

ORDINARY MEETING 18 AUGUST 2015	6.2
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NOTICE OF MOTION – CR MELCHERT

COUNCIL PENSIONER RATE REMISSIONS – PROPOSED AMENDMENT TO GUIDELINES

NOTICE OF MOTION

I hereby give Notice of my intention to move the following Motion at the Council meeting scheduled for Tuesday 18th August 2015.

“That Council amend the relevant paragraph of the present policy/guidelines permitting a life tenant to secure a Council pensioner concession on the basis that the current clause which reads;

The applicant(s) must be the sole owner(s) of the property in respect of which remission is sought or be Life tenant(s) under a Will with responsibility to pay all rates and charges.

Be amended to read;

The applicant(s) must be the sole owner(s) of the property in respect of which remission is sought or be Life tenant(s) under a Will or Life Tenant(s) under a Deed of Family Arrangement, with responsibility to pay all rates and charges,

and the amended guideline be applicable to applications for the remission for the 2015/2016 financial year and future financial years.”

BACKGROUND

In the last Will and Testament of a long time Douglas Shire ratepayer/property owner, she gave a clear indication of her intention that one of her sons would be the life tenant of the family home. At the time of the drafting of her Will she had intended to subdivide her land so that the family home would be on one lot with her son being the life tenant, and a new adjoining lot would be created.

However due a change in financial conditions the subdivision did not occur prior to her death.

In clear recognition of the owner’s intentions, and notwithstanding the subdivision had not occurred, the owner’s Executors and all Beneficiaries entered into Deed of Family Agreement which had the effect of altering the terms of the Will and recognised the son as life tenant of the whole of the land. This information has been provided to Council.

Lawyers for the relevant parties have a general view that the son is in effect the life tenant.

However Council staff have formed a more literal view and have denied claims for Council Pensioner remission on the basis the land has not been subdivided. This motion seeks to provide relief to the existing life tenant referred to in the above example, and also for any future applicants should a similar situation occur in the future.

CEO'S COMMENT:

This particular matter has been ongoing since June 2010 and the pension remission applicant has been advised on numerous occasions the reasons for the ineligibility to receive Council pension remission.

Owner's Intentions

It is stated by Cr Melchert that the deceased owner "intended to subdivide her land" however the Deed of Family Agreement states that the land will not be subdivided. Therefore it is hard to understand how Cr Melchert has a "clear recognition" of the deceased owner's intentions when the deceased owner was not part of the Deed of Family Agreement and this agreement contravenes the last Will and Testament left by the owner. Probate of the deceased's Will was granted 10 December 2010 prior to the Deed of Family Agreement.

Council Pension Remission

Staff's view on the eligibility of pension remission, in this particular case, has been based on legal advice received from arguably Queensland's leading law firm on Local Government matters. In 2011 the Queensland Ombudsman was undertaking an investigation into this matter and upon receipt of the previously mentioned legal advice, discontinued their investigation and closed the case. Therefore the assessment by Council staff of the eligibility is a shared view and staff are not acting without sound basis in their judgement of this pension remission application.

Cr Melchert and all other Councillors have been previously provided with a copy of the said legal advice.

Eligibility

The Queensland Government determines the eligibility criteria for pension subsidy of local government rates and further information can be located at -

<http://www.qld.gov.au/community/cost-of-living-support/rates-subsidy/index.html>

In reference to a life tenant it is stated:

"A life tenancy can only be created by a valid will and is effective only after the death of the property owner, or by a Supreme or Family Court order."

As defined above life tenancy can only be created by a valid will, Supreme Court Order or Family Court Order. Therefore amending Council's pension remission guidelines to include a Deed of Family Agreement is "ultra vires" as such an agreement cannot create a life tenancy for pension remission/subsidy.