

Minutes

AGED CARE ASSET DIVESTMENT COMMITTEE

15 December 2020

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MINUTES

MINUTES of the meeting of the Aged Care Asset Divestment Committee which was held in the Committee Room, City of Bayswater Civic Centre, 61 Broun Avenue, Morley on Tuesday, 15 December 2020.

Committee Recommendations to Council are subject to adoption, or otherwise, at the following Ordinary Meeting of Council, as recorded in Minutes of that Council Meeting.

1. OFFICIAL OPENING

The Chairperson, Cr Sally Palmer, declared the meeting open at 5:00pm.

2. ACKNOWLEDGEMENT OF COUNTRY

In accordance with the City of Bayswater's Reflect Reconciliation Action Plan November 2019-November 2020, the Presiding Member will deliver the Acknowledgement of Country.

Noongar Language

Ngalla City of Bayswater kaatanginy baalapa Noongar Boodja baaranginy, Whadjuk moort Noongar moort, boordiar's koora koora, boordiar's ye yai ba boordiar's boordawyn wah.

English Language Interpretation

We acknowledge the Traditional Custodians of the Land, the Wadjuk people of the Noongar Nation, and pay our respects to Elders past, present and emerging.

The Chairperson, Cr Sally Palmer, acknowledged the Traditional Custodians of the land, the Whadjuk people of the Noongar nation, and paid respects to Elders past, present and emerging.

3. ATTENDANCE

Members

Cr Sally Palmer
Cr Georgia Johnson

Chairperson

Officers

Mr Andrew Brien
Mr Des Abel
Mr Kelley Ambrose
Ms Carol Newport

Chief Executive Officer
Acting Director Corporate and Strategy
Manager Special Projects
PA/Director Corporate and Strategy

Observers

Nil.

3.1 Apologies

Cr Dan Bull, Mayor

3.2 Approved Leave of Absence

Nil.

4. DISCLOSURE OF INTEREST SUMMARY

Nil.

5. DELEGATED AUTHORITY BY COUNCIL

There are no items appearing in these minutes for which the Aged Care Asset Divestment Committee had been granted delegated authority by Council in accordance with section 5.23(1)(b) of the *Local Government Act 1995*; this meeting was closed to the Public.

6. TERMS OF REFERENCE

TERMS OF REFERENCE Aged Care Asset Divestment Committee	
Purpose:	To review and monitor all actions in relation to the divestment of Aged Care Assets as outlined in the proposed confidential Memorandum of Understanding and to make recommendations to Council on any actions required to progress the divestment of aged care assets.
Membership:	<p>Membership of the Committee comprises :</p> <p>3 x City of Bayswater representatives; and</p> <p>Chief Executive Officer; and</p> <p>Director Corporate and Strategy</p> <p>In accordance with section 5.11A of the <i>Local Government Act 1995</i>, all other Councillors are appointed as Deputy Members of the Aged Care Governance Committee for the term 31 October 2017 to 12 October 2019 in the following order:</p> <p>If a Member is unable to attend a meeting, the order of appointment of the Deputy at that meeting will be based on:</p> <p>i) Councillor of the same Ward as the Member of the Committee; and</p> <p>ii) Length of service</p>
Meetings:	<p>Committee meetings are to be in accordance with the City of Bayswater Standing Orders Local law.</p> <p>The Chairperson is responsible for the proper conduct of the Committee.</p> <p>The Committee has no delegated power or duty to implement its recommendations without approval of Council.</p>
Meeting Frequency:	Monthly or as required.
Meeting Date and Time:	When suitable.
Location:	City of Bayswater Civic Centre.
Liaison Officer:	Director Corporate and Strategy or nominated officer.

7. CONFIRMATION OF MINUTES

COMMITTEE RESOLUTION

The Minutes of the Aged Care Asset Divestment Committee meeting held on Tuesday, 27 October 2020 which have been distributed, be confirmed as a true and correct record.

CR GIORGIA JOHNSON MOVED, CR SALLY PALMER SECONDED

CARRIED UNANIMOUSLY: 2/0

8. REPORTS

8.1 Update on the Divestment of the City's Aged Care Assets

Responsible Branch:	Strategic Projects	
Responsible Directorate:	Corporate and Strategy	
Authority/Discretion:	<input type="checkbox"/> Advocacy <input checked="" type="checkbox"/> Executive/Strategic <input type="checkbox"/> Legislative	<input type="checkbox"/> Review <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Information Purposes
Voting Requirement:	Simple Majority Required	
Attachments:	Confidential Attachment 1. Updated Aged Care Divestment timelines	
Refer:	Item 3.2: OCM 26/03/2019 Item 14.1.1: OCM 24/03/2020 Item 14.1.1: OCM 24/11/2020	

Confidential Attachments - in accordance with Section 5.23(2) (e) (iii) of the *Local Government Act 1995* – information about the business, professional, commercial or financial affairs of a person.

SUMMARY

The Committee has been previously advised that direct negotiations with Juniper for acquisition of the City's aged care sites did not achieve the required outcome. At its meeting of 24 March 2020, Council approved a recommendation to proceed with an open market expression of interest (EOI) process.

The City engaged specialist aged care consultants, Ansell Strategic, to advise on the EOI process, including developing an Information Memorandum to provide to the market.

An extensive list of information was requested by Ansell Strategic on the assets, financials and operational aspects of the aged care sites for the Information Memorandum, and the City has required Juniper to provide much of that information. Due to delays receiving that, and the tight timeframe for the divestment process, an alternative approach was put to the last meeting of the Committee to enter into an interim management agreement for the aged care sites for a period of up to three years from the expiry of the current management.

Council adopted that recommendation at its Ordinary Meeting of 24 November 2020.

Ansell Strategic has provided an updated project timeline (**Confidential Attachment 1**) which is now provided to the Committee/Council for information.

COMMITTEE/OFFICER'S RECOMMENDATION TO COUNCIL

That Council notes the update on the divestment of the City's aged care assets, as contained in this report.

CR GIORGIA JOHNSON MOVED, CR SALLY PALMER SECONDED

CARRIED UNANIMOUSLY: 2/0

BACKGROUND

Council resolved to divest its remaining aged care sites (other than Mertome Gardens) at its meeting of 26 March 2019 by direct negotiation with Juniper, the current managing organisation. The City has not been able to reach agreement with Juniper on the valuation of the sites as going concerns and, in view of that, the Committee endorsed the Officer's recommendation at its meeting of 25 February 2020 to proceed with an open market expression of interest (EOI) followed by a select

tender process to identify a suitable buyer for the Salisbury, Noranda, Carramar and City of Bayswater Hostel aged care sites, and that recommendation was adopted by Council at its Ordinary Meeting of 24 March 2020.

Since then, the City has been working with its specialist aged care consultants, Ansell Strategic, to develop an Information Memorandum for the EOI process based on the land dispositions requirements under s3.58 of the *Local Government Act 1995* (Act).

An extensive list of information was required to inform the market of the current operational requirements, and delays in obtaining that information have reduced the available time to negotiate binding offers for the sites.

At its meeting of 27 October 2020, the Committee endorsed an alternative recommendation from Ansell Strategic to seek an interim management agreement for the sites from 1 July 2021 for a period of up to three years, with provision for the managing organisation to negotiate directly during that period for divestment of the sites.

The Committee was advised that such an interim agreement would provide additional time for negotiating with the State Government which holds the land titles for two of the sites (City of Bayswater Hostel and the Salisbury Retreat retirement village).

The Committee was also advised that an interim management agreement would be a relatively simpler process due to the lower commercial risk to the incoming party, and would also allow for the aged care sector to re-set after the COVID-19 pandemic has been resolved in the future.

Some risks were identified, such as the uncertainty of future annual management fees and other costs, and the logistical issues of transitioning staff and programs for a relatively short period.

EXTERNAL CONSULTATION

External consultants, Colliers International Healthcare, were engaged to carry out valuations of the aged care sites in late 2019, and the City has been working with Ansell Strategic on development of the Information Memorandum for the market process. The City's legal advisors will assist with the formal terms of the tender and the final management agreement.

OFFICER'S COMMENTS

Section 3.58 of the Act provides for disposal of land and property including by direct negotiation. That process includes public notice and a current market valuation, and would have applied to the original intention to divest the sites by direct negotiation.

The alternative approach of calling tenders for an interim management agreement would be subject to s3.57 of the Act, which covers tenders for goods and services and the detailed requirements are covered under the *Local Government (Functions and General) Regulations 1996* (the Regulations). Essentially, the City would be procuring the management services for the sites.

Any separate negotiation regarding divestment of the sites that may occur at a later date would be subject to section 3.58.

The work already completed by Ansell Strategic for the Information Memorandum for the EOI is being adapted to suit the tender process requirements, and the tender will be issued to the market as per the updated project timeline.

The regulations require pre-determined criteria for assessing tender submissions but are not specific on the level of detail to which the criteria must be established.

It is established practice to attribute percentage weightings to each criterion, and Ansell has proposed the following criteria and weightings:

Criterion	Detailed assessment requirements	Suggested weighting (%)
Management and Operations	<ul style="list-style-type: none"> Proposed pricing and management structure over a three-year period. Proposed transition strategy and approach. Arrangements for entitlements/provisions to retain staff and carry forward existing EBA's and awards. 	30%
Risk	<ul style="list-style-type: none"> Any conditions/requirements associated with the proposed management and acquisition of the City's aged care assets. Acceptance of requirements/conditions and the City's objectives outlined in the tender documents. Approvals required by the Boards/Committees of the organisation submitting the tender offer. 	35%
Reputation and Experience	<ul style="list-style-type: none"> Previous experience, relationship history and reputation in externally managing residential aged care facilities/retirement villages. Demonstrated intention to purchase the City's aged care assets on a commercial basis. Financial capacity to acquire the City's aged care assets. 	35%

The project timeline includes the communication to Juniper and to the residents at each of the City's sites. Juniper will be formally advised in December 2020 that the City is seeking tenders for an interim management agreement, which will provide six months' notice before the expiry of the management agreement.

Each resident will be written to individually outlining the City's intentions, and regular updates will be provided to residents as the tender progresses. A recommendation report will be provided to the Committee/Council as soon as the City has a preferred party.

LEGISLATIVE COMPLIANCE

The prevailing legislation is the *Aged Care Act 1997*. The Aged Care Quality and Safety Commission (Commission) commenced on 1 January 2019 with a range of functions specified in the *Aged Care Quality and Safety Commission Act 2018*. On 1 July 2019, the eight Aged Care Quality Standards came into effect and apply to the City's two residential care facilities. The implications of these standards are that the City must ensure that there is a management agreement in place with a reputable provider.

The tendering requirements are set out in s3.57 of the *Local Government Act 1995* and r. 11A – 24AJ of the *Local Government (Functions and General) Regulations 1996*.

OPTIONS

In accordance with the City's Risk Management Framework, the following option has been assessed against the City's adopted risk tolerance. Comments are provided against each of the risk categories.

Option 1	That Council notes the update on the divestment of the City's aged care assets, as contained in this report.	
Risk Category	Adopted Risk Appetite	Risk Assessment Outcome
Strategic Direction	Moderate	Low
Reputation	Low	Low
Governance	Low	Low
Community and Stakeholder	Moderate	Low
Financial Management	Low	Low
Environmental Responsibility	Low	Low
Service Delivery	Low	Low
Organisational Health and Safety	Low	Low
Conclusion	<p>The update on the divestment of the City's aged care assets is provided to Council for information. The tender for an interim management agreement will be issued to the market shortly and the City's legal advisors will assist as required with the formal terms of the tender and the resultant agreement.</p> <p>Juniper will be formally advised of the City's tender intentions prior to the tender being advertised, and that will serve as six months' notice under the current management agreement. Residents at each site will be individually notified and will be provided with regular updates.</p> <p>The low risk assessment reflects the noting of the update on the divestment of the aged care assets.</p>	

FINANCIAL IMPLICATIONS

\$151,624 has been carried forward from aged care operating for funding the divestment process, including any associated consultancy work and officer salaries.

The financial implications of an interim management agreement are that there could potentially be a higher management fee than the City currently pays Juniper (\$254,000) if another provider is selected.

In respect to the land title issues, it is possible that the State Government may only agree to transfer to the City at current market value, and that would have to be funded from reserves. However, that would be recovered through the sale process.

STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2017-2027 (as amended), the following applies:

Theme: Leadership and Governance
 Aspiration: Open, accountable and responsive service
 Outcome L1: Accountable and good governance

Council has resolved to divest the City's aged care sites.

The management agreement with Juniper expires on 30 June 2021, and a timely outcome on divestment or ongoing management of the aged care sites is critical to the welfare of the residents at the City's two residential care sites, which must be managed in accordance with the requirements of the national Aged Care Quality Standards. The City could potentially manage the day-to-day issues at the retirement villages that are subject to separate legislation, although that would require appropriate planning and resourcing.

CONCLUSION

While the intention since March 2019 has been to divest the City's aged care sites through direct negotiation with Juniper, that has not achieved the desired outcome for the City.

Development of an open market EOI has been challenged by a lack of operational information and, in light of the impending expiry of the management agreement with Juniper, Ansell Strategic has recommended that the City pursues an interim management agreement for up to three years which will be an opportunity to develop terms which allow for greater access by the City to the operational information and will also provide for any future opportunities for negotiation with the managing organisation with a view to divestment of the sites.

A tender process is required and the tender documents will be provided to the market shortly.

The City recognises that careful and considered communication with the residents at each site will be key to minimising any sense of uncertainty during the tender process. Residents will be advised by individual letter of the City's intentions and will be provided with regular updates as the tender process develops. Six months' formal notice to Juniper will allow for transition planning in the interim.

Further updates will be provided to the Committee/Council in early 2021.

9. PREVIOUS MATTERS DEALT WITH NOT ON THE MINUTES

Reconciliation of matters arising from past meetings:

Nil.

10. GENERAL BUSINESS

Nil.

11. CONFIDENTIAL ITEMS

Nil.

12. NEXT MEETING

The next meeting of the Aged Care Asset Divestment Committee will take place in the Committee Room on a date and at a time to be determined.

13. CLOSURE

There being no further business to discuss, the Chairperson, Cr Sally Palmer, declared the meeting closed at 5:15pm.