

CONFIDENTIAL REPORT



PortAugusta
CITY COUNCIL

REPORT FOR:	Strategic Management Committee		
MEETING DATE:	16 th March 2015		
REPORT FROM:	Director, Community Services		
REPORT TITLE:	Information Update No 2 - Expressions of Interest Aged Accommodation		
FILE NAME:	F10/2812	RECORD NO:	AR15/7887

COMMUNITY VISION & STRATEGIC PLAN OBJECTIVE/S
1.3 We use and manage our financial and physical resources in the best interests of our community, now and for the future.
4.2 Facilitate services and develop partnerships to enable appropriate care for people in our communities.

PURPOSE

To provide Elected Members with information regarding progress in the call for Expressions of Interest process for the development and management of aged accommodation in Port Augusta.

To seek Council endorsement to proceed with full negotiations regarding the transfer of Nerrilda Nursing Home and AM Ramsay Village to Little Company of Mary Healthcare Ltd (Calvary) with a further report provided to Council following these negotiations for consideration of Council.

RECOMMENDATION

Strategic Management Committee recommends Council endorses the Chief Executive Officer, Director Corporate Services, Director City & Cultural Services and Director Community Services proceeding with full negotiations regarding the transfer of Nerrilda Nursing Home and AM Ramsay Village to Little Company of Mary Healthcare Ltd (Calvary) with a further report provided to Council following these negotiations.

BACKGROUND

At the meeting held 22nd July 2013, Council resolved to call for Expressions of Interest for the development and management of Aged Accommodation in Port Augusta.

Expressions of interest closed Friday 23rd August 2013; five responses were received.

At the meeting held 16th December 2013, Council resolved that the City Manager, Director Community Services, Director Corporate Services and Care Managers of Nerrilda Nursing Home and AM Ramsay Village entering further negotiations with Little Company of Mary Health Care (Calvary), Southern Cross Care & Anglicare SA with a further report to be provided to Council in due course. A copy of this report and resolution is attached for members' information.

Both Southern Cross Care and Anglicare SA withdrew from the process in December 2014/January 2015.

A further information report was tabled at Council in September 2014 which included information on the formal valuation undertaken by Nelson Partners. The valuations were based on a "going concern" value "as is" for both sites based on fair market value taking into account age and condition of the buildings, trading details, and market evidence.

AM Ramsay Village is valued at \$2,820,000. Nerrilda Nursing Home is valued at \$2,500,000. However, it is noted that a discount in the order of 20 – 30% of the values assessed is not unrealistic.

DISCUSSION

Recent discussions with Calvary have been vigorous with Calvary having recognised the need to resource up this project to ensure it moves ahead in a timely fashion. To that end Calvary have appointed Greg Adey of G88 Consulting based in Adelaide to finalise investigations into the properties, including resolution of matters raised by Calvary in previous correspondence and work towards negotiating final approvals for both Calvary and Council. Greg previously worked at executive level with both ACH and Southern Cross Care (SA/NT).

Calvary has also engaged the services of a South Australian based development manager who will be working up a model for housing / independent living options for the surplus lands identified by Council (Homestead Park site)

Furthermore, Calvary has introduced a new role within their organisation, with a new National Operations Manager who will have direct responsibility for bringing new facilities up to speed as part of the Calvary network.

At a teleconference held on 2nd March 2015, National Director Retirement Communities, Paul Bradley advised that following a briefing to Calvary's Chief Executive Officer and Chief Financial Officer, Paul had also provided a short form report to Calvary's Board on 25th February 2015 to ensure their understanding of the proposal and will be seeking a Board resolution to proceed at the Board meeting scheduled for 25th March 2015.

A 'Letter of Intent' was received on Tuesday 10th March 2015. Calvary – Little Company of Mary Health Care Limited formally advised their intentions and made a non-binding offer to purchase the 'Nerrilda' and 'A.M. Ramsay Village' residential aged care facilities on the following terms and conditions:

1. a net purchase price of no more than Three Million, Nine Hundred and Ninety Thousand Dollars (\$3.99M), subject to adjustments for (i) outstanding employee entitlements and liabilities, (ii) existing bond and Residential Accommodation Deposits, (iii) any capital grants or loans which become repayable and (iv) any issues identified during the detailed due diligence process. All figures stated within this letter are GST exclusive.
2. an offer of employment to all employees
3. no disadvantage to existing residents
4. continued access to low income, low asset residents
5. an unencumbered transfer of all assets at settlement (as identified in the Nelson Partner valuation dated June 2014).
6. completion of a detailed due diligence process to the satisfaction of Calvary
7. approval of the transfer of the facilities and the licenses by the Department of Social Services
8. approval of the Crown to continue the lease of the 'Nerrilda' land
9. a deposit of Five Hundred Thousand Dollars (\$ 0.5 M) would be paid by Calvary on signing a binding sale agreement

10. ongoing discussions with Corporation of the City of Port Augusta to develop a master plan for the potential development of housing options for older people, including formulating an 'in principle' agreement related to relevant land transfers to support those housing options
11. approval of the transaction by the LCMHC Board.

Calvary's purchase price has been calculated based on the Nelson valuation dated June 2014 as a 'going concern' net of bonds, less a 25% discount due to current & previous trading performance (as per Nelson advice)

Calvary's offer is also made subject to:

- **confidentiality and non-disclosure**
- Calvary being granted exclusive rights until 30 June 2015 to negotiate with Corporation of the City of Port Augusta to purchase the residential aged care facilities, allowing Calvary time to undertake full due diligence and for a sale contract to be agreed.

Calvary have made a commitment to work with Corporation of the City of Port Augusta to promptly move through the required stages and realistic timeframes so that Calvary's formal due diligence can be completed and a final decision be made.

Calvary see this acquisition as a genuine opportunity to align with the Council to develop integrated high quality aged services solutions for the people of Port Augusta.

To date Council has described the following objectives within the prospectus document:

In any transfer of ownership or management Council will seek to:

- Retain existing service quality
- Ensure transmission of employment for all staff currently employed at Nerrilda Nursing Home and AM Ramsay Village.
- Ensure existing Aged Care Facility residents will not be disadvantaged
- Maintain access for low income residents
- Ensure a foundation that supports growth in bed numbers in the longer term i.e. more than 7 years from now
- Cover existing financial obligations including Council loans and grant repayments
- Leverage additional accommodation such as independent living units, semi-supported accommodation models, residential aged care beds and programs that provide support to older people to remain in their own homes
- Ensure the provider has a demonstrated commitment and proven track record in the delivery of quality care in the Residential Aged Care sector.

It must be noted that the Department for Social Services has to provide approval for a transfer of allocated bed places between Approved Providers. An application must be made to Department of Social Services for this to occur:

- no later than 60 days before the transfer day if the transferee is an approved provider (even if this approval is not yet in force), or
- no later than 90 days before the proposed transfer day, if the transferee is not an approved provider.

This approval is based on a number of factors, including:

- whether the transfer would meet the objectives of the allocation planning processes (see section 12-2, Aged Care Act),

- if the places were allocated to people with special needs, whether their needs would continue to be met after the transfer,
- if the places were allocated to provide a particular type of aged care (residential care, home care, flexible care), whether that type of aged care could continue to be provided after the transfer,
- the suitability of the transferee to provide the type of aged care to which the places relate,
- if, after the transfer, the places would relate to a different type of aged care service:
- the financial viability of the service from which the places were transferred from,
- the financial viability of the service to which the places are being transferred,
- the suitability of the premises to provide care,
- the standard of care, accommodation, and other services provided or proposed to be provided, by that aged care service, and
- whether the proposals set out in the application for ensuring the care needs are appropriately met, are satisfactory,

CONFIDENTIALITY PROVISIONS

Organisations have requested 'Commercial-in-Confidence' in relation to their responses and therefore Confidentiality Provisions are appropriate in this instance.

It is considered that pursuant to Section 90(3)(b) 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.

It is recommended that Council maintains the confidential provisions as outlined above until **31 July 2015, or until determination is made by Council in relation to this matter.**

RISK MANAGEMENT

1: Financial/Budget

The financial implications of the future options of Council's Aged Care Facilities will be demonstrated as part of a final presentation to Council once negotiations have been completed.

The following matters need to be considered during negotiations:

Debenture 220 (Nerrilda Nursing Home building loan) balance is currently \$749,150.61 with a further instalment due in June 2015. This 'credit foncier' loan expires in 2021.

Debenture 222 (AM Ramsay Village building loan) balance is currently \$419,155 with a further instalment due in July 2015. This 'credit foncier' loan expires in 2017.

Capital Grants were received from the Department of Health and Ageing of \$620,000 for Nerrilda Nursing Home and \$1,370,000 for AM Ramsay Village. However, a novation of the grant agreements or a cessation of the agreement with no financial penalty will be sought. Capital Grant Recovery Guidelines state:

'For capital grants of \$500,001 or more, unless otherwise stated in the grant agreement: The period in which the Commonwealth will retain an interest will be 10 years plus an additional 1 year for every \$100,000 of grant or part thereof greater than \$500,000; and The Commonwealth will seek repayment for the full amount of grant if disposal takes places at any time prior to the expiration of half the period of the Commonwealth interest. After this time, the amount repayable will reduce in equal proportions for each completed year to be \$0 at the end of the period of Commonwealth interest. The starting date for the determination of the period over which the Commonwealth will retain an interest will be the completion date of the project.'

Therefore the Commonwealth's interest in Nerrilda Nursing Home expires after 12 years and interest in AM Ramsay Village expires after 19 years. Building work was completed in 2007 at Nerrilda Nursing Home and 2008 at AM Ramsay Village. Repayment of the loan could equate to \$496,000 for Nerrilda Nursing Home and the full \$1,370,000 for AM Ramsay Village.

"Each case is assessed on its merits but the presumption is that the Commonwealth should seek repayment of its interest unless a strong argument to the contrary can be made in writing. In light of the fact that a decision not to seek repayment is just as much a decision about the allocation of Commonwealth resources as is a decision to seek repayment. The Commonwealth may seek repayment of all or part of the grant, having regard to the particular circumstances of the case.

In considering the merits of any case, the following questions should be addressed:

Is the facility being sold on the commercial market?

If the answer is yes the Commonwealth should seek repayment of the grant.

Is the facility being transferred in a way that results in financial/asset gain to the grant recipient?

If the answer is yes the Commonwealth should seek repayment of the grant.

Is there any convincing argument that to seek to repayment of the grant would frustrate the achievement of an identified Commonwealth aged care policy objective (for example, an argument that repayment of the grant would jeopardise the ongoing viability of the grantee's aged care services)?

If the answer is yes the policy objective should be identified and how seeking repayment of the grant would frustrate the achievement of the identified aged care policy objective should be addressed.

If an existing provider proposes to rebuild a service on the same site and to continue to operate that service, has the provider demonstrated a need to rebuild because it would be uneconomic or not practical to upgrade the existing facility, especially where such requirements could not have been foreseen at the time of the most recent Commonwealth capital grant?

If the answer is yes, the Commonwealth may choose not to seek repayment of previous grants, taking into account all other circumstances of the case.

Is the financial situation of the recipient such that there is little likelihood that an attempt to seek repayment of funds would be successful?

If the answer is yes the argument should be fully documented with supporting evidence. The legal position of the recipient may also need to be considered."

Leave liabilities as at 30th June 2014 were as follows:

Nerrilda	\$151,452 (LSL)	\$155,359 (AL)
Ramsay	\$132,583 (LSL)	\$109,265 (AL)

It can be usual for sick leave entitlements of 75% of the current liability to be transferred in this type of negotiation.

Employee Relations advice has been provided that if an employee is offered a position within the transferring business prior to the transmission of the business, that redundancy payments are not applicable as per "Transmission of Business" clauses in relevant awards.

'Refundable Accommodation Deposits' and 'Accommodation Bonds' of residents at Nerrilda Nursing Home and AM Ramsay Village total \$2,998,242 as at 28th February 2015. These funds are currently held in a separate account with the Local Government Finance Authority and must be paid to the new Approved Provider on the date of transmission of approved bed places.

2: Legal

With the increased level of care being provided in Residential Aged Care Facilities comes increased clinical risk with the potential for legal action to be taken against the facilities.

Providers specialising in health and aged care have purpose designed systems in place to support facilities to minimise risk in relation to clinical care and the shifting paradigm to sub-acute care within the Aged Care sector.

Legal opinion will be sought in relation to draft agreements that may occur as a result of the negotiation process.

A Heads of Agreement will also be developed in relation to the land at Homestead Park

3: Environment

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.

ANNE O'REILLY

10/03/2015



PortAugusta

CITY COUNCIL

CONFIDENTIAL RESOLUTION

PORT AUGUSTA CITY COUNCIL MEETING 16/12/2013

AR13/34177

**CONFIDENTIAL
ORDER –
EXPRESSIONS OF
INTEREST AGED
ACCOMMODATION
RESULTS**
AR13/32623
F10/2812

Crs Brown/Solomon that **Council:**

1. Orders (pursuant to the provisions of Section 90(2) of the Local Government Act 1999), that the public, with the exception of the following Council Staff – Acting City Manager Mr M Dunemann, Director City & Cultural Services Mrs L Heron & Executive Assistant Ms M Jenkins, be excluded from attendance at the meeting to discuss report AR13/31603 submitted by the Director Community Services, concerning “Expressions of Interest Aged Accommodation Results”.
2. Is satisfied that, pursuant to Section 90(3)(b) 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.
3. Is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council’s commercial position may severely prejudice Council’s ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.
4. That having considered report AR13/31603 in confidence under Section 90(2) & 3(b) of the Local Government Act 1999, the Council, pursuant to Section 91(7) of the Act orders that the report, discussions and minutes concerning this agenda item, be retained in confidence until 31 July 2014 or until a determination is made by Council in relation to this matter, and that this order be reviewed every 12 months (if the confidentiality period is longer than 12 months in duration).

CARRIED

**CONFIDENTIAL
REPORT –
EXPRESSIONS OF
INTEREST AGED
ACCOMMODATION
RESULTS**
AR13/31603
F10/2812

Crs Brown/Solomon that **Council** endorses the City Manager, Director Community Services, Director Corporate Services and Care Managers of Nerrilda Nursing Home and AM Ramsay Village entering further negotiations with Little Company of Mary Health Care (Calvary), Southern Cross Care & Anglicare SA with a further report to be provided to Council in due course.

CARRIED

CONFIDENTIAL REPORT

REPORT FOR:	Operations Committee		
MEETING DATE:	9 December 2013		
REPORT FROM:	Director, Community Services		
REPORT TITLE:	Expressions of Interest Aged Accommodation Results		
FILE NAME:	F10/2812	RECORD NO:	AR13/31603

COMMUNITY VISION & STRATEGIC PLAN OBJECTIVE/S
<p>1.3 We use and manage our financial and physical resources in the best interests of our community, now and for the future.</p> <p>4.2 Facilitate services and develop partnerships to enable appropriate care for people in our communities.</p>

PURPOSE

To provide Elected Members with information regarding responses to the call for Expressions of Interest in the development and management of aged accommodation in Port Augusta and resolve to enter into further negotiations with Little Company of Mary Health Care (Calvary) and Southern Cross Care.

RECOMMENDATION

Operations Committee recommends Council:

1. Endorses the City Manager, Director Community Services, Director Corporate Services and Care Managers of Nerrilda Nursing Home and AM Ramsay Village entering further negotiations with Little Company of Mary Health Care (Calvary) and Southern Cross Care with a further report to be provided to Council in due course.

BACKGROUND

On 22nd July 2013, Council resolved to call for Expressions of Interest for the development and management of Aged Accommodation in Port Augusta.

On 9th September 2013, an information report was provided to Council advising that five responses to the Expression of Interest had been received and further investigation would occur.

DISCUSSION

As per the information report provided to Council on 9th September 2013, five responses were received to the call for Expressions of Interest for the development and management of aged accommodation in Port Augusta.

All five responses were from reputable aged care organisations with four being not-for-profit organisations and one being a private operator.

One organisation was solely interested in the development of aged accommodation, and one organisation was only interested in the management of Council's aged care facilities.

Meetings were arranged with the other three organisations to determine their level of interest. It is unfortunate that these meetings took longer than originally anticipated to coordinate.

A meeting was held with five representatives of Anglicare SA on 4th November 2013. This meeting was quite positive with lively discussion taking place. However, following additional information being supplied to the organisation, a letter was received by Council on 21st November 2013 advising that after considerable discussion and consideration, AnglicareSA has decided to withdraw their Expression of Interest. I have responded to this letter expressing Council's disappointment and asking them to reconsider their position.

A meeting with David Bergman, National Chief Financial Officer & Company Secretary and Paul Bradley, National Director Aged Care & Retirement Services, Little Company of Mary Health Care (Calvary) was held on 6th November 2013. This discussion explored Calvary's renewed interest in our facilities given that Council had previously held approximately two years of discussion that did not progress. Calvary has a strong health background with opportunities such as telehealth, a big focus on end of life care and is realistic about the challenge of financial sustainability. Discussion also took place regarding feasibility of using village models through the Public Housing Authority to reduce build costs. This may link with recent news of Housing SA handing over housing to Community Housing Providers. Calvary is also holding initial discussions regarding management of two other facilities in regional South Australia.

A meeting with Southern Cross Care originally scheduled for 28th November 2013 has now been rescheduled by that organisation for 6th December 2013.

It is important to keep this Expression of Interest progressing as staff of the facilities and the community in general is awaiting the outcome of this process. There are also major changes scheduled to commence from 1st July 2014 in relation to aged care for which Council needs to position itself to respond to if it is to remain Approved Provider of Residential Aged Care in Port Augusta.

Given the delay in meeting with the organisations and the need to keep this process moving to get a result for the Community, I am requesting endorsement by Council for key staff to enter into further negotiations with the two remaining parties pending the results of the meeting with Southern Cross Care on 6th December 2013.

A further report on the progress of these negotiations will be provided to Council in the first quarter of New Year.

CONFIDENTIALITY PROVISIONS

Organisations have requested 'Commercial-in-Confidence' in relation to their responses and therefore Confidentiality Provisions are appropriate in this instance.

It is considered that pursuant to Section 90(3)(b) 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.

It is recommended that Council maintains the confidential provisions as outlined above until **31 July 2014, or until determination is made by Council in relation to this matter.**

RISK MANAGEMENT

1: Financial/Budget

The financial implications of the future options of Council's Aged Care Facilities will be demonstrated as part of a final presentation to Council once negotiations have been completed.

2: Legal

With the increased level of care being provided in Residential Aged Care Facilities comes increased clinical risk with the potential for legal action to be taken against the facilities. Providers specialising in health and aged care have purpose designed systems in place to support facilities to minimise risk in relation to clinical care and the shifting paradigm to sub-acute care within the Aged Care sector.

Legal opinion will be sought in the development of any draft agreements that may occur as a result of the negotiation process.

3: Environment

n/a

4: Community4.1 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.

4.2 OPAL Program

n/a

Anne O'Reilly
25/11/2013