



Pitcher Partners Advisors  
Proprietary Limited  
ACN 052 920 206  
Level 13, 664 Collins Street  
Docklands, VIC 3008

## MEMORANDUM

**To:** Leanne Williams **Date:** 26 May 2021

**From:** Mark Harrison **cc:**

**Subject:** **West Gippsland Regional Library Corp restructure**

The following commentary has been compiled at the request of West Gippsland Regional Library Corporation ('WGL') to assist its members to assess the commercial obligations associated with the proposed restructure of WGL.

### Executive Summary

- A. WGL proposes to restructure its current legal structure to operate through a company limited by guarantee.
- B. The Councils' that control WGL are requested to gift their interest in WGL to the company limited by guarantee, this is a cost of the proposed transaction.
- C. The Councils' are party to an existing Library Agreement that is intended to be novated to the company limited by guarantee, maintaining the Councils' existing financial risks of the current service arrangement.
- D. No other material financial costs have been identified within the proposed transaction.

### Commentary

1. Our comments are based on the following understanding:
  - a) WGL is a Victorian body corporate established to operate libraries for various councils. The councils to which services are provided at the members of the body corporate,
  - b) the members of WGL (the 'Councils') are:
    - Bass Coast Shire Council,
    - Baw Baw Shire Council,
    - South Gippsland Shire Council,
  - c) the councils' ownership interest in WGL is currently accounted for as an equity accounted investment in their respective financial reports. An equity accounted investment is initially recognised at cost and adjusted thereafter for the post-acquisition change in the investor's share of the investee's net assets. The investor's profit or loss includes its share of the investee's profit or loss and the investor's other comprehensive income includes its share of the investee's other comprehensive income,
  - d) the councils/members are parties to a library services agreement that documents the fees/funding to be provided to WGL for provision of services,
  - e) it is proposed that there be a gifting of Council assets (as represented by the respective equity accounted investments) to a new company, Myli – My Community Library Ltd ('Myli'),
  - f) Myli is a company limited by guarantee as per the Corporations Act 2001.
  - g) Myli represents a 'beneficial enterprise' in accord with sect 110 of the Local Government Act 2020.

If any of the above is incorrect or subsequently changes, the following should be disregarded, and the necessary revisions advised so that the comments can be reconsidered.

2. We have been engaged to provide commercial comment to assist the Councils to assess their obligations under the Local Government Act 2020 – sect 111. This commentary is limited to matters associated with

the total investment involved and the total risk exposure and assisting Councils to assess if the total risk exposure exceed its total investment.

3. Myli is a company limited by guarantee. A company limited by guarantee is a type of public company registered under the Corporations Act. They are formed on the principle that the liability of members is limited to the amount they agree to contribute if the company is wound up. This amount is typically nominal and set out in the company's constitution. Companies limited by guarantee cannot pay dividends.
4. In compliance with the above, the constitution of Myli identifies that Myli must not make payment or give a Member, directly or indirectly, an amount by way of dividend, bonus or otherwise, other than in very limited circumstances such as expense reimbursement or service fees/interest/rent.

Further, the Company's surplus assets, after satisfying all liabilities on wind up or dissolution must not be paid or given to current or former Members unless an Eligible recipient.

An Eligible recipients is a fund, authority or institution that has not-for-profit and charitable purposes similar to the Myli Purpose; and also prohibits its income and property from being paid to members on at least the Myli terms, is a charity registered under Relevant Laws if the Company had been, is income tax exempt under Commonwealth taxation Laws if the Company had been; and can receive deductible gifts under the Commonwealth taxation Laws if the Company could and on the same basis.

5. It has been determined that the appropriate means to effect the transfer of assets and liabilities of the Council from WGL to Myli is by gifting Council's interests in WGL, and therefore Council's interests in WGL's business, assets and liabilities, to the Company (Myli) and so as to give effect to Council's gift, the Councils will direct and authorise WGL to transfer in specie all its business, asset and liabilities to the Company (Myli).
6. It is also proposed that the existing Library Agreement to which all councils are already parties be novated to Myli – My Community Library, maintaining all the existing provisions (including annual funding) with the exception of those clauses where equivalent matters are now contained in the Constitution
7. Our understanding of the commercial implications of the above are:
  - a) Councils are divesting themselves of the existing equity accounted investment in WGL. The financial reporting implications of the divestment will be to expense the council asset currently carried in their respective financial reports.
  - b) The current equity accounted investment will not be replaced by another investment or interest in the new library corporation.
  - c) The Councils become members of Myli and provide a guarantee in accord with the terms of the constitution in the event of the entity being wound up. The constitution identifies a maximum guarantee of \$1 per member at the time of the entity being wound up.
  - d) On the basis of the above, the cost/lost investment of the councils will be the respective value of the equity accounted investment in WGL and this amount will never be recouped by the councils.
  - e) The change in the nature of the equitable interest from part ownership of the WGL body corporate to being a member of a company limited by guarantee results in each council having to fund \$1 of a Myli asset deficiency if the company is wound up.
  - f) The Councils retain the existing obligations and financial risks that they are already party to in the Library Agreement and accordingly maintain the pre existing risk exposure of this arrangement (we emphasise we have not reviewed this Agreement).
- g) We assume the councils, in their capacity as members, will have director representation on the Board of Myli. Councils should give due consideration to the potential exposure of liability that may arise if a claim is made of Myli directors and the directors acts in that capacity as a function of their employment with a council. We are advised existing insurance policies address this risk.
8. We have not been requested to assess, nor have we been provided information to make an assessment, of risk management arrangements; and how Councils implement regular performance monitoring and reporting arrangements in relation to the beneficial enterprise; ensure that any changes to the operation or purpose of the beneficial enterprise are reported to the Council; nor identify and manage any risks associated with any changes to the operation or purpose of the beneficial enterprise.
9. We emphasise that the above is a commercial commentary of the proposed arrangement based upon our understanding of the transaction, as documented above. The commentary does not represent legal advice and should not be construed as such. Legal advice should be sought by the parties to the proposed transaction as they may believe necessary. No assurance is provided in regard to the above.