

CONFIDENTIAL



REPORT FOR:	Special Council Meeting		
MEETING DATE:	20 February 2017		
REPORT FROM:	Director Community Services		
REPORT TITLE:	Confidential Update No 2 – Aged Care Sale Process		
FILE NAME:	F10/2812	RECORD NO:	AR17/6496

COMMUNITY VISION & STRATEGIC PLAN OBJECTIVE/S

4 We Care

4.2 Facilitate services and develop partnerships to enable appropriate care for people in our communities.

6 We Achieve

6.5 We use and manage our financial resources in the best interests of our community, and to ensure financial sustainability and organisational efficiency now and into the future.

PURPOSE

To provide an update to Elected Members regarding the Aged Care sale process in relation to Council's decision to sell its residential aged care facilities and seek endorsement from Council to move to the sale negotiation stage of the process.

RECOMMENDATION

Council:

1. Endorses the Chief Executive Officer, Director Community Services, Director City & Cultural Services and Manager, Strategy & Outcomes entering into sale negotiations with Edenfield Family Care as recommended by Ansell Strategic with a further report provided to Council prior to executing any binding sale agreement.

BACKGROUND

At a Council meeting on 23rd May 2016, Council resolved:

1. To sell Nerrilda Nursing Home and AM Ramsay Village with caveats to include:
 - retain or exceed existing service quality
 - retain the bed licences actively in Port Augusta
 - protect the rights of existing residents (security of tenure)

- retain the majority of staff
 - maintain access for low income people (the minimum mandated supported resident ratio for the region is 27.5%), and
 - achieve nil or minimal residual debt.
2. Develops a comprehensive communication strategy for the community and key stakeholders.
 3. Develops an action plan to move promptly to plan, implement, monitor and evaluate the sale strategy, addressing the project's critical success factors.
 4. Delegates authority to the CEO and Director Community Services to appoint suitably qualified external contractor to effectively manage the sale process including consultation with the State Government regarding the Nerrilda Nursing Home land and liaison with the Department of Health regarding capital grants and transfer of bed places as per Council's 'Purchasing, Contracts & Tendering' policy.
 5. Develops an indicative budget plan for the sale (costs, revenue, net proceeds).
 6. Develops a comprehensive risk management strategy, and
 7. Develops a stratagem to initiate operational financial reforms at Nerrilda Nursing Home and AM Ramsay Village in the event of a delay in concluding a sale agreement within a reasonable timeframe (this intervention would operate in parallel with the sale strategy).
 8. Receives a further report regarding future operation of Council's Community Home Support Programs (Health Focus and Men's Shed) in the context of the sale arrangements.

On 14 November 2016, Council resolved to endorse the Chief Executive Officer, Director Community Services, Director City & Cultural Services and Manager Strategy & Outcomes proceeding to due diligence with both Helping Hand Aged Care and Edenfield Family Care as recommended by Ansell Strategic, with a further report being provided to Council following submission of final offers.

DISCUSSION

Following Council's resolution on 14th November 2016, a secure electronic data room was set up for both interested parties to view due diligence materials.

The timeframe for submission of final offers was extended until 3rd February 2017 due to the holiday period falling within the timeframe.

Unfortunately, Helping Hand Aged Care responded to Ansell Strategic on 3rd February 2017 advising that they would not be submitting a financial offer for acquisition of the facilities. Their assessment is that the underlying cost structure, together with foreseeable short and medium-term capital requirements, suggest that the services are not financially sustainable as presently configured. As such, Helping Hand Aged Care are not able to accept the financial burden which would result if they were to assume ownership of the facilities.

Edenfield Family Care have submitted an offer for the purchase of both of the aged care facilities as well as the 'Homestead Park land' as detailed in the attached report from Ansell Strategic.

Edenfield have stated in their offer that they would continue to use the AM Ramsay Village and Nerrilda names , implement a 'significant refurbishment' of both facilities and retain all 108 aged care places within the Port Augusta Council area and retain all equipment purchased by Nerrilda Auxiliary for use at Nerrilda Nursing Home or AM Ramsay Village. Edenfield have also demonstrated financing arrangements in relation to the acquisition.

Ansell Strategic interviewed both parties, reviewed their submissions and examined available third party information about the company prior to due diligence. They believe that Edenfield has acquisition and operator experience, financial capacity and a clear plan to transition and operate the Port Augusta homes.

As can be expected in a transaction of this type, a number of matters need clarification and further negotiations will need to take place before Port Augusta City Council would be in a position to sign a sale agreement with the company.

Items requiring further clarification/negotiation/discussion include:

- The buyer will agreed to retain all equipment purchased by Nerrilda Auxiliary for use at Nerrilda Nursing Home or AM Ramsay Village but will not agree to any other restrictions on its use of the Assets or Property post-settlement contemplated by the draft asset sale agreement. (Clarification is required as to this statement)
- For the avoidance of doubt the Buyer will only settle all parts of the proposed sale if and when the Nerrilda land can be transferred to the Buyer and the Buyer will not enter into any interim leasing arrangements in respect of the Nerrilda land. (This process currently sits with the Minister but will hopefully progress in the near future).
- The offer states that the 'Homestead Park land' is included in the final offer with a request that Yudnapinna Homestead be removed from the property at Council's sole cost and expense prior to settlement date. (It is unlikely that this could happen in a short timeframe)
- The buyer considers it likely that in order to ensure the businesses operate profitably moving forward it may be necessary to offer some employees reduced or varied working hours or terms and must have the flexibility to make offers of employment to employees reflecting this. (This leaves Council at risk of surplus staff or redundancy payments to staff)

It should be noted that Edenfield Family Care is not interested in Council's Commonwealth Home Support Programs as part of this sale but is prepared to consider granting a lease back to Council of the space that Health Focus operates from, on terms to be agreed.

A Council resolution is required to enable officers to progress negotiations in relation to potential sale of the facilities.

Signing of a sale agreement would not occur until a further report has been provided to Council outlining terms and conditions of the negotiated agreement.

CONFIDENTIALITY PROVISIONS

Council is satisfied that, pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business, or proposing to conduct business, or would prejudice the commercial position of the Council.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in circumstances because the release of third party commercial-in-confidence details prior to Council completing negotiations would be detrimental to the outcome for the Council and community.

That having considered report AR17/6496 in confidence under Section 90(2) & 3(d) of the Local Government Act 1999, the Council, pursuant to Section 91(7) of the Act orders that the presentation, report, discussions and minutes concerning this agenda item, be retained in confidence until a sale agreement is signed by all parties.

RISK MANAGEMENT

1: Financial/Budget

Financial implications have been set out in previous reports.

2: Legal/Policy

Legal advice is being sought in relation to the sale process.

3: Environment/Planning

n/a

4: Community

4.1 General

Port Augusta, as with the rest of the nation is an ageing community. The key reason to consider future options is to ensure that the needs of the community of Port Augusta are met and that our residents receive the best quality aged care outcomes into the future.

It is acknowledged that the local community made a significant contribution to the construction of Nerrilda Nursing Home and is cognisant of potential negative reaction of the community to any change of operations.

Port Augusta needs a continuum of care available to older people to attract new community members and retain existing community members as they transition through retirement.

The State of Ageing in S.A. report (2009) includes key policy implications for Local Government including:

- The ability to age in place is dependent on choice, quality, suitability and sustainability of housing and access to appropriate services.

4.2 Aboriginal Community Consultation
n/a

ANNE O'REILLY
13/02/2017



PORT AUGUSTA CITY COUNCIL

FINAL OFFER ANALYSIS SUMMARY

FEBRUARY 2017

PRIVATE & CONFIDENTIAL



1. Overview of Bid Analysis

Background

The Port Augusta City Council (PACC or the City) appointed Ansell Strategic to assist with facilitating the divestment of the Council's residential aged care homes, Nerrilda Nursing Home and AM Ramsay Village.

In accordance with the City's objectives, a comprehensive Information Memorandum was developed providing information on Nerrilda Nursing Home and AM Ramsay Village's operations as well as property information. In addition, prospective purchasers made requests for additional information, which was provided.

Advertising for the opportunity was also carried out through the Australian Financial Review (Thursday 6th October 2016) and the Adelaide Advertiser (Saturday 8th October). PACC also released information regarding the opportunity and the process to the local community and media.

Submission of Non-binding Indicative Offers (NBIO) were accepted up until 5pm Australian Eastern Standard Time (AEST) 4th November 2016.

A number of parties indicated interest in the submission of indicative offer phase, with two parties ultimately responding with a submission of an NBIO. These organisations were:

- Helping Hand Aged Care; and
- Edenfield Family Care.

General feedback received from parties that did not submit an indicative offer related to the fit of the assets to their strategy, location to their current operations and deteriorating market conditions.

Both organisations which submitted an NBIO met Council's criteria and are existing approved aged care providers with established operations based in South Australia.

Further details of the organisations have been provided in Appendix 1.

Detailed Due Diligence

On 14th November 2016, Council resolved for both Helping Hand Aged Care and Edenfield Family Care to proceed to the due diligence stage.

Due diligence was undertaken through a secure electronic room which was open between 23rd November to 3rd February 2017. An extended timeframe was provided as a result of the due diligence process running over the holiday period.

Industry Conditions

During this process, the aged care industry continues to experience further changes to its operating environment. Last year, the Federal Government announced an estimated \$1.96 billion in cuts to funding over the next four years. These cuts are forecasted to potentially be even more and are expected to impact the viability of many providers within the sector.

Submission of Final Offers

Submission of Final Offers were accepted up until 5pm Australian Central Daylight Time (ACDT) 3rd February 2017.

Of the two parties selected by Council to proceed to the due diligence stage, only Edenfield Family Care submitted a final offer to purchase the residential aged care homes.

Helping Hand Aged Care indicated that they will not be submitting a financial offer on the basis that the organisation is not able to accept the financial burden which would result if they were to assume ownership of these facilities.

Further details of each parties responses has been provided in Appendix 2.

Bid Summary and Evaluation

The following pages present an evaluation of Edenfield Family Care's final offer.

2. Final Offer Comparison

Edenfield Family Care – Indicative & Final Offer

Edenfield Family Care		
	Indicative Offer	Final Offer
Gross Indicative Offer Price – Residential Aged Care Facilities	\$7,511,455	\$8,786,455
Net purchase price – Residential Aged Care Facilities	\$4,000,000	\$4,625,000
Land at Lot in DP94466	\$650,000	\$650,000
Key Conditions:		
Finance approval	✓	✓
Exclusivity	x	✓
Property valuation	N/A	✓
Pest and building report	N/A	✓
Approval from Department of Health for transfer of places	✓	✓
Removal of Yudnapinna Homestead from additional land	N/A	✓

Notes: For comparative purposes, the Gross price of the indicative and final offers have been adjusted to include total accommodation bonds/RADs held as at 31 July 2016.

3. Final Offer Evaluation Overview

Edenfield Family Care



Total net value for Residential Aged Care Assets - \$4,625,000

Positives

- Family owned provider based in South Australia.
- Well demonstrated consideration and analysis towards transition and improvement strategies.
- Previous success in executing transaction (acquisition of Edenfield).

Negatives

- Smaller provider (scale and resources).

Execution risk

- Finance approval - the organisation has advised that it has received financing approval from the Commonwealth Bank.

Key Conditions

- Subject to finance approval
- Ownership of Nerrilda Nursing Home Land
- Property valuation required
- Pest and building report
- Department of Health approval for the transfer of places to Edenfield Family Care
- Removal of Yudinapinna Homestead from additional land

4. Evaluation and Recommendation

Evaluation

In the context of the industry's current market conditions, Edenfield's offer represents a tangible opportunity for the City to divest its residential aged care assets to a specialised aged care operator. Despite being a smaller provider, the organisation has demonstrated service capabilities and consideration towards improvement strategies for the Port Augusta facilities. Edenfield has indicated the importance of managing acquisitions from the viewpoint of culture, operational risks and delivery of care services and conveyed it has sufficient existing capacity to perform the integration without disturbance to residents. To date, the organisation has maintained a fully compliant care accreditation history.

In moving forward with the divestment of the aged care assets, the City will need to clarify and discuss a number terms and conditions of Edenfield's offer. The City's appointed lawyer, O'Loughin's, has reviewed the offer and provided a summary of the key items that require further discussion (see Appendix 3).

Recommendation

Edenfield Family Care's final offer for PACC's residential aged care homes is \$625,000 higher than their indicative offer. The organisation has expressed it is committed in established a long-term productive partnership that benefits Port Augusta's elder community. Edenfield also has previous history of successfully executing the acquisition and transition of its facility located in South Australia.

Based on our evaluation of Edenfield's final offer, we have recommended that the City should proceed in entering negotiations with Edenfield's final offer with the ultimate aim of executing a binding sale agreement to complete the divestment of its residential aged care assets.



5. Next Steps

The next phase of the process requires a Council resolution to decide whether to proceed in entering negotiations with Edenfield Family Care's based on their final offer. As with the NBIO stage, we understand there may be factors beyond our understanding that may impact on PACC's decision.

The following phases will follow proceeding Council's decision to move forward:

1. Preparation and Negotiation on the Asset Sale Agreement

The City appointed O'Loughlins Lawyers to assist in the preparation and negotiation of the asset sale agreement. O'Loughlins drafted an asset sale agreement which was loaded in the data room during the due diligence process. Should the Council decide to proceed, negotiations relating to conditions, warranties and indemnities within the asset sale agreement will be undertaken. As previously mentioned, key areas for discussion based on their final offer have been summarised in Appendix 3. Council will be updated on the terms and conditions of the negotiated agreement. We expect that these negotiations can be concluded between two to four weeks.

2. Revocation Approval of Nerrilda Nursing Home Land

At a Special Council Meeting held on 16th January 2017, Council approved to proceed with the submission to the Minister for Local Government to seek approval for the revocation of the Nerrilda Nursing Home land. PACC has been advised that the Minister has received the revocation of land proposal and anticipates a decision should be made within the next few weeks. A decision from the Minister to proceed with the revocation of the land underlying Nerrilda Nursing Home is required to continue with completion.

3. Execution and Announcements

When terms have been agreed, the Council's nominated representatives will sign the Asset Sale Agreement.

As part of the execution process, PACC will be required to seek approval from the Department of Health to transfer the licences associated with Nerrilda and AM Ramsay Village. This is largely a formality to notify the Department, however the approval process can take up to 60 days. The notice period should be submitted no later than 60 days before the proposed transfer date.

Announcements are usually made immediately after signing in accordance with the Communication Plan approved by PACC. Representatives of PACC would accompany the purchaser for pre-arranged meetings with residents, families and staff. Prepared correspondence would be released to staff, residents, families, volunteers, media and other Council/Nerrilda and AM Ramsay stakeholders. It is protocol that the Department of Health is provided 3 days advanced warning so they are prepared to respond to questions made to them directly.

The purchaser will deploy staff to ensure a smooth transition and to make sure residents, families and staff are able to ask questions. We recommend that PACC staff are available on site in the days following the announcement. Ansell Strategic staff are also available to attend if required.

A media strategy is incorporated into the communication plan and it is important that Council members and City management refer questions to the nominated representative for media queries.

5. Next Steps

4. Completion / Settlement

Completion usually takes 60 days after the signing of the sale agreement and the buyer will transfer the remaining funds to PACC on the settlement date. Leading up to settlement, all of the business asset, staff and systems will have been transferred to the new owner.

Although PACC has no responsibility for operations post settlement, it is in the best interest of Nerrilda Nursing Home and AM Ramsay Village residents and staff to provide reasonable support post completion if required.

The following sets out the completed key milestones and indicative timeline for the sale process moving forward:



Appendices

Appendix 1. Profile of Parties Undertaking Due Diligence

Appendix 2. Final Offers - Responses

Appendix 3. O'Loughlins Lawyers - Memorandum

Appendix 1. Profile Overviews



Organisation Name	Helping Hand Aged Care	Edenfield Family Care
Services Provided	<ul style="list-style-type: none"> ▪ Residential Aged Care ▪ Retirement Villages ▪ Home Care 	<ul style="list-style-type: none"> ▪ Residential Aged Care
Operating Geographic Regions	South Australia	South Australia
Approved Provider	Yes	Yes
Status	Not-for-profit	Family owned, private operator
Operator Establishment	1953	2013
Residential Aged Care Facilities	8	1
Total Beds	743	50
Homes by location	<ul style="list-style-type: none"> ▪ Port Pirie – 104 beds ▪ Claire – 50 beds ▪ Jamestown – 41 beds ▪ North Adelaide – 155 beds ▪ Parafield Gardens – 93 beds ▪ Ingle Farm – 98 beds ▪ Mawson Lakes – 98 beds ▪ Northgate – 110 beds ▪ Golden Grove (under construction) – 110 beds 	<ul style="list-style-type: none"> ▪ Parafield Gardens – 50 beds

Appendix 1. Profile Overviews



Organisation Profile	<p>Helping Hand is a not-for-profit organisation offering home care services, retirement living and residential care homes to over 7,000 clients in metropolitan and regional South Australia.</p> <p>Helping Hand is recognised as one of the most progressive aged care service providers in Australia. Our clients and their choices are at the heart of all that we do. That is why our broad range of services deliver a variety of care options that allow for independence at home and full support in our residential sites.</p> <p>Client needs and their personal freedom drive how we plan, manage and deliver services.</p>	<p>Edenfield Family Care is a family owned and operated residential aged care operator.</p> <p>The organisation has a 50 bed boutique home located in Parafield Gardens, South Australia.</p> <p>Edenfield Family Care's ethos of 'Caring for your family like our own', spurs the organisation's endeavours to achieve service excellence in an environment that supports the wellbeing, independence, dignity and respect for those in our care.</p>
Management Team	<ul style="list-style-type: none"> ▪ Ian Hardy AM – Chief Executive Officer Ian Hardy has been CEO of Helping Hand Aged Care since 1990. A former President of the national aged-care peak body Aged and Community Services Australia (ACSA), Ian has also held a number of Board positions in the health care industry. He is currently a member of the Federal Department of Health's Advisory Group engaged in the development of a new set of standards for aged care services in Australia. ▪ Adrian Ware – Chief Financial Officer ▪ Julie Goods – Manager Corporate Support Services ▪ Susan Emerson – Director Care Environments and Service Strategy ▪ Meg Phythian – Director Care Governance ▪ Syd Farrell – General Manager Country Division ▪ Angela Littleford – General Manager Metro Division ▪ Megan Corlis – Director Research and Development 	<ul style="list-style-type: none"> ▪ Jesse Selvarajah – Chief Executive Officer Jesse directs all aspects of the business at the corporate and facility levels. He has over 20 years experience in the health industry. ▪ Dr Minni Gim – Group Executive Services Manager Minnie is directly responsible for the day to day running of Edenfield Family Care with over 10 years experience in the health care industry. ▪ Ms Barabara Pumpa – Group Customer Services Barbara is responsible for all aspects of client services, business support and administration for Edenfield Family Care. She has over 25 years experience in the aged care sector.

Appendix 2. Final Offers - Responses

3rd February 2016

Mr Jesse Selvarajah
CEO
El-Jasbella Pty Ltd
20-36 Gardenia Drive
Parafield Gardens
SA 5107

Mr Daniel Lee
Senior Finance Consultant
Ansell Strategic
Unit 11, 210 Bagot Road
Subiaco
WA 6008

RE: Offer for the Purchase of the Port Augusta Suite of Assets

Dear Mr Lee,

Enclosed is an offer for the purchase of the Port Augusta suite of assets comprising:

Assets	Pricing
Aged Care Facilities	\$4,625,000.00
Land at Lot in DP9466	\$650,000.00
Bond Liabilities	\$3,511,455.00
Total	\$8,786,455.00

After a lengthy and rigorous due diligence process Edenfield believes that there is a real need for Port Augusta to benefit from the Edenfield approach to Aged Care. This 'family' approach to Aged Care is where every resident and their family, staff and their family are part of the Edenfield Family. We believe that this approach has made us as successful as we have been.

Along with our due diligence process we have been in ongoing negotiations with two major Australian banks namely, The Commonwealth Bank of Australia and Westpac.

Both financial institutions are keen to provide the finance required to complete the purchase of the Aged Care Facilities in a timely manner.

Given the service capabilities of Edenfield, we believe the addition of the above mentioned facilities would allow service gaps across palliative care, emergency respite care, and supported accommodation for clients with mental health issues, and services for older Aboriginal residents to be better addressed.

We develop strong connections in our community in order to help our residents still be part of the community even though they are within an Aged Care Facility. We hold regular community events and activities that see our residents constantly engaged. We have strong links with our local hospitals, palliative care hospitals/services, rotary clubs, Aged Homelessness Assistance Program & Shelter SA (homeless organisations). Edenfield strives to be an integral part of the local job sector and hence has strong ties with local job agencies as well. We also invest in our staff by upskilling where possible and giving grants for additional training.

By way of example, post the acquisition of Edenfield, in order to facilitate the above a major renovation was undertaken, making Edenfield, “significantly refurbished”. This coupled with the person centric care philosophy (reflected in Jesse being on site every weekday and being accessible to both staff and families at all hours) which sees the resident and staff immersed in a homely environment as lead to the facility being commonly referred to as the ‘best in the north’ by local hospitals.

Acquisitions of this nature are often tricky to manage from the viewpoint of culture, operational risks and most importantly the care services being provided.

If successful with the acquisition of Port Augusta, we would implement:

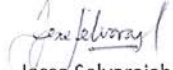
1. A Group CEO (Mr Jesse Selvarajah)
2. Group Executive Services Manager (Dr Minnie Gim)
3. Group Customer Services Co-Ordinator (Ms Barbara Pumpa)
4. Keep the Site Managers as is and Clinical Care Co-Ordinators.
5. Ensure that all Aged Care Places and Equipment stay within the Port Augusta Area.
6. Renovate facilities to be, “Significantly Refurbished”.
7. Put in place an integration framework and timeline complete with dedicated resources to ensure smooth transition.



Sufficient capacity exists within the current operational personnel to perform the integration without disturbance to the residents care.

Ultimately, we commit in establishing long-term productive partnerships that benefits Port Augusta's elder community and necessarily will require working with the local council. Additionally, we would further welcome any and all suggestions from the Port Augusta City Council that may see the offer further enhanced for both parties.

Yours Sincerely,


Jesse Selvarajah
Director

3rd February 2016

Mr Jesse Selvarajah
CEO
El-Jasbella Pty Ltd
20-36 Gardenia Drive
Parafield Gardens
SA 5107

Mr Daniel Lee
Senior Finance Consultant
Ansell Strategic
Unit 11, 210 Bagot Road
Subiaco
WA 6008

Proposed Purchase of the Aged Care Businesses known as Nerrilda Nursing Home and AM Ramsey Village carried on by Corporation of The City of Port Augusta (Business) and the properties located at Elsie Street, Port Augusta, 77 Seaview Road, Port Augusta and 71 Stokes Terrace, Port Augusta West (Property)

We are pleased to submit to you the following offer to purchase the Business and Properties on the following terms and conditions.

1. PARTIES

Buyer: (a) **Business** [buyer details to be confirmed, but the entity will be an existing approved provider under the *Aged Care Act 1997* (Cth)]

(b) **Property** [buyer details to be confirmed]

Seller: **Corporation of The City of Port Augusta**

2. PROPERTY AND ASSETS OF THE BUSINESS TO BE PURCHASED

2.1 The Buyer proposes to buy from the Seller the Property and all the assets used in connection with the Business (Assets) (other than those specifically excluded by clause 2.2) including, without limitation, the following:

- (a) the Goodwill and the right to carry on the Business as the successor of the Seller under the Business Name;
- (b) the Allocated Places;
- (c) the Plant and Equipment;
- (d) the Business Name;
- (e) the Stock;
- (f) the Business Contracts;
- (g) the Included Software, data, systems and licences included in the sale by mutual agreement between the Buyer and Seller;
- (h) the Statutory Licences;
- (i) the Records;
- (j) the Resident Agreements; and

2.2 The following shall be excluded from the sale:

- (a) the assets used in or related to the Seller's other businesses and operations other than the Business;
- (b) cash in hand, on deposit or at bank;
- (c) the Seller IP;
- (d) the Book Debts;
- (e) the Excluded Records;
- (f) all personal effects of Residents;

- (g) any motor vehicle not listed in the plant and equipment list set out in Schedule 1;
- (h) all software not specifically included in the sale by mutual agreement between the Buyer and Seller,
- (i) insurance policies relating to the Business or owned by the Seller or any Related Body Corporate prior to Completion and the benefit of any claims under those policies;
- (j) the CHSP business conducted by the Seller from Nerrilda Nursing Home;
- (k) the building known as Yudnapinna Homestead, presently located on the land known as 77 Seaview Road, Port Augusta, which is to be removed by the Seller at its sole cost and expense prior to the Settlement Date

2.3 The Buyer will acquire the Property and Business as a going concern

2.4 Other than as otherwise provided for in this offer, the Assets and Business will be acquired free from all claims, liens, equities, charges, encumbrances and adverse rights of any description.

3. PRICE

3.1 The gross price offered to purchase the Business and Property and Assets set out in clause 1 is **\$5,275,000.00 (exclusive of GST) (Business and Property Purchase Price)**. The Seller will nominate the apportionment of the Business and Property Purchase Price between the Business and the Property to the recorded in the Business Sale Agreement and the Property Sale Agreement. The Business and Property Purchase Price is payable to the Seller by the Buyer and must be satisfied by the Buyer in immediately available funds (being cash, bank cheque or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Seller).

3.2 The Business and Property Purchase Price will be payable as follows:

- a. The deposit is **\$527,000.00 (the Deposit Amount)**, of which \$527,000.00 will be paid by the Buyer to the Seller on receipt by the Buyer of a signed and dated copy of these heads of terms, and the remaining balance will be paid by the Buyer to the Seller upon both parties signing the Business Sale Agreement and Property Sale Agreement;
 - b. The Refundable Accommodation and Lump Sum Bond Deposit Balance (having the meaning set out in Schedule 1 to the *Aged Care Act 1997*) (**RAD Balance**) as at the Settlement Date will be adjusted in the Buyer's favour at settlement. It is noted that the Seller expects the value of the Refundable Accommodation and Lump Sum Bond Deposit Balance to be approximately \$3,500,000.00.
 - c. Property will otherwise be subject to the usual adjustments applied in business and property sales of this nature, as agreed between the parties (acting reasonably).
 - d. On Settlement, the Seller will be entitled to retain the Deposit Amount as part payment of the Business and Property Purchase Price
 - e. On Settlement \$300,000.00 of the purchase price shall be directed to the Seller's lawyer to be held in escrow for a period of 6 months. In the event of the breach of any warranty or due diligence issue being identified by the Buyer during this period all or part of the escrow sum will be applied in full or partial remedy legitimate claim on the part of the Buyer. Upon the conclusion of the escrow period any unused portion of the escrow sum will be released to the Seller.
 - f. The Business and Property Purchase Price will be adjusted 90 days after Settlement by reference to the final settlement accounts, calculated according to the mechanism set out in the Business Sale Agreement.
- 3.3 In the event that the Seller can secure the agreement of the Commonwealth to assign the obligations of the Seller under the Capital Grant Agreements disclosed in the due diligence materials to the Buyer the Buyer will agree to accept such an assignment provided it considers the terms attached to any such assignment to be reasonable. The Seller must indemnify the Buyer

against any amount that becomes payable to the Commonwealth of Australia under the Capital Grant Agreements as a result of the transfer of the Land, the Facility or the Allocated Places to the Buyer and this indemnity must survive settlement. In the event that the Seller cannot secure the agreement of the Commonwealth to assign the obligations of the Seller under the Capital Grant Agreements disclosed in the due diligence materials to the Buyer on terms acceptable to the Buyer and Seller the Seller must repay the amounts owing under the Capital Grant Agreements on or prior to the settlement date and otherwise provide the Buyer with evidences that the Seller's obligations under the Capital Grant Agreements have been fully discharged. as at the settlement date.

4. OFFER CONDITIONS

The proposed sale is conditional on the following:

- a. The Buyer obtaining finance approval on terms acceptable to it (acting reasonably) to enable it to proceed with and settle the transaction, noting that to date it has not been possible for the Buyer to arrange access to the Property for valuation purposes to date;
- b. The Buyer obtaining a pest and building report in respect of the property that is acceptable to the Buyer, noting that it has not been possible for the Buyer to arrange access to the Property for this purpose to date;
- c. The Buyer obtaining a report confirming that no tree located on the Property is a significant or regulated tree (within the meaning of the *Development Act 1993*), noting that it has not been possible for the Buyer to arrange access to the Property for this purpose to date;
- d. the preparation of the Business Sale Agreement and the Property Sale Agreement by Seller's lawyer, to be approved by the Seller's lawyer and Buyer's lawyer, acting reasonably. These documents will be broadly modelled on the draft asset sale agreement provided by the Seller during the due diligence process, subject to any amendments requested by the Buyer's lawyer and changes otherwise required by virtue of the terms of this letter of

offer and re-cast into separate documents for the business and property components of the transaction;

- e. The approval in writing of the Secretary to the transfer of the Allocated Places on and from the date following Completion from the Seller to the Buyer on terms no less favourable than those which exist at the date of this Agreement;
- f. The Target Date for Settlement as defined in the draft asset sale agreement shall be 90 days after the date contracts are exchanged and the Sunset Date as defined in the draft asset sale agreement shall be twelve months after the contracts are exchanged;
- g. The Buyer and Seller will commit to the process outlined in clause 2.7 of the draft asset sale agreement to provide for a fee simple interest in the Nerrilda Land being transferred from the Crown to the Seller to allow the transfer of a fee simple interest in the Nerrilda Land to the Buyer. For the avoidance of doubt the Buyer will only settle all parts of the proposed sale if and when the Nerrilda Land can be transferred to the Buyer and the Buyer will not enter into any interim leasing arrangements in respect of the Nerrilda Land;
- h. The Buyer will agree to:
 - (i) continue to use the AM Ramsay and Nerrilda names respectively in connection with the Businesses operated from those Facilities (which names may be used in conjunction with a name identifying the Buyer);
 - (ii) retain all 108 Allocated Places within the Port Augusta Council area; and
 - (iii) retain all equipment purchased by Nerrilda Auxiliary for use at Nerrilda Nursing Home or AM Ramsey Village but will not agree to any other restrictions on its use of the Assets or Property post-settlement contemplated by the draft asset sale agreement;

- i. The Seller must remove the Yudnapinna Homestead from the additional land forming part of the Property at its sole cost and expense prior to the settlement date;
- j. The Seller providing to the Buyer the Form 1 disclosure material required to be provided in respect of the sale of the Property and the Buyer's lawyer completing a satisfactory review of this material. The Seller reserves the right to amend any aspect of its offer following completion of this review.
- k. The Buyer's offer does not include the CHSP Business operated by the Seller as referred to in the due diligence and draft asset sale agreement, although the Seller would be prepared to entertain granting a lease back to the Seller of the space from which the CHSP Business operated by the Seller is conducted, on terms to be agreed;
- l. The Buyer will commit to the process outlined in clause 13 of the draft asset sale agreement in respect to employees save in the case of clauses 13.2(c)(2) and 13.9(c). The Buyer considers it likely that in order to ensure the businesses operate profitably moving forward it may be necessary to offer some employees reduced or varied working hours or terms and must have the flexibility to make offers of employment to employees reflecting this. The Buyer will not assume responsibility for any redundancy or other payments contemplated by Clause 13.9(c) of the draft asset sale agreement arising from any offer of employment made by the Buyer.
- m. The Buyer requires complete flexibility as to which Business Contracts (if any) are to be assigned or novated to it at settlement. If the Buyer advises the Seller that it will not be taking an assignment or novation of any Business Contract, the Seller must arrange for the termination of such Business Contract at its sole cost and expense on or prior to the settlement date;
- n. No Material Adverse Change (as defined in the draft asset sale agreement) having occurred on or prior to the settlement date;
- o. The Buyer will not assume any liabilities of the Seller relating to the Business or Property.

5. TIME LIMITS AND GOOD FAITH NEGOTIATION

The Buyer intends to proceed as quickly as possible with the proposed sale. The Buyer and the Seller will use their respective endeavours to negotiate in good faith the Business Sale Agreement and Property Sale Agreement in a manner that is materially consistent with the commercial principles set out in these heads of terms, with a view to signing the Business Sale Agreement and the Property Sale Agreement as soon as possible and completing the sale no later than 30th of June, 2017.

6. EXCLUSIVITY

6.1 The definitions in this clause 6 apply in this clause 6.

Third Party Negotiations: discussions or negotiations between the Seller (or any of its respective officers, agents, employees, advisers or other representatives) and anyone other than the Buyer, or a company which is a subsidiary of the Buyer (or any of its officers, agents, employees, advisers or other representatives) (Third Party), relating to the disposal (whether by way of sale, transfer or otherwise) of all, or any part of, the Business or the Property, otherwise than in the ordinary course of trading.

6.2 In consideration of the Buyer entering into these heads of agreement and undertaking and incurring fees and expenses and other costs in connection with pursuing this transaction, the Seller grants the Buyer a period of exclusivity on and from the date of the Seller accepts this offer in writing for a period of 30 days (Exclusivity Period) for the Buyer and seller to negotiate and exchange the Business Sale Agreement and Property Sale Agreement.

6.3 Immediately on signing these heads of terms, the Seller shall terminate, or procure the termination of, any Third Party Negotiations currently taking place.

6.4 During the Exclusivity Period, the Seller undertakes that it shall not, directly or indirectly:

- a. enter, re-start, solicit, initiate or otherwise participate in any Third Party Negotiations; or

- b. seek, encourage or respond to any approach that might lead to Third Party Negotiations; or
 - c. enter into any heads of terms, agreement, arrangement or understanding (whether or not legally binding) relating to any Third Party Negotiations; or
 - d. supply or otherwise disclose any information about the Business, the Property or the Seller and its subsidiaries to a Third Party that wishes, or may wish, to enter into Third Party Negotiations (unless the information is publicly available).
- 6.5 The Seller shall procure that its officers, employees, agents, advisers and other representatives, and each member of the Seller Group and their respective officers, employees, agents, advisers and other representatives, comply with the undertakings in this clause 6 as if they were the Seller.
- 6.6 The Seller shall notify the Buyer in writing immediately if, during the Exclusivity Period, the Seller or any member of the Seller Group receives an indication from any Third Party (including any Third Party with whom the Seller or any member of the Seller Group were having Third Party Negotiations prior to the date of these heads of terms) that such Third Party may wish to have discussions with a view to undertaking a possible Corporate Activity.
- 7. GENERAL**
- 7.1 The parties are responsible for their own costs in connection with the sale, whether or not it proceeds (including (without limitation) the preparation and negotiation of these heads of terms, the Business Sale Agreement, the Property Sale Agreement and any documents contemplated by them). Either party may end negotiations in relation to the proposed sale at any time prior to the exchange of the Business Sale Agreement and Property Sale Agreement without having to give any reason for doing so or incurring any liability to any other party. In the event that either party ends negotiations prior to the exchange of the Business Sale Agreement and Property Sale Agreement under this clause 7.1 , then the Seller must return any portion of

the Deposit Amount paid by the Buyer, to the Buyer within 2 business days of such termination.

- 7.2 The contents of this offer are confidential the parties and their legal and financial advisers and must not be disclosed to any third party without the consent of the other party to this offer.
- 7.3 The parties agree that:
- a. Save for the obligations under clauses 6 and 7 this offer does not constitute a legally binding obligation on either side;
 - b. This offer does not contain all matters upon which agreement must be reached in order for the sale to be consummated; and
 - c. This offer imposes no obligation on any person to proceed with the proposed sale.

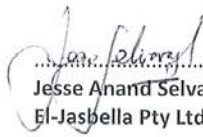
8. GOVERNING LAW AND THIRD PARTY RIGHTS

- 8.1 This offer, the negotiations between the Seller and the Buyer in connection with the sale and any disputes and claims arising out of or in connection with them, shall be governed by and construed in accordance with the laws applicable in South Australia, Australia.
- 8.2 Each party irrevocably agrees that the courts of South Australia, Australia shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this offer or its subject matter or formation and the Negotiations (including non-contractual disputes or claims)
- 8.3 No one other than a party to these heads of terms, their successors and permitted assignees, shall have any right to enforce any of its terms.



Please sign and return a copy of this letter as soon as possible to confirm your agreement to the above.

Yours faithfully,


.....
Jesse Anand Selvarajah
El-Jasbella Pty Ltd

ACCEPTED:

.....

DATE OF ACCEPTANCE:



Mr Daniel Lee
Senior Finance Consultant
Ansell Strategic
210 Bagot Rd
Subiaco WA 6008



Per daniel@ansellstrategic.com.au

3rd February 2017

Dear Mr Lee,

Re: Sale of City of Port Augusta Aged Care Facilities - Nerrilda Nursing Home and AM Ramsay Village

I refer to Helping Hand Aged Care's recent expression of interest in this sale and our subsequent due diligence activity.

You will be aware that we have conducted an extensive review of the facilities and their financial, accreditation and property status.

In brief, our assessment is that the underlying cost structure, together with foreseeable short and medium-term capital requirements, suggest that the services are not financially sustainable as presently configured.

Helping Hand Aged Care has a substantial residential and home care presence in the Mid-North and we recognise the potential benefits to the community, and to both ourselves and The City of Port Augusta, in incorporating Nerrilda Nursing Home and AM Ramsay Village into Helping Hand. However, we are not able to accept the financial burden which would result if we were to assume ownership of these facilities.

Regretfully, therefore, Helping Hand Aged Care will not be submitting a financial offer for acquisition of the facilities.

However, if a sale is not achieved at this time, we would be prepared to explore with Council, or its representatives, whether there are any avenues open to us by which the services' ongoing financial exposure could be mitigated and thus potentially permit the transfer of the facilities to Helping Hand.

Yours sincerely

Ian Hardy AM FUnISA
Chief Executive

Head Office
Helping Hand Aged Care Inc.
ABN 19 636 743 675
www.helpinghand.org.au

34 Molesworth Street
North Adelaide
PO Box 66, North Adelaide
South Australia 5006

Client Enquiries
T 1300 653 600
Corporate Administration
T 08 8366 5400



Appendix 3. O'Loughlins Lawyers - Memorandum

Memo

To: Port Augusta City Council
Date: 13 February 2017
Re: (33248) : Port Augusta City Council (**Council**) re Sale of Aged Care Facilities
Analysis of Edenfield Family Care Final Offer

1. Background

- 1.1 Edenfield Family Care (**Edenfield**) submitted a final offer on 3 February 2017 (although dated 3 February 2016) (**Offer**) for the purchase of the Assets and Business associated with Council's Nerrilda and A M Ramsay Village Residential Aged Care Sites (**Facilities**).
- 1.2 We have reviewed the terms and conditions of the Offer and discussed these with the Council's Project Team.
- 1.3 The purpose of this Memo is to outline our advice on the Offer and, in the event the Offer is acceptable (in its present form or subject to any of our suggested variations), to outline a path towards the execution of a binding Asset Sale Agreement and associated transaction documents in respect of the sale of Facilities (**Transaction Documents**).

2. Path Forward

In the event that Council are satisfied to proceed with the sale of the Facilities to Edenfield then we would suggest the following:

- 2.1 the current Offer (even if accepted on its current terms) is non-binding on the parties and Council should move towards having a binding agreement which would take the form of an executed and associated transaction documents;
- 2.2 given that the terms of the Offer are (from a legal perspective) largely within expectations and do not raise a substantial number material or 'deal breaking issues', we would suggest that it is not an efficient use of time or resources to further negotiate and amend a final form of the Offer to deal with any of Council's issues with the Offer in its present form;

2.3 we would suggest that a response be sent to Edenfield:

- (a) outlining that the Offer is provisionally accepted, but that certain issues remained to be agreed;
- (b) providing a list of the parts of the Offer that are not acceptable or require clarification; and
- (c) advising that an updated draft of the Transaction Documents will be provided to reflect the terms of the Offer (subject Council's further amendments).

2.4 If this process is followed then we are confident that the remaining issues could be negotiated and resolved in conjunction with the finalisation of the Asset Sale Agreement in a timely and efficient manner. We would expect this process to take between 2 and 4 weeks from engagement with Edenfield.

2.5 Council would have an opportunity to review and approve the final Transaction Documents prior to their execution (and the Transaction Documents becoming binding).

3. **Specific Comments on the Offer**

Please see over the page our specific comments on the Offer and relevant issues.

Per: Hamish Archibald

Clause	Issue	Suggested Resolution
Clause 1, Parties	The Offer suggests that Edenfield may prefer to purchase the Business and the Land in separate entities. This raises issues in obtaining the GST Going Concern Exemption (although we note these risks would be contractually transferred to Edenfield) and we would also need to ensure both entities are tied to the 'Continuing Use' obligations.	Clarity should be sought from Edenfield as to the purchasing entities and proposed GST treatment. Each Transaction Document would include a separate GST clause relevant to those specific assets and all risk in regards to the GST treatment would be passed to Edenfield. The Transaction Documents will be drafted to ensure that all Edenfield related parties will be bound by the Continuing Use Obligations.
Clause 2.2 (j), Excluded Assets - CHSP Business	Edenfield have noted they do not wish to take over Council's CHSP business conducted from the Nerrilda facility.	Council should consider its preference for the ongoing operation of CHSP and any preference for the grant of the Lease at Nerrilda to continue that program. Council's preferred arrangements should then be proposed to Edenfield.
Clause 2.2(k), Excluded Assets – Yudnapinna Homestead	Edenfield have noted a requirement for Council to remove the Yudnapinna Homestead from the 'Additional Land' prior to Settlement. We understand from Council this may present an issue from a timing perspective.	We suggest that the contract for the Additional Land not be interdependent on the remaining Transaction Documents. We could then provide for a longer timeframe for Council to resolve these issues and settle the contract for the Additional Land. Given the Additional Land is unlikely to be required for immediate purposes this may be favourable to Edenfield also.
Clause 3.1, Apportionment of Purchase Price	Edenfield have expressed that they would like to apportion the Purchase Price across the assets at their discretion.	Any apportionment in the Transaction Documents should be subject to Council agreement (which agreement would not be unreasonably withheld).
Clause 3.2(b), Adjustments – Bond Balance	The Offer is not clear that the Purchase Price will be adjusted (up or down) on a dollar for dollar basis based on the movement between the Bond/RAD balance at Settlement and the pegged balance of \$3,511,455.00 on which the Offer is based.	This issue would be clarified in the Transaction Documents and the 'pegged' figure documented.
Clause 3.2(e), Escrow Payment	Edenfield have suggested that \$300,000 of the Purchase Price be held in Escrow pending the resolution of any post-settlement claims.	We suggest this not be agreed. Given the vendor is the Council our view would be this provides more than adequate security for any post-settlement claims.

Clause	Issue	Suggested Resolution
Clause 3.3, Capital Grants	Edenfield indicate they would seek and indemnity in respect of any future liability under the Capital Grants if they are novated.	The Transaction Documents would clarify that any indemnity only relate to the period that Council owned and occupied the Facilities. Council should not be required to indemnify Edenfield for any period that Edenfield owns and controls the Facilities.
Clause 4, Conditions	The majority of the Conditions outlined in clause 4 of the Offer are as expected and, subject to our comments below, should be acceptable. We would look to ensure that by the time the Transaction Documents were signed that as many of these Conditions as possible are already satisfied and those remaining to be satisfied were, as far as possible, within the control of Council to achieve.	<p>We would suggest that the Conditions outlined in the Offer be divided as follows:</p> <p>To be satisfied or resolved prior to signing Transaction Documents: 4(a) – finance approval, 4(b) – pest inspections, 4(c) - significant tree report, 4(d) – preparation of transaction documents, 4(j) – provisions of Form 1 Disclosure Statement, 4(k) – agreement on CHSP lease, 4(l) – offers to employees, 4(m) – selection of Business Contracts to be assigned and 4(o) Edenfield not to assume any liability.</p> <p>To be satisfied prior to Settlement: 4(e) – approval of transfer of allocated places, 4(g) – freeholding of Nerrilda land and 4(n) – no material adverse change,</p> <p>To be satisfied prior to Settlement on the Additional Land: 4(i) – removal of Yudnapinna Homestead [<i>note - Council would need to add further conditions around this settlement i.e. relocation of model clubs, realignment of boundaries re public toilets</i>].</p>
Clause 4(g), Interdependence	Edenfield have noted the transfer of all assets should be interdependent and they would not settle until freehold title to the Nerrilda land could be transferred. This may cause timing issues with the Additional Land.	As outlined above the Additional Land could be transferred under a separate contract which could be entered into at the same time as the Transaction Documents but could settle at a later (but not earlier) date than the other Transaction Documents.

Clause	Issue	Suggested Resolution
Clause 4(f), Sunset Date	Edenfield have indicated a preferred Settlement date prior to or on 30 June 2017, but with a Sunset Date of 12 months from execution of the Transaction Documents.	We would suggest this be agreed, a Sunset Date of 12 months (which could also be extended by agreement) should allow time for the freeholding of the Nerrilda Land.
Clause 4(h), Continuing Use Obligations	<p>Edenfield have noted they will accept that:</p> <ul style="list-style-type: none"> • the Nerrilda and AM Ramsay names be used; • all 108 Allocated Places would remain in the Council area; and • retain all equipment purchased by the Nerrilda Auxiliary at the Facilities, <p>but that it <i>'will not agree to any other restrictions on its use of the Assets or Property post settlement contemplated by the draft asset sale agreement'</i>.</p>	<p>We need to clarify what is meant by <i>'will not agree to any other restrictions on its use of the Assets or Property post settlement contemplated by the draft asset sale agreement'</i>.</p> <p>We are clear on Council's directive that the Facilities should continue to operate in the Council area.</p> <p>It may be that Edenfield simply want to ensure they can replace assets as they reach the end of their useful life which would be logical.</p>
Clause 4(l), Offers to employees	<p>Edenfield have advised they do not want to be obliged to offer continuing employment to all employees on the same terms and conditions as they currently enjoy.</p> <p>This creates issues for Council in two primary regards:</p> <ul style="list-style-type: none"> • a reputational risk in disadvantaging existing staff as a result of the transaction; and • if staff do not accept an offer of employment from Edenfield then unless the offer was <i>'on terms substantially similar to, and, considered on and overall basis, no less favourable than, that employees current terms and conditions of employment'</i> (the Test), Council will be liable for redundancy payments to those employees. Where an offer of continuing employment by Edenfield does pass the Test, if the employee does not accept the offer then they can not claim an entitlement to a redundancy payment from Council. <p>Whilst a redundancy payment does not need to be made to any casual employee (no matter what the terms offered to them may be) there are over 50 full and part time employees who may be affected.</p>	<p>The preference of Council should be that all offers made to transferring employees should pass the Test.</p> <p>We suggest engaging with Edenfield to ascertain the specifics of their concerns. It may be that by:</p> <ul style="list-style-type: none"> • excluding certain employees; or • an adjustment of hours for casual employees; or • clarification of Edenfield's concerns, <p>that the issue can be resolved.</p>

Clause	Issue	Suggested Resolution
Clause 4(m), Business Contracts	Edenfield have advised that they want flexibility to choose which of the Business Contracts that take an assignment of. The risk with this approach is whether any contracts that Edenfield chose not to take on may have break costs.	We will review the contracts to confirm what if any break costs are possible. Anecdotally, Council do not believe there are any.
Clause 4(o), Assumption of liabilities	Edenfield indicate that they ' <i>will not assume any liabilities of the Seller relating to the Business or the Property</i> '. We are not clear on exactly what is meant by this. This exclusion of liability can not relate to any assumed contracts, including the Resident Agreements and the liability for the repayment of Bonds/RADs.	We will clarify this condition with Edenfield and ensure the Transaction Documents reflect what is required.
Clause 6, Exclusivity	Edenfield have requested an exclusivity period of 30 days to negotiate Transaction Documents.	Given that Edenfield are the only party to make a final offer we suggest this be accepted.
Clause 7.1, Costs	Edenfield have noted that each party will pay their own costs of negotiate, documentation and settlement.	We would clarify in a response that Edenfield would be responsible for any stamp duty payable.