

Preface

The Club's Board of Directors has called a Special General Meeting to update members on continuing issues surrounding the Subordinated loan which has been on the Club and Sub Branch accounts since the early 1990's.

As a preface the Clubs Board would like clear outline the following points,

- The Current Club Board's sense of Charter is absolute. We accept that the primary purpose of the Club is the financial support of the Cairns RSL Sub Branch and by default Veterans welfare and support services. **The Club is committed to providing significant levels of ongoing financial and in kind support to the Sub Branch.**
- The Board recognise their fiduciary duty under law to the company and acting in the best interests of it and its members. **Support to the Sub Branch has to be a negotiated platform which considers the needs of both entities.**
- It is the board position that an arrangement which is considered unreasonable, unfair or has the capacity to limit or restrict the company's ability to operate to the best of its ability is not in the best interest of Club Members and cannot be supported. **The Clubs directors cannot legally or in good conscience support agreements which a reasonable person would consider inequitable or unfair to the Company.**
- The Clubs directors are by law responsible for the outcomes of the Company (Club). **Any action outside the control of the Board which may be perceived to impact the ability of the Company (Club) to successfully meet its obligations moving forward will require immediate voluntary dissolution of the board.**

The primary aim of the meeting is to contextualise that the Club/Sub Branch relationship is effectively a support relationship. As the only major funding source for the Sub Branch, a viable and evolving club is in the best interest of Sub Branch Members, by default **actions by the Sub Branch which may be perceived to be contrary to the ongoing success and viability of the Club should be recognised as not in the best interest of the Sub Branch membership.**

A Potted history of the Sub Branch and Club from about 1990.

In early 1990's the Sub Branch and Club operated, for all intents and purposes, as a single entity. The operation was largely as a bar for Returned Ex-service personnel and did not include the provision of any welfare or advocacy services.

The Club was not profitable due to a variety of reasons least of which was the view that returned men should not pay for their alcohol.

Men of the ilk of Kel Ryan, Merv Hains and Duncan Walker began the process of saving the Cairns Cairns RSL by:

- 1. Incorporating the Club in 1991; and*
- 2. Resolving to refresh and rebuild the premises to try to attract a wider customer-base and hence move to profitability.*

The Sub Branch, such as it was with no corporate structure and trustees holding the land title, was not in a position to undertake the building refurbishment. It fell to the newly incorporated Club to drive the project.

A loan was raised by the Sub Branch against the land titles and the proceeds immediately loaned to the Club. The trustees of the Sub Branch had to sign for the loan and that action made them individually liable for the repayment.

You will understand that they were reticent to further their individual financial obligations by contracting Builders, etc to do the job. The Club, being an incorporated company was then used as a vessel to undertake the project role and contract, manage and pay the builder.

The actual amount of the contracts for construction and other purchases are now lost in the passage of the years, but the Subordinated Loan recorded in both the Sub Branch and Club Balance Sheets reflects the amount of \$2,222,882 that was loaned at the time (less about \$99k which is thought to be unpaid interest).

There is no evidence that there was a demarcation between the role of the Landlord and the Tenant. Such would be the case now with the former being responsible for structural building alterations and the latter being responsible for fitout, etc.

Such a demarcation would not have been considered in the practical reality of the circumstances with the two bodies essentially one commonality, the key difference being the Club at the time with a Manager, 2 x Chartered Accountants on the Club Board and an appropriate corporate structure in place.

So sometime after 1992/93 the refurbishment was complete and the Loan of \$2,123,350 registered in both Balance Sheets as a Loan by the Sub Branch to the Club.

Subordinated Loan

There were alternative ways of looking at this matter.

1. The Club could have been regarded as a Project Manager acting on behalf of the Sub Branch thus at the end of the project the premises and improvements (Assets) could have been handed back to the Sub Branch and the 'Loan' reflected as an improvement in the Sub Branch real assets. In this case, which is the one which would probably be pursued today, there is no Loan but an increase in the asset known as building.
2. The way the matter was dealt with at the time however was to have the transfer of funds registered as a loan to the club, not the development of an asset for the Sub Branch, and it has remained thus since 1993. This option had some currency as the Club began to make profits. The depreciation of the Assets and payment of interest has been useful in reducing the tax burden for the Club and thus ultimately ensuring more revenue for the Sub Branch. Remember that the Club is a commercial venture and is liable to tax on profits whilst the SB is not.

For the sceptics of this approach and the apparent fear of the ACNC, the Club sought a ruling from the ATO that such an arrangement was appropriate and further, State RSL consultant Mr Bruce Curle examined the arrangement and agreed that it was appropriate.

Commentary

In modern times negotiation between Sub Branch and Club would mean that the total amount would be broken into Landlord responsibility and Tenant responsibility.

This occurred in 2012 with the Sports Bar, Pokies area and Tab refurbishment

Sub Branch	\$370,251
Club	\$1,239,090
Total	\$1,609,341

And again in 2015 with the Outdoor Dining area

Sub Branch	\$46,468
Club	\$ 141,411
Total	\$ 182,880

And finally, in 2017 Kitchen & Admin

Sub Branch	\$306,622
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Club	\$1,069,902
Total	\$1,376,524.

But in the 90's the circumstances were different, and it appears that the Club has borne the whole loan of \$2,123,350 even though much of the rebuilding in this case was structural and thus attributable to the Sub Branch as Landlord. While the original Assets are still show in the clubs Asset register, the legal ownership resides with the Sub Branch as owner of the land.

Future Arrangements

Clearly the 1993 value of the building improvements have been written off many years ago but the 'indebtedness' of the Club to the Sub Branch remains.

The loan has lost its value as a tax tool but now remains as a misunderstood impediment between the two organisations.

The Concern for the Club being that there appears a very real shift in expectation from the Sub Branch to an expectation for full repayment of the entire amount.

The Clubs Directors would be negligent in their obligations with they were to accept liability to pay for a debt of this magnitude with no benefit to the club.

The club as an entity would have to forgo \$2,123,350 worth of future investment in the business, in member facilities and services.

Other Sub Branch and Club milestones

1. Sub Branch.

The Sub Branch did not establish its own office until 2008 when it employed Lyn Warwick as the Sub Branch Secretary. This was the first step in formally separating the 2 groups and most of the day-to-day dealings of the Sub Branch were transferred from the Club Administration at that time. Under the guidance of Peter Turner, the Sub Branch established and grew the PAWS operations.

The Sub Branch refurbished the Kokoda Hall and moved its operations upstairs in 2013.

The Sub Branch finally incorporated in 2013.

2. Club

The Club Constitution was altered several years ago to accommodate the approach that there should be a joint philosophy, even though they were separate organisations, so that of the Board of Directors of 7, 4 positions have been reserved for nominees of the Sub Branch.

Following those changes the Sub Branch resolved a policy as follows:

- 2 nominees to be current serving Sub Branch Board members
- 2 nominees to be persons of requisite skill and not necessarily service members.

This constitutional change was designed to cement the attitude of like mindedness between the Sub Branch & Club but respecting the different roles of each and the need for differences in decision-making.

Since that time the Sub Branch and Club have moved further apart so that they are now 2 differing operating entities. This separation was necessary and has largely been without difficulty until recently.

Rent

The Club started paying rent in 1993 after the construction was completed and has paid each year since then. The total, up to the end of September 2019, is **\$7,539,323**

The tenancy of the Club and the rent to be paid are contained in a formally drawn Lease Agreement between the 2 entities.

Interest on the Subordinated Loan

During the years 1993-2009 the interest on the Loan was always recorded but paid according to the cashflow of the Club. By 2009 the Club was in a financial position to bring any outstanding interest payments up to date by making a single payment in 2009 of \$727,652.

The total interest paid by the Club up to the end of September 2019 is **\$2,815,600**.

Club to Sub Branch cashflow

2015	\$439,880
2016	\$448,520
2017	\$452,160
2018	\$453,192

It should be completely clear to the reader by now that the Sub Branchs' financial existence is almost completely dependent upon the successful operations of the Club. The principal aim of the Club's existence has always been and will continue to be to ensure that appropriate levels of monies are available for Sub Branchs'ub ranch operations.

Approach to the Future.

Clearly there needs to be put in place some co-ordinated mechanisms which assist the Sub branch and the Club to understand the directions, needs and responsibilities of one to the other and to their membership. The Sub branch has previously rejected the approach of a joint Strategic planning session and the Club has only been identified as a Strategic partner alongside CRC, Cairns Defence Bases, DVA and FND.

This approach is short-sighted and largely ignores the reality of the Sub Branch and Club sharing many members with the latter being the principal funder of the former.

We have observed the deteriorating relationship with dismay and the Club Board are challenged to ensure that the hard-fought successes of men and women like Kel Ryan, Peter Turner, Merv Hains, Duncan Walker, Carmel Martin and many others do not evaporate into a mist.

We must jointly develop operating and strategic mechanisms to bring the two bodies towards a mutually respectful, partnership.