

# CONFIDENTIAL

Note: Confidential Provisions released on 30/06/2020



REPORT FOR:	<b>Operations Committee</b>		
MEETING DATE:	13 February 2017		
REPORT FROM:	Director – Community Services		
REPORT TITLE:	<b>Proposal – Future Management of Council Owned Facilities</b>		
FILE NAME:	F10/622	RECORD NO:	AR17/4808

## COMMUNITY VISION & STRATEGIC PLAN OUTCOMES

### **1 We Thrive**

1.3 Develop partnerships to attract investors in business proposals and new developments that contribute to a diversified and robust economy.

### **4 We Care**

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

## **PURPOSE**

The purpose of this report is to provide Elected Members with information regarding an unsolicited proposal that has been received in relation to the operation and management of the Poinsettia Village.

## **RECOMMENDATION**

### **Operations Committee recommends Council:**

1. Approves the Chief Executive Officer, Director – Community Services, and Director - City and Cultural Services to commence negotiations with Orana to purchase Poinsettia Village outright, instead of progressing the original proposal
2. Supports a mutual non-disclosure agreement and exchange of information to be formalised by the relevant parties to enable negotiations to progress.
3. Notes that the 6 existing tenants have contractual rights to remain living at Poinsettia Village under existing terms of the agreement.

## **BACKGROUND**

In late December 2016, Orana approached Council to advise that the company was interested in a concept of creating a Lifestyle Support Village utilising Poinsettia Village as accommodation, with Orana providing support to those residing in the village.

Information regarding the operation of Poinsettia Village was provided to Elected Members in a report tabled at the Operations Committee meeting on 14<sup>th</sup> November 2016.

Poinsettia Village comprises of 14 units and is located on the corner of Pybus, Surrey and Ralkeith Streets. (Poinsettia Village – Appendix A Site Plan). This property is identified as Allotments 8, 9, 10,11,12,13,14 and 15 within Deposited Plan 738 as described in Certificate of Title Volume 5696, Folio 235 and the 'Schedule of Endorsements' on the Title pursuant to the Retirement Villages Act, 1987 requires that the land is used as a retirement village. This land has been excluded from the classification as Community Land.

Six units are currently occupied, leaving another eight vacant at this time. Council has not been advertising these vacant units for occupancy due to the fact that they are not suitable for elderly people with mobility issues. The Units have narrow doorways, steps for entry and have ramps that do not meet current building standards. Also the ensuite bathrooms are very small, and this is a major issue for any resident requiring assistance with daily showering or manoeuvring a walking frame etc.

All tenants have paid an entry contribution of \$4,000 upon entry to Poinsettia Village which is a requirement under the Retirement Villages Act. The fortnightly rental is based on 20% of the single protected rate of pension, currently \$72.50 per week.

Pursuant to Section 33 of the Retirement Villages Act 1987 the Certificate of Title relating to Poinsettia Village has been endorsed for retirement village. The 'retirement villages endorsement' on the Title would need to be removed to enable a sale of this property. Section 33(4) of the Act provides that, before the Registrar-General will cancel the endorsement, the Registrar-General must be '*satisfied that no part of the land is still occupied under the scheme*'. It is noted that the *Retirement Villages Bill 2016* has recently passed both Houses of Parliament, and is awaiting assent. Once assented to, this will become law and will replace the *Retirement Villages Act 1987*. The new mechanism for cancelling an endorsement is replicated, however with a slight difference in wording as follows: *The Register-General may cancel an endorsement made under this section if satisfied that the land is no longer used, or to be used, as a retirement village.*

Section 31 of the Act provides that a resident has a right to occupation which cannot be terminated except in certain circumstances. Rights of termination can be modified by residence contracts. The current residence contract provides '*that as a resident at a retirement village, you will have a right of occupation of a unit or hostel that will continue until your death unless it is terminated before then. It can be terminated by agreement between you and the administering authority. The administering authority may ask you to leave but if you do not want to go, your right of occupation can only be terminated if the administering authority convinces the Residential Tenancies Tribunal that you are mentally or physically incapable of remaining at the village.*

*If the retirement village fails financially, your right of occupation cannot be terminated except by a mortgage that was in existence at the date the Act came into effect – 30 June 1987'.*

## **DISCUSSION**

Under the proposal presented by Orana, the village remain under the ownership of Poinsettia Village and contracts Orana to operate the village with a modest return to the Council. The village would also be re-badged to *Orana Lifestyle Support Village*.

It is proposed that a mix of people living on the site will include people with varying levels of need, both young adults and older, and integrate a few people who are socio-economically disadvantaged but have no other supports. It is further proposed that two of the units be reserved to provide respite care (emergency and/or pre-planned) to adults and/or to provide an experience of independent living coupled with skill development to adults who are planning a transition to their own homes from their parental home.

If Council were keen for this proposal to proceed, discussions with all existing tenants would need to occur in the first instance. If support was obtained from all of the existing tenants, a further report would need to be provided to Council seeking a resolution supporting the removal of the retirement village endorsement. Council would then make an application to the Registrar-General which must be in a form determined by the Registrar-General; and must be endorsed with a certificate as required by Section 273(1) of the Real Property Act 1886; and must be accompanied by the appropriate fee under the Real Property (Fees) Regulations 2002. The current application fee for the cancellation of the endorsement is \$157.

The Lands Titles Office also require that such application be accompanied by a statutory declaration to the effect that no part of the land remains occupied under the retirement villages scheme. Such a declaration would be made by the Chief Executive Officer, or another officer authorised by the Council to do so

Once the endorsement was cancelled, further discussions may be able to be held with Orana in relation to the Lifestyle Support Village.

Whilst this proposal is clearly meeting an area of need within the Port Augusta community, the complexity with the proposal lies in two areas:

1. Council commitment to the existing tenants who have a tenancy agreement. All (not just the majority) existing tenants would need to be in agreement for this proposal to go ahead to enable the current retirement village endorsement to be removed from the Certificate of Title.
2. **Council would remain responsible for the property including ongoing maintenance and upgrades.**

It may be more prudent for Council to not tenant units as they become vacant. Once all units have been vacated, Council can then proceed with the removal of the retirement villages endorsement on the Title and then undertake an open market sale process. This could possibly result in a cash injection to Council whilst removing the ongoing liability of maintenance of Poinsettia Village.

There is a risk that the property may not sell on the open market once Council has a vacant property. Also as six units are still occupied it could take some time before they are vacated, to enable the removal of the retirement villages endorsement and then the sale of the property on the open market, however if Council's preference is to dispose of this property, then it would ultimately be in Council's best interest not to enter into an arrangement with Orana in line with their current proposal, as this would lock Council into an ongoing contractual arrangement, which it is felt would be very difficult to terminate.

Another option may be for Council to negotiate with Orana regarding the proposal to determine if Orana is open to outright purchase of Poinsettia Village subject to existing tenant arrangements being maintained and removal of the retirement villages endorsement. It is stated in Orana's proposal that under the NDIS it is mandatory that landlord responsibilities are not vested in the same service provider providing assistance with daily living and in home supports. This has been raised with an NDIS Senior Officer who is investigating as to whether this is correct.

The proposal presented by Orana will be actioned in line with the provisions of Council Unsolicited Proposals Policy 2.3.14 and results of negotiations between the Council Steering Committee and the proponent will be forwarded to Council for further consideration and direction.

## **CONFIDENTIALITY PROVISIONS**

The 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 commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information.

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 the circumstance because commercial position of the company could be compromised and negotiations could be negatively impacted, resulting in Council not being able to achieve a positive outcome for the benefit of the community. The disclosure could also result in the person who disclosed information to Council not being willing to negotiate with Council if the information is released at this time.

That having considered this Agenda Item – Proposal – Operation and Management of Council Facilities in confidence under Section 90(2) and (3)(d) of the *Local Government Act 1999*, it is recommended that Council pursuant to Section 91(7) of that Act orders that the report be retained in confidence for a period until negotiations have been terminated, finalised via entering into a contractual agreement, or consultation is required to be undertaken, and that this order be reviewed every 12 months, if the confidentiality period extends for longer than 12 months in duration.

## **RISK MANAGEMENT**

### **1: Financial/Budget**

The expenditure and revenue details relating to Poinsettia Village for 2014/2015, 2015/2016 and 2016/2017 are as follows:

Year	Expenditure	Revenue	Profit/Loss
2014/2015	\$44,577.25	\$27,412.00	-\$17,165.25
2015/2016	\$46,446.52	\$24,747.40	-\$21,699.12
2016/2017 (as at 6/10/16)	\$5589.01	\$6,249.60	+\$660.59

It should be noted that an amount of \$14,629.00 depreciation is included with the expenditure figures for the 14/15 and 15/16 financial years.

### **2: Legal/Policy**

Section 36 of the *Local Government Act 1999* provides that Council has the legal capacity of a natural person, and may enter into any kind of contract or arrangement.

The Retirement Villages Act 1987 sets out responsibilities of the Owner & Administering Authority in relation to tenancy.

Existing signed tenancy agreements set out the rights of the tenants.

### **3: Environment/Planning**

Not applicable.

**4: Community**

4.1 General

Consultation will be an important part of progressing this proposal, if Council approves proceeding after initial negotiations have taken place as to the options available for both parties and a report presented back to Council for consideration.

4.2 Aboriginal Community Consultation

Not applicable.

**Anne O'Reilly**  
**31/01/2017**





Proposal - Orana  
Lifestyle Support Village  
Port Augusta

December 2016





### **PORT AUGUSTA COUNCIL STRATEGIES**

In keeping with Port Augusta City Council's Ageing Strategy 2007-2012 and the Port Augusta Community Vision and Strategic Plan 2013-2017 the Council strives to strengthen existing partnerships and build new relationships between service providers (government, non-government and private) to facilitate appropriate care for people in their communities.

The key pillars of the ageing strategy are still at the forefront of the Council's objectives – affordable and appropriate housing; fostering social interactions and building connections; ensuring people have access to support to enable them to remain in their own homes and, when necessary, access to high quality affordable aged care accommodation and services.

The Strategic Plan "Outcomes and Strategies for a Caring Community" draw the needs of people with disabilities and the ageing population together in exploring future housing and service options – retirement villages and independent living units that are adaptable and affordable.

In early 2016 the Council decided to transfer ownership of two (2) of its nursing homes to an Approved Provider. Following a call for expressions of interest this process is now at the due diligence stage. The Council has since decided to also explore ownership transfer or the contracting of a third party to operate Poinsettia Village which currently offers independent living tenancies to the aged. The village is a registered nursing home. It is not fully occupied at present, hence the Council is open to proposals that will facilitate an integrated continuum of independent living and home care that ensures community social inclusion for a diverse cohort including people with disabilities, those who are ageing, or those who are socio-economically disadvantaged.

### **POINSETTIA VILLAGE**

Poinsettia Village has been owned and operated by the Port Augusta City Council since 1974 when the inaugural governance committee was disbanded. It consists of fourteen (14) units with communal garden areas. All units comprise a single bed room with an ensuite bathroom. They also feature a lounge and kitchen area. The Village is on the bus route and has a small convenience store in walking distance.

### **PROPOSAL – ORANA LIFESTYLE VILLAGE**

The Council recently advised the Chief Executive of Orana Incorporated that it is open to a proposal for Poinsettia Village from Orana.

Orana is a not-for-profit organisation that provides independent living support to people with disabilities ranging in ages from 18 to 70 years. Orana is a registered provider under the National Disability Insurance Scheme (NDIS) and is currently making an application to become an approved



provider under My Aged Care. Orana is reconfiguring to provide learning and lifestyle packages of support to people of all ages and to pro-actively support people through life transitions from school; to adult life experiences and learning; to healthy and active ageing. Orana has a culturally diverse workforce that is responsive to the needs of people who have linguistic, emotional and/or psychological needs. Orana strives to support people to live as independently as possible as they leave school, explore social, education and vocational options, move away from the parental home and begin to age. Orana advocates for and facilitates social inclusion and helps build the social networks to enable clients to participate as valuable members of their communities.

Orana would re-badge the village to *Orana Lifestyle Support Village*. It is proposed that the Council retains ownership of the asset and contracts Orana to operate the village with a modest but sustainable financial return to the Council. The rationale for this proposal is that under the NDIS it is mandatory that landlord responsibilities are not vested in the same service provider providing assistance with daily living and in home supports.

### CONCEPT OVERVIEW

Attachment 1 - *Orana Learning and Lifestyle Opportunities throughout Life* shows the continuum of care and menu of services on offer to Orana clients. It is intended that the Orana Lifestyle Support Village would be configured to deliver **lifestyle packages** of support to those residing in the village including:

- Assistance with daily living
- In home support including health support
- Passive overnight support (on call when needed)
- Community and social participation options
- Capacity building and skill development.

Each resident will pay rent and be responsible for his/her share of the utilities charges and garden maintenance. They will each be responsible for funding their own furniture and appliances. Each resident will have an *individualised life goals plan* regardless of age and if their NDIS or My Aged Care plan prescribes supports under the broader spectrum of Orana services or programs the resident will have ready access to them.

It is also proposed that two of the village units will be reserved to provide **respite care (emergency and/or pre-planned)** to adults and/or to provide an **experience of independent living coupled with skill development** to adults who are planning a transition to their own homes from their parental home.

It is proposed that the mix of people living on the site will ensure compatibility, include people with varying levels of need and integrate a few people who are socio-economically disadvantaged but have no other support needs. Depending on the capabilities of the residents the village environment could be utilised for gardening, watering, social gatherings, fitness and exercise etc. Other community members could be involved in coordinating and/or participating in these activities.



Orana is establishing independent Case Management and Community Housing programs that the residents could access in the future should their circumstances or needs change.

#### ALIGNMENT TO GOVERNMENT AND COUNCIL OBJECTIVES

Given the diversity that this proposal aims to achieve in supporting those in need in the Port Augusta communities it must align to several Council and government objectives. The following matrix highlights the alignment of the proposal to those most pertinent to the service objectives.

	Port Augusta Council	NDIS	Aged and Community Services <sup>1</sup>	Orana's Objectives for Village residents
Appropriate, adaptable and affordable housing options	√	√		√
Whole-of-life choices				√
Supported life transitions				√
Personal goals and outcome focused		√	√	√
Equity			√	√
Choice and control		√	√	√
Consumer directed		√	√	√
Flexible and scalable	√	√	√	√
Efficient	√		√	√
Certainty and sustainability	√	√	√	√
Transparent and simplified			√	√
Integrated	√		√	√
Value for money and affordability	√	√	√	√
Individualised and maximum independence		√		√
Capacity Building		√		√
Foster interactions and build connections	√	√		√
High quality aged care and disability services	√	√	√	√
Healthy and active ageing in place			√	√
Maximise social and economic participation		√		√

<sup>1</sup> NFP Principles for Aged Care Services Funding – Aged & Community Services Australia November 2016



### **ORANA'S VALUE-ADD**

Orana's aim is to provide people with disability the chance to live and work as part of their community as independently as possible. As people age Orana aims to tailor supports to meet a person's changing needs. Orana is also well placed to provide emergency or episodic respite care to enable parents and carers to take a break or to attend to other pressing family or personal matters. It is intended that Orana will also offer in home support to other community members in need drawing on the team of workers that will be developed in the course of managing the day-to-day operations at the village. Essentially it will become a service hub within the community.

The range of services offered can be adapted and shaped to meet individual needs. Orana also has specialist programs that can be accessed from time to time to meet a particular need. Orana has a diverse range of staff skills and expertise that can be utilised to deliver flexible and timely service responses as necessary. The mix of people residing on the site will warrant overnight support which would be available to all residents should they experience a health episode or other crisis.

Orana has diverse relationships with stakeholders in the Port Augusta region that have already added value to clients in the guise of broader social networks and opportunities. It is Orana's intention to continue to build on these relationships further and build new connections for the benefit of current and future clients.

### **RESOURCE IMPLICATIONS**

Orana will recruit staff specifically to meet the needs of the village residents. Oversight and day-to-day operations management will be provided locally with executive oversight from Netley.

Orana will work with referring parties (Disability SA; NDIA; and the Department of Health) to identify people who should be prioritised to access the village. Orana will work with the relevant Council staff to collaborate in the communications with any existing residents.

Orana will facilitate any maintenance or refurbishment requirements utilising its supported employment work teams either from its local business operations or from Netley depending on the nature of the work required. The funding of the maintenance or refurbishment program will be negotiated and agreed with the Council as the owner of the asset.

A service agreement will be executed between the Council and Orana to articulate the relevant roles and responsibilities inherent to the arrangement including a modest financial return to the Council.

### **NEXT STEPS**

Pending Council approval of this concept proposal the following will be developed and submitted to the Council:

- a detailed report
- a draft service agreement.

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Attachment 1



**LEARNING AND LIFESTYLE OPPORTUNITIES THROUGHOUT LIFE**

