

SPECIAL COUNCIL AGENDA

MONDAY, 9 JULY 2018



GLENORCHY CITY COUNCIL

QUALIFIED PERSON CERTIFICATION

The General Manager certifies that, in accordance with section 65 of the *Local Government Act 1993*, any advice, information and recommendations contained in the reports related to this agenda have been prepared by persons who have the qualifications or experience necessary to give such advice, information and recommendations.

A handwritten signature in blue ink, likely of Tony McMullen.

Tony McMullen
General Manager

6 July 2018

Hour: 6.00 p.m.

Present:

In attendance:

Leave of Absence:

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1. APOLOGIES

2. PECUNIARY INTEREST NOTIFICATION

COMMUNITY

3. DISPOSAL OF LAND AND UNSOLICITED OFFER TO PURCHASE - DERWENT ENTERTAINMENT CENTRE

Author: Acting Director, Community, Economic Development and
Business (David Ronaldson)
Manager, Legal and Procurement (Carey Higgins)

Qualified Person: General Manager (Tony McMullen)

ECM File Reference: Derwent Entertainment Centre Proposals

Community Plan Reference:

Leading Our Community

We will be a progressive, positive community with strong council leadership, striving to make Our Community's Vision a reality.

The communities of Glenorchy will be confident that the Council manages the community's assets soundly for the long term benefit of the community.

Strategic or Annual Plan Reference:

Leading our community

Objective 4.1 Govern in the best interests of our community.

Strategy 4.1.1 Manage Council for maximum efficiency, accountability and transparency.

Strategy 4.1.2 Manage the City's assets soundly for the long term benefit of the community.

Objective 4.2 Prioritise resources to achieve our communities' goals.

Strategy 4.2.1 Deploy the Council's resources effectively to deliver value.

Reporting Brief:

Council has recently received an unsolicited approach to purchase the Derwent Entertainment Centre.

In this report, Council is not being asked to make a decision about acceptance of the unsolicited approach.

This report recommends that Council form an intention under section 178 of the *Local Government Act 1993 (the Act)* to (potentially) sell the Derwent Entertainment Centre and surrounding land comprised in Certificate of Title Volume 110871 Folio 1 and the business operations as a going concern (subject to conditions regarding access as summarised in this report).

Proposal in Detail:

Under section 178 of the Act, Council may sell, lease, donate, exchange or otherwise dispose of public land owned by it in accordance with this section.

A resolution of the Council to sell, lease, donate, exchange or otherwise dispose of public land is to be passed by an absolute majority.

This report requests Council to consider a sale of the Derwent Entertainment Centre and the reasons for that.

There is a distinction in process under the Act in selling, leasing, donating, exchanging or otherwise disposing of 'council land' versus 'public land'.

In summary, under section 178 of the Act, the sale of public land requires an absolute majority resolution of Council to sell, lease, donate, exchange or otherwise deal with public land, advertising on two (2) occasions in a daily newspaper circulating in the municipal area, displaying a copy of the notice on any boundary of the public land that abuts a highway and notifies the public that objection to the proposal may be made to the General Manager within 21 days of the date of the first publication.

In comparison, the sale of council land pursuant to section 177A of the Act also requires an absolute majority and requires a valuation of the land from the Valuer-General or a person who is qualified to practice as a land valuer but does not require a process of public advertising and objection period.

Public land is defined in section 177A as follows:

177A Public Land

- (1) The following land owned by a council is public land;*
 - (a) a public pier or public jetty;*
 - (b) any land that provides health, recreation, amusement or sporting facilities for public use;***
 - (c) any public park or garden;*
 - (d) any land acquired under section 176 for the purpose of establishing or extending public land;*
 - (e) any land shown on a subdivision plan a public open space that is acquired by a council under the Local Government (Building and Miscellaneous Provisions) Act 1993;*
 - (f) any other land that the council determines is public land;***
 - (g) any other prescribed land or class or land*
- (emphasis added)*

Without a thorough analysis of the definitions in section 177A of the Act or reviewing the history of acquisition, it is considered that the Derwent Entertainment Centre may likely fall within the definition of public land or it can be determined by Council to be public land in any event. Council can resolve to handle a potential sale of the Derwent Entertainment Centre by way of a public land sale process.

The proposal is to consider the sale of the Derwent Entertainment Centre business operations and assets, the land and building (more particularly comprised in Certificate of Title Volume 110871, Folio 1) as a going concern, at Council's discretion.

It is noted that Council has recently received an unsolicited proposal (on conditions) by Hydraplay Pty Ltd A.C.N 159 602 721 as trustee for the Hickey Family Trust (**Hydraplay**) to consider a sale of the Derwent Entertainment Centre including the business operations and assets and the land and building to it.

No formal decision by Council has yet been made in relation to acceptance of the proposal as presented by Hydraplay (which is under consideration) or a sale of the Derwent Entertainment Centre to Hydraplay.

Council is required to advertise an intention to sell public land on at least two (2) occasions in a daily newspaper circulating in the municipal area and otherwise meet the public notification requirements prescribed in section 178(4).

The case to commence the section 178 process is not dependent on the interest from Hydraplay.

The notices required by section 178(4) will record that Council has received an unsolicited proposal from Hydraplay.

Upon completion of the advertising process under section 178 it is expected a further report will be returned to Council as to the outcome.

Consultations:

The following parties have been consulted in the preparation of this report:

- Mayor
- General Manager
- Acting Director, Community Economic Development & Business
- Manager, Business & Finance
- DEC Venue Manager
- Manager, Legal and Procurement

Human Resource / Financial and Risk Management Implications:

Financial

It has been recently reported by Council in its budget briefings that the Derwent Entertainment Centre is currently operating at a loss to the Glenorchy Community and that the depreciation costs are significant.

The most recent financial year report 2016/17 outlined the following:

- the Derwent Entertainment Centre reported an operational loss of \$234,000 in the 2016/2017 financial year, and
- depreciation for the Derwent Entertainment Centre was recorded at \$860,000 in the 2016/2017 financial year.

Therefore, during the 2016/2017 financial year the operating loss and cost of depreciation alone to the Glenorchy Community was \$1,094,000.

Human resources

Consideration of staffing impacts would be taken into account in any potential sale of the Derwent Entertainment Centre. Council currently employs 4 permanent staff and 70 casual staff at the Derwent Entertainment Centre.

Risk management

Risk Identification	Consequence	Likelihood	Rating	Risk Mitigation Treatment
Adopt the recommendation Council does not achieve best value for the community on disposal of the land. Loss of the DEC as a public asset.	Major (C4)	Possible (L3)	Notable	Independent valuation is obtained by Council. Ensure due diligence is undertaken on the purchaser and there is clear agreement on the future use of the land where possible
Do not adopt the recommendation Business continues as usual with the Derwent Entertainment Centre owned by Council and likely to continue to operate at a significant loss	Major (C4)	Likely (L4)	Significant	Attempt to continue to run the Derwent Entertainment Centre as effectively as possible and conserve costs where possible in terms of operations. Note depreciation costs (2016/2017 figure of approx. \$800k) cannot be heavily mitigated

Legal Access

It has been identified that any potential sale of the Derwent Entertainment Centre will need to address ongoing legal and permanent access via the existing road that accesses both Wilkinsons Point and the Derwent Entertainment Centre from the Brooker Highway frontage. It is understood that the existing road is partially comprised within Certificate of Title Volume 110871 Folio 1 (subject to survey) and which is used to access both the Derwent Entertainment Centre and Wilkinson's Point land. There has been no need previously to consider creation of a road lot or easement. A boundary adjustment or creation of a right of carriageway for the benefit of adjoining land, not intended to be sold by Council, would need to be formalised as a condition of any sale and noted in any advertising. Further, it is likely that a wider road reservation burdening Certificate of Title Volume 110871 Folio and adjoining land not to be sold by Council will also need to be created.

Community Consultation and Public Relations Implications:

Community consultation

There has been no community consultation yet in relation to a possible sale of the Derwent Entertainment Centre or the unsolicited proposal by Hydraplay outlined in this report.

Council is required to undertake public notification of its intention to dispose of the relevant land in accordance with the requirements of section 178 of the Act.

The process under section 178 of the Act requires Council to:

- publish notice of intention to sell twice in the local newspaper and display a notice on any boundary of the land that abuts a highway, and
- notify the public they have 21 days to object (objections are considered and notice to the objecting party is given with objections, if necessary, being heard by the Resource Management Planning Appeals Tribunal).

It is considered that advertising of the intention to sell will provide the community with an opportunity for comment on this possibility.

Public relations

The Derwent Entertainment Centre is an admired community asset that for decades has been prominent to the Glenorchy and Southern Tasmanian community and ownership was transferred to Glenorchy City Council in 1997.

It is noted that the Derwent Entertainment Centre is currently running at a significant loss at the expense of Glenorchy City Council rate payers and the provision of an entertainment venue is not a traditional core function of local government.

Advertising an intention to sell may identify an opportunity for a new purchaser to bring a new vision to this facility, subject to compliance with statutory obligations in terms of its operations.

Recommendation:

That Council:

1. NOTE that Council has recently received an unsolicited proposal (on conditions) by Hydraplay Pty Ltd A.C.N 159 602 721 as trustee for the Hickey Family Trust to consider a sale of the Derwent Entertainment Centre including the business operations and assets and the land and building to it

2. FORM an intention under section 178 of the *Local Government Act 1993* (the Act) to dispose of public land, namely the Derwent Entertainment Centre, at 601 Brooker Highway Glenorchy, more particularly comprised in Certificate of Title Volume 110871 Folio 1 (and to sell the business operations as a going concern), subject to satisfactory resolution of the ongoing security of legal and permanent access referred to earlier in this report
3. AUTHORISE the General Manager to take all actions necessary to complete public notification of Council's intent to dispose of the land in accordance with section 178 of the Act, and
4. AUTHORISE the General Manager to consider and acknowledge any objection received pursuant to section 178(6) of the Act and report to a future Council meeting.

Attachments/Annexures

Nil.

CLOSED TO MEMBERS OF THE PUBLIC

COMMUNITY

4. UNSOLICITED OFFER - DERWENT ENTERTAINMENT CENTRE

This item is to be considered at a closed meeting of the Council by authority of the Local Government (Meeting Procedures) Regulations 2015 Regulation 15(2)(c) (Commercial information of a confidential nature that, if disclosed, is likely to: prejudice the commercial position of the person who supplied it; confer a commercial advantage on a competitor of the Council; or reveal a trade secret), 15 (2)(f) (Proposals for the Council to acquire land or an interest in land or for the disposal of land and 15 (2)(g) (Information of a personal and confidential nature or information provided to the Council on the condition it is kept confidential.)

GOVERNANCE

5. KGV TENANCY MATTER

This item is to be considered at a closed meeting of the Council by authority of the Local Government (Meeting Procedures) Regulations 2015 Regulation 15(2)(c) (Commercial information of a confidential nature that, if disclosed, is likely to: prejudice the commercial position of the person who supplied it; confer a commercial advantage on a competitor of the Council; or reveal a trade secret,) 15(2)(g) (Information of a personal and confidential nature or information provided to the Council on the condition it is kept confidential) and 15(2)(i) (Matters relating to actual or possible litigation taken, or to be taken, by or involving the Council or an employee of the Council.)