordance with the following formula:

$$\text{CPCP}\% = \frac{X \times 100}{Y + M}$$

where

X = the number of people living within the municipal district of the Council based on figures collected by the Australian Bureau of Statistics current at the date on which the Council’s particular financial contribution is required;

Y = the number of people living within the municipal district of Yarra based on figures collected by the Australian Bureau of Statistics current at the date on which the Council’s particular financial contribution is required;

M = the number of people living within the municipal district of Melbourne based on figures collected by the Australian Bureau of Statistics current at the date on which the Council’s particular financial contribution is required;

“Dispute” means any dispute or difference between a Council and the Regional Library or between any of the Councils which arises out of this Agreement or concerns the Regional Library;

“Local Law” means a Local Law made in accordance with Part 5 of the Act;

“Minister” means the Victorian Government Minister responsible for administering the Act;

“Panel” means the Panel constituted under clause 14.1(b);

“Regional Library” means the Regional Library Corporation established under this Agreement;

“Regional Library Board” or **“Board”** means the governing body of the Regional Library established under clause 4.1;

“Resolution Period” means the period of fourteen calendar days or some other period agreed by the Panel;

“**RLCAC**” means the Regional Library Community Advisory Committee constituted by, and comprising members appointed by, the Board;

“**Senior Officer**” has the same meaning as in section 3(1) of the Act;

“**Special Project**” means an additional service provided by the Regional Library which does not form part of the Regional Library’s ordinary function of providing library services and which is identified as a “Special Project” in accordance with clause 10.5; and

“**Strategic Plan**” means a document prepared and revised annually by the Chief Executive Officer for endorsement by the Board, which establishes strategic direction for the Corporation for the following three years;

- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting any gender include all genders; and
- (d) headings are for convenience only and shall not affect the interpretation of this Agreement.

2. TERM

This Agreement shall commence on the day on which the relevant gazettal is published pursuant to Section 196 (2) of the Act and expires on the third anniversary of the commencement of the Agreement.

3. CREATION OF THE REGIONAL LIBRARY

There shall be constituted a regional library corporation for the purposes of section 196 of the Act which shall have such name as the Board determines, to:

- (a) provide resources and programs aimed at meeting the information, recreation, educational and cultural needs of the diverse communities of Yarra and Melbourne in an equitable, effective, efficient, responsive and forward looking manner;
- (b) provide or ensure the provision of, subject to any conditions attached to any State government library subsidies and grants to the Regional Library or the Councils, a regional library service for the Councils’ municipal districts as determined by the Board;
- (c) provide additional services as “Special Projects” in accordance with this Agreement;
- (d) make Local Laws relating to the Regional Library;
- (e) perform any other functions which are conferred on the Regional Library under this Agreement or the Act, including defining overall policy objectives, developing strategic policy, inviting tenders and awarding contracts for the provision of services, monitoring contracts under which services are provided, and approving a Strategic Plan and an Annual Service Plan first approved by each Council in accordance with clause 8.5; and
- (f) to do all things necessary or expedient in accordance with this Agreement and the Act for the carrying out of its functions.

4. MEMBERSHIP OF THE BOARD

4.1 The Board of the Regional Library shall consist of the following members:

- (a) (i) one Councillor appointed by Yarra;
- (a) (ii) one Councillor appointed by Melbourne;
- (b) a Senior Officer appointed by each Council;
- (c) one community representative nominated by the RLCAC and appointed by the Board provided that if the RLCAC fails to nominate a representative, the Board may, but is not obliged to, appoint another community representative, to be a member of the Board; and
- (d) **two** other persons appointed by the Board.

4.2 (a) A Council may appoint a person to act as deputy for a member appointed by the Council, but the deputy shall hold a position of the same category as the position of the member for whom the deputy acts (except that, in the case of a member who is a Councillor, the deputy may be a Senior Officer).

- (b) A Board member who is a member of the RLCAC may nominate a person who is also a member of the RLCAC to act as a deputy, but the person's appointment as deputy shall only be effective if the Board approves the nomination of that person as deputy.

4.3 (a) Subject to this clause 4.3 and clause 4.4, a member and deputy shall continue to hold office until the term of the person's appointment expires, or the person resigns.

- (b) A member and deputy shall hold office for a term of no more than three years but may be re-appointed for a subsequent term or terms.
- (c) A member or deputy who is a Councillor or Senior Officer shall immediately cease to hold office if the Council who has appointed him or her so resolves or if the person ceases to be a Councillor or Senior Officer.
- (d) A member or deputy who is a member of the RLCAC shall immediately cease to hold office if the person ceases to be a member of that committee.

4.4 A member appointed by a Council or the Board may be removed by that Council or the Board.

4.5 A Council must fill a vacancy in its membership as soon as possible and notify the Board in writing of the new member.

4.6 The office of a member automatically becomes vacant if he/she is absent (whether or not the member is represented by a deputy) for three consecutive meetings without the leave of the Board.

4.7 The Councils must seek to ensure that the Board is comprised of suitably qualified people so that the Board has access to the following skills:

- (a) knowledge in areas of library and information services management;
- (b) policy development;
- (c) business, financial and contract management;
- (d) education; and

- (e) community service needs.

5. PROCEEDINGS OF THE BOARD

- 5.1 The Board shall hold an ordinary meeting at least once in every three months.
- 5.2 If a special meeting is called, it must be called by the Chief Executive Officer on the request of the Chair or any three members of the Board.
- 5.3
 - (a) The Chair shall be the person nominated by the Board and appointed by the Councils to be Chair of the Board of the Regional Library.
 - (b) The Deputy Chair shall be the person nominated by the Board and appointed by the Councils to be Deputy Chair of the Board of the Regional Library.
 - (c) The Chair and the Deputy Chair shall hold office for twelve months, unless they go out of office earlier in accordance with clause 4.3 of this Agreement.
- 5.4 The Chair or, in the absence of the Chair, the Deputy Chair, shall preside at meetings of the Board. The Chair or, in the absence of the Chair, the Deputy Chair, shall have a casting vote unless this is contrary to the Act.
- 5.5 In the absence of the Chair and Deputy Chair from a Board meeting, the remaining members of the Board may elect one of their number to preside at that meeting.
- 5.6 Notice of a motion:
 - (a) to recommend amendment of this Agreement; and
 - (b) for the adoption or amendment of Local Laws by the Board;shall be given in writing to the Councils at least one month before the meeting of the Board at which the motion is to be discussed.
- 5.7 Each Council agrees to indemnify the Regional Library in respect of any liability incurred as a consequence of the operation of section 76 of the Act in relation to each of its appointed members.
- 5.8 The Board shall ensure that the RLCAC is comprised of a wide range of library users and community members of the Regional Library.

6. CHIEF EXECUTIVE OFFICER

- 6.1 The Board shall appoint a Chief Executive Officer.
- 6.2 In addition to any responsibilities imposed on a Chief Executive Officer under the Act, the Chief Executive Officer shall be responsible to the Board for the finances and administration of the Regional Library including the implementation of the Annual Service Plan, the preparation and annual review of the Strategic Plan for approval by the Board by 30 June each year, delivery of the service either internally, and/or externally by a third party service provider, administrative support for the Board and any other duties specified.

7. EQUITY AND OPERATING COSTS

- 7.1 If a Council wishes to transfer assets to the Regional Library or make additional assets available to the Regional Library for its use, the assets to be transferred or made available must be set out in a statement (“the Statement”) executed by the Councils and the Chief Executive Officer.
- 7.2 The Chief Executive officer shall maintain a register of the assets provided for the use of the Regional Library by the Councils which must be updated each time a Statement is executed by the Councils and the Chief Executive Officer. This register must indicate which Council owns each asset.
- 7.3 The Chief Executive Officer shall maintain a register of the assets owned by the Regional Library.
- 7.4 A Council must, unless otherwise agreed by the Councils, give twelve months notice in writing to the Chief Executive Officer of its intention to withdraw assets from the use of the Regional Library.
- 7.5 Notwithstanding that the service provision may be outsourced and that the costs referred to in this clause may be borne by an external service provider:
- (a) the Regional Library shall, unless otherwise agreed by the Councils, be responsible for the maintenance, repair, replacement and operating costs of assets owned by the Regional Library or provided by the Councils for the use of the Regional Library;
 - (b) each Council shall be responsible for structural repairs to buildings owned by it but provided for the use of the Regional Library; and
 - (c) the Councils agree that the Regional Library shall be responsible for the maintenance, repair, replacement and operating costs of the Councils’ Collections.
- 7.6 The Regional Library shall, unless otherwise agreed by the Councils and subject to clause 7.5, be responsible for its own operating costs.

8. STRATEGIC PLANNING

- 8.1 The Chief Executive Officer shall by 1 June each year provide each Council with a copy of the Regional Library’s proposed Strategic Plan prepared in accordance with section 153A of the Act.
- 8.2 The Chief Executive Officer shall by 1 June each year prepare and provide each Council with a proposed Annual Service Plan for the financial year commencing 1 July.
- 8.3 The Annual Service Plan shall include a program for the delivery of services by the Regional Library which identifies the nature and extent of proposed services and an estimate of the costs of the provision of those services.
- 8.4 The Regional Library must adopt a Strategic Plan and an Annual Service Plan by the date specified in the Act for the adoption of its Budget.
- 8.5 The Regional Library must not adopt a Strategic Plan or Annual Service Plan which has not been approved, in writing, by the Councils.
- 8.6 The Regional Library must not substantially deviate from an adopted Strategic Plan or adopted Annual Service Plan, without first obtaining the Councils’ written approval.
- 8.7 The Regional Library must not enter into a contract for the provision of the library service which has not been approved, in writing, by the Councils.

9. ANNUAL BUDGET

- 9.1 The Chief Executive Officer shall by 1 June each year provide each Council with a copy of the Regional Library's proposed annual budget prepared in accordance with section 144 of the Act.
- 9.2 The proposed annual budget shall include:
- (a) the amount of funds currently held by the Regional Library;
 - (b) the amount of each Council's proposed financial contribution to the Regional Library for the financial year commencing 1 July;
 - (c) the amount of funds to be received from any other source by the Regional Library in the financial year commencing 1 July;
 - (d) amounts payable under contracts with service providers who have successfully tendered to provide services to the Regional Library; and
 - (e) the amount of funds expected to be recovered from or expended for Special Projects.
- 9.3 The Regional Library must not adopt a proposed annual budget or a revised annual budget which has not been approved, in writing, by the Councils.

10. ANNUAL FINANCIAL CONTRIBUTIONS

- 10.1 The amount to be contributed to the Regional Library by each Council during each financial year shall be the sum of:
- (a) the amount specified in the Regional Library's Budget including:
 - (i) the Council's Per Capita Proportion of amounts payable under contracts with service providers who have successfully tendered to provide services to the Regional Library, excluding amounts payable for Special Projects;
 - (ii) the Council's agreed proportion of amounts payable for Special Projects;
 - (iii) the Council's agreed proportion of the operating expenses of the Board;
 - (iv) all State Government library subsidies and grants received by the Council for library services which relate to the services provided or to be provided by the Regional Library;
 - (v) **the Councils agreed amounts for the rental (actual or notional) of properties occupied by the Regional Library; and**
 - (vi) funds received by the Council from any other source for library services provided or to be provided by the Regional Library; and
 - (b) funds received by the Council from any other source for library services to be provided by the Regional Library, in respect of which no provision has been made in the Regional Library's Budget.
- 10.2 Each Council's financial contribution to the Regional Library under clause 10.1(a) shall be paid in quarterly instalments on the first day of July, October, January and April of each year, or, if pursuant to a contract with an external service provider, the Regional Library is required to make

payments more frequently than quarterly, with sufficient frequency to ensure that the Regional Library is capable of observing its contractual obligations with the external service provider.

- 10.3 If, following the transitional period, the proposed annual budget has not been approved by each Council by 1 July, the first instalment for that year shall be the same amount paid by the Council in the previous quarter and the second instalment shall include any adjustment to ensure the two instalments together equal half the amount to be paid by that Council for that financial year or as soon as reasonably practicable, subject always to clause 10.6.
- 10.4 All other Council contributions under clause 9.1 shall be paid within one month of receipt of the monies by the Council.
- 10.5 In addition to the contributions payable under this clause, a Council shall be responsible for the Regional Library's costs in providing any additional service or resources requested in writing by the Council, but only if the additional services have been:
- (a) designated as a Special Project by a resolution of the Board; and
 - (b) approved in writing as a "Special Project" by the Chief Executive Officers of each Council or their nominees,

and such costs are to be paid within 30 days of the Council receiving an invoice from the Regional Library.

- 10.6 Interest shall be paid on any amount payable under clause 10 which is not received by the Regional Library within 14 days of the due date at the rate fixed by the Governor in Council for the purposes of section 172 of the Act and calculated monthly from the date the amount became due until the date it is received by the Chief Executive Officer.

11. REPORTING AND ACCOUNTS

- 11.1 The Chief Executive Officer shall, within three months of the end of each financial year, provide each Council with a copy of the Regional Library's annual report prepared in accordance with section 126 of the Act.
- 11.2 The books of accounts and all other financial records of the Regional Library shall be available for inspection at all reasonable times by any Councillor, person authorised by a Council or any person authorised by the Secretary of the Department responsible for administering State Government library subsidies and grants from which the Regional Library or Councils receive funds.
- 11.3 The Regional Library must provide the Chief Executive Officers of each Council with quarterly financial reports which include an operating statement reporting the Regional Library's performance to Budget and other performance indicators as detailed in the Annual Service Plan, within one month of the end of each quarter.

12. ENTRY AND EXIT OF ALL PARTIES

- 12.1 A Council which is not a party to this Agreement may, by supplementary agreement with the Councils, be admitted as a party to this Agreement and subject to the provisions of the supplementary agreement, shall have the same rights, duties and obligations of the Councils under this Agreement.
- 12.2 A Council may withdraw from this Agreement having given not less than twelve months notice in writing to the Chief Executive Officer of its intention to do so.

- 12.3 A Council which has given notice under clause 12.2 must, unless otherwise agreed by the Councils, withdraw from this Agreement on 30 June in any year.
- 12.4 A Council which withdraws from this Agreement shall be entitled to a portion of the net assets of the Regional Library as at the date of its withdrawal from the Agreement, less an amount which reasonably represents the cost to the Regional Library of the withdrawal.
- 12.5 The portion of net assets to which a Council is entitled under clause 12.4:
- (a) shall be calculated according to the value of the assets as disclosed by the relevant audited financial statements;
 - (b) shall be in the same proportion as its financial contribution to the Regional Library bears to all the member Councils' financial contributions to the Regional Library over the duration of this Agreement except that, in relation to special Projects, the portion of net assets to which a Council is entitled shall be calculated according to the Council's agreed proportion of amounts payable for Special Projects; and
 - (c) may be taken in such combination of property and cash as agreed between the Council and the Board, and if it is agreed that a Council is entitled to library materials, the cost of removing them shall be paid for by the Council.
- 12.6 A Council which withdraws from this Agreement shall be liable for a portion of the liabilities, including contingent liabilities, of the Regional Library as at the date of its withdrawal from the Agreement.
- 12.7 The portion of the liabilities and contingent liabilities to which a Council is liable under clause 12.6:
- (a) shall be calculated according to the liabilities and contingent liabilities as disclosed by the relevant audited financial statements and reports, and any notes attached to them; and
 - (b) shall be in the same proportion as its financial contribution to the Regional Library bears to all the member Councils' financial contributions to the Regional Library over the duration of this Agreement.

13. DISSOLUTION OF REGIONAL LIBRARY

- 13.1 Subject to section 197G of the Act, the Regional Library may be dissolved by both parties to the Agreement or, if more parties are admitted to the Agreement by supplementary agreement, by agreement of at least two thirds of the parties to this Agreement, including those admitted as a party by supplementary agreement.
- 13.2 If the Regional Library is dissolved under this clause:
- (a) each Council shall be entitled to a portion of the Regional Library's assets in the same proportion as its financial contribution to the regional Library bears to all the member councils' financial contributions to the Regional Library over the duration of this Agreement except that, in relation to Special Projects, the portion of assets to which a Council is entitled shall be calculated according to the Council's agreed proportion of amounts payable for Special Projects;
 - (b) each Council shall be liable for a portion of the liabilities and contingent liabilities of the Regional Library in the same proportion as its financial contribution to the Regional Library bears to all the Councils' financial contributions to the Regional Library over the duration of this Agreement except that, in relation to Special Projects, the portion of liabilities and contingent liabilities to which a Council is entitled shall be calculated

according to the Council's agreed proportion of amounts payable for Special Projects;
and

- (c) each Council's Collection at the date of dissolution of the Regional Library shall be ascertained having regard to the value of the Council's Collection on the date of this Agreement or if a Council was not a party to this Agreement, on the date on which it was admitted as a party pursuant to clause 13.1

14. DISPUTE RESOLUTION

- 14.1 (a) If any Dispute arises, any party to the Dispute may by notice to the other party to the Dispute (the "Referral Notice") refer the Dispute to a Panel for resolution.

The Referral Notice must specify in reasonable detail, the nature of the Dispute.

- (b) The Panel in respect of a dispute is to consist of:
 - (i) one representative appointed by Yarra who must be the Chief Executive Officer or a Senior Officer; and
 - (ii) one representative appointed by Melbourne who must be the Chief Executive Officer or a Senior Officer.
- (c) The Panel must determine its own procedures for meetings, and unless the Panel otherwise determines, all meetings of the Panel are to be held in Melbourne.
- (d) Decisions of the Panel may only be made by unanimous agreement of members of the Panel.
- (e) If a dispute is referred to the Panel, the Panel must meet (in person or as otherwise determined by the Panel) to resolve the dispute.
- (f) Any decision of the Panel is binding on the parties.
- (g) If the Panel does not resolve the Dispute within the Resolution Period, the Panel must issue a notice of its failure to resolve the Dispute to the parties, promptly after the expiry of the Resolution Period.

- 14.2 A party must not commence proceedings pursuant to clause 14.3 in respect of a Dispute unless:

- (a) the Dispute has first been referred to the Panel; and
- (b) the Panel:
 - (i) does not meet before the expiry of the Resolution Period; or
 - (ii) meets, and issues a notice of its failure to resolve the Dispute in accordance with clause 14.1(g); or
 - (iii) meets, and cannot resolve the Dispute within the Resolution Period, but fails to issue a notice in accordance with clause 14.1(g).

- 14.3 If there is a Dispute and provided that the procedures set out in clause 14.1 and 14.2 have been complied with, the matter shall be determined as a dispute under the *Commercial Arbitration Act* 1984 and the arbitrator's decision shall be final and binding on the parties to the dispute.

- 14.4 The parties to the arbitration shall:

- (a) be responsible for their own arbitration costs; and
- (b) unless otherwise determined by the arbitrator, share the arbitrator's costs equally.

15. AGREEMENT AMENDMENT

An amendment to this Agreement has no effect unless it is:

- (a) in writing and signed by all parties to the Agreement; and
- (b) approved by the Minister by notice published in the Government Gazette.

The parties agree that if a Council transfers assets to the Regional Library or makes available additional assets for the use of the Regional Library in accordance with the procedure set out in clause 7.1, this is not to constitute an amendment to this Agreement.

16. AGREEMENT REVIEW

The parties shall, together with the Board, review the operation of this Agreement at least once in every three years.

17. CONDITIONS PRECEDENT

This Agreement has no effect as between the parties unless it is approved by the Minister in accordance with section 196(2) of the Act.

EXECUTED
by the Parties on the date specified

THE COMMON SEAL of the)
MELBOURNE CITY COUNCIL was)
affixed hereto in accordance with the)
Conduct of Meetings Local Law 2001)

.....
Lord Mayor

.....
Chief Executive Officer

THE COMMON SEAL of the)
YARRA CITY COUNCIL was affixed)
hereto on the in accordance)
with the resolution of the Council made on)
14 December 1999.)

.....
Mayor

.....
Chief Executive Officer

FINANCE ATTACHMENT

REVIEW OF REGIONAL LIBRARY BOARD AGREEMENT

There are no direct financial implications arising from the recommendations of the report.

Joseph Groher
Manager Finance Services

LEGAL ATTACHMENT

REVIEW OF REGIONAL LIBRARY BOARD AGREEMENT

The report accurately describes the relevant provisions of the *Local Government Act 1989* (“ Act”) and the terms of the Yarra Melbourne Regional Library Corporation Agreement.

Section 197 of the Act provides that a person has the right to make a submission under section 223 of the Act on any proposal to amend a regional library agreement.

The process under section 223 of the Act has been followed.

Under section 223(1)(e) of the Act, the Council must take into consideration all the submissions in making its decision and must notify its decision in writing to any person who has made a submission.

The Agreement requires the Minister for Local Government (“the Minister”) to approve any amendment to the Agreement, and until, that approval by notice published in the Government Gazette, the amendment has no effect.

Alison Lyon
Manager Governance Services