



Notice of Meeting Preston Village Project Management Team

TO:

Cr Crowley, Cr Dawson,
I Kemp and W Betti

To be held on

Tuesday, 8 April 2014

Commencing at 5.00pm

In Council Chambers

Cnr Bentley and Collins Streets, Donnybrook WA 6239

A handwritten signature in blue ink, appearing to read "J R Attwood".

J R ATTWOOD
Chief Executive Officer

24 March 2014

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PRESTON VILLAGE PROJECT MANAGEMENT TEAM AGENDA

8 April 2014

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SHIRE OF DONNYBROOK-BALINGUP

PRESTON VILLAGE PROJECT MANAGEMENT TEAM MEETING AGENDA

To be held at the Council Chambers on Tuesday, 8 April 2014 at 5.00pm

MEMBERS PRESENT

COUNCILLORS

Cr Dawson
Cr Crowley

SHIRE OFFICERS

John Attwood – CEO

COMMUNITY

I Kemp
W Betti

PUBLIC GALLERY

APOLOGIES

1 DECLARATION OF FINANCIAL INTEREST

Division 6: Sub-Division 1 of the *Local Government Act 1995*. Care should be taken by all Committee members to ensure that a financial interest is declared and that they refrain from voting on any matter which is considered may come within the ambit of the Act.

2 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

2.1 Preston Village Project Management Team Meeting – 4 June 2013

Moved:

Seconded:

That the Minutes of the Preston Village Project Management Team meeting held on 19 November 2013 be confirmed as a true and correct record.

3 REPORTS OF OFFICERS

3.1 Chief Executive Officer

3.1.1	SUBJECT:	PRESTON RETIREMENT VILLAGE
	Location:	152 Sharp Street, Donnybrook
	Applicants:	Donnybrook-Balingup
	Zone:	Special Use Aged Person Accommodation
	File Ref:	CSV 01/9
	Author:	J Attwood – CEO (Judy Franks, Executive Assistant)
	Report Date:	24 March 2014
	Attachments:	3.1.1 Summary of Amendments

Background

At the Committee meeting held on the 19th November 2013 it was recommended:

“That Council officers prepare tender documentation and advertise tender to complete Units 12 and 13 at Preston Retirement Village.

and

That the selection criteria for the tender for the completion of Units 12 and 13 is:

Qualitative Criteria

<i>Key Personal Qualifications, Skills, Experience and Capacity</i>	<i>30%</i>
<i>Occupational Safety & Health</i>	<i>10%</i>

Quantitative Criteria

<i>Price</i>	<i>60%</i>
	<i>100%”</i>

Comment

Units 12 & 13

The tender for the completion of units 12 and 13 has been prepared and advertised. The tender closes on the 2nd April 2014.

To date Council has received enquiries from eight contractors.

Unit 8

Notwithstanding that Council has received a valuation of \$280,000 the Executors of the Estate of the late Mrs Bennet have indicate that they are not prepared to market for anything less that the purchased price of \$325,000. The Executors have also advised that they do not wish to market through a real estate agent.

Legal advice has been provided as follows:

“The "selling price" or what is more correctly the agreed loan marketing value for a new lease grant is agreed between the Shire and the outgoing resident or that person's Executor (if deceased). If agreement cannot be reached then the value is determined by a registered Valuer who has experience with retirement village leasehold schemes. See clause 13.3.

The Shire owns the freehold and is responsible for marketing all units including "re-sales". The outgoing resident does not have any interest in real estate to sell as such but has a financial interest in the outcome of a successful re-sale by leasing. The Shire can market without using a real estate agent or it can choose to use an agent. The Shire does not have to appoint an agent that the outgoing resident suggests be used. The Shire has to use all reasonable endeavours to re-sell by leasing and to do this it might particularly in a tight market be considered necessary to ensure that all is being done to satisfy the reasonable endeavours obligation. The decision to appoint an agent rests with the Shire”.

Options

- 1 Allow the unit to stand vacant until it is occupied which may necessitate Council buying the unit at the end of the three year period and then sell at the market value.
- 2 Council agree to sell the unit at the market valuation and pay to the Estate market value plus the difference between market value and purchased price less all associated fees (Real Estate, amenities, reserves etc).

Committee's Recommended Resolution

Moved:

Seconded:

That Council

Staged Commencement of Changes to Retirement Villages Legislation

The first tranche of reforms to the retirement villages legislation will commence on the 1st April 2014.

The Amendment Act, its new regulations and a revised Code of Conduct under the *Fair Trading Act 2010* (Revised Code), will implement some of the most important recommendations from the statutory review of retirement villages legislation. Thirty eight recommendations of the final report remain to be addressed as part of a second tranche of reforms, work on which will only commence once the first tranche is fully operational.

It is proposed that the following will commence on the 1st April 2014:

- All of the substantive provisions of the Amendment Act which insert provisions into the *Retirement Villages Act 1992* (RV Act);
- The proposed *Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014* (Amendment Regulations) which insert provisions into the *Retirement Villages Regulations 1992*; and
- A further Interim Code (as the current Fair Training (Retirement Villages Interim Code) (No. 2) 2013 expires on 31 March 2014.

Sections 13 and 14 amended – relates to increased disclosure and cooling off periods.

New Section 14A – relates to Village contracts – matters that must or must not be included in residence contract.

Section 18 amended – relates to release of premium to the operator from trust.

New Section 23 and its regulations – relates to the limitation on liability of outgoing non-owner residents to pay recurrent charges.

New Section 24 and its regulations – relates to liability for recurrent charges may be paid out of refund entitlement.

New Section 25 and its regulations – relates to Fees and charges not to be included in a village operating budget.

New Section 55 – relates to applications to the State Administrative Tribunal (SAT) in relation to residence contracts' compliance with regulations under section 14A.

Amended Section 56 – relates to Powers of the Tribunal (SAT) in relation to recreation and entertainment services and amenities.

Sect 57A – relates to residents appeal to the Sat on recurrent charges or levies.

New Part 5A Section 75A to 85I – relates to the appointment of a statutory manager by the SAT.

New Sections 76 and 77A to 77C and regulations – relates to certain persons not to be involved in village management.

Amended Section 80 – relates to the extension of time for proceedings.

Amended Section 82 – relates to penalties for offences against the regulations.

Attachment 3.1.1 provides a summary of the above amendments.

The main impact for Council at this time is new section 23 and its regulations – limitation on liability of outgoing non-owner residents to pay recurrent charges.

A former non-owner resident's liability to pay recurrent charges after they permanently vacate the village, ceases in accordance with the regulations.

The proposed Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014) provide that this will be six months for residents on existing contracts and three months for residents on new contracts (signed after 1 April 2014), allowing for probate delays if a former resident is deceased.

Once a former non-owner resident's liability has ceased, the administering body will have to cover the cost of the recurrent charges and will be prohibited from recovering those costs by increasing recurrent charges or imposing additional operating fees or charges on other residents within the village.

Sections 13 and 14 amended – increased disclosure and cooling off periods.

Increase in the time for prospective residents to consider pre-contractual disclosure information from 5 to 10 working days.

Increase in the 'cooling off' period following entry into the residence contract (ie the date of signing), during which a resident can rescind the contract without penalty:

- From 5 to 7 working days where the pre-contractual documents have been given to the prospective resident prior to signing of the contract; and
- From 10 to 17 working days from the date on which pre-contractual documents are given to the resident where the required disclosure information was not provided to the resident at least 10 days before the residence contract was signed.

4 CLOSURE OF MEETING

The Chairperson to advise the date of the next Preston Village Project Management Team meeting will be held on _____ commencing at _____ at the Shire of Donnybrook/Balingup – Council Chambers.

The Chairperson to declare the meeting closed

ATTACHMENT A

AMENDMENTS TO THE *RETIREMENT VILLAGES ACT 1992* CONTAINED IN THE *RETIREMENT VILLAGES AMENDMENT ACT 2012*

Summary of amendments

(except where mentioned below all amendments are proposed to commence on 1 April 2014)

Sections 13 and 14 amended	<p>Increased disclosure and cooling off periods</p> <p>Increases the time for prospective residents to consider pre-contractual disclosure information from 5 to 10 working days.</p> <p>Newly provides that a fee or charge must not be imposed in relation to the provision of pre-contractual disclosure information.</p> <p>Increases the "cooling-off" period following entry into the residence contract (i.e. the date of signing), during which a resident can rescind the contract without penalty:</p> <ul style="list-style-type: none">• from 5 to 7 working days where the pre-contractual documents have been given to the prospective resident prior to signing of the contract; and• from 10 to 17 working days from the date on which pre-contractual documents are given to the resident where the required disclosure information was not provided to the resident at least 10 days before the residence contract was signed.
New section 14A	<p>Village contracts - matters that must or must not be included in a residence contract</p> <p>Creates a head of power in the <i>Retirement Villages Act 1992</i> (the Act) so that regulations may prescribe certain provisions or matters that must or must not be included in residence contracts. The regulations under this section have not been finalised and will not commence on 1 April 2014. They are proposed to commence at the same time as the Revised Retirement Villages Code of Conduct, later in 2014.</p>
Section 18 amended	<p>Release of premium to the operator from trust</p> <p>Allows residents' premium payments to village operators to be released from trust, to the operator, once a resident is entitled to occupy the village unit and the cooling off period has expired, if this occurs before a resident actually takes up occupancy. This amendment addresses a problem for operators, who currently cannot access residents' paid funds if, for example, a new resident does not immediately take up residence but goes on an extended holiday.</p>

New section 23
and its regulations

Limitation on liability of outgoing non-owner residents to pay recurrent charges

The Amendment Act defines permanent vacation as requiring four elements to be satisfied:

- the administering body has been given notice of the resident's intention to vacate the premises, if this notice is required by the residence contract;
- the goods and belongings of the former resident have been removed from the residential premises;
- the former resident has ceased to reside in the premises; and
- the right to exclusively occupy the premises has been given up by the return of the keys to the premises, to the administering body.

Some of these elements may be satisfied by the estate of the former resident, if the resident is deceased.

A former non-owner resident's liability to pay recurrent charges after they permanently vacate the village, ceases in accordance with the regulations.

The proposed *Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014* (Amendment Regulations) provide that this will be 6 months for residents on existing contracts and 3 months for residents on new contracts (signed after 1 April 2014), allowing for probate delays if a former resident is deceased. This means that:

- For non-owner residents on existing contracts who leave a village on or after 1 April 2014, it is proposed that their liability will cease 6 months after they permanently vacate their premises in the village or, if they are deceased at the time of permanent vacation, 6 months after the administering body being given evidence of the resident's death¹ or the premises having been permanently vacated, whichever is later.
- For non-owner residents who have permanently vacated a village before 1 April 2014 and who are still paying recurrent charges on 1 April, it is proposed that their liability will cease 6 months after 1 April unless they are deceased in which case their liability will cease 6 months after the administering body being given evidence of the resident's death or the commencement day, whichever is later.
- For new residence contracts signed after 1 April 2014, it is proposed that the liability of non-owner residents to pay recurrent charges will cease 3 months after they permanently vacate the village or, if they are deceased at the time of permanent vacation, 3 months after the administering body being given evidence of the resident's death or permanent vacation, whichever is later.

¹ "Evidence of death" is proposed to be defined in the Amendment Regulations to be evidence of the grant of probate or letters of administration, or such other evidence that the administering body accepts as evidence of death.

In every case though, a former resident's liability may cease earlier than the 6 months or 3 months, if their contract provides for it. It is proposed that the Amendment Regulations also provide that the former resident's liability may cease earlier than the 6 or 3 months, if their premium is repaid in full or in part, or if a new resident becomes liable to pay those recurrent charges.

Similarly it is proposed that the Amendment Regulations provide that if the State Administrative Tribunal (SAT) makes an order that results in a former resident's liability ceasing earlier, then the resident's liability will cease in accordance with SAT's order.

It is proposed that the Amendment Regulations will also provide that if the resident dies before the expiry of the relevant 6 or 3 month period, then the relevant period stops expiring to start again when the administering body is given evidence of the grant of probate or letters of administration, or other evidence of death that the administering body accepts.

Once a former non-owner resident's liability has ceased, the administering body will have to cover the cost of the recurrent charges and will be prohibited from recovering those costs by increasing recurrent charges or imposing additional operating fees or charges on other residents within the village

New section 24
and its regulations

Liability for recurrent charges may be paid out of refund entitlement

Provides all non-owner residents with the capacity to defer the payment of recurrent charges incurred after they permanently vacate the village and to have these charges deducted from the repayment of their premium. The Amendment Regulations will prescribe the maximum rate of interest payable on recurrent charges that have been deferred. It is proposed that the prescribed rate in the Amendment Regulations be the rate that applies to unpaid accommodation bonds under the *Aged Care Act 1997* at the time of the resident's election to defer the payment. A lower rate of interest applies if the resident and the administering body agree, or if the residence contract specifies a lower rate.

New section 24 also provides that the administering body must contribute any recurrent charges that former residents have elected to defer, into the operating budget at the time the former resident would have otherwise been required to pay them, and may charge the former resident interest on the unpaid amounts.

New section 25
and its regulations

Fees and charges not to be included in a village operating budget

Prohibits an administering body demanding or receiving payments (prohibited charges) in respect of matters prescribed in the regulations. New section 25 provides that the prohibited charges will apply to all residents and former residents, irrespective of when their contracts were signed.

The matters to be prescribed in the regulations are proposed to be prohibited from 1 April 2014, but the proposed Amendment Regulations provide existing retirement villages a period of grace so that the prohibited charges do not apply until the first day of the next financial year of the retirement village which starts after 1 April 2014. This means that if prohibited charges are for example included in a retirement village's operating budget for the 2013/14 financial year, the prohibitions will only commence for that village from 1 July 2014.

The prohibited charges proposed to be prescribed relate to matters that should not reasonably be passed onto residents (that were identified in the final report) or for which demanding more than the cost incurred is unreasonable. For example, some of the main proposed prohibited charges include charging:

- a resident or former resident a refurbishment fee which is more than the costs incurred in refurbishing the individual residential premises previously occupied by the resident;
- an individual former resident a marketing and advertising fee for the residential premises they previously occupied, which is more than any costs incurred in marketing or advertising those individual premises;
- residents and former residents with management and administration fees which are more than the costs incurred by the administering body in managing and administering that retirement village. In cases where the village is administered by an administering body on behalf of the village owner, a reasonable fee for that administration and management service may also be charged, in addition to the costs incurred;
- any more than the resident's portion of 50% of the membership and accreditation fees which the administering body pays to an industry body representing retirement village operators. This recognises that some, but not all, of the benefits of industry body membership and accreditation flow to residents.

New section 55

Applications to the State Administrative Tribunal (SAT) in relation to residence contracts' compliance with regulations under section 14A

Provides the SAT with jurisdiction to hear disputes between the parties to a residence contract as to the contract's compliance with the regulations made under section 14A. Either party to the residence contract, or the Commissioner for Consumer Protection, may apply to the SAT in relation to the matter. The SAT may make any orders it considers appropriate and may declare that the orders apply to any residence contracts specified.

Logically, this section will only become operational once regulations proposed under new section 14A commence later in 2014.

Amended section 56 **Powers of the Tribunal (SAT) in relation to recreation and entertainment services and amenities**

The amendments clarify the current powers of the SAT to deal with disputes about the provision of village amenities, irrespective of whether such amenities are included in a residence contract or a service contract.

Section 57A **Residents appeal to the SAT on recurrent charges or levies**

Provides residents with the capacity to apply collectively (via a special resolution of residents) to the SAT regarding a dispute with the administering body about an increase in recurrent charges or the imposition of a levy. The provisions give the SAT the power to make any orders it considers appropriate.

New Part 5A - Section 75A to 75I **Appointment of a statutory manager by the SAT**

Provides the Commissioner for Consumer Protection with the capacity to apply to the SAT for the appointment of a statutory manager to manage a village, where the well-being or financial security of residents is at risk.

A range of issues will need to be considered prior to the appointment of a statutory manager. SAT will, therefore, be empowered to determine issues such as:

- the terms and conditions appropriate to the appointment;
- the functions to be performed by the statutory manager;
- the source of funds used to remunerate the statutory manager and meet their expenses; and
- the extent of the statutory manager's control of those funds.

New sections 76 and 77A to 77C, and regulations **Certain persons not to be involved in village management**

Introduces a prohibition on certain persons being concerned, directly or indirectly, in the administration of a village. An onus is also placed on the employing or engaging authority to ensure that prohibited persons are not employed or engaged and a penalty attaches to a breach of this provision. Prohibited persons may seek an exemption from the prohibition from the Commissioner for Consumer Protection.

The proposed Amendment Regulations under section 77C will prescribe \$700 as the fee payable with an application for exemption, include a penalty for providing false or misleading information to the Commissioner in relation to an application for exemption, and set out matters relevant to the Commissioner's consideration of whether there are special circumstances warranting giving a full or partial refund of the application fee. Note that the refusal of an application is not on its own a special circumstance for which a refund may be granted.

Transitional provisions in the Amendment Act deem persons who on 1 April 2014 are directly or indirectly concerned in the administration of a village, and who are prohibited, to have an exemption certificate that is valid for 6 months. Such persons will however have to apply to the Commissioner for an exemption certificate within the 6 months if they want the exemption to continue. Once an application has been made, the deemed certificate remains valid until such time as their application is decided by the Commissioner one way or the other.

Amended section
80

Extension of time for proceedings

Extends from two to three years, the timeframe within which a person may bring proceedings to court for an offence under the Act.

Amended section
82

Penalties for offences against the regulations

Increases the maximum penalty for offences against the regulations from \$500 to \$5,000.