

EASTERN REGIONAL LIBRARIES - TRANSITION TO A BENEFICIAL ENTERPRISE

Report Author: Manager Creative and Connected Communities

Responsible Officer: Director Communities

Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

The introduction of the *Local Government Act (LGA) 2020* has a requirement for Regional Library Corporations to be wound up in accordance with section 330(4) and a beneficial enterprise established in accordance with section 110. In line with this requirement, Eastern Regional Libraries Corporation (ERL) is transitioning to Your Library Ltd (YLL) to continue delivering library services on behalf of Yarra Ranges Council, Knox City Council and Maroondah City Council. The transition is scheduled to occur on 1 July 2023.

At the 28 June 2022 Council Meeting, pursuant to Section 110(1) of the LGA, Council resolved to participate in the formation of, and become a founding member of, Your Library Ltd (a public company limited by guarantee) on the terms of the Your Library Ltd Constitution as set out in attachment 1.

Over recent months, the ERL board has considered options and obtained legal advice regarding equity share and treatment of accumulated surpluses on transition to the new entity. At the ERL Board meeting on 4 April 2023, the Board resolved to proceed with the original equity share.

In 2021, a \$2M distribution from ERL's accumulated surplus was made to each member council. This resulted in the equity share changing. In order to return the equity share back to the original allocation following the ERL Board's decision, a distribution will be made to Yarra Ranges Council of \$1,011,920 and to Knox City Council of \$924,066. The ERL Board has resolved that these funds are to be held in a reserve fund to be used for library purposes.

The final step in undertaking the transition is for the Member Councils to adopt the Your Library Ltd Agreement for execution as set out in attachment 2.

RECOMMENDATION

That Council

- 1. Resolves to adopt the Your Library Ltd Agreement;**
- 2. Authorises the Chief Executive Officer to execute the Your Library Ltd Agreement on behalf of Council before 30 June 2023; and**
- 3. Notes that prior to transition, a distribution of \$1,011,920 will be made to Yarra Ranges Council, as adopted by the Eastern Regional Libraries Board, with funds to be used for library purposes.**

RELATED COUNCIL DECISIONS

At the 28 June 2022 Council Meeting, the following resolution was passed.

That Council:

1. Note the proposal that the Eastern Regional Library Corporation be wound up in accordance with section 330(4) of the Local Government Act 2020 and a Beneficial Enterprise be established in accordance with Section 110 of the Local Government Act 2020 to deliver library services on behalf of the Yarra Ranges, Knox and Maroondah City Councils.
2. Note that officers have assessed the proposal to participate in a beneficial enterprise and are satisfied that Council has met, and can continue to meet, the requirements of sections 110(1) and 111 of the Local Government Act 2020.
3. Note the risk assessment, management and mitigation strategies to address these risks set out in attachment two of the report.
4. Pursuant to section 110(1) of the Local Government Act 2020, resolve to participate in the formation of, and become a founding member of, Your Library Ltd (a public company limited by guarantee) on the terms of the Your Library Ltd Constitution as set out in Attachment one and:
 - a. Appoints the following two natural persons as the inaugural Directors of Your Library Ltd:
 - Name 1: Councillor Jim Child
 - Name 2: Councillor Andrew Fullagar
 - b. Appoints the following natural person as its Corporate Representative:
 - Name: Clinton Hong Manager Creative & Connected Communities
5. Note that the Eastern Regional Library Corporation will continue to provide library services under the current model, while officers from the member Councils and Eastern Regional Library Corporation negotiate and finalise the terms of the Your Library Agreement which will govern the relationship between the Member Councils and Your Library Limited.

DISCUSSION

Purpose and Background

Council's original participation in ERL commenced in 1996 with the establishment of ERL by the Member Councils in accordance with section 196 of the Local Government Act 1989. The Board of ERL governs the Corporation in accordance with the relevant provisions of the Local Government Act 1989, the Regional Library Agreement and other adopted policies and procedures. The agreement was reviewed and renewed in 1999 and 2009.

The introduction of the Local Government Act 2020 requires Regional Library Corporations to transition to a Beneficial Enterprise structure within ten (10) years from 1 July 2020. This is underway with Eastern Regional Libraries Corporation (ERL) transitioning to Your Library Ltd (YLL).

Equity share in the new entity

The initial equity percentages were established in 1996 when ERL commenced. These remained in place until 2021 when a \$2M distribution from accumulated surplus was made to each member council. This changed the equity share in ERL to:

Member Council	Original	After distribution
Yarra Ranges	38.72%	42.79%
Knox	36.39%	38.7%
Maroondah	24.89%	18.52%

Over recent months, the ERL Board has explored a range of options for equity share distribution in the new entity including transitioning:

- Under the current equity share (equating to 42.79% for Yarra Ranges Council);
- Under an equal equity share arrangement; or
- Under the original equity share (equating to 38.72% for Yarra Ranges Council)

On 4 April 2023, the ERL Board resolved to transition with the original equity share. This requires a distribution of \$1,011,920 to Yarra Ranges Council and \$924,066 to Knox City Council.

This decision was based on consideration of the financial position of ERL. When the Victorian Auditor-General's Office (VAGO) Indicators were applied, this option was deemed an acceptable risk by the ERL Board. Member council preferences were also considered in making this decision.

Options considered

Withdraw from the arrangement and deliver library services directly.

This was discounted as it is likely to require a larger investment from Council and negatively impact relationships with neighbouring councils so was not considered. A 2019 VAGO Council Libraries report found sharing services makes libraries more efficient, enabling them to deliver more services to the community with fewer resources. VAGO data analysis shows that, overall regional library corporations and co-operative models deliver core library services more efficiently than most standalone libraries.

Recommended option and justification

Continue with the partnership between member councils and transition to the new entity to deliver library services on Councils behalf.

This delivery model has proven to be successful over many years and Council has previously resolved to become a founding member of Your Library Ltd on the terms of the Your Library Ltd Constitution as set out in attachment 1. The final step is to adopt the Your Library Ltd Agreement for execution as set out in attachment 2.

FINANCIAL ANALYSIS

Council contributes funds to ERL to deliver its library service. Since 2016-17, member councils agreed to an annual increase in line with the rate cap. In 2023-2024 Council has budgeted for a \$3,899,888 contribution. The transition to the new entity does not have any effect on Council's annual contributions.

Costs associated with transitioning to a beneficial enterprise will be funded by ERL.

In a company limited by guarantee, liability of the members is \$1, apart from future obligations that may arise from a call on the Defined Benefits Superannuation Scheme. ERL currently has staff in the defined benefit scheme and the estimated total liability is approximately \$2.5M. This equates to a Yarra Ranges Council liability of approximately \$968,000 (equity share of 38.72%).

Contribution to Your Library Ltd on transition

Member Council	*Initial Contributions	Plus accumulated surpluses at the date of transition (AS)	Total contribution to YLL
	\$,000		\$,000
Yarra Ranges Council	\$1,429	38.72% of AS	\$1,429 + 38.72% of AS**
Knox City Council	\$1,342	36.39% AS	\$1,342 + 36.39% of AS
Maroondah City Council	\$918	24.89% AS	\$918 + 24.89% of AS
Total Member Councils' contributions to YLL	\$3,689	100% of AS	\$3,689 + 100% of AS

**Initial Contributions are derived from the initial contributions to ERL in 1996*

***The dollar value of the Member Council's contribution will be adjusted as at the date of transition as the value of accumulated surpluses will fluctuate until the day of transition. The calculation will use the following formula for Yarra Ranges Council: \$1,429,000 (Initial contribution) + % share (38.72%) of the accumulated surpluses as at the date of transition = Total Equity of Yarra Ranges Council in Your Library Ltd.*

The percentage equity will be the percentage distribution available to the Member Councils in the event of withdrawal or dissolution.

APPLICABLE PLANS AND POLICIES

Library services support Council's strategic objectives:

- Connected and Healthy Communities
- Quality Infrastructure and Liveable Places
- Protected and Enhanced Natural Environment
- Vibrant Economy, Agriculture and Tourism

RELEVANT LAW

The *Local Government Act 2020* requires Regional Library Corporations to be wound up in accordance with section 330(4) and a beneficial enterprise established in accordance with section 110 and Council to comply with section 111.

SUSTAINABILITY IMPLICATIONS

Economic Implications

There are no known economic impacts arising from the recommendation in this report.

Social Implications

There are no known social impacts arising from the recommendation in this report.

Environmental Implications

There are no known environmental impacts arising from the recommendation in this report.

COMMUNITY ENGAGEMENT

Not applicable

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

The information within this report is based on discussions with:

- ERL management;
- ERL Board Members including Yarra Ranges Council Councillor representatives;
- Council officers including Financial Services and Creative & Connected Communities; and
- Other proposed member councils Knox City Council and Maroondah City Council officers.

RISK ASSESSMENT

Risk	Likelihood	Mitigation
Risk to financial viability of new entity	Improbable	<ul style="list-style-type: none">• Risk assessment completed by ERL• External legal services review of new entity documentation and associated risks• Strong history of ERL financial performance and healthy financial position• Councillor representation on Board
Reputational damage to Council	Improbable	<ul style="list-style-type: none">• Risk assessment completed by ERL• Strong historical performance of ERL• Councillor representation on Board• Demonstrated evidence of successful model of outsourcing library service to external organisation
A member council withdraws from the arrangement	Improbable	<ul style="list-style-type: none">• Strong relationships with member councils and goodwill built over 28 years• Strong historical performance of ERL
Underperforming operation	Improbable	<ul style="list-style-type: none">• Risk assessment completed by ERL• External legal services review of new entity documentation and associated risks• History of ERL operating success• Councillor representation on Board

Likelihood rating: Improbable (Risk unlikely to occur), Possible (Risk will likely occur), Probable (Risk will occur)

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Your Library Ltd Constitution
2. Your Library Ltd Agreement