



AGENDA APPENDIX
Council Meeting
Wednesday 24 September 2014

AGENDA ITEM FOR SEPARATE DISTRIBUTION TO COUNCILLORS AND
EXECUTIVE LEADERSHIP TEAM DUE TO DOCUMENT SIZE.

THE ITEM IS ACCESSIBLE VIA THE COUNCIL WEBSITE OR BY
CONTACTING COUNCIL ON 03 5662 9200.

E.7 WEST GIPPSLAND REGIONAL LIBRARY CORPORATION
AGREEMENT

Appendix 1 – West Gippsland Regional Library Corporation Agreement 2014



WEST GIPPSLAND REGIONAL LIBRARY CORPORATION

REGIONAL LIBRARY AGREEMENT

2014

WEST GIPPSLAND REGIONAL LIBRARY CORPORATION AGREEMENT

THIS AGREEMENT is made on 2014.

BETWEEN:

Bass Coast Shire Council, established as a body corporate under an Order in Council made pursuant to the Local Government Act 1989, of Baillieu St, Wonthaggi;

Baw Baw Shire Council, established as a body corporate under an Order in Council made pursuant to the Local Government Act 1989, Civic Place, Warragul and

South Gippsland Shire Council, established as a body corporate under an Order in Council made pursuant to the Local Government Act 1989, of Smith Street, Leongatha.

RECITALS:

- A. The West Gippsland Regional Library Corporation (the Regional Library) was established by the Councils on 11th December 1995, by an agreement made under section 196 of the Local Government Act 1989 (the Original Agreement).
- B. The Councils desire to revise an Agreement dated 7th April 2005, which formed a regional library to service the area comprising their municipal districts pursuant to section 196 of the *Local Government Act 1989*.
- C. The Regional Library will continue to service the area comprising the member Councils' municipal districts.
- D. The Regional Library will operate in accordance with requirements of Section 196 of the Act.
- E. The Councils have agreed to contribute certain sums of money annually for the purposes of the Regional Library providing public library services on their behalf.

AGREEMENT

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*.

“Board” means the governing body of the Regional Library established under clause 3.1.

“Chief Executive Officer” means the person appointed in accordance with the Act.

"Commencement Date" means 11th December 1995.

“Council” means a party to this Agreement.

"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 *Local Government Act 1989*.

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

"Service Point" is any location that offers services requested by a Council, including, but not limited to, a static library or mobile library and includes virtual library services through kiosks and similar services;

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

2. CREATION OF THE REGIONAL LIBRARY

There shall be constituted a regional library corporation for the purposes of section 196 of the Act by the name of West Gippsland Regional Library Corporation to –

- (a) provide resources and programs aimed at meeting the information, recreation, educational and cultural needs of the diverse communities of Baw Baw, Bass Coast and South Gippsland in an equitable, effective, efficient, responsive and forward looking manner in accordance with the values and objectives of the Library Plan;
- (b) provide, subject to any service level agreements or any conditions attached to any State government library subsidies and grants to the Regional Library or the Councils, a quality, customer-focused regional library service for Council's municipal districts as determined by the Board;
- (c) make Local Laws relating to the Regional Library;
- (d) 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 and a Financial Strategy, approving a Library Plan, developing an Annual Budget; preparing an Annual Report; and
- (e) to do all things necessary or expedient in accordance with this Agreement and the Act for the carrying out of its functions.

3. MEMBERSHIP OF THE BOARD

3.1 The Board of the Regional Library shall consist of the following members-

- (a) One councillor appointed by each Council; and
- (b) One Director member of Council staff appointed by each Council;

3.2 A Council may appoint a councillor to act as deputy in place of its appointed councillor member.

3.3 A Council may appoint a member of council staff to act as deputy in place of its appointed staff member.

3.4 A member and deputy shall hold office until the term of his/her appointment expires, until removed or the person resigns or ceases to be a councillor or member of council staff, whichever occurs first.

- 3.5 A Council may remove from office its appointed member or deputy.
- 3.6 A Council must fill a vacancy in its members as soon as possible and notify the Board in writing of the new member.
- 3.7 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 leave of the Board.
- 3.8 Notwithstanding clause 3.7 above, the Board may exercise discretion with the application of clause 3.7 if extenuating circumstances can be shown to exist.

4. OBJECTIVES, ROLE AND FUNCTIONS OF THE BOARD

4.1 Objectives of the Board

- (a) The primary objective of the Board is to achieve the best library service outcomes for the communities of the member Councils within the context of each member Council's available resources and competing demands.
- (b) In seeking to achieve its primary objective, The Board must have regard to the following facilitating objectives-
 - (i) to ensure that Regional Library resources are used efficiently and effectively and library services are provided in accordance with Best Value Principles to best meet the needs of the community;
 - (ii) to support local business and employment opportunities;
 - (iii) to ensure that library services and facilities provided by the Regional Library are accessible within each Council community;
 - (iv) to ensure the equitable imposition of any library fees and charges; and
 - (v) to ensure transparency and accountability in Board decision making.

4.2 Role of the Board

- (a) The Board is appointed to provide leadership for the good governance of the Regional Library.
- (b) The role of the Board includes-
 - (i) ensuring that the library services provided by the Regional Library are provided in accordance with the Library Plan, Strategic Resource Plan and Annual Budget;
 - (ii) providing leadership by establishing Regional Library strategic objectives and monitoring their achievement;

- (iii) providing advice as requested to the Councils on the planning and provision of library services and facilities;
- (iv) maintaining the sustainability and viability of the Regional Library by ensuring that resources are managed in a responsible and accountable manner;
- (v) advocating the library service interests of the local community to other communities and governments;
- (vi) acting as a responsible partner in government by taking into account the aspirations and needs of other communities; and
- (vii) ensuring that the library service continues to contribute to the social and economic wellbeing of the community.

4.3 Functions of the Board

(a) The functions of the Board include-

- (i) ensuring the benefits of the Regional Library service are equitable for the three member Councils whilst delivering flexible responses to member Council communities, in conjunction with each member Council;
- (ii) ensuring the Regional Library exercises, performs and discharges its duties, functions and powers under the Act and other relevant Acts; and
- (iii) adopting procedures and reporting practices at Board level that will ensure transparent decision making and the good governance of the Regional Library.

(b) For the purpose of achieving its objectives, the Board may perform its functions inside and outside its member Councils' municipal districts.

4.4 Subject to the provisions section 89 of the Act, Board meetings will be open to members of the public.

5. PROCEEDINGS OF THE BOARD

5.1 The Board shall hold an ordinary meeting at least once 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 Chairperson or any three members of the Board.

5.3 The Board shall elect a Councillor member to be the Chairperson of the Board and they shall hold office for twelve months, unless they go out of office earlier in accordance with clause 3.7 of this Agreement.

- 5.4 The Board shall elect a Councillor member to be the Deputy Chairperson of the Board and they shall hold office for twelve months, unless they go out of office earlier in accordance with clause 3.7 of this Agreement.
- 5.5 The Chairperson shall preside at a meeting of the Board.
- 5.6 In the absence of the Chairperson from a Board meeting, the Deputy Chairperson shall assume the chair however in that person's absence the remaining members of the Board may elect one of their number to preside at that meeting.
- 5.7 Notice of motion to recommend amendment of this Agreement and notice of motion for the adoption or amendment of Local Laws by the Board shall be given in writing to Councils at least one month before the meeting of the Board at which a motion is to be discussed.
- 5.8 The quorum for any meeting of the Board is a majority of the number of members.
- 5.9 The Board shall make Local Laws governing the conduct of meetings for the Board.

6. CHIEF EXECUTIVE OFFICER

- 6.1 The Board shall appoint a Chief Executive Officer of the Regional Library.
- 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 Library Plan, the Financial Strategy, preparation of the Annual Budget and Annual Report, 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 The Councils acknowledge that, as at the date of this Agreement, the Regional Library occupies and operates the branch libraries (including mobile library service points and depots) described in Schedule 1.
- 7.2 The occupancy of branch (including mobile library service points and depots) libraries may be subject to an agreement between the respective Council and Regional Library that sets out the obligations and the responsibilities of the parties.
- 7.3 Each Council agrees to the Regional Library using the assets set out in the Statement of Council Assets in Schedule 1.

- 7.4 Nothing in this clause 7 or this Agreement generally requires a Council to continue to provide the facilities provided to the Regional Library at the commencement of this Agreement or subsequently, nor restricts a Council from adding to, changing or withdrawing any of the facilities provided to the Regional Library.
- 7.5 Where a Council adds to, changes or withdraws any of the services provided by, or facilities provided to, the Regional Library that lead to excess staff, then that Council will be liable for the redundancy costs for excess staff (whether deployed in branch libraries, the administration of the Regional Library or otherwise) subject to every attempt being first made by the Regional Library to redeploy the affected staff within its operations.
- 7.6 A Council must, unless otherwise agreed by the Board, give twelve months notice in writing to the Chief Executive Officer of its intention to withdraw assets from the use of the Regional Library.
- 7.7 The Chief Executive Officer shall maintain a register of the assets owned and used by the Regional Library including those assets provided by a member Council for library use.
- 7.8 The Regional Library shall, unless otherwise agreed, be responsible for the maintenance, repair, replacement and operating costs of assets owned by the Regional Library, as outlined in Schedule 2, and in accordance with Schedule 4.
- 7.9 Each Council shall, unless otherwise agreed by the Board, be responsible for the major maintenance, repair, replacement and operating costs of assets owned by it but provided for the use of the Regional Library.
- 7.10 Each member council may pay to the Regional Library an agreed amount each year to cover the recurrent costs of operating a council owned or rented facility as outlined in Schedule 1, and in accordance with Schedule 4.
- 7.11 Where the Regional Library agrees to assume responsibility for specific maintenance, repair, replacement and operating costs of assets owned by any one or more of the Councils, the respective Council will negotiate in good faith an increase in its annual contribution to cover the maintenance, repair, replacement and operating costs of the assets.
- 7.12 The Regional Library shall, unless otherwise agreed by Councils and subject to Clauses 7.8 and 7.9 be responsible for its own operating costs.

8. STRATEGIC PLANNING

- 8.1 A Library Plan (including a Strategic Resource Plan) will be prepared and approved in accordance with section 197D of the Act. The Chief Executive Officer shall each year provide each Council with a copy of the Regional Library's adopted Library Plan.
- 8.2 The Strategic Resource Plan shall include a program for the delivery of services by the Regional Library which identifies the financial and other resource requirements of the Corporation.
- 8.3 The Strategic Resource 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 Library Plan and a Strategic Resource Plan by the date specified in the Act.

9. ANNUAL BUDGET

- 9.1 The Chief Executive Officer shall by June 1 each year provide each Council with a copy of the Regional Library's proposed Annual Budget prepared in accordance with section 127 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; and
 - (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.
 - (e) The Regional Library must not adopt an 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 adopted Annual Budget;
 - (b) all State Government library subsidies and grants received by the Council for library services; and
 - (c) funds received by the Council from any other source for library services.
- 10.2 The Councils must agree on a funding formula for the purpose of making annual financial contributions to the Regional Library under Clause 10.1 (a)(b). See Schedule 3 for the correct funding formula.
- 10.3 Each Council’s financial contribution to the Regional Library shall be paid in quarterly installments on the first day of July, October, January and April each year.
- 10.4 If the proposed Annual Budget has not been approved by the Board and each Council by 1 July the first installment shall be the same amount paid by the Council in the previous quarter and the second installment shall include any adjustment to ensure the two installments together equal half the amount payable by that Council for that financial year in accordance with Clause 10.1(a).
- 10.5 Council contributions under Clause 10.1(a) shall be paid within one month of receipt of an invoice from the Regional Library.
- 10.6 The Regional Library is to use its best endeavours to ensure quarterly invoices are forwarded to member councils with at least 30 days’ notice of payments due.
- 10.7 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 by the Council and such costs are to be paid within 30 days of the Council receiving an invoice from the Regional Library.
- 10.8 Interest shall be paid on any amount payable under clause 10.1(a) which is not received by the Chief Executive Officer 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 it is received by the Chief Executive Officer.

11. ANNUAL 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 131 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 person authorised by a Council, or by 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.

12. ENTRY AND EXIT OF 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 (including Digital assets) of the Regional Library as at the date of its withdrawal from the Agreement, less an amount which represents the full costs 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 member Councils' financial contributions to the Regional Library over the duration of this Agreement;
- 12.6 For the purposes of clause 12.4, the cost to the Regional Library of a Council's withdrawal from this Agreement shall include (but not be limited to)
 - (a) redundancy costs for excess staff (whether deployed in branch libraries, the administration of the Corporation or otherwise);

- (b) the cost of extracting bibliographic records for that Council's books and materials; and
- (c) the cost of amending bibliographic records to account only for those books and materials which remain and
- (d) 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.

12.7 The portion of assets to which a Council is entitled under clause 12.4:

- (a) is those books and like materials housed within a branch (including mobile) library located in its municipal district; and
- (b) may not be taken in the form of other property or cash unless the Board agrees:

and the cost of removing the books and like materials shall be paid for by the Council.

12.8 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.

12.9 The portion of the liabilities and contingent liabilities to which a Council is liable under clause 12.8 –

- (a) shall be calculated according to the liabilities and contingent liabilities as disclosed by the relevant audited financial statements and reports, and any other notes attached to them;
- (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; and
- (c) where contracts for goods and services are affected, shall be the full cost of any additional payments for variations to contractual arrangements resulting from the withdrawal.

13. DISSOLUTION OF REGIONAL LIBRARY

- 13.1 Subject to section 197G of the Act, the Regional Library may be dissolved by all parties to the Agreement of the parties to this 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, as at the date of dissolution, 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; and
 - (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 member Councils' financial contributions to the Regional Library over the duration of this Agreement.

14. DISPUTE RESOLUTION

- 14.1 If any Dispute arises which cannot be resolved by the Board, the Councils must use their best endeavours, and act in good faith, to settle that Dispute.
- 14.2 As a general principle, a decision by two members shall bind the third.
- 14.3 If there is 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, that is unable to be settled, the Councils must agree to the appointment of an independent mediator. If the Councils are unable to agree on a person to act as an independent mediator, the mediator will be appointed by the President of the Law Institute of Victoria.
- 14.4 The parties to the mediation shall –
- (a) be responsible for their own mediation costs; and
 - (b) share the mediator's costs equally.
- 14.5 The function of the mediator is to mediate not arbitrate. The mediator will not have the power to make any decisions. If the Dispute is not resolved through mediation, the Councils may proceed to arbitration in accordance with clause 14.7.

14.6 A party must not commence proceedings pursuant to clause 13.2 in respect of a Dispute unless:

- (a) the Dispute has first been referred to a mediator; and
- (b) the Dispute remains unresolved.

14.7 If there is a Dispute 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.

14.8 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 as set out in clause 7.4, this is not to constitute an amendment to this Agreement.

16. AGREEMENT REVIEW

The parties shall, together with the Board, review the operations of this Agreement at least once every five 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 as an Agreement.

IN WITNESS WHEREOF

In accordance with a Resolution of the **Bass Coast Shire Council** made on
.....

THE COMMON SEAL of the **Bass Coast Shire Council**
Was hereunto affixed on in the presence of –

.....Mayor

.....Councillor

.....Chief Executive Officer

In accordance with a Resolution of the **Baw Baw Shire Council** made on
.....

THE COMMON SEAL of the **Baw Baw Shire Council**
Was hereunto affixed on in the presence of –

.....Mayor

.....Councillor

.....Chief Executive Officer

In accordance with a Resolution of the **South Gippsland Shire Council** made on
.....

THE COMMON SEAL of the **South Gippsland Shire Council**
Was hereunto affixed on in the presence of –

.....Mayor

.....Councillor

.....Chief Executive Officer

SCHEDULE 1
STATEMENT OF COUNCIL ASSETS

BASS COAST SHIRE COUNCIL

- * Library Building, 89 Thompson Avenue, COWES
- * Library Building, Murray Street, WONTHAGGI
- * Library Building, 16 A'Beckett Street, INVERLOCH
- * Mobile Library stop sites (various)
- * Mobile Library Depot, Factory A, Lot 5 Inverloch Road, WONTHAGGI

BAW BAW SHIRE COUNCIL

- * Library Building, 75 Victoria Street, WARRAGUL
- * Library Building, 136 Princes Way, DROUIN
- * Library Building, 372 Mt. Baw Baw Tourist Road, NOOJEE
- * Mobile Library stop sites (various)
- * 1 Portable Office (IFCO) and vehicle shelter, Council Depot, WARRAGUL
- * Mobile Library Depot, WARRAGUL

SOUTH GIPPSLAND SHIRE COUNCIL

- * Library Building, 2 Smith Street, LEONGATHA
- * Library Building, 165 Commercial Street, KORUMBURRA
- * Library Building, Ridgway, MIRBOO NORTH
- * Library Building, 18 Ranceby Road, POOWONG
- * Library Building, Main Street, FOSTER
- * Mobile Library stop sites (various)
- * Mobile Library vehicle shelter, Council Depot, FOSTER

SCHEDULE 2
STATEMENT OF REGIONAL LIBRARY ASSETS

The Regional Library owns the shelving, furniture, fixtures, fittings and ICT related technology at each of the branch library service points and depots listed above.

The Regional Library owns and maintains two Mobile Libraries comprising of a prime mover and trailer. These vehicles are garaged at each depot depending on their operational movements. The vehicles operate throughout the region.

The Regional Library owns and maintains the Regional Support Centre office premises at 2/65 Victoria Street Warragul.

SCHEDULE 3
WGRLC FUNDING FORMULA

Each member Council contributes to the operating expenses on the following basis:

	Member Council
Annual Library Site Operating Costs (Inc direct salary, building maintenance, utilities, insurances, depot rents and copiers)	100%
Annual Regional Support costs inc all ICT	Per capita
Property Rental/Capital Costs	Location of service point; 100%
Board Operating Costs	Per capita
Library Materials	Per Capita

SCHEDULE 4

MAINTENANCE RESPONSIBILITIES

For service points identified in Schedule 1 Councils are responsible for **major** maintenance and infrastructure provision including;

1. Reroofing, Recladding
2. Floor coverings
3. Window coverings
4. Carparks and car parking delineation
5. Mobile library site provision and maintenance
6. Mobile street signage
7. Mobile electrical bollard provision
8. External building signage
9. Security system installation
10. Air-conditioning (heating and cooling) installations and upgrades
11. Painting- internal and external
12. Solar Power and energy efficient building installations
13. Fixed lighting installations and upgrades
14. Building connectivity to the NBN
15. Building fabric including doors, windows, ceilings, ramps and handrails
16. Gardens, paths and landscaping

The Corporation will be responsible for **minor** maintenance and recurrent utility costs including;

1. Minor plumbing callouts
2. Electricity, gas, water, garbage and telephone charges,
3. Internal signage (other than fixed directional)
4. Minor air-conditioning maintenance(unless otherwise agreed)
5. Cleaning

6. Lighting/electrical maintenance
7. Mobile depot rentals(BCSC)
8. Insurances
9. Service Agreements (electronic doors, security systems, fire extinguishers)
10. Shelving and loose furniture provision and maintenance(except for new libraries)
11. Rates
12. Fuel and Tyres
13. Taxi contracts
14. Vehicle replacement and maintenance
15. Vehicle registration and insurance
16. Photocopier provision and maintenance
17. ICT infrastructure and maintenance
18. Broadband- recurrent costs