

## 12 Reports

### 12.8 Confidential Items Report

#### Recommendation

having considered agenda Item 12.8 in confidence under section 90 [ 2 ] and [ 3 ] [ a ], [ h ] and [ k ] of the Local Government Act 1999, the Council pursuant to section 91 [ 7 ] of the Act orders that the item and the minutes, reports and all other records, relating to the matter be retained in confidence. This order is to be reviewed at or before the Ordinary Council Meeting to be held in January 2018, as to if this order is to continue in operation

## 13 Other Business

## 14 Confidential Items

### 14.1 Refer to Item 12.8 – Confidential Items Report

### 14.2 Pinnaroo Independent Living Units

#### Recommendation

Pursuant to Section 90 [ 2 ] of the Local Government Act 1999 the Council orders that all persons, except the Chief Executive Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 14.2 Pinnaroo Independent Living Units

The Council is satisfied that pursuant to section 90 [ 3 ] [ h ] of the Act, the information to be received, discussed or considered in relation to the agenda item is legal advice

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of information that has been provided previously to the Council under Section 90 of the Local Government Act and retained under Section 91 of the Local Government Act.

## 14 Confidential Items

### 14.2 Pinnaroo Independent Living Units

A copy of the Pinnaroo Independent Living Units Review has been circulated with the agenda for Elected Members Information

#### Recommendation

having considered agenda Item 14.2 of the Agenda in confidence under section 90 [ 2 ] and [ 3 ] [ h ] of the Local Government Act 1999, the Council pursuant to section 91 [ 7 ] of the Act orders that the item and the minutes, reports and all other records, relating to the matter be retained in confidence. This order is to be reviewed at or before the Ordinary Council Meeting to be held in January 2018, as to if this order is to continue in operation

### 14.3 Chief Executive Officer Key Performance Indicators Update

#### Recommendation

Pursuant to Section 90 [ 2 ] of the Local Government Act 1999 the Council orders that all persons, except the Chief Executive Officer be excluded from attendance at the meeting for Agenda Item 14.3 Chief Executive Officer Key Performance Indicators Update

The Council is satisfied that pursuant to section 90 [ 3 ] [ a ] of the Act, the information to be received, discussed or considered in relation to the agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of information that has been provided previously to the Council under Section 90 of the Local Government Act and retained under Section 91 of the Local Government Act.



## **Pinnaroo Independent Living Units Review**

---

## Background

Council currently owns and operates 7 Independent living units situated at 1 – 3 Jenkins Terrace, Pinnaroo. The facility was registered as a retirement village under the Retirement Villages Act 1987 (now/soon to be the Retirement Villages Act 2016).

There is currently five lots on two certificate of titles that make up the facility. Lot 1 and 2 are on CT Volume 5816 and Folio 27 and lots 3, 4 and 5 are on CT Volume 5708 and Folio 37.

Under this registration the facility name is Pinnaroo & District Retirement Village.

In November 2015 (Recommendation Number 18/1115) the policy was changed and the facility name was “changed” to Pinnaroo Residential Tenancy Units and subsequently Pinnaroo Independent Living Units. The operation method under this change was in line with the Residential Tenancy Act 1995.

As such there is a large variance in the way tenants have entered the units and in what they have paid.

For example under the Retirement Villages Act tenants paid a \$12,000 lump sum payment, known as a right to occupy payment. The tenants were then required to pay a weekly amount which is referenced as a maintenance fee under the Retirement Villages Act.

However after the change in policy and the change to operate under the Residential Tenancies Act 1997 there have been tenants authorised to occupy the units and pay a weekly rental amount with no lump sum payment to enter.

An analysis of each unit and tenant arrangements are listed below.

## Current Individual Unit Analysis

Unit Number	Tenant	Right to Occupy	Weekly Amount
2	Mrs Dot Billing		\$ 97.50
3	Mr Allan Sharrad		\$100.00
4	Vacant		
5	Vacant		
6	Vacant		
7	Mrs Pam Briscoe	\$12,000	\$ 48.00
8	Mrs Murray & Delna Gilbertson		\$ 97.00

## Legal Advice Received

There has been legal advice received around different areas relating to the facility. The first was in the earlier stages of the investigation around the change from a retirement village to units that are operated under the Residential Tenancies Act. Below is a copy and paste from the email seeking advice together with the response.

---

*Please find the following information to recap our telephone discussion earlier today to enable you to pass the information on to the appropriate person to give an opinion and guidance on.*

*Council owns and lease out 7 units within the Pinnaroo Township. A location map from LTO and Certificates of Titles are attached (attachment 3) The original (or at least only) application we can find for the units to become retirement village was submitted in 2007 (attachment 1)*

*Over the years there has been some confusion or changes made within Council that have changed them from Pinnaroo Retirement Village to Pinnaroo Residential Tenancy Units and have set policies around each scenario of retirement village or residential tenancy unit (attachment 5) They have also been called the Pinnaroo Independent Living Units. Subsequently as a result of the changes in the way these units operate there are tenants who are in there under different lease arrangements. Some are in there after paying a \$12,000 contribution and a reduced amount of rent under a lease provided under the Retirement Villages Act and some are in there paying reduced rent and having signed a Residential Tenancies Act lease an example of both are attached (attachment 2) I have also included a breakdown of how each unit entered and the amount they pay for rent along with the current rental amounts that are included in the fees and charges (attachment 6)*

*We have recently received correspondence from the Department of Health and Ageing confirming that units are registered as a retirement village (attachment 4)*

*My concern is that if it is a registered retirement village we would be hard pressed to be complying. Also that there would be a substantial amount of capital works required to bring them up to a standard for disability access and inclusion. Yesterday a health care worker came into the Pinnaroo office (knowing there is a vacant unit) saying she has a client who is most at need and should be put in there. My concern is this person would need assisted living (a health care professional visiting regularly) as they have dementia. I don't believe that this is Council's core business or even intent of these units. I definitely don't believe they are at a standard that would support this kind of living. I don't support Council staff being put in a position to determine whose client or which individual is most at need to go into a unit or undertake any form of asset testing.*

*So to conclude the answers I am seeking are*

- 1. Confirmation that these units must be operated as a retirement village or can be operated under the Residential Tenancies Act?*
- 2. If they do not, what process needs to be taken to revoke the registration and operate them under the Residential Tenancy Act*
- 3. If they are required to be operated under the Retirement Villages Act some guidance around requirements that would need to be met to comply with the Act*
- 4. Any other guidance to assist with sorting this mess out*

*A summary of the attached attachments are;*

*attachment 1 – Only application that has been found to register the units as a retirement village*

*attachment 2 – Both Tenancy leases that relate to each scenario*

*attachment 3 – Property location and certificate of titles*

*attachment 4 – Correspondence from Department of Health and Ageing*

*attachment 5 – Both Policies*

*attachment 6 – Current unit lease payment arrangements and fees and charges*



---

The response to the above query is as follows;

*Our advice, having considered the documents provided and the resulting status of the properties located at 1-5 Jenkins Terrace, Pinnaroo ("the Premises"), is set out below.*

### ***Retirement Village or Residential Tenancies***

*The Premises meet the definitions of "retirement village scheme" and "retirement village" under the Retirement Villages Act 1987 ("the RV Act"). This is because of the payment of a "premium" of \$12,000 by two of the residents (including one couple who reside together). The definition of "premium" under the Act is broad, it includes any non-recurrent payment made to the Council in consideration of admission by the resident into the Premises. In our view, the 'capital contribution' payable under clause 1 of the Retirement Village Conditions will be considered to be a premium under the RV Act.*

*The payment of a premium (as distinct from a security bond) is the distinguishing factor between a retirement village scheme falling under the RV Act and residential tenancies under the Residential Tenancies Act 1995 ("the RT Act").*

*If a premium is not payable by any resident of the Premises, then it becomes a "no premium retirement village" as defined in the RT Act. This means that the Premises fall outside the operation of the RV Act, but the Council can still require payments from residents (for domestic services and the like) under an agreement which is collateral to the residential tenancy, as provided for under the RT Act.*

### ***Retirement Village Conditions for Tenants***

*The Conditions of occupancy do not meet the requirements for a "residence contract" under section 17 of the RV Act, or regulation 5 of the Retirement Village Regulations 2006 ("the RV Regulations"). The Contract does not, amongst other things, include items such as the right to 'cool off' or a dispute resolution process, financial details of the scheme or sufficient details about the relevant unit.*

*In addition, given that the whole Premises comes under the RV Act, all units (and all contracts) are required to comply with the requirements of the RV Act and the RV Regulations. To that end, we confirm the 'Residential Tenancy Periodic Agreement' also does not meet the requirements for a residence contract under the RV Act or the RV Regulations.*

### ***Obligations for Retirement Village Scheme***

*There are a number of significant, onerous and ongoing obligations on the Council in the operation of a retirement village, including:*

- 1. an annotation must be made on the certificates of title for the Premises that the land is to be used as a retirement village. A penalty of up to \$35,000 applies for failure to do this. The current certificates of title for the Premises do not include such annotation;*
- 2. the various requirements for residence contracts, as required by section 17 of the RV Act and Regulations 5 of the RV Regulations (as described above) must be met. Failure to satisfy these requirements is an offence with a maximum penalty of \$35,000;*

- 
3. *a meeting of residents must be convened by the Council on an annual basis, not more than 4 months after the end of the financial year which relates to the village and otherwise in accordance with section 22 of the RV Act;*
  4. *provision of details to residents of any person engaged by the Council to manage the village, as required under section 29 of the RV Act; and*
  5. *the Council must also produce various financial reports and other information upon the request of a resident or resident committee under the RV Act. There are offence provisions for failing to comply with requirements relating to financial reports.*

### **Options**

*Below, we outline the Council's options for transferring operation of the Premises from a retirement village under the RV Act to a 'no premium retirement village' with residential tenancies under the RT Act.*

1. *Under section 35 of the RV Act, a retirement village scheme (where residents remain in occupation) may be terminated with the approval of the Supreme Court. After termination of the retirement village scheme, the Council is able to operate the Premises as separate residential tenancies under the RT Act. An application to the Supreme Court is a costly exercise and, in our view, is unlikely to be granted where one or more of the residents dispute the Council's application.*
2. *Alternatively, the Minister for Ageing may terminate a retirement village scheme by notice in the Gazette, where the Minister is satisfied that all residents of the retirement village wish to terminate the scheme. Again, once the retirement village scheme is terminated, the Council would be able to operate the Premises as separate residential tenancies under the RT Act.*
3. *If the two residents who have paid premiums under the retirement village scheme vacate the Premises, the Premises would no longer fall within the definition of a retirement village under the RV Act. The Council could then operate the Premises as separate residential tenancies under the RT Act.*

*Under section 31 of the RV Act, residents have ongoing rights of occupation guaranteed under the RV Act and those rights cannot be terminated unless the resident dies, ceases to reside in the village, commits a breach of the residence contract or the Premises becomes unsuitable for the resident because of their mental or physical incapability. These rights may be modified by the residence contract, however, in the current circumstances the Retirement Village Conditions do not modify the Council's right to terminate the Contract and require vacant possession of the Premises.*

*Importantly, termination on the ground of breach of a residence contract or mental or physical incapacity is ineffective unless the South Australian Civil and Administrative Tribunal ('SACAT') is also satisfied that sufficient grounds exist for such termination.*

*In essence, this means that the Council cannot legally require the residents to vacate the Premises, unless a breach of the residence contract can be established with some certainty. We agree with your comments that it is not appropriate for Council staff to make an assessment of the mental or physical incapacity of a resident.*



---

## **Recommendation**

*As outlined above, the Council is currently at risk of prosecution for non-compliance with several key aspects of the RV Act. Such prosecution would, quite clearly, also bring with it significant reputational damage for the Council.*

*We have assumed that, in the circumstances each of the premium-paying residents, who have been there for over 10 years, will not be willing to vacate the Premises. Let me know if you have any indication to the contrary.*

*The Council cannot unilaterally terminate a residence contract, unless there has been a clear breach of the Contract by a resident, or the Premises is clearly inappropriate for the resident because of their physical or mental capabilities (and that conclusion is supported by SACAT). Even if the Council were to obtain the consent of the premium-paying residents to 'transfer' to a residential tenancy, in our view, the Premises would still fall under the definition of retirement village under the RV Act, as a result of the premium having been paid. Similarly, even if the Council were to refund the premium to those residents in part or in full, the definition and the RV Act would still apply.*

*As such, our recommended approach is to seek the consent of each of the residents (both premium-paying and otherwise) to convert the Premises from a retirement village under the RV Act to residential tenancies under the RT Act. In doing so, the Council should assure the residents that their rental obligations would not be greater than under a retirement village scheme.*

*If consent is obtained from all residents, the Council should then apply to the Minister for Ageing for termination of the retirement village scheme. If such termination is granted, the Council will need to prepare new residential tenancy agreements for the premium-paying residents. Such agreement should also note the termination of the retirement village scheme and the Contract used under that scheme.*

*If consent from all residents cannot be obtained, we can, after reviewing every relevant document and all correspondence, consider in further detail the Council's likelihood of success in an application to the Supreme Court for termination of the retirement village scheme.*

## **Additional Comments**

*We note your comments below regarding the request for a 'high need' person to be provided with rights to occupy the Premises.*

*From a legal perspective, the Council is under no obligation to accept a resident into the Premises, whether 'high need' or otherwise. From a policy perspective, the Council will, in our view, be acting reasonably in refusing a new resident whom the Council anticipates requires a higher level of care than is offered/available at the Premises – where, maybe, a supported residential facility is what the person requires. This is consistent with the Council's current policy as well as its previous policy.*

Following on from this advice Sheryn Bennier has made contact with Lucy Hosking who is the Retirement Villages Officer at the Office for the Ageing to update Council's Administering Authority and Village Manager Information Officer from Marc Wordsworth to



---

Mia Dohnt. During this process a letter advising Council that the Certificate of Titles are not endorsed was received. Under Section 33 – Endorsement of certificate of titles in the Retirement Villages Act 1987 it states;

### **33—Endorsement of certificates of title**

- (1) Where land is, or is to be, used as a retirement village, a note of that fact must be endorsed on the relevant certificates of title.
- (2) The owner of any such land must apply to the Registrar-General for endorsement of the relevant certificates of title—
  - (a) if the retirement village was established before the commencement of this Act—within 3 months after the commencement of this Act;
  - (b) in any other case—before any person is admitted to occupation of a residence in accordance with the scheme.

Maximum penalty: \$35 000.

- (3) Before an application is made under subsection (2), the owner must notify each person who holds a mortgage, charge or encumbrance over the land and, if the application relates to a retirement village that had not been established before the commencement of this Act, the application can only be made with the consent of each such person.
- (4) The Registrar-General may cancel an endorsement made under this section if satisfied that no part of the land is still occupied under the scheme.

As you will note the penalty is quite substantial and this would apply to both Certificate of Titles held.

Further legal advice was received to clarify some more issues around the proposed subdivision and sale of lot 5 as is being recently investigated. The queries that advice were sought is as follows;

*In my previous advice received from you, you advised that because the units are registered as a retirement village it had to specify that on the certificate of titles. I do not see that on the titles (Attachment 3). Whilst I was on leave my acting CEO advised a resident that they may be able to purchase the vacant land at the end of the retirement village (being lot 5 on the plans) which is now being investigated. As such I have the following questions*

- 1. If it is supposed to show that it is a retirement village on the certificate of title and does not, what does that mean? We are required to do something with Land Services?*
- 2. What are the consequences for it not being on the certificate of title?*
- 3. If it should have a designated purpose as a retirement village then are the lots able to be subdivided and a portion sold off?*
- 4. This parcel of land is exempt from community land status. Is that ok given it is a retirement village (I think so but just checking)*

The advice received is;

*Please note that my advice is based upon the relevant provisions of the Retirement Villages Act 1987 ('RV Act') – but this legislation is to soon be repealed and replaced by the Retirement Villages Act 2016 which, for the purposes of your questions below, contains 'mirror' provisions.*

---

**1. If it is supposed to show that it is a retirement village on the certificate of title and does not, what does that mean? We are required to do something with Land Services?**

Section 33(1) of the RV Act provides that "where land is, or is to be, used as a retirement village, a note of that fact must be endorsed on the relevant certificates of title."

The obligation to 'note' this fact is on the owner of the land (the Council) which must apply to the Registrar-General to seek the endorsement on the certificates of title. This is achieved by lodging an Application AR form with the Lands Titles Office and paying the prescribed registration fee.

**2. What are the consequences for it not being on the certificate of title?**

Section 33(2) of the RV Act imposes a maximum fine of \$35,000 for failing to make the required application to the Registrar-General before any person is admitted to occupation of the residence.

Therefore, the time has clearly passed for the Council to lodge the application with the Lands Titles Office and, consequently, the Council is in breach of the RV Act. The obligation to register the note applies to the relevant certificates of title. As the retirement village carries over 2 separate certificates of title there are, technically, two breaches of the RV Act (however they would likely be factored together in the event of any enforcement action).

Any prosecution for offences under the RC Act can only be commenced by the Minister for Health and Ageing (or a person authorised by the Minister). I am not aware of any prosecution for circumstances similar to these because when the obligation becomes known to the owner of the retirement village there are usually immediate steps taken to note the title as required – whilst this will not 'cure' any preceding breach, it does demonstrate the bona fides of the informed owner – the effect of which is, sensibly, to render any action for prior non-compliance an unwise if not unnecessary step.

Note, however, that section 38(1) of the RV Act does allow any person to apply to the South Australian Civil and Administrative Tribunal (SACAT) to excuse them from the consequences of an inadvertent non-compliance with a provision of the RV Act. The Council could, therefore, apply to SACAT on the basis that it has inadvertently failed to note the retirement village on the titles but has subsequently done so upon becoming aware of the obligation and in taking this course of action the Council will remove any risk of future action (within time limitations) in respect of the breaches. Let me know if you would like me to further research and advise of the benefits (if any) of pursuing this course of action.

**3. If it should have a designated purpose as a retirement village then are the lots able to be subdivided and a portion sold off?**

For the land to cease to be a retirement village under the RV Act it is necessary to terminate the retirement village scheme in accordance with the RV Act. When this has occurred there is then no impediment to the land being sold as you have indicated, as unencumbered freehold. Given that the land is also not classified as community land, there is no further impediment to sale under the LG Act. However, the Council will be required to have regard to and, as necessary, comply with its relevant policies concerning the disposal of real property.



---

*In this matter, because there has not been any application to note the retirement village on the certificates of title, there is no (current) obligation to remove the notes – which requires an Application CR form with the Lands Titles Office and the payment of the registration fee. That is, it may be assumed that the LTO does not have any current knowledge of the status of the land. It is my advice that this inadvertent state of affairs cannot be relied upon by the Council to circumvent the requirement to terminate the scheme prior to any sale – this is of particular importance given that the responsibilities of the Council as a public authority.*

*Whilst the retirement village is in operation, the land will need to be held for that purpose and the provisions of the RV Act observed, but once the retirement village scheme is terminated, the land is free to be sold. The two certificates of title currently contain 5 designated allotments (3 and 2). At the appropriate time (and subject to compliance with all obligations under the RV Act and, in turn, the LG Act, those allotments can be sold without the need for the lodgement of any plans of division or applications for new certificates of title.*

*In addition, I assume that the land is currently approved for land use as a retirement village and on that basis any purchasers of the divided lots would need to apply to change the authorised use of the land.*

**4. This parcel of land is exempt from community land status. Is that ok given it is a retirement village (I think so but just checking)**

*On the basis that the land has been either excluded from classification as community land or it has otherwise been subject to a community land classification revocation process, the Council can deal with and sell the land as above, subject to the caveats as above*

For the land to cease being a retirement village under the Act Council can consider Section 35 and 36 of the Act if that is the chosen path, although not recommended;

### **35—Termination of retirement village scheme on application to Supreme Court**

- (1) Subject to this Act, a retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has been admitted to occupation of a residence under the scheme remains in occupation of that residence.
- (2) The Minister will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme is sought.
- (3) If the Supreme Court approves the termination of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

### **36—Voluntary termination of retirement village scheme**

- (1) The Minister may, by notice in the Gazette, terminate a retirement village scheme.
- (2) The Minister may not terminate a retirement village scheme unless satisfied (in such manner as the Minister thinks fit) that all residents of the retirement village wish to terminate the scheme.
- (3) The Minister may make such orders as the Minister thinks necessary or appropriate on account of the termination of a retirement village scheme under this section.
- (4) The termination of a retirement village scheme will take effect from the date specified for the purpose in the notice.



- 
- (5) The Registrar-General must, at the request of the Minister, take any action for or in connection with the issue, alteration, correction or cancellation of certificates of title necessary to give effect to the provisions of this section.
  - (6) If the Minister requests the Registrar-General to give effect to a particular determination or action, the Minister will, if so required by the Registrar-General, furnish the Registrar-General with a certificate certifying the determination or action.

## Annual Maintenance costs

The total annual maintenance expenditure averaged per unit including depreciation is as follows

Year	Total Annual Cost	Average weekly cost
14/15	\$50,849.99	\$139.70
15/16	\$39,621.37	\$108.85
16/17	\$45,447.51	\$124.86

## Research undertaken as part of the review

### Renmark Paringa Independent Living Units

The CEO and Mayor met with Raelene Fuller, Secretary and Peter Hunt, Renmark Paringa Council representative of Renmark Paringa Independent Living Units to seek information about the way they operated.

The right to occupy fee varied considerably depending on the facility you were entering into but ranged from \$70,000 to over \$100,000.

The maintenance fee was set at 25% of the base pension rate for single and 20% of the base pension rate for double.

The maintenance fee included expenses for maintenance and repairs, insurance and gardening. It did not include any capital works. The cost of capital works are to be covered by the tenant and remain in-situ when they vacate the premises.

### Berri Cottages

The CEO met with the committee of Berri Cottages to seek information about the way they operated.

The right to occupy fee varied considerably depending on the facility you were entering into but averaged around \$100,000.

The maintenance fee was set at 25% of the base pension rate for single and 20% of the base pension rate for double.

The maintenance fee included expenses for maintenance and repairs, insurance and gardening. It did not include any capital works. The cost of capital works are to be covered by the tenant and remain in-situ when they vacate the premises.

---

## Proposals for consideration

### Proposal One

#### Right to Occupy Fee

A fee of \$25,000 to be paid on entry to the unit. Vacate the unit within a 4 year period and there is a pro-rata refund of the right to occupy fee. After the 4 year period there is no refund of the right to occupy fee.

The maintenance fee be set at 25% of the base pension rate for single and 20% of the base pension rate for double and increase as the pension rates as set by the Department of Human Services increase.

The current base rates to be used as a starting basis are as follows

#### Age Pension rates

---

##### Age Pension rates – Single (per fortnight)

	<b>20 March 2017</b>	<b>20 September 2016</b>	<b>Increase</b>
<b>Base</b>	<b>\$808.30</b>	<b>\$797.90</b>	<b>\$10.40 pf</b>
<b>Pension Supplement</b>	<b>\$65.90</b>	<b>\$65.10</b>	<b>\$0.80 pf</b>
<b>Energy Supplement</b>	<b>\$14.10</b>	<b>\$14.10</b>	<b>\$0.00 pf</b>
<b>Total</b>	<b>\$888.30</b>	<b>\$877.10</b>	<b>\$11.20 pf</b>

##### Age Pension rates – Couple (each member of couple, per fortnight)

	<b>20 March 2017</b>	<b>20 September 2016</b>	<b>Increase</b>
--	----------------------	--------------------------	-----------------

---

<b>Base</b>	<b>\$609.30</b>	<b>\$601.50</b>	<b>\$7.80 pf</b>
<b>Pension Supplement</b>	<b>\$49.70</b>	<b>\$49.10</b>	<b>\$0.60 pf</b>
<b>Energy Supplement</b>	<b>\$10.60</b>	<b>\$10.60</b>	<b>\$0.00 pf</b>
<b>Total</b>	<b>\$669.60</b>	<b>\$661.20</b>	<b>\$8.40 pf</b>

Based on the current pension rates the following fortnightly amounts would be applied

**Single \$808.30 x 25% = \$202 per fortnight or \$101 per week**

**Double \$609.30 x 2 x 20% = \$244 per fortnight or \$122 per week**

#### Proposal Two

##### Right to Occupy Fee

A fee of \$25,000 to be paid on entry to the unit. Vacate the unit within a 4 year period and there is a pro-rata refund of the right to occupy fee. After the 4 year period there is no refund of the right to occupy fee.

The maintenance fee be set at 25% of the base pension rate for single and 20% of the base pension rate for double and increase by March CPI at 1 July each year.

The current base rates as a starting basis are as follows;

##### Age Pension rates

##### Age Pension rates – Single (per fortnight)

<b>20 March 2017</b>	<b>20 September 2016</b>	<b>Increase</b>
----------------------	--------------------------	-----------------



---

<b>Base</b>	<b>\$808.30</b>	<b>\$797.90</b>	<b>\$10.40 pf</b>
<b>Pension Supplement</b>	<b>\$65.90</b>	<b>\$65.10</b>	<b>\$0.80 pf</b>
<b>Energy Supplement</b>	<b>\$14.10</b>	<b>\$14.10</b>	<b>\$0.00 pf</b>
<b>Total</b>	<b>\$888.30</b>	<b>\$877.10</b>	<b>\$11.20 pf</b>

Age Pension rates – Couple (each member of couple, per fortnight)

	<b>20 March 2017</b>	<b>20 September 2016</b>	<b>Increase</b>
<b>Base</b>	<b>\$609.30</b>	<b>\$601.50</b>	<b>\$7.80 pf</b>
<b>Pension Supplement</b>	<b>\$49.70</b>	<b>\$49.10</b>	<b>\$0.60 pf</b>
<b>Energy Supplement</b>	<b>\$10.60</b>	<b>\$10.60</b>	<b>\$0.00 pf</b>
<b>Total</b>	<b>\$669.60</b>	<b>\$661.20</b>	<b>\$8.40 pf</b>

Based on the current pension rates the following fortnightly amounts would be applied

**Single \$808.30 x 25% = \$202 per fortnight or \$101 per week**

**Double \$609.30 x 2 x 20% = \$244 per fortnight or \$122 per week**

## Current arrangement versus proposal

Unit Number	Tenant	Right to Occupy	Current Weekly Amount	Proposed Weekly Amount
2	Mrs Dot Billing		\$ 97.50	\$101
3	Mr Allan Sharrad		\$100.00	\$101
4	Vacant			
5	Vacant			
6	Vacant			
7	Mrs Pam Briscoe	\$12,000	\$ 48	\$101
8	Mrs Murray & Delna Gilbertson		\$ 97.00	\$122

## Considerations when making a decision

- Is Council going to continue to operate this facility as a Retirement Village Under the Retirement Villages Act?

If so, Council will need to apply to the Registrar General and have each Certificate of Title endorsed as it should have been many years ago upon registration per Section 33 of the Act

### 33—Endorsement of certificates of title

- (1) Where land is, or is to be, used as a retirement village, a note of that fact must be endorsed on the relevant certificates of title.
- (2) The owner of any such land must apply to the Registrar-General for endorsement of the relevant certificates of title—
  - (a) if the retirement village was established before the commencement of this Act—within 3 months after the commencement of this Act;
  - (b) in any other case—before any person is admitted to occupation of a residence in accordance with the scheme.

Maximum penalty: \$35 000.

- (3) Before an application is made under subsection (2), the owner must notify each person who holds a mortgage, charge or encumbrance over the land and, if the application relates to a retirement village that had not been established before the commencement of this Act, the application can only be made with the consent of each such person.
- (4) The Registrar-General may cancel an endorsement made under this section if satisfied that no part of the land is still occupied under the scheme.

If not, then Council will need to follow one of two processes as set out in Section 35 & 36 of the Retirement Villages Act being;

---

### **35—Termination of retirement village scheme on application to Supreme Court**

- (1) Subject to this Act, a retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has been admitted to occupation of a residence under the scheme remains in occupation of that residence.
- (2) The Minister will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme is sought.
- (3) If the Supreme Court approves the termination of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

### **36—Voluntary termination of retirement village scheme**

- (1) The Minister may, by notice in the Gazette, terminate a retirement village scheme.
  - (2) The Minister may not terminate a retirement village scheme unless satisfied (in such manner as the Minister thinks fit) that all residents of the retirement village wish to terminate the scheme.
  - (3) The Minister may make such orders as the Minister thinks necessary or appropriate on account of the termination of a retirement village scheme under this section.
  - (4) The termination of a retirement village scheme will take effect from the date specified for the purpose in the notice.
  - (5) The Registrar-General must, at the request of the Minister, take any action for or in connection with the issue, alteration, correction or cancellation of certificates of title necessary to give effect to the provisions of this section.
  - (6) If the Minister requests the Registrar-General to give effect to a particular determination or action, the Minister will, if so required by the Registrar-General, furnish the Registrar-General with a certificate certifying the determination or action.
- What will the official name be so there can be consistency maintained. Ie Pinnaroo & District Retirement Village, Pinnaroo Independent Living Units, Pinnaroo Retirement Village
  - Council will be required to select one of the two proposals set out above, or select a new set of entry payment and maintenance fee payment guidelines.
  - Agree on a phased in approach for increases to rental amounts. Should this be incremental on a monthly, bi monthly, 6 monthly etc
  - Agree to how the existing tenants who have not paid the right to occupy fee will be treated. Are they required to now pay this? Or will they not be required to pay this?
  - If tenants are required to pay a right to occupy fee, how long will they be permitted before it must be paid. Ie can they pay it off over a certain amount of time or does it have to be paid in one lump sum.



---

## Legal issues around the sale of Lot 5

The following question was proposed for legal advice and the subsequent answer provided;

### **3. If it should have a designated purpose as a retirement village then are the lots able to be subdivided and a portion sold off?**

*For the land to cease to be a retirement village under the RV Act it is necessary to terminate the retirement village scheme in accordance with the RV Act. When this has occurred there is then no impediment to the land being sold as you have indicated, as unencumbered freehold. Given that the land is also not classified as community land, there is no further impediment to sale under the LG Act. However, the Council will be required to have regard to and, as necessary, comply with its relevant policies concerning the disposal of real property.*

*In this matter, because there has not been any application to note the retirement village on the certificates of title, there is no (current) obligation to remove the notes – which requires an Application CR form with the Lands Titles Office and the payment of the registration fee. That is, it may be assumed that the LTO does not have any current knowledge of the status of the land. It is my advice that this inadvertent state of affairs cannot be relied upon by the Council to circumvent the requirement to terminate the scheme prior to any sale – this is of particular importance given that the responsibilities of the Council as a public authority.*

*Whilst the retirement village is in operation, the land will need to be held for that purpose and the provisions of the RV Act observed, but once the retirement village scheme is terminated, the land is free to be sold. The two certificates of title currently contain 5 designated allotments (3 and 2). At the appropriate time (and subject to compliance with all obligations under the RV Act and, in turn, the LG Act, those allotments can be sold without the need for the lodgement of any plans of division or applications for new certificates of title.*

*In addition, I assume that the land is currently approved for land use as a retirement village and on that basis any purchasers of the divided lots would need to apply to change the authorised use of the land.*

Further clarification was sought with the following questions

*I just need to clarify my thinking around some of the below information.*

*When you say terminate the RV Scheme, do you mean across all 5 lots or just on the lot that is being proposed to sell? With the current CTs not having the endorsement, Council would still be expected to Act as though that has happened? Or can Council change the boundaries by subdivision then have the CTs endorsed as they should be. I would think that being in Public Office it would not be appropriate to act in the latter manner.*

The legal response was;

*I am not aware of any 'partial' scheme terminations having occurred but there is no legal reason why that could not occur- would need to negotiate the outcome with the Minister's office but subject to adequate protection for existing residents being the primary consideration I would expect.*

---

*Yes you are correct in that the absence of the CT notations is not a situation that the Council can take advantage of - particularly as a public authority you are expected to act as if that error had not occurred and hence act without regard to the error.*

*In addition to the above comment In addition, I assume that the land is currently approved for land use as a retirement village and on that basis any purchasers of the divided lots would need to apply to change the authorised use of the land. I have sought advice from David Hutchison from Access Planning who has advised;*

*The land is presently zoned Residential. It is proposed be in the same zone in the new Development Plan.*

*An application for a medical centre would require approval and would be a Category 3 development requiring full public consultation.*

*I am assuming the development would be on the vacant piece of land adjoining the business premises to the east. If so it would be a much better development option that the last site which was in the middle of the Residential zone.*

*Notably, under the **pending** Development Plan it would be an easier proposition as small scale consulting rooms become an envisaged land use in the Residential zone.*

#### *Land Use*

*1 The following forms of development are envisaged in the zone:*

- *small scale non-residential use that serves the local community, for example:*
  - *child care facility*
  - *health and welfare service*
  - *open space*
  - *primary and secondary school*
  - *recreation area*
  - *shop, office or consulting room*

*4 Non-residential development such as shops, schools and consulting rooms should be of a nature and scale that:*

- (a) serves the local community*
- (b) is consistent with the character of the locality*
- (c) does not detrimentally impact on the amenity of nearby residents.*



### 13 Other Business

Nil

### 14 Confidential Items

#### 14.1 Pinnaroo Independent Living Units

Cr Kevin O'Driscoll moved Cr Brian Toogood seconded that pursuant to Section 90 [ 2 ] of the Local Government Act 1999 the Council orders that all persons, except the Chief Executive Officer and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 14.2 Pinnaroo Independent Living Units

The Council is satisfied that pursuant to section 90 [ 3 ] [ h ] of the Act, the information to be received, discussed or considered in relation to the agenda item is legal advice

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of information that has been provided previously to the Council under Section 90 of the Local Government Act and retained under Section 91 of the Local Government Act at 2.35 pm

**Carried 32 / 0917**

14.1.1 Cr Kevin O'Driscoll moved Cr Brian Toogood seconded that the situation with the vacant land adjacent to the Pinnaroo Independent Living Units be explained to Ms Di Thornton [ Mallee Border Health Centre ] including the impending time frames and costs

**Carried 33 / 0917**

**2.53pm** Cr Allan Dunsford left the meeting

14.1.2 Cr Kevin O'Driscoll moved Cr Andrew Grieger seconded that the Council owned Units on Jenkins Terrace Pinnaroo be called "Pinnaroo Retirement Village"

**Carried 34 / 0917**

**2.59 pm** Cr Brian Toogood left the meeting

**3.02 pm** Cr Kevin O'Driscoll left the meeting

**3.03 pm** Cr Kevin O'Driscoll rejoined the meeting

## 14 Confidential Items

### 14.1 Pinnaroo Independent Living Units

14.1.3 Cr Andrew Grieger moved Cr Dennis Hyde seconded that the Council set a Right to Occupy fee for the Pinnaroo Retirement Village of \$35,000 to be paid on entry of the unit and that fee will be paid back pro rata if the unit is vacated within a four [ 4 ] year period. After the four [ 4 ] year period there is no refund of the Right to Occupy Fee. A Maintenance Fee will be set at 25% of the base pension rate for single and 20% of the base pension rate for double and increase inline with the pension rates as set by the Department of Human Services

**Carried 35 / 0917**

14.1.4 Cr Kevin O'Driscoll moved Cr Neville Pfeiffer seconded that the Council take the "Phase Out" approach to the charging of the Right to Occupy Fee and the Maintenance Fee be implemented from 1 July 2018 with the exception of the current occupant of Unit 7

**Carried 36 / 0917**

Cr Kevin O'Driscoll moved Cr Neville Pfeiffer seconded having considered agenda Item 14.2 of the Agenda in confidence under section 90 [ 2 ] and [ 3 ] [ h ] of the Local Government Act 1999, the Council pursuant to section 91 [ 7 ] of the Act orders that the item and the minutes, reports and all other records, relating to the matter be retained in confidence. This order is to be reviewed at or before the Ordinary Council Meeting to be held in January 2018, as to if this order is to continue in operation at 3.19pm

**Carried 37 / 0917**