

<b>Title</b>	<b>POTENTIAL SALE OF THE CYGNET MEDICAL CENTRE</b>
<b>Agenda Number</b>	15.024/19*
<b>Strategic Plan Reference</b>	3 and 5
<b>File Reference</b>	7830242, 19/76
<b>Author</b>	Legal and Governance Officer
<b>Responsible Officer</b>	Legal and Governance Officer
<b>Reporting Brief</b>	The Director Legal and Governance Services presenting a report from the Legal and Governance Officer on the potential sale of the Cygnet Medical Centre
<b>Attachments</b>	<ul style="list-style-type: none"> <li>A. Health and Hospitals Fund Funding list</li> <li>B. 2016 Census Snapshot for Cygnet and the Huon Valley</li> <li>C. Objections received pursuant to section 178 <i>Local Government Act 1993</i></li> <li>D. Extracts from Annual Reports</li> <li>E. Plan showing approximate area to be subdivided for the Medical Centre title</li> </ul>

## **Background**

The Cygnet Medical Centre at 14 George Street was developed by Council in 2012 with Commonwealth funding for the benefit of the community due to the limited availability of medical services in the Cygnet area. Prior to securing the funding Cygnet was lacking in infrastructure and was facing a shortage of doctors as two of the area's doctors were expected to retire in the short term.

The centre was developed as part of the Health and Hospitals Fund from the Commonwealth. The funding was subject to an agreement between the Council and the Commonwealth and required the provision of services for the medical centre for a period of 20 years until 2032 ("the Funding Agreement").

The Council operated the centre as Cygnet Medical Services between December 2012 and February 2017. The Council ceased providing medical services in Cygnet as the services were no longer necessary as other private providers were available. In Geeveston and Dover Council continues to provide medical services and there are no other providers available in those areas.

The medical centre is currently leased and operated by Huon Valley Health Centre Pty Ltd so that medical services are being provided from the property in accordance with the Funding Agreement.

At the September 2018 Ordinary Meeting of Council a resolution was made in open Council commencing the potential sale process by providing Council's intention to sell public land in accordance with section 178 of the *Local Government Act 1993* ("the Act"). The resolution is subject to specific conditions as set out in resolution 15.035/18 therefore any progress of that intention must not only comply with the statutory process under section 178, it must also meet those conditions to be a valid execution of the resolution.

The matter was progressed to advertising for expressions of interest in purchasing the medical centre and commencing the statutory consultation process by inviting any objections to the intention to sell.

The request for expressions of interest opened on 1 March 2019 and closed on 2 April 2019. The statutory process under section 178 of the Act commenced on 1 March 2019 and objections closed at midnight on Friday 22 March 2019.

Information regarding the processes has been provided on the Council's website and an Information Session was held at Carmel Hall, Cygnet at 2:00pm on Thursday 14 March 2019.

The purpose of this report is to inform Council and the community of the objections received to the Notice of Intention to Sell a portion (2,050m<sup>2</sup>) of land and the building at 14 George Street, Cygnet, being the Cygnet Medical Centre.

In total 13 objections were received pursuant to section 178 of the Act and a petition containing 144 signatures was lodged pursuant to section 57 of the Act. The petition will be considered within this report as per the resolution 15.015/19\* at the Ordinary Meeting of Council on 17 April 2019.

This report will analyse the reasoning of the objections as well as issues relating to Council's ownership of the Centre. Through understanding of the reasons for objections and Council's issues regarding ownership of the centre, Council will be in a position to consider options available and make a decision of whether or not to sell the land and any other action to be taken. There will also be consideration of whether additional community consultation should be undertaken.

## **Council Policy**

Council does not have any specific policy in relation to Medical Centres.

Council resolution No. 15.035/18 at the September 2018 ordinary meeting:

*That:*

- a) *The report on the potential subdivision and sale of the medical centre at 14 George Street Cygnet be received and noted.*

- b) Pursuant to Section 178 of the Local Government Act 1993 Council resolves its intention to sell public land containing the medical centre at 14 George Street, Cygnet being part of the land contained in Certificate of Title volume 106267 Folio 3 being that portion of land of approximately 2050 square metres (final area subject to subdivision approval and final survey) as generally shown outlined in red and Lot 1 on the plans included as Attachment B to this Report.
- c) For the purposes of Paragraph b) of this Resolution and subject to meeting the requirements of section 178 of the Local Government 1993:
- Huon Valley Council calls for expressions of interest for purchase of the land for the purposes of the ongoing operation of the medical centre in accordance with the Commonwealth Funding Agreement;
  - The Council engages an independent probity officer to conduct the expression of interest process and make recommendations to the Council for a decision in relation to the expression of interest;
  - The Council nominates the preferred purchaser as the transferee of the Council's obligations under the Commonwealth Funding Agreement for the medical centre; and
  - Any sale of the land is dependent on the purchaser being accepted by the Commonwealth as transferee of the Council's obligations under the Commonwealth Funding Agreement for the medical centre
  - This expression of interest process is to run concurrently with the sale of public land process under paragraph b) of this Resolution.

Also relevant to this matter is the Council's Communication and Engagement Policy and the Lease Policy.

### **Legislative Requirements**

Section 178 of the Act applies to the sale of public land process. The portion of the Council land at George Street, Cygnet is considered to be public land under Section 177A of the Act in that it is land that provides health facilities for public use.

Section 178A of the Act outlines the right of a person who lodged an objection under 178 to appeal against a Council decision to sell public land on the grounds set out in section 178A(3).

The functions of Councillors in section 28 of the Act and the functions of Council in section 20 of the Act are to be considered in the decision making process and should form the basis of a decision.

A petition has been lodged with respect to the potential sale of the Cygnet Medical Centre and is to be considered in this report. Petitions are dealt with pursuant to Division 1 of Part 6 of the Act in accordance with the process set out in sections 57 and 60. Notice has been provided to the person who lodged the petition of when Council is to consider the petition. The petition was considered by Council within

42 days. At the April 2019 meeting it was resolved that the petition would be considered in conjunction with a decision pursuant to section 178 of the Act.

### **Risk Implications**

Council is at risk for its liability and obligations under the Funding Agreement with the Commonwealth. That is that the Commonwealth funding is likely to be repayable if medical services are not provided at the centre until 2032.

Also following on from variable risks of the Funding Agreement obligation is the potential situation that Council might be in if it is unable to continuously have a private provider in the centre providing medical services. If that occurs and Council has to provide the services to comply with the Agreement obligations then Council will be competing with other providers in Cygnet.

Under the National Competition Policy and Competitive Neutrality Principles it is still possible for Council to provide services in competition with private businesses however, it must be done either with full cost attribution or by corporatisation and this could in all likelihood lead to Council running the centre at a loss.

An additional risk associated with Council having to provide services is the reliance upon doctors and locums. With the difficulties currently and historically faced for Council to attract permanent general practitioners, the risk that Council cannot secure permanent general practitioners is significant.

If the land is not subdivided, the Commonwealth covenant as per the Funding Agreement will be retained across the entire site. That will put any future plans or attempts to develop the surrounding George Street land at risk.

As the owner of land which contains a medical centre, the Council has a public liability risk regardless of whether they provide medical services. A medical services facility attracts a high standard of care and therefore must be maintained prudently to ensure the safety for patients visiting the centre who may have a diverse range of physical abilities. This duty as landlord can be delegated to an extent at common law to a lessee, but cannot be removed.

Council maintains appropriate insurance to cover public liability risk and there is always a risk of premiums to rise based on ownership of facilities and varying risk.

In addition to legal risk there is also financial risk in terms of an ageing facility which will depreciate over time. The maintenance required increases over time and eventually refurbishment or replacement of the building would be required at Council's cost if the building is retained by Council for the long term.

Finally, as with most Council decisions there is always a risk that the decision made will not satisfy every member of the community. This means that Council has to consider all factors associated with making a decision and objectively reach a decision based on the interests of the Huon Valley community.

## **Engagement**

Community engagement was undertaken in accordance with Section 178 of the Act and expressions of interest were called for the purchase and ongoing operation of the medical centre.

An information session was held on Thursday 14 March 2019 to provide the community with further information regarding the potential sale of the Cygnet Medical Centre.

The process under Section 178 of the Act received 13 objections to the Notice of Intention to Sell provided on 1 March 2019.

A petition was received asking for the medical centre not to be sold and on that petition there were 144 signatories.

The potential for further community engagement has been considered in the Discussion of this Report.

Engagement associated with this Report will be undertaken at inform level by inclusion with the Council meeting minutes that will be available to the public on the Council's website and at the Customer Service Centre.

## **Human Resource and Financial Implications**

If additional community consultation is required to accompany statutory consultation that will require additional resources to be provided. Depending on the scale of community engagement, consultants may be required at additional cost to Council.

There are financial implications on Council for owning any asset through management of assets. A key issue associated with this property is the rate at which it depreciates, increasing the financial burden on Council.

The remaining land forming the Old School Farm requires funding to progress that project. To move things forward that project has been segregated from the medical centre due to the completed status of the medical centre.

Another financial implication is the absence of having developed land subdivided from undeveloped land to allow a higher rateable value for the medical centre land. Without subdivision of the land, it is difficult for Council to fully recover the potential rateable value, equating to a loss per year.

Council consideration may also be required in terms of whether a rate increase is a way to support provision of medical facilities and services in all townships.

There are differing human resource and financial implications depending on the decision that Council makes. If a strategy is to be developed regarding Council's

provision of medical facilities and services, additional staff resources and budget allocation would be required. Council would need to consider a way to fund any loss arising from ongoing ownership of the medical centre which could be a differential rate for the Cygnet area on the basis that Council's ownership of the centre is not necessary.

If there is a decision to sell the centre then resources would be required for the expression of interest process, contractual negotiations and finalising legal documentation. If the Council decides to do nothing then there would be the ongoing resources associated with ownership of the centre as well as additional property management resources. Further, as outlined earlier, if the current operator is to withdraw services and there is no other tenant willing to pay a commercial rental rate, then Council will have the financial burden of operating the centre in competition with other businesses or repaying the Commonwealth grant funds.

## **Discussion**

### *History of the Cygnet Medical Centre*

In 1999 Council purchased the land known as the Old School Farm from the Crown for \$40,000.

In 2003 Council resolved for conceptual plans to be developed for residential allotments on the Old School Farm.

In 2009 Council endorsed a Site Development Strategy and that was then released for community consultation. Overall there was support for the development of a medical centre and development of the surrounding George Street land subject to further investigation.

In December 2009 the Council resolved to progress investigation and planning for the development of the George Street site subject to obtaining a Traffic Impact Study, Hydrology Study and architectural review of the design.

In 2010 the Council applied for Federal funding for the medical centre and in 2011–2013 the centre was developed with Federal funding of \$1,160,000 (see Attachment A), \$80,000 from Huon Valley Financial Services and \$200,000 of Council contribution.

The specific need for the Cygnet community to receive funding for the medical centre is not detailed in previous reports however review of Council's records has revealed background information which suggested that retirement of two key doctors within the Cygnet community was anticipated which would have led to a shortage of medical services. Council attempted to engage local doctors to provide the services at the medical centre however those attempts were unsuccessful. Therefore, Council engaged doctors to fulfil the Commonwealth requirement to provide services at the location which was done between 2013 and 2017.

Within that time, particularly 2014, there were complaints from the local community regarding the provision of medical services at the centre. This was largely resulting from the Council's difficulty in securing permanent general practitioners and reliance upon locums.

Due to the difficulties that Council faced in operating the medical centre and interest in providing a practice by other providers, in November 2016 expressions of interest were called for a lease of the medical centre. In February 2017 a lease was entered into with Huon Valley Health Centre as the highest scoring applicant in the expression of interest process.

In 2018 The Cygnet Association undertook its own community consultation for the Old School Farm development to present ideas and concepts for the development of the remaining Old School Farm land surrounding the medical centre.

#### *Current position regarding development of Old School Farm*

The Development Strategy that was previously endorsed by Council and subject to community consultation back in 2009 has not yet been acted upon. There has been a lack of financial resourcing to progress the hydrology study, traffic management study and architectural review.

It has been 10 years since the last formal consultation process in respect of the wider development of the Old School Farm. A consultation was recently undertaken by The Cygnet Association which has communicated fresh ideas from the community for the development.

The completion of the development of the medical centre separates it from the remaining vacant land and planning for future development of the Old School Farm Land does not require a connection between the property titles.

Future engagement and investigation into the viability of any plan on the remaining George Street land needs to be conducted. Engagement of consultants and allocation of financial resources is required to achieve that. However, the covenant requiring only medical services to be conducted on the George Street land needs to be restricted to the medical centre only. That can be achieved through subdivision of the land that is not part of the medical centre.

The Land Strategy includes a recommendation to undertake a subdivision of the land to create a formalised Cygnet Medical Centre title including allowing for a future expansion. The other recommendation was to prepare a development proposal for the land to consider the matters outlined in that recommendation. The recommendation will be considered in the context of the consultation feedback from The Cygnet Association.

The objections made by some members of the community indicate a desire to not allow a subdivision of the land between the medical centre and the surrounding

area so that all of the Old School Farm land at George Street can be considered as one development. That would create a complicated financial and legal status of the land.

The development of the Old School Farm Land has potential to add value to the township of Cygnet and to improve the quality of services available to residents. To simplify and proceed with the development, it is not recommended that the subdivision resolution be changed and whilst the Land Strategy implementation is on hold Council resolve to proceed with the subdivision.

### *Population and Demographic*

In determining a decision that will impact the Cygnet and Huon Valley community, it is important to consider relevant population and demographic information.

The 2016 Census information shows the following for the area of Cygnet:

- the population at that point of time for Cygnet was 1,556 people
- the median age was 44 years
- there were 706 private dwellings
- 18.3% of the population as Aboriginal or Torres Strait Islander
- 637 people above 50 years
- 735 people between the age bracket of 10-49 years old

The data for the Huon Valley is as follows:

- the population was 16,199
- the median age was 45 years
- there were 7,997 private dwellings
- 9.2% of the Huon Valley population are Aboriginal or Torres Strait Islander people

The Cygnet population forms 9.6% of the population of the Huon Valley.

The petition received contains 144 signatures which is 0.8% of the Huon Valley population and 9.25% of the Cygnet population.

The data for Cygnet shows that there is an ageing population of a similar percentage consistent with the wider Huon Valley. Therefore any approach for the provision of services for the population should be considered in light of the needs of the whole Huon Valley.

The Statistics of the above Census data are attached as Attachment B to this report.

### *Objections Received*

A copy of the objections received and notes regarding the objections are included in the Attachments to this Report indicated as Attachment C. In total 13 objections were received and the common themes throughout those objections are:

- Concerns over the remaining land at George Street;



- Security of long term provision of medical services at the location;
- Support for continuing to own the medical centre as commercial land;
- Against privatisation of a community asset;
- No guarantee that funds from selling would be used solely in Cygnet;
- Concern regarding other private businesses and the ability of those private businesses to use the centre in the future;
- Loss of essential services to the Cygnet community;
- Potential loss of access to a purpose built medical centre for the community;
- Concern over the lack of consultation process;
- Loss of rental income from the centre;
- Concern over what could happen if a subsequent provider were to become bankrupt;
- Inapplicability of competitive neutrality principles;
- Desire to use the land and building for purposes other than a medical centre in the future;
- Desire to ensure the long term health and wellbeing of the Cygnet community;
- Concern that subdivisions could create urban sprawl by taking over valuable agricultural land in Cygnet.

None of the objections raised any issue relating to who owns and operates the building or whether there is a personal impact to the objectors if Council no longer owns the building.

The 13 objections received are 0.84% of the Cygnet population and 0.08% of the Huon Valley population. The objections received did not all address the specific appeal grounds under section 178A of the Act however the following points were made:

- There is no other modern purpose built medical facility in Cygnet that would be available to community members and therefore that could result in undue hardship arising from the loss of access to and the use of that public land. That is based on the notion that beyond 13 years from now, if the centre was privately owned there is no guarantee those services would be continued.
- This is the newest medical centre facility currently available therefore there is no similar facility available to the users of that facility.

The level of feedback received being 13 objections is consistent with the level of community engagement response back in 2009 where 19 written submissions regarding the Old School Farm development were received.

Overall the objections lacked specific examples or evidence of how the objectors would personally be impacted by a potential sale of the medical centre.

#### *Current market for medical services in the Huon Valley*

The Huon Valley currently has medical services available in the areas of Huonville, Geeveston, Dover and Cygnet. The medical services in Dover and Geeveston are

currently provided by the Huon Valley Council due to the fact that there are no other medical services available in both of those areas.

The table below shows the current service providers in the Huon Valley and the status of the premises:

<b>Huonville</b>	
Community Health Centre Tasmania Health Service	Owned by the Department of Health and Human Services. Allied health services only.
Huon Doctors Surgery	Privately owned
Huon Valley Health Centre	Privately owned
<b>Cygnnet</b>	
Tasmania Health Service	Allied health services only.
Cygnnet Family Practice	Private provider at premises owned by the Department of Health and Human Services
Huon Valley Health Centre	Private provider at premises owned by the Huon Valley Council
South East Tasmanian Aboriginal Corporation	Privately owned
<b>Geeveston</b>	
Geeveston Medical Centre	Owned and operated by the Huon Valley Council
<b>Dover</b>	
Dover Medical Centre	Operated by the Huon Valley Council
THS	Allied health services only

#### *Council's ownership risk of the Cygnnet Medical Centre land and building*

Council developed the medical centre with the expectation that local doctors would provide services at the centre. As that did not happen Council had to step in and provide services to comply with the Funding Agreement obligations of the Commonwealth.

The Council's requirements under the Funding Agreement include:

- Commonwealth commitment to assist with the construction of a new single storey medical centre in Cygnnet, Tasmania with no ongoing commitment to operation funding;
- To ensure the property and the works are used for the designated use;
- To ensure the property and the works are not left unused or unoccupied for a period in excess of four weeks without first obtaining the written consent of the Commonwealth;
- Not to use the property or works or permit the property or works to be used for any purpose other than the designated use without first obtaining the written consent of the Commonwealth;
- To safeguard the property and the works against loss, damage and unauthorised use;
- To maintain the property and the works in good condition;

- To reinstate the property and the works if they are damaged or destroyed;
- Not to grant or dispose of any interest in the property or any part of the property without first obtaining the Commonwealth's consent and requiring any purchaser to enter into a Deed of Covenant with the Commonwealth on terms acceptable to the Commonwealth under which the purchaser has covenants in favour of the Commonwealth to use the property and works for the designated use until the expiry of the designated use period;
- A requirement to repay the Commonwealth funding on a sliding scale if the Commonwealth considers that the Council has failed to comply with the obligations under the agreement;
- Provide reports as and when requested by the Commonwealth;
- Prepare financial reports for the Commonwealth;
- Allow access by the Commonwealth to the property upon giving of reasonable notice.

As this is a commercial property, the Lease Policy applies to require Council to obtain commercial rent which limits the ability of Council to negotiate with providers, particularly in market lows. If Council is unable to comply with the lease policy whilst securing a tenant for the property that may lead to a breakdown in any negotiations and Council being unable to fill the tenancy. A further complication is the limitation of a five year lease term imposed by section 178 of the Act.

If the Council cannot fill the tenancy, at a commercial rate, then it will need to either repay the outstanding funds to the Commonwealth or provide medical services in accordance with the funding agreement obligations. The implications of Council providing services arise from the fact that Council would be competing with private businesses. It is likely that Council, through full cost attribution, would run the centre at a loss. There is also the complication arising from the Tasmania-wide doctor shortage and the difficulties Council faces in competing with private providers to secure permanent general practitioners.

If Council needs to repay funds under the Agreement, that would significantly impact Council's ability to fund or service other assets or services for the community.

The financial risk relating to the Council's ownership of the building includes the depreciation value and the cost that Council is liable for over the life of the building. Those costs include insurance, land tax, rates and maintenance costs.

The 2016-2017 Annual Report of Council shows that for the 2017 financial year medical centres were in deficit of \$227,000 and that went down to \$56,000 for the 2018 financial year. Extracts from the relevant Annual Reports are attached to this Report as Attachment D.

Since 2013 the overall deficit for all medical centres run by Council is \$274,000. The overall deficit from the operation of Cygnet Medical Services was approximately \$226,000 between 2013 and 2017.

As part of the development of the medical centre Council contributed \$200,000 to the development and that sum of money is tied up in the asset as long as Council has ownership of it.

The annual lease income of the property is reduced by annual depreciation and Council is liable for ownership expenses such as commercial property management and structural maintenance.

The objections received pursuant to section 178 of the Act raise concern over the potential lack of security for future services if the medical centre was sold to a private provider. Those concerns do need to be taken into account and considered with any future contractual negotiations with the Commonwealth. The risk for selling the centre without sufficient conditions to apply to the funding agreement includes:

- Loss of control over who can own the centre;
- If Council needs to acquire land in the future it would be at an unknown cost and would be at valuation;
- Any contract or deed entered into between the Council and a purchaser needs to meet the requirements of the Commonwealth and therefore there is a risk that that process will not be able to be completed if the conditions of sale are not sufficient to address those needs.

In light of those risks it is recommended that any sale of the property should be subject to conditions protecting the future use of the land and securing compliance with the Commonwealth conditions.

### *Competitive Neutrality*

There is guidance to the principles of competitive neutrality applicable to local government is available from the Department of Treasury and Finance, Tasmania. The website link for that information is <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/national-competition-policy>.

If Council were to be required in the future to provide medical services to fulfil the Funding Agreement obligations, those services would have to be provided at either full cost attribution or by corporatisation. By going through either of those processes there is a high likelihood that the expense of operating medical services would further increase for Council, causing a greater financial loss.

The Competitive Neutrality Principles are a requirement at the federal level and are implemented through State legislation. Unless there is policy change, the Council must be wary of the potential legal and financial risks arising from engaging in and control over public assets in excess of the public needs.

There was a suggestion by an objector that Council should be providing low cost or free health services to the Cygnet community. That would be a clear breach of

competitive neutrality principles and would cause a significant deficit to the Huon Valley community.

### *Community Needs*

The concept of provision of medical services in the Huon Valley by the Council is only to the extent as it is appropriate for the community needs. That concept is set out in:

- The Community Plan 2020  
*“To meet the challenges of modern living a community must be fit and health. Promoting an active and health lifestyle supported by medical and allied health services will help meet these demands. As the Valley’s population ages and others discover its natural appeal and benefits, the provision of appropriate care and housing will become an increasing priority.”*
- The Strategic Plan 2015-2025  
*“The mix of health services, doctors, allied health, emergency response and aged care facilities is critical to attracting and retaining people and businesses across the Huon Valley. Council’s Strategic stance is to intervene and as necessary facilitate services on a break-even cost basis. There the opportunity to work with networks to develop creative and cost effective responses to health and safety conditions and risks that also include preventative elements.”*

None of the objections raised indicate that there is a specific need of the Cygnet community for Council owned medical facilities and/or services to justify Council ownership of the Cygnet Medical Centre. As there is no need for Council to facilitate or provide medical services in Cygnet, continuation of ownership of the Cygnet Medical Centre would be inconsistent with the Community Plan 2020 and the Strategic Plan 2015-2025.

To deviate from the current strategy would require further investigation of all health facilities and services provided for all Huon Valley townships. As that is a larger issue that may require development of a new strategy, a Council decision is required to determine whether that path should be pursued.

### *Consultation Process*

The objections raised concerns over the lack of consultation prior to the report provided in the September 2018 ordinary meeting and prior to notification of the sale of Public Land process pursuant to section 178 of the Act, and the Expression of Interest process.

Under the current Community Engagement Policy no additional consultation is required when there is a statutory consultation process (i.e. the process under section 178 of the Act).

If Council wishes to extend that consultation process, there must be separate consideration and a decision reached as to the following issues:

- Whether additional consultation should be required only for issues under section 178 of the Act, or if it should apply to all statutory consultation processes.
- How Council will fund additional consultation?
- The scope of consultation required?

To proceed with altering the community consultation process, direction is required from Council as to whether the additional consultation process is warranted.

#### *Protection for Future Use of Land*

The portion of land containing the medical centre is currently zoned Community Purpose. The purpose of the Community Purpose Zone as stated under provision 17.1 of the Huon Valley Interim Planning Scheme 2015:

17.1.1.1 To provide for key community facilities and services where those facilities and services are not appropriate for inclusion as an associated activity within another zone.

17.1.1.2 To ensure land required for future public use is protected from inappropriate use or development.

17.1.1.3 To encourage multi-purpose, flexible and adaptable social infrastructure to respond to changing and emerging community needs.

The Cygnet Medical Centre is approved for use of the land as a Medical Centre. If there is any other use of the land proposed, that would require development approval.

#### *Legal Test for Objections*

The main legal factor to be considered in relation to the issues of whether to sell public land is the test for grounds of an Appeal under section 178A of the Act. This test must be considered as Council should not make a decision that gives rise to a successful appeal against the decision.

The grounds for Appeal under section 178A of the Act are:

- (3) An appeal may only be made on the ground that the decision of the 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.*

The potential implications if the grounds for appeal are not considered are:

- Council having to pay for a protracted Appeal;
- Council having to pay for costs of an Appellant;

- Appellant may be required to pay for Council's costs if there is evidence of unreasonableness.

The elements which must be met for the first ground for appeal under section 178A(3)(a) are:

- The decision of council is not in the public interest; and
- The community may suffer undue hardship due to the loss of access to the public land; and
- The community may suffer undue hardship due to the loss of the use of the public land.

The elements which must be met for the second ground for appeal under section 178A(3)(b) are:

- The decision of Council is not in the public interest; and
- There is no similar facility available to the users of that facility.

Some of the objections partially address the grounds as follows:

- "The Cygnet Medical Centre, by far, surpasses any other medical facility in Cygnet. For the HVC to remain as the landlord it helps to keep competing medical providers on a more equal footing. If one provider was to acquire this centre it would seriously put other medical providers at a great disadvantage. It would be instrumental in helping monopolising services in the new owners favour. This is definitely not in the public interest. The public interest is best observed by the HVC being a neutral observer in the provision of medical services, not favouring one over the other."
- "As outlined above the sale of the Cygnet medical centre into private ownership would not guarantee the availability of medical services at the site for more than 13 years. This could result in undue hardship due to the loss of access to, and the use of, public land beyond 2032. There is no other publicly-owned, modern, purpose-built medical facility in Cygnet that would be available to community members."
- "I am not at all convinced that it is in the public interest to sell off a very valuable public asset to a private buyer, especially as it is currently used by the community as a medical facility and once privatised costs would inevitably rise."
- "The other medical services providers in Cygnet are housed in much older buildings it is important to ensure the most modern medical facility remains available for Cygnet into the future. It seems obvious to community members that the best way to ensure this is for our local council – HVC- to retain ownership of the Centre and to ensure it is leased to the most able and appropriate provider. This is in the public interest."

The objectors use the correct wording for the grounds of appeal but there is a lack of reasoning behind the objections to support the statements made. For example, the objections that raise hardship do not explain what that hardship would be. If the objectors do not address the ground of undue hardship in their objections with

ease, it seems unlikely that they would be able to provide any reasoning or evidence for the purpose of an appeal.

The objections attempt to address the element of public interest however once again there is limited explanation for how a decision to sell the land would not be in the public interest. The reasoning of increased costs of privatisation, retaining public ownership and HVC being a neutral observer may be factual circumstances relevant to considering public interest but do not explain how or what impact those factors would have on the objectors or any member of the public at a personal level.

Other factual circumstances such as the financial risk and impact on the public would also be considered to determine if the decision is in the public interest.

As the objections do not raise evidence based reasoning to show that there would be a successful ground for appeal, any risk of an appeal is substantially reduced.

### *Funding Medical Facilities and Services*

The broader issue of whether Council is to own and operate medical centres involves consideration of how Council should fund facilities and services, particularly if it is not necessary for Council to provide such facilities and services.

It is currently within Council's strategic framework to provide medical services and facilities in the townships of Dover and Geeveston as there are no other available services in those towns. Cygnet is vastly different because the medical industry there has shown strength and growth within the private sector. If Council were to retain involvement in the medical industry in Cygnet potentially at the cost of the Huon Valley ratepayers, that is not equitable. Therefore to retain the facility would require Council to consider how the risk of future financial loss to Council should be funded.

A funding solution that is possible within the powers of Council is to apply a specific rates charge to the area of Cygnet to support the ownership and provision of services and facilities.

If Council is to continue ownership of the facility, investigation should be undertaken to consider the potential for a separate rate or charge for the Cygnet area to mitigate the financial burden and impact of the medical centre.

### *Action on Petition*

The Act requires the Council to consider the petition and any actions proposed in relation to the request. Council may choose to take action as requested on the petition, take some other action or take no action at all.

The matters raised in the petition regarding the potential sale of the medical centre are similar to the matters raised by objections pursuant to section 178 of the Act.



Under section 178 of the Act Council is to consider the objections and make a decision on whether or not to proceed with the sale.

The petition requests three actions of:

1. No further action be taken until the subdivision of the property has been approved so that the exact area is defined.
2. The Council retains the facility in public ownership in order to ensure the long-term health and wellbeing of the community through provision of local medical services after 2032 (ie for more than 13 years).
3. The Expression of Interest (Eoi) process be put on hold and re-opened only if there is strong community support for the council's proposed sale of public land and the medical centre located at the site.

The process of subdividing the land is a separate process to a potential sale. Subdivision is required prior to any sale and the process of subdivision requires a discretionary permit. Through the subdivision process there is opportunity to deal with determining the exact area.

Allowing the first action suggested in the petition would cause unnecessary delay and is not necessary because through the subdivision process the exact area will be finalised.

Therefore the first action is not recommended.

The second action should not be progressed as it requires Council to commit to providing services after 2032 and is confined to the Cygnet community only. If Council were to make a decision to provide the Cygnet community with medical facilities and services after 2032, Council needs to consider if similar facilities and services are also to be provided to the wider Huon Valley community.

The third action is unreasonable as it does not allow Council to make a decision based on the best interests of the Huon Valley community and in exercise of the functions of Council.

It is recommended that no further action be taken on the petition.

#### *Process if sale proceeds*

If the Council resolves to sell the Medical Centre, the Expression of Interest process will be recommenced and the Council will be presented with options arising from the Expression of Interest process to decide whether there is an adequate offer for a sale to proceed. However, this process may be delayed if any appeal is made until a time when an outcome of the appeal proceedings is achieved.

Council would also need to assess the current equipment inventory, including equipment granted to Council, at the Centre to determine the value of any items that remain which do not belong to the current tenant.

At a point where any appeal proceedings are finalised, a purchaser has been selected by the Council and inventory complete, the relevant parties (i.e. a purchaser, current tenant, Council and the Commonwealth) will negotiate and prepare contractual arrangements for the transaction.

The whole process is dependent upon each step being achieved successfully. For example, if an adequate offer is not received or the purchaser is not accepted by the Commonwealth, the sale will not proceed. The decision to sell the Centre would be the first step in a long process to achieve a sale.

## **Conclusion and Recommendation**

The process of considering the decision of whether Council should sell the Cygnet Medical Centre has resulted in some key objections from the public which bring to the forefront broader issues in terms of:

- Does the Council need to own the Cygnet Medical Centre when it does not operate the Centre?
- What impact does that have on Council's funding?
- Should Council fund the provision of medical facilities and services when there is a financial loss?
- Should Council retain ownership of property when it does not fit within any strategy of Council?
- Will there be any value for money if there is additional community consultation when there is a statutory consultation process?
- How would additional consultation processes be funded?
- Should all townships in the Huon Valley have local and equal access to Council owned medical facilities?

Not all of the above questions have been considered by this report as the issues fall outside the scope of this decision. However, the questions have been raised as a decision to retain ownership of the Medical Centre will trigger investigations into the broader issues to develop a strategy of the Council to deal with the issues.

This report has discussed at length various factors impacting the decision on whether to retain the land, including the 13 objections received. The key factors that Council has to consider when making a decision are:

- The financial and legal risks of ownership;
- The financial risk if Council is required to provide services again;
- Supporting or mitigating any risks;
- Whether it is in the public interest to sell or not to sell public land;
- Any benefit to the community from the sale;
- Any benefit to the community by retaining ownership;
- The powers, role and responsibility of Council as a Local Government Authority; and
- The needs of the Cygnet community.

Commercial and financial information has been provided to Councillors on a confidential basis to assist with their decision making in terms of the financial risk posed by the medical centre to Council.

The Council's ownership of the medical centre is receiving a modest commercial rental return incorporating depreciation. That rental return can continue as long as there are private providers in the Cygnet area who are ready, willing and able to pay for a commercial tenancy of the premises as well as providing medical services. There is no way for Council to guarantee that a separate provider will provide services at the location until 2032 without a contract with a provider, which from commercial perspective is highly unlikely due to the commitment that would be required from the private provider.

Until 2032, Council must ensure that there are medical services provided at the medical centre otherwise it must repay a significant amount of the Federal Government funding. The option of repaying the funding is always available but that is not a desirable course of action due to the financial loss to Council. However, the risk of being in a position where Council must provide medical services again is also not desirable due to the potential impact that could have on existing businesses and the cost to ratepayers for any loss arising from Council providing services.

Council presently has an opportunity to address the issues regarding the medical centre and make a determination on which direction to take. Below is an outline of the key options available to Council as well as an overview of the functions of Council which would be impacted by each option.

The reasonable options available to Council are as follows:

#### **1. Sell the medical centre**

This option is consistent with the current Council strategies to only support necessary services.

Selling the medical centre would remove all financial and legal risk from Council whilst stepping out of the way of commercial enterprise developing naturally in the community.

The functions of Council pursuant to section 20 of the Act are impacted by the option to "sell the medical centre" in regards to:

- *Provision of health, safety and welfare of the community* – Council is not currently providing health care services to the community at the medical centre, nor is it financially viable to do so in the future. This function would not be impacted by a decision to sell the medical centre.
- *Represent and promote the interests of the community* – This function would be achieved by a decision to sell the medical centre as the majority of the

population in the Huon Valley has no interest in retaining ownership of the centre.

- *Provision of peace, order and good government of the municipal area* – This function would be achieved by a decision to sell the medical centre as Council would be mitigating known financial risk however it should be ensured that any sale would maintain security of medical services at the location.

If the option to sell the medical centre is selected, any sale must only be to a suitable provider and must be to the satisfaction of the Commonwealth. Selection of a provider and allowing a purchase may be in the near future or after conclusion of the current lease depending on market conditions.

## **2. Retain the Medical Centre and develop a strategy to address the issues with ownership of medical centres**

By retaining the Medical Centre Council will need to be diligent in its ownership and develop a strategy to:

- Determine whether similar facilities should be available for all Huon Valley townships;
- Fund provision of medical facilities and services for areas where there is no specific need for services;
- Manage leased property as a commercial landlord;
- Investigate the impact of competitive neutrality principles on Council medical services.

The functions of Council pursuant to section 20 of the Act are impacted by the option to “Retain ownership” in regards to:

- *Provision of health, safety and welfare of the community* – If Council is to retain ownership and no other provider is willing to provide services at the location, Council would need to provide medical services to fulfil this function. However, if Council does so for the Cygnet area, Council must consider the health safety and welfare in terms of provision of Council provided medical facilities and services for all Huon Valley residents to equitably fulfil this function.
- *Represent and promote the interests of the community* – In order to retain ownership of the Cygnet Medical Centre with the risk of providing services in the future, Council must consider the interests of all of the Huon Valley community. This would include consideration of distribution of resources for the provision of medical facilities and services for all areas of the Huon Valley.
- *Provision of peace, order and good government of the municipal area* – Developing a strategy for Council’s ownership of medical centres would fulfil this function as it would ensure that Council considers community needs in an equitable manner. In the absence of federal or state funding, this function is not met in the respect that there is currently no reliable funding available to support Council supplied medical services to all townships. Therefore expenditure of resources for Council to investigate and consider funding

provision of medical facilities and services by rate increase for specific areas is required.

The Council's involvement in the Cygnet Medical Centre is distinguished from Geeveston and Dover due to the absence of any other providers in those areas. Therefore Council's involvement in the Cygnet medical sector presents a complicated issue of ensuring that such involvement is fair and equitable for the Huon Valley community. This issue can be addressed by investigating and developing a strategy to consider funding provision of medical facilities and services for all areas of the Huon Valley. To fulfil Council's functions under section 20 for this option, the major hurdle will be developing a way to equitably fund the approach.

**15.024/19\***

### **RECOMMENDATION**

**That:**

- a) **The report on Potential Sale of the Cygnet Medical Centre be received and noted.**
- b) **Pursuant to Section 178 of the *Local Government Act 1993* Council resolves to sell public land containing the medical centre at 14 George Street, Cygnet being part of the land contained in Certificate of Title volume 106267 Folio 3 being that portion of land of approximately 2050 square metres (final area subject to subdivision approval and final survey) as generally shown outlined in red and Lot 1 on the plans included as Attachment E to the Report.**
- c) **Sale of the land is subject to:**
  - a. **Completion of the Expression of Interest and a suitable provider selected by Council, and**
  - b. **If a suitable provider is selected, any transfer is subject to agreement between the Council, the Commonwealth and the selected provider securing medical and allied health services until at least 2032.**
- d) **The General Manager is authorised to undertake all necessary actions to sell the land in accordance with this resolution.**
- e) **No action be taken on petition objecting to the proposal to the sale of a portion of public land at 14 George Street, Cygnet lodged with Council 19 March 2019 as the action will be in accordance with the decision of Council as confirmed by resolution.**
- f) **The subdivision of the medical centre land from the surrounding George Street land known as the "Old School Farm" is to only be to the extent that the medical centre is separate from the remaining land.**

**Any further subdivision of the balance George Street land requires a separate decision of Council.**