

RELEASED 1 DECEMBER 2023

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 9 May 2023
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 18.1

Responsible Officer: Karen Cummings
Manager Property Services
Corporate Services

Subject: Sale of Retirement Village

For: Decision

1. Land tenure matter – Exclusion of the Public

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- Acting Chief Executive Officer, David Waters
- Acting Director Community Capacity, Rebecca Shepherd
- Director Corporate Services, Terry Crackett
- Director Development & Regulatory Services, Natalie Armstrong
- Director Infrastructure & Operations, Peter Bice
- Executive Manager Governance & Performance, Lachlan Miller
- Manager Property Services, Karen Cummings
- Governance & Risk Coordinator, Steven Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 18.1: (Land Tenure matter) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3)(b) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is

- (b) Information the disclosure of which –
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

2. Sale of Retirement Village – Confidential Item

SUMMARY

The purpose of this report is to seek Council's decision to enter into a contract with Clayton Church Homes Incorporated (CCH) for the sale of the Bridgewater Retirement Village located at 1 Second Avenue, Bridgewater. The sale of the site to Clayton Church Homes would bring to a close Council's divestment/sale of six (6) retirement villages within the Council area, five of which have already been sold to CCH in October of 2018.

The Bridgewater Retirement Village was held back from the 2018 retirement villages sale as it was discovered that there was a Trust held over the land that prevented its sale. There were also other encroachment matters that affected the title that required resolution before the property could be sold. Due to the Trust, the land was also classified as Community Land under the *Local Government Act 1999*. The 2018 contract for the sale and purchase of the six retirement village sites provided for a first right of refusal for CCH to purchase the Bridgewater Retirement Village. As the removal of the Trust over the Land, the removal of the Community Land classification and management of the other land tenure matters took some four years to work through, the contract with CCH for first right of refusal over the Bridgewater Retirement Village lapsed.

As those outstanding matters have now been resolved, contact was recently made with CCH to gauge their ongoing interest in purchasing the property from Council at current market value. CCH have been undertaking their due diligence and have indicated that they still have an interest in purchasing the Bridgewater Retirement Village site at market value, and an in principle Heads of Agreement was entered into, subject to Council's consideration on its current position on the proposed sale of the land.

It is recommended that Council proceed with entering into a sales and purchase contract with Clayton Church Homes Incorporated for the sum of \$750,000. It should be noted that the contract for sale transfers responsibility to CCH to honour debenture agreements with existing residents, which in turn increases the total value of the sale to Council by a further \$1,182,000 (i.e. a total acquisition cost of \$1,932,000).

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted.**
- 2. Council waives application of the *Disposal of Assets Policy* as it relates to the sale of the Bridgewater Retirement Village at 1 Second Avenue, Bridgewater given an open tender process will not achieve the best strategic outcomes for Council.**
- 3. To enter into a Contract for the Sale and Purchase of the Bridgewater Retirement Village located at 1 Second Avenue, Bridgewater with Clayton Church Homes Incorporated, contained in Certificates of Title CT 5488/788 (Lot 220 in FP 8131) and CT 6276/629 (Lot 1 in DP 41530) for consideration in the amount of \$750,000.**

4. **To authorise the Mayor and CEO to sign all necessary documents, including by affixing the common seal, to give effect to this resolution.**
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1. **BACKGROUND**

Council previously owned six (6) retirement villages in Balhannah, Crafers, Gumeracha, Lobethal, Woodside and Bridgewater. Following a review of these retirement villages it was determined that ownership was not deemed to be a core business for Council and a decision was made to divest Council's interest in all of those retirement villages.

Accordingly, after an extensive open market process, five (5) of those retirement villages were sold to Clayton Church Homes Incorporated (CCH) on 26 October 2018. During the due diligence phase it was discovered that a charitable trust existed over the Bridgewater Retirement Village land and that it was also classified as Community Land. As such this site could not be sold as part of Council's divestment of its retirement village portfolio at that time, though CCH was provided a right of first refusal to purchase the property (since expired) following resolution of these matters.

Council has received a public report to this meeting which provides background on the status of the outstanding land tenure matters, and a recommendation has been made through this separate report, for Council to exclude the Bridgewater Retirement Village land from the Community Land classification. Following this resolution, Council is in a position to now proceed to sell the land.

2. **ANALYSIS**

➤ **Strategic Management Plan/Functional Strategy/Council Policy Alignment**

Strategic Plan 2020-24 – A brighter future

Goal	Community wellbeing
Objective C2	A connected, engaged and supported community.
Priority 03.1	Support our ageing community to access services and continue to participate and contribute to community life.

Strategic Plan 2020-24 – A brighter future

Goal	A progressive organisation
Objective 03	Our organisation is financially sustainable for both current and future generations
Priority 03.1	Ensure the delivery of agreed strategic plan requirements whilst meeting endorsed long term targets for a sustainable operating surplus and level of debt.

Divestment of the remaining retirement village is consistent with Council's position in 2018 whereby divesting to an experienced retirement village living housing provider will assist Council in meeting its objective to support our ageing community to access services at a level greater than Council is in a position to provide.

The projected income from the sale of the Bridgewater retirement village has been budgeted for return to Council as part of the 2022/2023 Annual Business Plan and Budget. If the sale is able to be finalised prior to 30 June 2023 it will contribute towards balancing Council's

budget this financial year and create opportunities to deliver services to the community in a financially sustainable way.

➤ **Legal Implications**

The Bridgewater Retirement Village is subject to the provisions of the *Retirement Villages Act 2016*. Resident rights under existing agreements are protected under the provisions of this Act.

Prior to Council staff re-engaging with CCH regarding their interest in purchasing the property, legal advice was sought as to whether a direct negotiation was able to be made with CCH regarding the sale, or whether Council was required to undertake an open market process. In the process of seeking that advice it was noted that CCH had an existing interest in the site due to the sale of the other retirement villages in 2018, and that if Council were to put the property on the open market it may not attract any alternate buyers due to the small number of units, and the specialised nature of owning and operating retirement villages.

Consideration was given to Council's Procurement Policy and in particular its *Disposal of Assets Policy*. Council's Disposal of Assets Policy lists the following methods for disposing of land;

- Open market sale – by procuring the services of a licensed real estate agent and/or auctioneer (following compliance with Council's Procurement Policy);
- Expressions of interest – seeking expressions of interest for the land;
- Select tender – seeking tenders from a selected group of persons or companies;
- Open tender – openly seeking bids through tenders, including public auction, or
- By negotiation with owners of land adjoining the land to be disposed or others with a pre-existing interest in the land, or where the land is to be used by a purchase whose purpose for the land is consistent with the Council's strategic objectives for the land.

The sale of the Bridgewater retirement village directly to CCH does not appear to fall within the abovementioned circumstances whereby a sale by negotiation is expressly permitted. For example, CCH is not an owner of adjoining land and does not presently have an interest in the Bridgewater Retirement Village.

However, Council's *Disposal of Assets Policy* does allow for exemptions. The Policy, adopted on 23 August 2022, provides as follows:

"This policy contains general guidelines to be followed by the Council in its disposal activities. There may be emergencies, or disposals in which a tender process will not necessarily deliver the best outcome for the Council, and other market approaches may be more appropriate. In certain circumstances, the Council may, subject to the resolution of Council, waive application of this policy and pursue a method which will bring the best outcome for the Council. The Council must record its reasons in writing for waiving application of this policy."

In making a direct approach to CCH to negotiate a possible sale of the Bridgewater retirement village, the following considerations were made:

1. CCH had an option to purchase the Bridgewater retirement village back in 2018 but were prevented by matters not only beyond their control, but attributable to the actions of Council through the prior existence of the Trust and Community Land classification;
2. Council’s sales agent has advised that there would be limited interest in the market to purchase the Bridgewater retirement village and, in fact, there could be no interest;
3. Residents of the Bridgewater Retirement Village have anticipated the change of ownership to CCH since 2018 and are supportive of it;
4. The expense associated with an open market approach would be wasted if there are no other potential buyers, and
5. CCH is still interested in purchasing the property.

Given these points it is considered appropriate that Council waive the application of its *Disposal of Assets Policy* and proceed with a direct sale of the property to CCH.

➤ **Risk Management Implications**

The divestment of the Bridgewater retirement village will assist in mitigating the risks of:

Lack of a consistent and reasonable standard of service provision to residents in the retirement village, leading to a loss of confidence in Council and Council’s ability to deliver retirement village housing

Inherent Risk	Residual Risk	Target Risk
Medium (3C)	Low (2D)	Low (1E)

Ongoing subsidisation of the Retirement Village portfolio resulting in the allocation of funds away from other community facilities, services and initiatives and the reinforcing the community expectation that Council will provide ongoing subsidisation of retirement housing

Inherent Risk	Residual Risk	Target Risk
Medium (3C)	Low (1E)	Low (2D)

The financial sustainability of the Retirement Village portfolio leading to a greater financial commitment required by Council to meet mid-long term asset renewal requirements and service standards expected by residents

Inherent Risk	Residual Risk	Target Risk
Medium (3C)	Low (1E)	Low (1C)

The risks identified above are consistent with those considered by Council in divesting its other five retirement villages in 2018. If the Council chooses not to divest the Bridgewater retirement village, mitigation actions will be required to be implemented.

➤ **Financial and Resource Implications**

Two (2) valuations were sought as part of the negotiation for the sale of the property. Firstly, Council’s agent, Colliers, who are experienced in the sale and complexities around the financial treatment of retirement villages, undertook a desktop valuation of the site. Secondly, an specialist independent valuation, prepared by a Valuer specialising in the valuation of retirement villages, was also undertaken. The two valuations are summarised below:

Name of company	Date of valuation	Valuation amount
Colliers	12/09/2022	\$669,000
M3 Property	27/10/2022(received 20/12/2022)	\$750,000

Council staff, through its Agent from Colliers, have been able to negotiate an in principle agreement with CCH for a cash payment for the purchase of property of \$750,000 and the transfer in responsibility to CCH to honour debenture agreements with existing residents, which in turn increases the total value of the sale to Council by a further \$1,182,000 (i.e. a total acquisition cost of \$1,932,000). This represents fair market value.

It is worth noting that the valuation received for the property in 2018, that was the subject of CCH’s (now expired) first right of refusal contract at that time, was \$638,000. This contract for sale also required transfer of responsibility to CCH to honour debenture agreements with existing residents, which in turn increased the total value of the sale to Council by a further \$780,000 (i.e. a total acquisition cost of \$1,418,000).

The divestment of the Bridgewater retirement village can be summarised financially below:

	Revenue cash (\$)	Revenue non-cash (\$)	Expenditure	Net proceeds from sale
Sale proceeds	\$750,000			
Resident liability released from Council		\$1,182,000		
Cost of valuation			\$6,204	
Sales agent fees (1.95% of sales price)			\$14,625	
Other legal fees to prepare contracts and settle the property			\$5,200 (approx.)	
	\$750,000	\$1,182,000	\$26,029	\$1,905,471

For the 2022/2023 financial year, an amount of \$1,418,000 has been budgeted as anticipated proceeds from the sale of the property and as such the outcome proposed represents an improvement of approximately \$500k.

It should be noted that the release of the resident’s debenture liability of \$1,182,000 does not represent an improvement in available cash given the funds are already held by Council. The release however will result in a reduction in the liabilities held by Council and therefore a direct improvement in the Net Liabilities Ratio.

Capital expenditure impact

No capital budget has been set aside for the Bridgewater retirement village for this current financial year as the sale has been budgeted for in Council’s annual business plan and budget. If the sale were to not go ahead, unprogrammed capital upgrades would need to be budgeted for in the order of \$20,000 per year.

Operating expenditure impact

The current 2022/2023 operating budget for the Bridgewater retirement village (including depreciation, emergency services levy, general day to day maintenance and water) is approximately \$31,000. Sale of the property will result in an operating expenditure saving of this approximate amount.

➤ **Customer Service and Community/Cultural Implications**

The Administration is confident that the sale of the Bridgewater retirement village to a not-for-profit aged care organisation providing permanent and respite residential aged care accommodation such as CCH. will have a positive impact on service levels and the quality of the experience of the residents in the village.

CCH’s Vision Statement is: “To lead and inspire positive ageing, where each person lives their best possible life.”

CCH’s Mission Statement is: “Passionately and respectfully supporting older people to Be You.”

➤ **Sustainability Implications**

Not applicable.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: Not applicable.

Council Workshops: Previously on 19 October 2016, 6 December 2017 and 19 June 2018 as it related to the divestment of all six (6) retirement villages.

Advisory Groups: Not applicable.

External Agencies: Not applicable.

Community: Residents of the retirement village have been advised that Council will likely continue to move forward with the sale of the property, consistent with the divestment of its other retirement villages in 2018.

➤ **Additional Analysis**

The proposed sale of the Bridgewater retirement village has been included as part of numerous reports to Council dating back as far as 2004. On 1 August 2018, Council received a report which indicated that during contract negotiations with CCH, and as part of their due diligence, it was discovered that an unregistered charitable Trust was held over the Bridgewater property, which meant that the property remained classified as Community Land under the *Local Government Act 1999*.

A separate report to Council on 9 May 2023 has notified Council that the charitable Trust has now been removed, as well as approval granted from the Minister for Local Government to remove the Community Land classification. That separate report seeks resolution from Council to move forward with the Community Land revocation to enable the sale to proceed.

In addition to the above, there were several other encroachment matters that needed to be addressed. These were:

- An SA Water pumping station on Second Ave, built on the Bridgewater retirement village land
- a walkway between Second Avenue and First Avenue that had not been constructed on the adjoining CR parcel, which had been dedicated for walkway purposes, due to the topography of the land, and
- a rainwater tank that encroached onto 2 properties at the rear of Unit 3.

Those encroachments have now been dealt with or removed from the property.

Given the above, it is considered that, subject to CCH's updated due diligence requirements being met, that Council can now proceed with the sale of the land.

3. OPTIONS

Council has the following options:

- I. Resolve to sell the Bridgewater retirement village in line with the recommendation (Recommended)
- II. Resolve to not sell the retirement Bridgewater retirement village which will result in the retirement village remaining in Council's ownership (Not Recommended)

4. APPENDIX

- (1) Plan showing the location of the Bridgewater retirement village site

Appendix 1

*Plan showing the location of the Bridgewater
retirement village site*

Bridgewater Retirement Village – 1 Second Avenue Bridgewater



3. Land tenure matter – Duration of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council’s decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 18.1 in confidence under sections 90(2) and 90(3)(b) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	Until the sale has been finalised, but not longer than 12 months from the date of this report being 9 May 2024.
Related Attachments	Until the sale has been finalised, but not longer than 12 months from the date of this report being 9 May 2024.
Minutes	Until the sale has been finalised, but not longer than 12 months from the date of this report being 9 May 2024.
Other	NIL

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, the Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.