

**SPECIAL COUNCIL MEETING
AGENDA
FRIDAY, 28 FEBRUARY 2020**



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, appearing to read 'Tony McMullen', is positioned above a horizontal line.

Tony McMullen
General Manager

25 February 2020

Hour: 12:00 noon

Present:

In attendance:

Leave of Absence:

TABLE OF CONTENTS:

1.	APOLOGIES	3
4.	PECUNIARY INTEREST NOTIFICATION	3
	CLOSED TO MEMBERS OF THE PUBLIC	3
12.	SALE OF WILKINSONS POINT AND THE DEC	3
	OPEN TO MEMBERS OF THE PUBLIC	4
8.	SALE OF WILKINSONS POINT AND THE DEC	4

1. APOLOGIES

2. PECUNIARY INTEREST NOTIFICATION

Recommendation:

That the meeting be closed to the public to allow discussion of matters that are described in Regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015*.

CLOSED TO MEMBERS OF THE PUBLIC

3. SALE OF WILKINSONS POINT AND THE DEC

This item is to be considered at a closed meeting of the Special Council by authority of the Local Government (Meeting Procedures) Regulations 2015 Regulation 15(2)(b) (Information that, if disclosed, is likely to confer a commercial advantage or impose a commercial disadvantage on a person with whom the Council is conducting, or proposes to conduct, business) and (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) and (2)(g) (Information of a personal and confidential nature or information provided to the Council on the condition it is kept confidential).

Recommendation:

That the meeting be re-opened to the public.

OPEN TO MEMBERS OF THE PUBLIC

4. SALE OF WILKINSONS POINT AND THE DEC

Author: Director Strategy and Development (Sam Fox)

Qualified Person: General Manager (Tony McMullen)

ECM File Reference: DEC Proposals

Community Plan Reference:

We are a proud city; a city of arts; of opportunity; of partnerships; a city that makes exciting things happen.

Making lives better

Our lives will be enhanced by using good design to create safer, more welcoming public spaces. Community facilities and services are important to us, especially meeting places, parks and playgrounds.

Valuing our environment

We will work actively to clean up and enhance the River Derwent and foreshore so that we can enjoy it for recreation, hospitality, arts and tourism. Our City will celebrate its foreshore, sharing it with locals and visitors alike.

We will improve the amenity of our public spaces through public art and quality landscaping, promoting walking and bike access and encourage high standard contemporary design for new buildings alongside creative reuse of our heritage buildings.

Open for business

Our City will be recognised for its economic opportunities and strengths; a place where it is easy to do business. We will encourage business diversity, innovation and new technologies to stimulate jobs, creativity and collaboration. We will be a place where business can establish, continue and flourish.

The revitalised CBD areas, open spaces and entertainment areas will create opportunities for restaurants, cafes, nightlife, markets and events, drawing local people and visitors from further afield.

We will have a range of accommodation to cater for all visitors and strong connections between hospitality services, visitor attractions and business.

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:

Open for business

Objective 2.1 Stimulate a prosperous economy

Valuing our environment

Objective 3.1 Create a liveable and desirable City

Strategy 3.1.2 Enhance our parks and public spaces with public art and contemporary design

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:

To seek Council's decision on the key terms of a sale of the Derwent Entertainment Centre (DEC) and Wilkinsons Point to the Tasmanian Government.

Proposal in Detail:

Background

Council has long planned the development of its land at Wilkinsons Point, with the revised 2013 Master Plan setting out a vision for an iconic vibrant waterfront precinct. The DEC, Tasmania's biggest indoor sports and entertainment facility, is considered a non-core function for local government, needs investment and has not provided a stable operational return.

In 2018 and 2019, Council commenced disposal of public land processes under s. 178 of the *Local Government Act 1993* for both the DEC and Wilkinsons Point. After considering objections, Council resolved on 20 August 2018 to dispose of the DEC and on 29 April 2019 to dispose of Wilkinsons Point except for maintenance of public access to the foreshore and continued road access via Loyd Road.

Negotiations with LK Group

Following receipt of an unsolicited concept proposal from Larry Kestelman of LK Group, on 24 June 2019, Council agreed to enter a 120-day exclusive negotiation period with LK Group for the purchase of the DEC and Wilkinsons Point.

The negotiation period was formalised through the signing of a Memorandum of Understanding (**MoU**) by the General Manager and Mr. Kestelman. The MoU:

- recorded the agreement to enter a 120-day exclusive negotiation period (between 2 July and 30 October 2019) for the sale of the DEC and Wilkinsons Point to LK Group
- set out the key terms to be included in any final agreement for the sale, and
- affirmed the obligation of LK Group to complete and lodge with the Tasmanian Planning Commission a certified application to amend the Wilkinsons Point and Elwick Bay Specific Area Plan as soon as practicable.

On 28 October 2019, Council resolved to extend the exclusive negotiation period with LK Group in relation to the disposal of the DEC and Wilkinsons Point until 30 December 2019. Council noted the significant progress made in negotiating the terms for sale of the DEC and Wilkinsons Point and the preparation and lodgment by LK Group of a proposed amendment to the Wilkinsons Point and Elwick Bay Specific Area Plan.

Progress lodging the planning scheme amendment

On 16 October 2019, Ireneinc Planning lodged a proposed Specific Area Plan amendment on behalf of LK Group. Landowner consent to the proposed amendment was provided by Crown Land and the General Manager.

As for all such applications, the proposed planning scheme amendment was assessed against statutory requirements and for compliance with relevant State Government policies.

In accordance with advice from our probity adviser, Council engaged a planning consultant, Emma Riley and Associates (**ERA**), to provide independent advice to the Glenorchy Planning Authority about the proposed planning scheme amendment. ERA provided their assessment to the Glenorchy Planning Authority on 23 October 2019, when the Authority decided to initiate the proposed amendment.

ERA subsequently sought further information on the amendment request which was received early in 2020.

ERA assessed the application, and, on 17 February 2020, the Glenorchy Planning Authority certified the proposed amendment to enable it to be publicly exhibited, with members of the community invited to make representations.

Following the completion of the public exhibition period, the Glenorchy Planning Authority will consider whether the proposed amendment requires any changes based on the representations received before submitting a report (containing the representations and any Council recommendations) to the Tasmanian Planning Commission for its assessment and decision.

Negotiations with the Tasmanian Government

In parallel with discussions about the sale of the DEC and Wilkinsons Point with Council, LK Group has been seeking significant Tasmanian Government investment in the upgrade of the DEC and operation of the Tasmanian NBL team.

On 5 December 2019, then Treasurer, the Hon Peter Gutwein MP, advised both LK Group and Council that Tasmanian Government investment would only proceed if the DEC were publicly owned.

On 17 December 2019, the Treasurer proposed that the Tasmanian Government would purchase the DEC and Wilkinsons Point from Council at an agreed price and would negotiate with LK Group to undertake the DEC upgrade, establish the Tasmanian NBL team and develop the remainder of Wilkinsons Point.

On 23 December 2019, Council authorised the General Manager to negotiate a sale agreement to sell the DEC and Wilkinsons Point to the Tasmanian Government.

Since that time, negotiations have progressed significantly between Council and the Tasmanian Government, and between the Tasmanian Government and LK Group.

An initial draft indicative terms sheet was provided by the Tasmanian Government on 4 February 2020. Having considered preliminary comments from Council officers, the Tasmanian Government provided an updated terms sheet for the agreement to sell the DEC and Wilkinsons Point on 25 February 2020, for consideration by Council.

The potential agreement between Council and the Tasmanian Government would be linked to potential agreements between the Tasmanian Government and LK Group. As a result, the Tasmanian Government requires a decision from Council regarding the key terms of the sale agreement before it is able to agree key terms with the LK Group.

The terms sheet (including sale price) is being considered in the closed section of this Council meeting as it has been provided in confidence to Council by the Tasmanian Government and disclosure of the key terms at this time may impose a commercial disadvantage on the Tasmanian Government in their negotiations with LK Group.

It is intended however that the terms of the agreement, including the sale price will be made available to the public after the Tasmanian Government has agreed key terms with the LK Group.

Potential conflicts of interest

Four Alderman have previously abstained from voting on the sale of the DEC and Wilkinsons Point, due to concerns about potential conflict of interest rising from:

- from involvement in Tasmanian Government working groups and with facilities that provide sporting and recreational facilities
- involvement with the University of Tasmania.

Council sought advice regarding these potential conflicts of interest from an independent governance expert who has confirmed that these do not represent conflicts of interest.

Proposal

It is recommended that Council resolves to sell the DEC and Wilkinsons Point to the Tasmanian Government, subject to the following:

- a) Council and the Tasmanian Government reaching a final agreement for the sale of the DEC and Wilkinsons Point, which is to be generally in accordance with the key terms, and authorises the General Manager to finalise and sign a final sale agreement, and
- b) Council reaching a satisfactory agreement with LK Group for the transfer of the business of the Derwent Entertainment Centre (as a going concern)

Clearly, the above recommendation is predicated on the satisfaction of any conditions precedent set out in the key terms.

The key terms of the proposed sale are discussed in broad terms below.

Sale price

The proposed sale price is considered reasonable, taking into account the market value of the land and the opportunity to realise significant benefits to the people of Glenorchy and the State by maintaining the DEC in public ownership and developing the Point.

Retention of foreshore land by Council

Council has committed to retaining public access to the Wilkinsons Point foreshore and GASP infrastructure. The term sheet refers to this land as 'GCC Retained Land'. Council will retain a 20-metre coastal buffer (as far as practicable) on the western side of the Wilkinsons Point, as measured from the top of the seawall, to ensure current and future access to the GASP licence area. On the eastern side of the entrance from the Brooker Highway, this buffer will be reduced to allow construction of a Waterfront Pavilion. To the east of the GASP Pavilion, Council will retain a coastal buffer 10 metres or wider, to provide for a shared pedestrian / vehicular access way. Council will also retain the tip of the Point itself, seaward of the wall.

The mechanism for this to occur would be that the State would hold the land until such time as it subdivides the foreshore land and transfers it back to the Council.

Continued road access via Loyd Road

Council has committed to retaining public access to Wilkinsons Point via Loyd Road. Continued public road access via Loyd Road has been agreed and is provided for in the term sheet.

Minimal and capped Council contributions to the development

Council contributions to the development would be consistent with the resolution from the closed session of the Council meeting of 23 December 2019 and are modest when compared to the scale of development.

Conditions to ensure development of Wilkinsons Point

One of Council's core objectives for the sale is to ensure development of Wilkinsons Point. The Tasmanian Government has committed to include provisions in their proposed agreements with LK Group to ensure a short-term pipeline of investment within the precinct and facilitate development of Wilkinsons Point within the medium term.

Transfer of the DEC as a business to LK Group

While it is proposed that the DEC and Wilkinsons Point land would be sold to the Tasmanian Government, there may be a requirement for LK Group and Council to separately negotiate a transfer of business agreement. Council has drafted a transfer of business agreement to cover these aspects such as employment of permanent staff, which will be considered in the closed section of Council due to the sensitivity and commerciality of those arrangements.

Benefits of the proposal

The sale of the DEC and Wilkinsons Point to the Tasmanian Government would create a range of benefits to Council, over and above sale to a private developer such as LK Group. Benefits of the proposal are outlined below:

Realising Council's vision of Wilkinsons Point as a waterfront precinct

The proposal will enable the development of Wilkinsons Point as a sports and entertainment precinct - in keeping with Council's long held ambition for "an iconic waterfront location ... and a richly vibrant waterfront precinct – a place that is engaging, contemporary and culturally relevant".

Securing significant investment by the Tasmanian Government

The LK Group concept proposal for the site is unique in that it will bring an NBL Team to Tasmania based at the DEC. While this is not, in itself, a key Council objective, the concept has the potential to leverage significant Tasmanian Government investment in upgrade of the DEC and the development of an indoor sports facility. Without such a large investment, it is unlikely that Wilkinsons Point would be developed to such an extent in the short to medium term.

Community support for the concept

The proposed development and the formation of a Tasmanian NBL team is broadly supported by the Tasmanian community, as indicated by traditional, digital and social media commentary. More than 10,000 people have registered their support for a Tasmanian team in an online poll.

The DEC would be maintained in public ownership and continue to host community events

Council has received a total of five petitions (all in the same or similar terms) lodged by Janiece Bryan of Montrose, relating to Council's proposed sale of the Derwent

Entertainment Centre and Wilkinson's Point, containing a total of 2,981 signatures. The petitions and the dates they were considered are set out in the following table:

Considered at Council meeting on:	Total Signatures
20 August 2018	418
29 October 2018	758
29 January 2019	842
29 April 2019	594
25 November 2019	369
TOTAL:	2,981

In each case where Council has considered the petition Council has resolved:

"to take the concerns of the [NUMBER OF] signatories to the Petition into account in any future consideration by Council of sale of the DEC or the acceptance of assistance from the State Government in relation to the development of Wilkinson's Point."

(Note that the offer of assistance from the State Government is irrelevant in the current context since it referred to a potential \$4m loan to Council to develop Wilkinsons Point, which has not been pursued.)

It appears that much of the concern about the proposed sale of the DEC and Wilkinsons Point is based on fear that if the DEC is sold to a private developer it would be demolished or not made available for community use. It is expected that these concerns would be addressed through sale to the Tasmanian Government as the facility would remain in public hands. The covering letters to the petitions also raised concerns about the loss of foreshore land to public use, which the proposed agreement would also address.

Nevertheless, in considering the proposal before it, Aldermen should note the concerns of the 2,981 signatories to the five petitions and take them into account in their deliberations.

Economic benefits for Greater Hobart

Economic analysis by SGS Economics and Planning commissioned by the proponent suggests that the proposed Wilkinsons Point development would:

- represent a net present value of \$145.23 million, with a benefit–cost ratio of 1.46.
- add \$102 million per annum to the Gross Regional Product of the Greater Hobart economy, and
- support 1,198 FTE jobs.

Certainty for GASP infrastructure

Council will retain the land underlying the GASP infrastructure. This approach is expected to alleviate community concerns about the perceived sale of GASP infrastructure and loss of community access to it and the foreshore.

GASP's Creative Director and Chairman have been briefed regularly through the process from the outset on the progress of negotiations. Most recently, the Mayor and General Manager briefed them on 17 February 2020 on the forthcoming consideration of this report.

Financial benefits

Ownership of the DEC and Wilkinsons Point is a financial burden on Council. Costs include:

1. Annual depreciation costs - approximately \$194,000 (historically more than \$800,000)
2. Annual operating costs - approximately \$1.4 million, and
3. Current staff leave liability - approximately \$55,000.

While there is offsetting revenue, the DEC has historically oscillated between small operating profits and small operating losses.

Recent (unverified) investigations undertaken by LK Group suggest that a major upgrade of the DEC would trigger a requirement for an estimated \$5 million in investment to bring the facility into compliance with contemporary building codes and work health and safety regulations.

The sale of the DEC would provide a significant return to Council. This would be offset by costs associated with the sale, an in-kind contribution to roading at Wilkinsons Point and costs associated with mitigating any risks associated with any potentially contaminated land.

If the development of Wilkinsons Point were to proceed as envisaged, Council would also receive rates revenue in the medium to long term as follows:

- DEC - based on current value, plus additional investment of \$45 million (AAV of \$2.2 million), estimated rates would be around \$185,000 per annum.
- Wilkinsons Point - based on \$145 million commercial development (AAV of \$5.8 million), estimated rates revenue would be around \$485,000 per annum.

Alternatives

It is recommended that Council progresses a sale of the DEC and Wilkinsons Point to the Tasmanian Government.

Alternatively, Council might proceed to a formal EOI process.

For the reasons set out above, officers are of the view that sale to the Tasmanian Government proposal would provide a significant benefit to Council, the residents of Glenorchy and the Tasmanian community more broadly.

Council is unlikely to be able to attract the significant investment of the Tasmanian Government in the site, or another proponent of the calibre and reputation of Mr Kestelman, through an EOI process.

Consultations:

LK Group
Mayor
All Aldermen (Council workshops)
Executive Leadership Team
Executive Officer
Senior Legal Counsel
Matthew Wallace, KPMG
Harvey Gibson, WLF Advisory
Roger Curtis, Abetz Curtis
Emma Riley, ERA Planning
State Government
GASP

Human Resource / Financial and Risk Management Implications:Financial

Council is seeking to achieve a fair return for the DEC and Wilkinsons Point.

Council has been and will continue to engage a consultancy team to provide advice in relation to the sale. At this stage, the following consultants have been engaged at cost to Council:

- Roger Curtis, Abetz Curtis - legal advice
- Matthew Wallace, KPMG - negotiation advice
- Harvey Gibson, WLF Advisory - probity advice
- Andrew Edwards; and Scott Newton of Knight Frank – property advice
- Bruce Williams, Asset Management Services and Saunders and Pitt – registered valuers, and
- Emma Riley, ERA Planning – independent assessment of the planning scheme amendment.

If Council were to decide (alternatively) to progress an EOI, additional costs are anticipated for real estate marketing, which are estimated at between 1% and 1.5% of the sale price.

Human resources

Council's Director Strategy and Development is leading this matter and will continue to work with the Tasmanian Government, LK Group and specialist Council staff and consultants to give effect to any Council resolution.

Risk management

The following risks and mitigation treatments are identified in respect of the decision options for disposal of the DEC and Wilkinsons Point:

Risk Identification	Consequence	Likelihood	Rating	Risk Mitigation Treatment
Adopt recommendation	Almost certain (L5)	Moderate (C3)	Significant	Council to clearly explain the benefits of the proposal and its reasons for sale to the Tasmanian Government.
Adverse reaction from potential bidders and reputational damage if EOI does not proceed.				
Negotiations do not result in a contract for sale.	Possible (L3)	Moderate (C3)	Moderate	Proceed to EOI process; or Decide to retain the DEC and Wilkinsons Point.
Do not adopt recommendation	Almost certain (L5)	Moderate (C3)	Significant	Absorb in budget and identify savings measures and reprioritisation of other tasks.
EOI process results in additional cost, resource use, time and process complexity.				
EOI process results in the flight of LK Group.	Almost certain (L5)	Severe (C5)	High	Nil. Proponent has indicated that they would not participate in an EOI process.
EOI process fails to produce a more viable unsolicited proponent.	Likely (L4)	Severe (C5)	High	Ensure EOI process is well promoted. Engage professional assistance in design and carriage of EOI process.
Failure to meet Council strategic objectives for disposal of the DEC and development of Wilkinsons Point	Possible (L3)	Moderate (C3)	Moderate	Continue ownership of the DEC and/or Wilkinsons Point with ongoing responsibility for operating and capital expenditure.

Community Consultation and Public Relations Implications:Community consultation on the proposed development

Council resolved on 29 April 2019 as part of its decision to dispose of Wilkinsons Point to:

REQUIRE that any proposal to purchase the subject land that is being actively considered by Council be subject to a community consultation process to ensure that any proposal that is accepted by Council is generally satisfactory to the community.

In October 2019, LK Group consulted publicly on their proposed development, which included media and launching a website (www.wilkinsonspoint.com.au). Community feedback appeared overwhelmingly positive.

The proposed planning scheme amendment will shortly be publicly exhibited. This will provide further indication of community sentiment.

Communicating the decision of Council

Council's resolution in relation to a sale agreement with the Tasmanian Government will be recorded in open Council minutes.

Council will formally communicate its decision to the State Government, LK Group, GASP and other interested parties.

Recommendation:

That Council:

1. SELL the Derwent Entertainment Centre (Certificate of Title Volume 110871 Folio 1) and Wilkinsons Point (Certificate of Title Volume 157350 Folios 1 and 2) to the Tasmanian Government, subject to:
 - (a) Council and the Tasmanian Government reaching a final agreement for the sale, which is to be generally in accordance with the key terms, and authorises the General Manager to finalise and sign a final sale agreement, and
 - (b) Council reaching a satisfactory agreement with LK Group for the transfer of the business of the Derwent Entertainment Centre, and
2. NOTE the concerns of the 2,981 signatories to the five petitions lodged by Janiece Bryan and further note that it has taken those concerns into account when considering the resolution made in paragraph 1.

Attachments/Annexures