SPECIAL COUNCIL

AGENDA

MONDAY, 20 AUGUST 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.

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Tony McMullen
General Manager

16 August 2018

Hour: 6.00 p.m.

Present:

In attendance:

Leave of Absence:

TABLE OF CONTENTS:

1. APOLOGIES

2. PECUNIARY INTEREST NOTIFICATION

3. PUBLIC QUESTION TIME (15 MINUTES)

GOVERNANCE

4. PETITION - OBJECTION TO DISPOSAL OF DERWENT ENTERTAINMENT CENTRE

Author:	Acting Manager, Governance and Risk (Bryn Hannan)
Qualified Person:	Acting Director, Corporate Governance (Simon Scott)
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.

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 4.1.3	Maximise regulatory compliance in Council and the community through our systems and processes.

Reporting Brief:

To table a petition presented to the General Manager relating to the potential disposal of the Derwent Entertainment Centre in accordance with the requirements of part 6, division 1 of the *Local Government Act 1993* and recommend the action to be taken by Council in response to it.

Proposal in Detail:

Petition Details

Council has received a petition, lodged by Janiece Bryan of 14 England Avenue, Montrose, the subject of which is identified as '*Objection to Disposal of Derwent Entertainment Centre and Surrounding Land (Certificate of Title Volume 110871 Folio 1)*' (**the Petition**). A copy of the Petition is Attachment 1.

The Petition records its signatories' objection to Council's proposal to dispose of public land under section 178 of the *Local Government Act 1993* (**the Act**), being the Derwent Entertainment Centre, 601 Brooker Highway, Glenorchy (Certificate of Title Volume 110871, Folio 1) (**the Land**). Council will consider whether to take any action under section 178 of the Act at the current special meeting.

The reasons for the objection, as stated in the petition are:

"...

- *The named Citizens object to Council disposing of the Derwent Entertainment Centre & Community Facility, A Bi-Centennial Gift to the People of Glenorchy, and*
- *The decision of Council is not in the public interest in that-*
  - *(a) The community may suffer undue hardship due to the loss of access to, and the use of, the public land; or*
  - *(b) There is no similar facility available to the users of that facility.*
- *There is no budgetary requirement to sell this important and valuable community facility belonging to the People of Glenorchy.*
- *There is no replacement building for similar community use. Glenorchy has no Civic Centre to use for a range of community based activities which are currently undertaken at this facility including the use o f the car park area. The lease on a property previously used as a Civic Centre was terminated as a cost saving measure by Council on the agreement that the Derwent Entertainment Centre facilities would be used."*

The Petition contains 418 signatories. Of the 418 signatories, 142 were from people who reside outside the Glenorchy local government area.

Requirements for dealing with petitions under the Act

The Petition substantially complies with the requirements under section 57 of the Act. Accordingly, Council is required to be tabled at a Council meeting.

The Petition is being tabled at this special meeting of Council instead of 'at the next ordinary meeting of Council' (as required in section 58(2) of the Act), given that its subject matter relates to the issues under consideration at the special meeting.

The General Manager has given notice to Mrs Bryan that Council is considering the Petition at this special meeting, as required under section 60(b) of the Act.

In addition to Mrs Bryan, Council has written directly to those individual signatories to the Petition who provided their address details to advise them of this special Council meeting. Of note, 181 signatories did not provide full address details. As a result, it was not possible for Council to correspond with those individuals.

Under section 60(4)(b) of the Act, Council is required to determine any action to be taken in respect of the petition at the present meeting.

Recommended action on petition

It is recommended that Council resolve to treat the petition as an objection to the proposed sale of the Land for the purposes of section 178 of the Act, and to take the Petition into consideration when deciding whether to take any action under section 178.

The 'reasons for objection' identified in the petition include the grounds for an appeal against a decision to dispose of public land, namely that the disposal is not in the public interest because:

> "…
>
> *(c) The community may suffer undue hardship due to the loss of access to, and the use of, the public land; or*
>
> *(d) There is no similar facility available to the users of that facility…."*

On that basis, while the petition is not identified as being an objection lodged under section 178, it is appropriate that Council treats it as if it were. Doing so will trigger a requirement under section 178(6) that Council advise the person who lodged the objection (Mrs Bryan) of its ultimate decision and any right to appeal against it.

Consultations:

Acting Director, Community, Economic Development and Business
Acting Director, Corporate Governance

Human Resource / Financial and Risk Management Implications:

Financial

There are no material financial implications.

Human resources

There are no material human resources implications.

Risk management

Risk Identification	Consequence	Likelihood	Rating	Risk Mitigation Treatment
Adopt the recommendation If Council were to adopt the recommendations and then subsequently resolve not to dispose of the Land, a person aggrieved by Council's decision may object to the Petition having been taken into consideration in Council's deliberations.	Minor	Possible	**Low**	Council clearly communicates the reasons for any decision made in relation to the section 178 process for the disposal of public land.
Do not adopt the recommendation The lodger of the petition may have grounds to argue that the section 178 process was not complied with on the basis that the Petition constituted an objection which was not properly responded to, potentially invalidating the process.	Moderate	Unlikely	**Moderate**	Council obtains legal advice as to the ramifications of not considering the petition in its deliberations under section 178.

Community Consultation and Public Relations Implications:

Community consultation

The lodger of the petition, Mrs. Bryan, has been informed that the petition will be tabled and of the recommendation being presented to Council. There has otherwise been no community consultation by Council in respect to the Petition itself, though the consultation in respect to the potential sale of the Land has been well documented.

Public relations

There are not expected to be any negative public relations impacts if Council adopts the recommendations in this report.

The purpose of this special meeting has been widely reported in the media. The presence of the Petition may be referred to in any media reporting around the outcome of the meeting.

Recommendation:

That Council

1. RECEIVE and NOTE the petition titled *Objection to Disposal of Derwent Entertainment Centre and Surrounding Land (Certificate of Title Volume 110871 Folio 1)* containing 418 signatures lodged by Janiece Bryan of 14 England Avenue, Montrose (**the Petition**), and
2. RESOLVE to treat the Petition as an objection to the proposed disposal of the public land, being Certificate of Title Volume 110871 Folio 1, given under section 178 of the *Local Government Act 1993*.

Attachments/Annexures

1 Petition - Objection to Sale of DEC

5. DISPOSAL OF LAND - DERWENT ENTERTAINMENT CENTRE

Author:	Acting Director, Community, Economic Development and Business (David Ronaldson)
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:

At a special council meeting on 9 July 2018, Council resolved to form an intention to dispose of the Derwent Entertainment Centre and surrounding land comprised in Certificate of Title Volume 110871 Folio 1. The intended disposal was advertised under section 178 of the *Local Government Act 1993* (**the Act**) and submissions were invited.

This report reviews the submissions received (including objections) and recommends that Council resolves, in-principle, to dispose of the Derwent Entertainment Centre and its related parcel of land.

It should be noted that if Council adopts the recommendations in this report, this does not constitute (in any way) a decision to sell the land to any particular purchaser. This would be a matter for further consideration by Council at a future meeting.

Proposal in Detail:

Background

The Derwent Entertainment Centre (**DEC**) was constructed in 1988/89 as Tasmania's contribution to the Australian Bicentennial celebrations.

The DEC was developed by and continued to operate under the joint ownership of the State Government and the Glenorchy City Council. The DEC was managed by a Board in accordance with the *Derwent Entertainment Centre Management Authority Act 1988*. In 1996, on the advice of the Board, Council obtained government agreement to DEC's sole ownership and control.

The venue was transferred to the ownership of Glenorchy City Council in 1997 for a nominal amount. Since taking ownership of the property, Council has operated the DEC for its intended purpose: providing an entertainment venue that is accessed by local Glenorchy, Greater Hobart and Tasmanian communities.

The DEC is the largest capacity venue of its kind in Tasmania, with a reported capacity up to 7,500 persons on general entry. The seating configuration varies depending on event requirements with up to 4,875 people fully seated for theatre, 1,300 for banquet style and 800 for cabaret. The building contains a main arena, several ancillary function rooms, a board room and staff and public toilet facilities. The facility also houses a fully equipped and functioning large commercial kitchen, modern offices, booking area, three reception foyers, several bar areas including food and drink provision, and external covered entry areas. The back of stage area is easily accessible for road transport providing the opportunity for a wide range of uses.

PART 1 – SECTION 178 PROCESS AND PUBLIC OBJECTIONS AND SUBMISSIONS

Intention to Dispose of Public Land

At its special meeting on 9 July 2018, Council considered a report entitled 'Disposal of Land and Unsolicited Offer to Purchase - Derwent Entertainment Centre'.

In respect of that item, Council resolved to:

1. *NOTE that Council has recently received an unsolicited proposal (on conditions) from 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.*
   (a) *In doing so, Council welcomes expressions of interest in the purchase of the DEC during the Section 178 consultation process.*
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.*

Following that meeting, Council advertised the intention to dispose of the subject land under section 178 of the Act (**the section 178 process**), as follows:

- in accordance with section 178 of the Act, notice was given of Council's intention to dispose of the DEC and land folio.
- this notice was advertised in accordance with the Act via The Mercury newspaper (14 and 21 July 2018), Council notice boards, onsite through signage and via Council's Website.
- in compliance with section 178 of the Act, the 21-day public period for objection closed on Friday, 3 August 2018.

It is also noted that during this period, the Hydraplay consortium's proposed plans for the DEC and surrounds were extensively covered in the electronic and print media. This has drawn significant public attention to the proposal and has led to prolonged community awareness and comment.

Resolution 1(a) from the 9 July special council meeting invited expressions of interest from potential purchasers as a part of the section 178 process. Council did not receive any further expressions of interest during the 21-day period.

Public Objections and Submissions

During the 21-day advertising period under section 178, Council received submissions from 15 people, with 7 of those being objections. The following attachments to this report summarise and attach the submissions:

- Attachment 1 is a table listing the identity of all submitters, and the date the submissions were received, and summarises the content of the submission. It should be noted that Council received 2 responses outside the 21-day period. These are also listed in Attachment 1
- Attachment 2 lists only the objecting submissions, and contains the identity of objectors, date received and a summary of the grounds of objection, and
- Attachment 3 contains copies of all submissions received during the section 178 process.

Section 178 (6) of the Act requires that Council must –

(a) Consider any objection lodged; and

(b) By notice in writing within 7 days after making a decision to take or not take any action under this section, advise any person who lodged an objection of –

(i) that decision; and

(ii) the right to appeal against that decision under section 178A

Section 178A allows for appeals to be made on the basis that Council's decision is not in the public interest, on the following two grounds:

(a) The community may suffer undue hardship due to the loss of access to, and the use of, the public land; or

(b) There is no similar facility available to the users of that facility.

It is considered that these are the two primary criteria that Council needs to weigh up when deciding whether to confirm its intention to dispose of the DEC and surrounding land.

Of course, Council also has the discretion to consider other matters when coming to its decision.

Officer Responses to Objections and Submissions

Council officers have categorised the public submissions into objections, questions and comments, and have provided a response to each. Those responses are outlined in tables 1 to 3, below.

<u>Objections</u>

Table 1 – Grounds of Objection (below) sets out the objections raised during the 21-day objection period and officers' responses.

Table 1 – Grounds of Objection.

Item	Ground of Objection	Officer Response
O1	Concern re public access to the site inclusive of the foreshore, walking paths, car parks and GASP.	The proposal to dispose of public land does not affect access to these areas.
O2	Concern re public access to the venue and that this is ensured maintained.	The public currently has access to the venue via payment for entertainment/sporting activities. It is not envisaged that this will change.
O3	Criticism of Council for not advertising the proposed disposal sufficiently.	Council has followed the section 178 process outlined in the Act to advise of its intention to sell the public land and DEC. The proposal has also attracted widespread media coverage.

Item	Ground of Objection	Officer Response
O4	Ability to use the DEC for low cost community events.	Council has never provided the DEC for low cost events. The DEC has always provided a range of prices for various sections of the building to be accessed. This has applied to all potential hirers, whether community or private organisations.
O5	Council has been disposing of land for years including the Showgrounds. This should not occur.	Council takes the provision of land (and facilities) for the Community into consideration in each decision it makes in relation to retention or disposal of land and assets. Further, Council does not, and never did, own the Hobart Showgrounds.
O6	Prematurity of decision to activate the Act requirements based on others' timelines.	Council has received an unsolicited bid for the venue. Council is working through an open and transparent process based on section 178 of the Act to decide whether to dispose of the asset. These timelines are in accordance with the Act. The presence of an unsolicited bid did bring this decision process forward. However, it was a matter that Council had already identified as needing to be considered during the 2018/19 budget process. While the consortium may have its preferred timelines, Council, as landowner, has ultimate control over the decision to dispose and the timing of that decision.
O7	Inadequate or irrelevant considerations (i.e. Council issued the Section 178 notice before it was fully informed)	Council is being presented with all information available. The section 178 process is also an interim step, meaning that there is the opportunity for Council to obtain further information prior to considering any future agreement to sell the DEC.
O8	Vehicle Access and Parking precinct infrastructure are key considerations in the future.	The current parking facilities are required for the DEC to operate.
O9	The Community may suffer undue hardship due to the loss of access to and use of public land.	The current proposal is to dispose of the DEC and the land parcel attached as advertised. The public will continue to have access to the foreshore and Wilkinsons Point. Further, if Council decides to dispose of the venue, continuation of the entertainment centre operation and continued public access to ticketed events will be a key consideration.
O10	There is no replacement building for similar community use. Glenorchy has no Civic Centre to use for a range of community-based activities which are currently undertaken there including use of the car park area. The lease on a property previously used as a Civic Centre was terminated as a cost saving measure by Council on the	It is acknowledged that the DEC is Tasmania's only roofed stadium with a spectator capacity of its size. The intention would be for the DEC to continue its current entertainment centre function following any future sale. There are also a range of other venues across the broader Hobart community that offer, sport, entertainment and conference facilities.

Item	Ground of Objection	Officer Response
	agreement that the Derwent Entertainment Centre facilities would be used.	Council also has a range of buildings (for example, the Moonah Arts Centre, Multicultural Hub, KGV Sports and Community Facility and the Chigwell Barn) which are available for civic use. It is not correct that the lease on the former Civic Centre was terminated on the agreement that the DEC facilities would be used. Additionally, the DEC is not available for free use by anyone, including Council itself. The DEC's annual revenue includes fees charged to Council for the use of its facilities for civic events (such as citizenship ceremonies). Accordingly, the sale of the DEC would not result in the loss of a free facility for civic events.

Questions

Table 2 - Questions Raised by Submitters (below) shows the questions raised by submitters during the public notification period and officer responses.

Table 2 - Questions Raised by Submitters

Item	Question	Officer Response
Q1	Will a sale result in rezoning the land?	No. There is a specific area plan under the relevant Planning Scheme that guides land usage on the site.
Q2	Release of detailed information regarding the DEC finances inclusive of profit / loss, maintenance and depreciation costs.	The DEC's financial situation is reported annually in Council's annual report. Further information about the DEC's finances is provided in the body of this report.
Q3	Questions about process – open and closed meeting minutes on 9 July.	On 9 July 2018 Council considered a matter in relation to the intention to dispose of public land in open Council. At the same meeting Council considered a report in relation to an Unsolicited Offer received for the DEC. Further negotiations with the consortium that made the unsolicited offer may continue if Council resolves, in-principle, to dispose of the DEC with a prospective purchaser at the present meeting following the conclusion of the process under section 178 of the Act.
Q4	Request for information about agreement re proposed sale.	Council has not formed an agreement to sell anything at this time. Accordingly, Council does not have details of an agreement because no agreement exists. The section 178 process outlines the detail of the land parcel and facility that Council would sell if it ultimately reaches an agreement to sell the DEC, but beyond that no terms of any potential sale have been agreed.
Q5	Can Council release the names of the Consortium?	This is a matter for the Consortium.

Item	Question	Officer Response
Q6	Questions around timeline of process – perception of haste.	Council has fully complied with the section 178 process as set out in the Act, inclusive of timelines. Council will continue to comply with its statutory obligations and its obligations to act in the best interests of the community.
Q7	Concern raised over perceived transparency of the proposed sale.	Council is going through an open and transparent process under section 178 of the Act to highlight its intention to dispose of the DEC. Objectors have 21 days to lodge their concerns and have accessed this opportunity.
Q8	What is an unsolicited approach?	'Unsolicited approach' means the approach was 'unsolicited' in the sense that Council did not solicit (ask for) offers to purchase the DEC. In other words, Council did not approach anyone (or the wider market), the consortium approached Council.
Q9	How is the value of the DEC assessed?	There are several different methods on which a property can be valued including market and replacement. The publicly available valuation is the legislated valuation provided by the Tasmanian Valuer General. As at 1 July 2016 the capital value of the DEC was valued $10.6M. This information is publicly available through the Land Titles Office.
Q10	What was the revenue of the DEC in 2016/17?	$1,294,016
Q11	How has the depreciation changed since 2016/17?	Depreciation increased by $9,000 from 2016/17 to 2017/18.
Q12	Has the DEC provided a financial report to Council in March/June 2018?	The DEC reports to Council monthly as part of the whole of organisation reporting and is specifically mentioned in each Annual Report.
Q13	How much money has been spent on the DEC for sale?	No money has been spent on the DEC itself in preparation for a potential disposal, because, as noted, the potential disposal has come about because of an unsolicited approach. There has been a small amount spent on advertising and other consultancy costs required to comply with section 178 and to conduct proper due diligence.
Q14	Why did Council provide 2 negative indicators regarding the financial performance of the DEC?	The indicators used are those reported in Council's Annual Plan each year.
Q15	Is there a weighting system applied to public comments?	No.
Q16	What mechanism does Council have to allow members of the community to participate if they have low literacy	Council invests in a range of solutions to this issue - specifically attempting to present information in plain English.

Item	Question	Officer Response
	levels?	
Q17	Does Council already have commercial arrangements with the Hobart Chargers?	Yes.
Q18	How will these (Chargers arrangement) be impacted by the sale? Is the ratepayer disadvantaged by a potential sale?	No sale has been agreed to yet. This is a matter for consideration if Council resolves to dispose of the DEC following the conclusion of the section 178 process. As stated above Council has a fundamental duty to act in the best interests of the community and achieve best value for the community.
Q19	What is the 'reserve price' placed on the DEC? The sale should not be a 'fire sale".	No reserve price has been placed on the DEC. Council's position in any future negotiations around a potential sale of the DEC will be guided by the advice of expert consultants in relevant fields. As stated above, in all transactions Council has a fundamental duty to act in the best interest of the community and achieve best value for the community. Selling the DEC for a price determined without proper due diligence would not be in the community's best interests and will not occur.
Q20	How will funds from the sale be spent?	There has been no decision to sell yet. Accordingly, there has not been any consideration given to how any prospective funds from a sale would be spent.
Q21	How will lost parking spaces be replaced?	Parking spaces around the DEC are primarily used for DEC events by DEC patrons and staff, are therefore related to the operation of the venue. Accordingly, there will be no loss of public parking facilities.
Q22	Will a developer be required to follow the Wilkinson Point Masterplan?	Council has in place a specific area plan that guides land usage on the site and supports the Wilkinsons Point Masterplan.
Q23	Will developers be required to operate the venue for major entertainment productions.	If Council resolves to sell the DEC, it may choose to do so on the terms of the original acquisition that the venue is to remain as an entertainment venue.
Q25	How can section 178 of the Act be used to sell a multimillion dollar venue?	Council must follow the section 178 process before it can sell the Derwent Entertainment Centre (DEC). This is a legally binding statutory requirement. The reason Council must follow that process is because the DEC is situated on public land. Under section 178 of the Act, every potential disposal of public land must first go through the section 178 process before any sale can proceed.

Item	Question	Officer Response
		This section also allows objectors the opportunity to object to Council's decision once it is made. If Council resolves to sell under section 178, Council is then free to determine an appropriate process to identify prospective purchasers.
Q26	Is the Sale permitted under the Deed of Arrangement with the State Government?	Yes.
Q27	Would Council benefit from rates after sale?	Yes. The exact amount is yet to be determined, but yes, any person or organisation that purchased the DEC would be required to pay rates to Council.
Q28	Will staffing contracts and contractual matters be affected by a sale?	This is a matter to be considered at the appropriate time.

Comments

Table 3 – Comments Made by Submitters (below) shows the comments made by submitters during the public notification period which were not considered to be objections and officers' responses.

Table 3 – Comments Made by Submitters

Item	Comment	Officer Response
C1	Criticism of media reports not being accurate, and statements made in the media by others.	Council has provided accurate information to the media at all times. Further, Council has corrected information when the media has incorrectly reported. Council is not responsible for, and has no control, over the way in which media organisations report decisions of Council.
C2	A $4 million dollar loan should not be accepted by Council from the State Government.	The offer of a $4 million interest free, deferred repayment loan from the State Government has not yet been taken up. The intention of the loan was to develop/service Wilkinson Point in preparation for possible sale as per the 2016 Council adopted Wilkinson Point Masterplan. This is a separate matter to the proposed disposal of the DEC.
C3	There is a lack of detail about the Hydraplay Consortium proposal.	At this time Council is considering the 'in principle' question as to whether it should dispose of the asset. Council will not proceed with any agreement to sell the DEC to a particular purchaser without acting with due diligence to ensure it has sufficient information to achieve best value for the community.

Item	Comment	Officer Response
C4	Sale of the DEC – should be based on three separate market valuations.	Council has a valuation from the State Governments' Independent Valuer General and this is widely available. Council has also obtained its own independent valuation advice.
C5	Suggestion to create a winery / distillery complex around the periphery of the DEC as a tourist attraction and employment / training provider.	At this time, this suggestion has not been explored.
C6	Offer to carry out a land survey of the site.	At this time, this suggestion has not been actioned.
C7	Investigation of a long-term lease instead of sale.	This has been and is continuing to be considered. However, a decision to lease the DEC would still require Council to go through section 178 process, as leasing is a form of disposal of public land under the Act.
C8	Investigate discussions with MONA for the usage of Wilkinsons Point and the DEC.	Council is currently engaging with MONA in relation to MONA's own proposed developments.
C9	Retention of the DEC for variety of events /uses.	If Council agrees to dispose of the DEC, it will be a consideration in any subsequent negotiations with a potential purchaser that the DEC is retained as an entertainment venue, and that this is a condition of any proposed sale.
C10	A request for an information session in relation to what will the site be used for before any sale is completed.	No sale has been agreed to, nor will an affirmative decision at the current meeting constitute an agreement to sell the DEC. Negotiations around a sale are cannot progress unless Council makes a resolution to confirm its intention to sell the DEC at the present meeting.
C11	Sell the DEC at current market value.	In all transactions Council has a fundamental duty to act in the best interest of the community and achieve best value for the community. Council will comply with that duty.
C12	Alleges a lack of data for residents to make comment on a sale to the consortium.	Council has made no agreement to sell to anyone. Council is currently considering if it will dispose of the DEC and surrounding land. The question of how to, who to and best value is yet to be considered.

Item	Comment	Officer Response
C13	Criticism over advertising the 9 July Special Council meeting on a Friday before the Monday meeting.	Council complied with the *Local Government (Meeting Procedures) Regulation 2015* in the advertising timelines set out by the Act for the 9 July meeting. Further, Council has considered this opinion and has extended the advertising time for the current special Council meeting exceeding the requirements in the regulations.
C14	Council should retain the land allotment that the DEC sits on.	Acknowledged. Council has signalled it intent to dispose of the land and improvements.
C15	Council should consider wider community engagement before making any further decisions.	Noted. As previously expressed the avenue via the Act was to follow the section 178 process for Disposal of Land. Council may engage in further community consultation prior to any actual sale.
C16	Higher rates should ensure Council does not sell the DEC.	The notice of intention to dispose of the DEC is not related to Council's decision to increase rates. Rather the decision is based in Council's fundamental duty to act in the best interest of the community and achieve best value for the community.
C17	Council should put more effort into advertising the advantages of the DEC.	Currently, Council employs a team of officers solely focused on the operations of the venue inclusive of marketing and promotional activities.
C18	Criticism of adopting New Disposal Policy at same time as this matter.	The old Disposal of Council Land Policy was last updated in 2009. The updated version of that policy was adopted on 20 July 2018 (**the new policy**). There is nothing in the new policy which will makes it easier or less transparent for Council to dispose of Council land. The cornerstone of both the old policy and the new policy is that Council considers all Council land to be public land for the purposes if the Act, the consequence of which is that the section 178 process must be followed for all sales of land owned by Council. This requirement has not changed between the two versions of the policy. The new policy was introduced when it was because it had been overdue for some time and was due to be updated as part of Council's ongoing policy review process. The fact that Council received an unsolicited offer in respect of the DEC provided the impetus to expedite the review of the policy, to ensure that if the sale of the DEC and surrounding public land did go ahead, it would be conducted in accordance with to a robust

Item	Comment	Officer Response
		internal policy process, rather than the framework under the old policy which was somewhat rudimentary and did not provide appropriate controls or directions about the sale of land by Council.
C19	Cost of running the DEC - argues that the venue has only recently run at a loss, depreciation is irrelevant, and this is not a reason to dispose.	The DEC has run at an operational loss for most years over the past decade.
C20	Past Land Sales - makes a link to previous sale of the Claremont Primary School site and the former Berriedale Caravan Park as evidence that Council has poor record in the disposal of public assets.	Claremont Primary School was owned by the State Government. The former Berriedale Caravan Park disposal process is not concluded at this time.
C21	The proposed disposal of the DEC is unsystematic and non-strategic.	The proposed sale is in-line with Council's and the community's intent to best use ratepayers' money, and seeks to achieve this.
C22	There is no budgetary requirement to sell our important and valuable community facility.	As per above, the notice of intention to dispose of the DEC is not related to Council's current financial year. Rather the decision is based in Council's fundamental duty to act in the best interest of the community and achieve best value for the community.

A separate report is presented to this meeting about a petition containing 418 signatories received as an objection during the section 178 process. That report recommends that Council treats the petition as a public submission for the purposes of section 178, which Council will do if those recommendations are adopted.

The petition objects to the disposal of the land and states the grounds listed for the petition as:

- *"The named Citizens object to Council disposing of the Derwent Entertainment Centre & Community Facility, A Bi-Centennial Gift to the People of Glenorchy, and*
- *The decision of Council is not in the public interest in that-*
  - *(a) The community may suffer undue hardship due to the loss of access to, and the use of, the public land; or*
  - *(b) There is no similar facility available to the users of that facility.*
- *There is no budgetary requirement to sell this important and valuable community facility belonging to the People of Glenorchy.*

- *There is no replacement building for similar community use. Glenorchy has no Civic Centre to use for a range of community-based activities which are currently undertaken at this facility including the use of the car park area. The lease on a property previously used as a Civic Centre was terminated as a cost saving measure by Council on the agreement that the Derwent Entertainment Centre facilities would be used."*

Council has written directly to signatories who provided sufficient address details to advise them of this Special Council meeting. However, 181 signatories did not provide full address details and therefore their submission could not be acknowledged in writing. Of the 418 signatories, 142 were from outside the Glenorchy Local Government area.

PART 2: CONSIDERATIONS FOR COUNCIL

Public Submissions and Objections

Section 178 of the Act requires that Council must consider any objection lodged. The objections and all other public submissions are summarised in Part 1 (above) and in the attachments to this report.

Council is bound to consider the objections in reaching its decision.

Financial Considerations

This section provides information to Council about financial considerations associated with the past and future operation of the DEC and its potential disposal.

Annual Cost to Council of DEC's Operations

Data from the 2014/15 to 2017/18 financial years indicates that the total annual cost of to Council of operating the DEC (inclusive of operating costs, depreciation, capital expenditure and maintenance) is between $887K and 1.096M, as illustrated in Table 4 (below).

Table 4: Annual Cost of DEC Operation to Council

	Directly accounted for			Indirectly accounted for		
Financial Year End (FYE)	**Revenue** ($,000)	**Expenses** ($,000)	**Profit/(Loss)** ($,000)	**Depreciation** ($,000)	**Works Centre Maintenance** ($,000)	**Total Cost to Council** ($,000)
2014/15	1,379	(1,422)	**(43)**	755	89	**(887)**
2015/16	1,605	(1,521)	**84**	800	197	**(913)**
2016/17	1,294	(1,356)	**(62)**	861	51	**(974)**
2017/18	1,283	(1,428)	**(145)**	869	82	**(1,096)**
2018/19 (budgeted)	1,649	(1,487)	**162**	186	66	**(90)**

Commentary on the data in Table 4 is provided below.

Profit/(Loss)

Currently the DEC's profitability (earnings less operational costs, excluding depreciation and works centre maintenance) fluctuates. The DEC's profitability is highly dependent on the number of large concerts that it hosts, and the contractual conditions agreed with the promoters. The 2018/19 budget projects a $162,000 Net Profit for the current financial year.

It should be noted that the figures reported here vary to those disclosed in the 'Significant Business Activity' notes in Council's Annual Reports. In those notes, engineering and administration costs (calculated at 12.5% of operating costs) provided to the DEC indirectly by other areas of Council are calculated and added to the above results. This is a requirement of the Australian Accounting Standards (**AAS**). The above figures are based on actual revenue and expense figures extracted from Council's accounting records.

Based on historical data, it is estimated that the DEC is generating an annual gross profit margin (defined as 'event and hire revenue less direct event and hire costs) of approximately 35%. This margin is considered too low to cover the DEC's fixed operating costs and leaves the business vulnerable to continued operating losses (which explains the consistent losses made over the last ten years).

Depreciation

It has been recently reported by Council in its budget briefings that the DEC is currently operating at a loss and that the depreciation costs are significant.

Table 4 (above) identifies Council's reported depreciation figures from the 2014/15 to 2017/18 financial years. The figures account for infrastructure assets, including the land, but exclude minor items such as equipment, furniture and vehicles.

The estimated depreciation of the DEC for the current financial year is $186,000:

This represents is a significant projected drop in depreciation between the 17/18 and 18/19 financial years. The reason for that drop is that in early 2018, Council (in consultation with the Tasmanian Audit Office) undertook investigations into the appropriate methodology to use to accurately value the DEC to ensure compliance with the AAS. That exercise resulted in a reduced valuation for depreciation purposes, and, consequently reduced depreciation for the next financial year. The following should also be noted about the project depreciation figure for the current financial year:

- the DEC's historical depreciation expenses has been significant because they were based on its original cost, indexed over time, plus the cost of capital additions made over the asset's lifetime. That methodology has been revised, and

- the DEC asset includes various sub-asset classes. The updated methodology results in a number of those sub-assets becoming fully depreciated during the next financial year, which further reduces projected depreciation.

<u>Capital Expenditure</u>

One reason Council depreciates its assets is so that it can progressively recognise the estimated amount of capital spending required to replace them.

It is estimated that if Council intends to support the DEC as an on-going business, it will need to invest significantly on capital projects, including venue enhancements, improvements to event operating costs and assisting to mitigate work health and safety (**WH&S**) risks.

The following are two (2) options as to how a future capital program for the DEC could be administered:

1. maintain the DEC's asset integrity through ongoing capital replacement and/or major repair of its assets (building components, carparks, signage, gates, fitouts and fittings), including any reactive works and the mitigation of WH&S risks, or

2. based on a DEC Master Plan (not yet developed), determine a program of works for venue enhancements such as expansion for larger 'higher earning' events, improvements to reduce event operating costs, and assisting to mitigate WH&S risks including reactive works as required.

Council estimates that option 1 would amount to approximately $90K to $150K per annum, depending upon the nature of the reactive and replacement works required to maintain the existing asset condition. Alternatively, option 2 would need to be costed based on a plan to provide for new and replacement assets. The annual capital spend could be anywhere between $250K to $500K per annum, depending on what the DEC Master Plan, if developed, determined was necessary following a detailed analysis.

<u>Maintenance Costs</u>

It is important to note the distinction in Table 4 between and DEC internal maintenance costs (not shown separately in Table 4) and 'Works Centre Maintenance' costs which are in the second column from the left in Table 4:

- DEC internal maintenance costs are included in the figures in the 'Expenses' column and consist of maintenance expenses incurred from the DEC's own internal operational budget. The current expenditure on DEC internal maintenance is estimated to be $40K per annum.

- Works Centre Maintenance costs are costs that are incurred by Council, from Council's operating budget. These are incurred by Council addition to the DEC's internal maintenance costs. The current expenditure on this category of maintenance is approximately $80K to $120K per annum depending on the reactive maintenance requirements from year to year.

The DEC is a Non-Core Asset

The Derwent Entertainment Centre is a significant entertainment facility serving the Southern Region.

The management of a regional entertainment venue is neither a traditional core function of local government nor does it provide services focused solely on the local community. Despite having a highly experienced and competent venue management team for the DEC, the entertainment sector is not core business for a local government and this renders it difficult to leverage the full potential of the business.

Council's intent in expressing an interest in potentially disposing of the DEC as a non-core asset is to see the continuance of the entertainment centre use, albeit under different tenure and management arrangements, which would result in better utilisation of the facility with associated benefits to the Glenorchy and Southern Tasmanian communities.

The other distinct advantage of disposing of the DEC is that it will remove the opportunity cost associated with operating a facility which is not a core business activity of Council. This would give Council the ability to bring its focus back on to its core activities going forward, and arrest the financial disadvantages that the operation of a business of this type brings to Council.

Use as Regional Emergency Evacuation Centre

Finally, Council is also aware that the DEC is currently listed as the Regional Emergency Evacuation and Recovery Centre. This usage is instigated by Tasmania Police under advice from the State Emergency Service in partnership with Council. If Council was to dispose of the DEC, this would not affect the ability of Tasmania Police to require the use of the DEC in an emergency situation (although they would need to negotiate directly with any new owners rather than Council).

PART 3: CONCLUSION

On 9 July 2018 Council resolved to form an intention under section 178 of the Act to dispose of public land, namely the Derwent Entertainment Centre, comprised in Certificate of title Volume 110871 Folio 1.

The Act calls for a public notification process as set out in section 178 of the Act. The decision of Council was notified via the process outlined in the Act and a range of submissions were received as detailed earlier in this report.

The submissions centre on the following:

<u>For:</u>

- Sell the asset to remove it from Council's books.
- Generate rates income for the Glenorchy ratepayers.

<u>Against:</u>

- Retain the public asset / A bicentennial gift to the people.

- Council should retain the land ownership.
- DEC should run at a profit – Council is not managing the asset optimally.
- There is no replacement building / asset.
- Loss of community access to the facility.

<u>Position Unstated</u>

- Question the process of disposal.
- Question the available information to make a decision upon.

To progress this matter, Council needs to be aware of the grounds on which a decision to dispose of the land can be appealed and should satisfy itself that those grounds would not exist if it were to proceed. The grounds for an appeal are that the decision of Council is not in the public interest in that:

- *The community may suffer undue hardship due to the loss of access to, and the use of, the public land; or*
- *There is no similar facility available to the users of that facility.*

As noted, a key concern raised by objectors is the potential that the community could be deprived of access to a community facility. In relation to this, Council should consider the following:

- The DEC is a ‘community facility’ only in the sense that it is owned by Council. All users (whether community groups or otherwise) pay a fee to use the facility. It does not have publicly accessible facilities (e.g., basketball courts etc.) available for free community use.
- However, the concerns about the loss of the DEC as an entertainment facility are certainly valid, given that it is the largest such venue in Southern Tasmania. Nevertheless, those concerns (and subsequently one of the two grounds for appeal) could be fully addressed by Council including a provision in any disposal agreement that the DEC must continue to be used as an entertainment centre and to be made available for public events such as sporting events, concerts, competitions and other similar uses.

Additionally, objectors have raised concerns about continued access to Wilkinsons Point/GASP and the foreshore. This area is <u>not</u> proposed for disposal or reduction in public access under this process. The sale of the DEC and the associated parcel of land will not affect access to those areas. Council’s resolution and subsequent public notices clearly identified the land parcel proposed for sale, made up of the front and rear carparks and the venue itself, and not the Wilkinsons Point/GASP area.

As stated above Council has owned and operated the DEC jointly with the State Government since 1989 and solely since 1997.

During Council's 2018/2019 budgetary considerations the DEC was identified for further consideration in relation to the ongoing operation, maintenance, capital and depreciation support that is required to operate the venue. The above analysis of the financial position of the DEC indicates that:

- the DEC has been subject to annual depreciation of between $744-869k (though this is projected to decrease in the next reporting period due to a re-evaluation of the depreciation methodology)

- the DEC has recorded an average net loss (before depreciation is added) of $104k per year over the period from 2008/9 to present

- Council is required to spend significant amounts on capital expenditure to maintain the viability of the asset (ranging between $0 and $586k per year since 2012/13), and

- annual maintenance costs (in addition to capital expenditure) are between $85 and 120K per annum).

The DEC, as reported through each Annual Report, has relied on Council's ongoing financial support to operate.

Since taking full ownership of the DEC from the State Government, Glenorchy ratepayers have borne the cost to service Southern Tasmanian taxpayers in operational, depreciation and ongoing maintenance costs for the past two (2) decades with no assistance from other levels of government.

In deciding to dispose of the asset, Council must consider the decision in context of seeking to provide best value of the rate dollar for rate payers. As noted above, the operation of an entertainment centre is not a core service provided by local governments. The operation of the DEC by Council is arguably therefore not an efficient use of Council's resources. This results in not only a financial burden, but a significant opportunity cost in diverting resources away from core functions and services. Those financial and human resources are able to be better employed in delivering services directly to the Glenorchy community, rather than operating what is essentially a privately-operated facility for which all users (community or otherwise) pay a fee.

Council should therefore consider whether this asset is providing the best possible return for the investment that Council makes annually. Arguably it is not, since Council lacks the strategic expertise to run it to its potential and return operating profits that could be utilised for the benefit ratepayers' benefits.

It is therefore concluded that, for the reasons outlined above, it is in the best long-term interests of the Glenorchy ratepayers to explore a change of ownership of the DEC and for Council to use all measures at its disposal to retain the existing use of the building as an Entertainment Centre thus addressing the issues of objection to any proposed disposal.

Decision Options:

Having considered the objections lodged during the section 178 process, Council has the following options:

1. if satisfied that the above two grounds for appeal have been adequately responded to, Council can resolve in-principle to dispose of the DEC (and notifies the public accordingly)

2. Council can determine that the objections have determining weight and resolve not dispose of the DEC under the current process, or

3. Council can defer a decision until further information (to be specified) is provided to assist in reaching a decision.

Consultations:

Mayor
General Manager
Acting Manager, Business and Finance
Senior Risk and Assurance Advisor / Chartered Accountant
Acting Manager, Governance and Risk
DEC Venue Manager
Manager, Legal and Procurement
Abetz Curtis Lawyers – Roger Curtis
KPMG – Matthew Wallace

Human Resource / Financial and Risk Management Implications:

<u>Financial</u>

The financial considerations associated with the decision are outlined in the body of and conclusion to this report.

<u>Human resources</u>

Staffing impacts would be taken into account in any potential sale of the DEC. As previous Council reports have indicated, Council currently employs 4 permanent staff and 70 casual staff at the DEC.

Council also needs to be aware of the instability this process has caused for permanent and casual staff members currently at the venue.

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.	Moderate (C3)	Possible (L3)	Moderate (9)	Council conducts a rigorous due diligence process in determining the terms of any potential disposal and in response to any offer received, including obtaining advice from appropriately qualified professionals relevant fields.
Loss of the DEC as a public asset.	Minor (C2)	Possible (L3)	Moderate (6)	Consider including terms of disposal which preserve the DEC as an entertainment centre (with use or access available on a fee-paying basis as is currently the case).
Council decides to dispose of the land but loses at appeal.	Moderate (C3)	Possible (L3)	Moderate (9)	Ensure Council's decision is made with appropriate response to the potential grounds of appeal available under section 178A of the *Local Government Act 1993*.
There is widespread lack of community acceptance of the sale of the DEC.	Moderate (C3)	Unlikely (L2)	Moderate (6)	Follow the appropriate process under section 178 to test public opinion. Communicate the reasons for disposal of the DEC.
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.	Moderate (C3)	Likely (L4)	Notable (12)	Council conducts a comprehensive financial and business analysis of the DEC's operations and develops a long-term financial and business plan to make the DEC a profitable enterprise.

Community Consultation and Public Relations Implications:

Council is required to undertake public notification of its intention to dispose of the DEC and the associated land package 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).

The process requires that Council advertises its intention to dispose of public land and considers all submissions received before making an in-principle decision as to whether to dispose of the DEC.

Council has completed the section 178 process in accordance with statutory requirements, as outlined above in this report.

Council has also gone to additional lengths to publicise this special meeting of Council, which have included putting out a media release and a news article on its website, and writing to all submitters and signatories of the petition discussed above, in addition to the statutory meeting notification requirements (which require the placement of an advertisement in The Mercury).

<u>Public Relations</u>

The potential disposal of the DEC has (and will continue to) attract significant media attention, having been widely reported in digital and print media, television and radio. Any decision that Council makes in relation to this report is also likely to receive a similar amount of coverage.

Given that the potential disposal has the potential to polarise opinion, it is possible that whatever decision Council reaches will attract some negative comment.

Council must be mindful of the potential for confusion between the section 178 process (which, if affirmed authorises Council to dispose of public land) and any subsequent sale agreement that Council may enter into and should use its best endeavours to ensure that this distinction is drawn in media reporting.

Recommendation:

That Council:

1. NOTE the responses to the section 178 process and thank all responders for their time and consideration of the issue
2. RESOLVE in principle to dispose of the public land, namely the Derwent Entertainment Centre, at 601 Brooker Highway Glenorchy, comprised in Certificate of Title Volume 110871 Folio 1 in whole or in part
3. ACKNOWLEDGE that this does not constitute in any way a decision to sell the subject land to any particular purchaser
4. AUTHORISE the General Manager to actively pursue opportunities to give effect to resolution 2 (above)
5. REQUIRE that any proposals to purchase the subject land be reported to Council for due consideration, and

6. WRITE to all responders to the section 178 process for whom sufficient address details are available advising them of Council's decision and the right of any person who lodged an objection to appeal against the decision of the Council under section 178(6).

Attachments/Annexures

1 Responses to section 178 Process

2 Objections to Proposed DEC Sale - section 178 Process

3 Public Submissions