

Shire of  
**BROOKTON**

**SPECIAL MEETING OF COUNCIL**

**AGENDA**

**30 May 2019**

# Shire of **BROOKTON**

## **NOTICE OF MEETING**

**30 May 2019**

**14 White Street  
Brookton, WA 6306**

Dear Councillor, Resident or Ratepayer,

Notice is hereby given that the Special Meeting of the Brookton Shire Council will be held on Thursday 30 May 2019 in the Council Chambers at the Shire Administration Centre commencing at 5.30 pm.

The business to be transacted is shown in the Agenda.

**Ian D'Arcy**  
**CHIEF EXECUTIVE OFFICER**  
24/05/2019

### **DISCLAIMER**

*The recommendations contained in the Agenda are subject to confirmation by Council. The Shire of Brookton warns that anyone who has any application lodged with Council must obtain and should only rely on written confirmation of the outcomes of the application following the Council meeting, and any conditions attaching to the decision made by the Council in respect of the application. No responsibility whatsoever is implied or accepted by the Shire of Brookton for any act, omission or statement or intimation occurring during a Council meeting.*

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1.05.19 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

2.05.19 RECORD OF ATTENDANCE/APPOLOGIES/APPROVED LEAVE OF ABSENCE

3.05.19 PUBLIC QUESTION TIME

4.05.19 PETITIONS/DEPUTATIONS/PRESENTATIONS

6.05.19 ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION

7.05.19 DISCLOSURE OF INTERESTS

***Members and Officers to declare Financial, Proximity or Impartiality Interests & submit forms to the Chief Executive Officer at the commencement of the meeting and also prior to the item.***

### **Disclosure of Financial & Proximity Interests**

- a. Members must disclose the nature of their interest in matters to be considered at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*).
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the *Local Government Act 1995*).

### **Disclosure of Interest Affecting Impartiality**

- a. Members and staff must disclose their interest in matters to be considered at the meeting in respect of which the member or employee has given or will give advice.

## 8.05.19 GOVERNANCE

### 8.05.19.01 PROPOSED OCCUPATION OF CONSULTING ROOM - SADDLEBACK MEDICAL CENTRE

<b>File No:</b>	
<b>Date of Meeting:</b>	30/05/2019
<b>Location/Address:</b>	Saddleback Medical Centre - Lot 511 Whittington Street Brookton
<b>Name of Applicant:</b>	Dr Andre and Dr Esther Oladipo
<b>Name of Owner:</b>	Shire of Brookton
<b>Author/s:</b>	Ian D'Arcy – Chief Executive Officer
<b>Authorising Officer</b>	As above
<b>Declaration of Interest:</b>	The author has no interest in this matter
<b>Voting Requirements:</b>	Absolute majority
<b>Previous Reports:</b>	N/A

#### Summary of Item:

This report relates to a request from Doctors Andre and Esther Oladipo seeking free use of a vacant consulting room at the Saddleback Medical Centre on the Monday, Wednesday and Friday, which are presently not covered Beverley Medical Practice, and possibly access residential accommodation owned by the Shire at market rent.

The Officer Recommendation is to support the request for an initial 13 month period to the 30<sup>th</sup> June 2020.

#### Description of Proposal:

A copy of the email request from Doctors Andre and Esther Oladipo is provided below that outlines the proposed arrangement being sought:

*From: bola oladipo [mailto:droladipodre@yahoo.com]*

*Sent: Saturday, 18 May 2019 9:22 PM*

*To: Ian D'Arcy <ceo@brookton.wa.gov.au>*

*Subject: new medical centre in brookton*

*Dear Sir,*

*We, Dr Andre and Esther Oladipo will like to start a medical practice in Brookton for continuous and available health service to the good people of Brookton.*

*We believe that Brookton have the capacity for a five days medical practice as some of our patients keep asking why we are not working five days a week.*

*On the days doctors are not available in Brookton, the patients travel to neighbouring towns to see doctors. We intend to fill this vacuum.*

*We intend to work on days when Dr Remi Adebayo is not running the practice which is Monday, Wednesday and Friday.*

*We are hoping to get an accommodation in town which we will be paying for and we hope to get a room for free in the medical practice to render these health services.*

*Regards,  
Andre and Esther.*

**Background:**

By way of background, correspondence has been received by the Shire confirming a separation in partnership of the existing medical practice. This has prompted the Oladipo's request to Council, although it is understood that there has not been any discussion with Doctor Adebayo (Beverley Medical Practice) on this matter.

At present, there is two agreements in place in relation to the Saddleback Medical Centre, both with a common expiry date of the 30<sup>th</sup> June 2020. These are:

1. A Lease Agreement with Silver Chain Group Ltd that allows for occupation of a designated 'Home Services Area' and shared use of the 'Common Use Area' within the Saddleback Medical Centre at a 'peppercorn' rental of \$1.00 a year.
2. A Service Agreement with Adebayo Services Pty Ltd (Beverly Medical Practice) that ensures the delivery of medical (general practice) services for two days per week from the designated area of the Saddleback Medical Centre, including shared use of the 'Common Use Area', at an annual charge to the Shire for this service of \$24,000 per annum.

Respectively, the following floor plan of the Saddleback Medical Centre (**Figure 1**) provides an appreciation the designated areas assigned under each of the above-mentioned agreements, with the consulting room in question highlighted by a purple border. Given its status as unallocated, Council may, at its discretion, allocate this consulting room to another medical practitioner or medical professional of its choice. Previously, it is understood this room was used for the provision of dental services, but in recent years has predominantly remained vacant, with only occasional use for pathology and other health professionals on an informal basis.

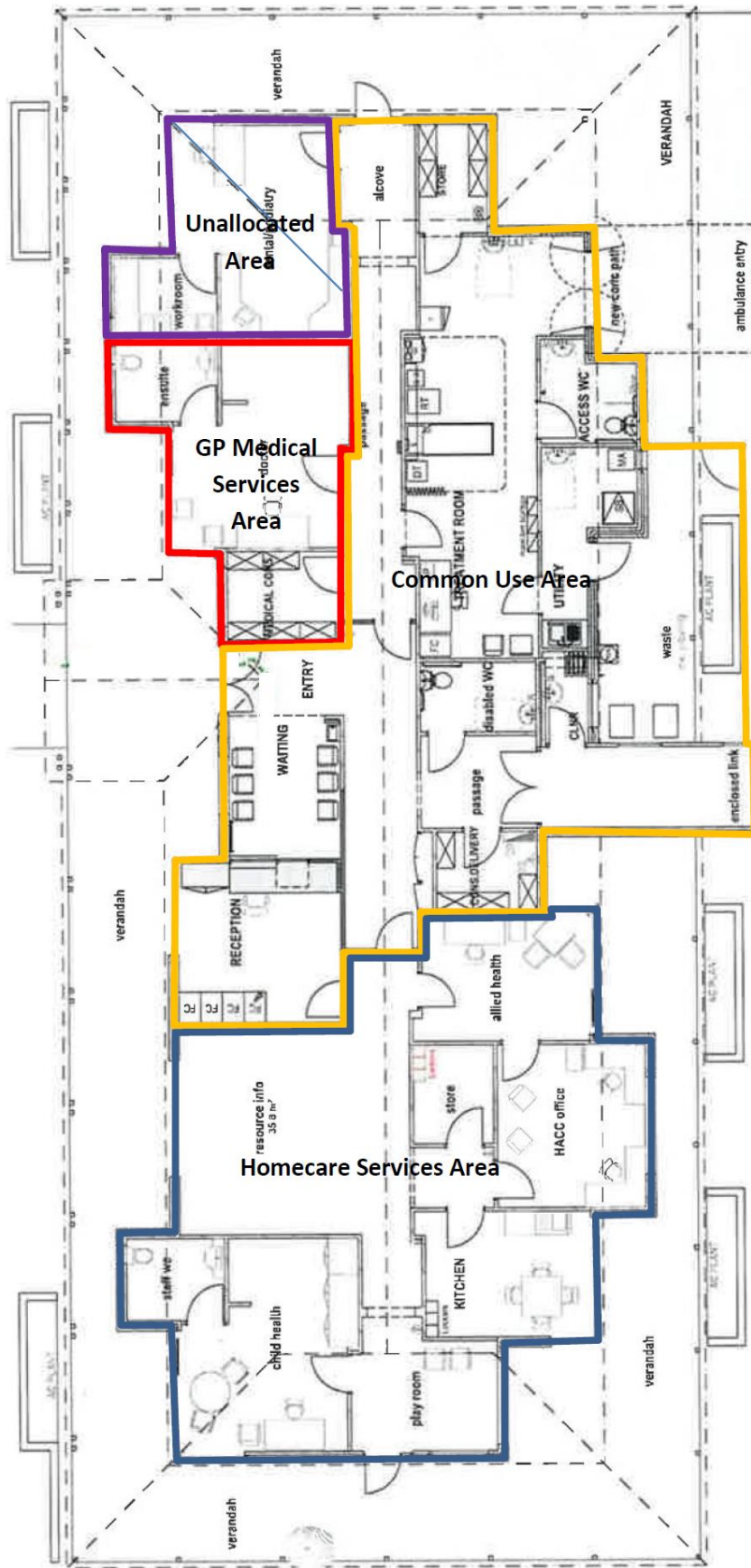
As for the designed 'Common Use Area' bordered by a yellow line:

- The respective agreements grant both parties use this area on a co-operative basis for the mutual benefit of their clients and patients;
- A number of allied health services under WA Country Health banner also occupy this space as well as other designated areas of Medical Centre without formal agreement; and
- The Council also retains an interest in this area should it need to adjudicate on any dispute arising between the occupants on the shared use arrangement.

Of note, the area bordered by a red line is assigned to the Beverley Medical Practice, while the area bounded by the blue line is leased to Silver Chain.

In regard to the Service Agreement with Beverly Medical Practice more specifically, the Agreement Schedule stipulates the medical service is required to be delivered across *"Two days (each of 7 hours) each week, of as otherwise agreed between the Shire and the Medical Services Provider"* – see table in Risk Assessment section below. Traditionally, the two days has been a Tuesday and Thursday each week.

Figure 1 – Saddleback Medical Centre Floor Plan



Saddleback Medical Facility

**Consultation:**

Limited consultation has been entertained on this proposal between the applicants, Shire Executive Staff and Shire President.

**Statutory Environment:**

As the owner of the Saddleback Medical Centre the Council may entertain this request through:

- a) A Service Agreement (Contract) similar to the arrangement with the Beverley medical practice;
- b) A Lease agreement in a consistent manner to the arrangement with Silver Chain; or
- c) A Commercial Tenancy Agreement for a prescribed period of time.

In regard to b) above, the Local Government (Functions and General) Regulations 1996 prescribes under Reg. 30.(2)(e) that the Council may entertain a lease with a person or organisation for up to two years without having to accord with the provisions of Section 3.58 of the *Local Government Act, 1995*.

In relation to residential accommodation Council has two vacant Independent Living Units located opposite the Saddleback Medical Centre that could be let under a periodical Residential Tenancy Agreement.

Further, the *Local Government Act, 1995* empowers the Council to delegate its authority to the CEO pursuant to Section 5.42 to the Act and determine matters on its behalf, while Section 9.49A of the Act allows for the execution of documents.

**Relevant Plans and Policy:**

In relation to rental of a residential unit owned by the Shire it is expected Council *Policy 2.33 – Employee and Community Housing* will apply to this matter.

**Financial Implications:**

As this request involves free use of a consulting room and possible market rental of a housing unit, the only financial implication for Council is:

- A possible income of \$245 per week for a 3 bedroom housing unit if rented; and
- Additional power and water consumption at the Saddleback Medical Centre, which is considered to be minimal and presently too difficult to monitor.

**Risk Assessment:**

As the Agreements tied to the Saddleback Medical Center are legal instruments of a contractually binding nature, the respective parties need to adhere to the stated provisions and ensure there is no breach of the obligations or entitlements contained within. With this in mind, the Service Agreement for the Beverley Medical Practice under provision 4.1(2) states:

*“(2) In particular, the Medical Services Provider, during the Term and to the reasonable satisfaction of the Shire, must –*

- a) *provide, during the Agreed Hours, the Medical Services to residents of the Shire of Brookton and other patients attending the Medical Centre;*
- b) *provide, in addition to the Agreed Hours, the Medical Services to residents of the Kalkarni Aged Residential Care Facility at that facility;*
- c) *provide bulk-billing services to pensioners and health care cardholders;*

- d) ensure that appropriate equipment and staff are obtained or engaged, and are available and utilised, to provide the Medical Services;
- e) ensure that the timing of the Agreed Hours each week is determined so as to maximise patient service and efficiency – which may, for example, include half-day sessions or evening sessions; and
- f) comply with his obligations under the Medical Practitioners Act 2008, any code of conduct made under that Act and any other written law relevant to the provision of the Medical Services.

Further, the Schedule of this Agreement advocates:

5.	Contract Price (clauses 1.1 and 2.3)	The amount of \$24,000 (inclusive of GST) (as adjusted from time to time under clause 2.5) for each year that the Contract is in force from the Commencement Date.
6.	Agreed Hours (clause 1.1)	Two days (each of 7 hours) each week – or as otherwise agreed between the Shire and the Medical Services Provider.

With specific reference to 4.1(2)(a) and (b) of the Service Agreement (underlined above), it has been observed that the Beverley Medical Practice accords to the required 2 days of service provision each week.

Also, it is understood Baptistcare regularly rely on patient transfer through the St Johns Ambulance service to Beverley, Pingelly or Narrogin for medical attention, and anticipated this will be reduced with a stronger on-site presence at the Medical Centre.

Further, it is interpreted that the wording in Provision 4.1 of the current Service Agreement does not specifically state or imply any form of exclusivity in favour of the Beverley Medical Practice for the days presently not covered under the Service Agreement. This includes any out of hours servicing needed for the Kalkarni Residential Aged Care Facility across the days of Monday, Wednesday, Friday, Saturday and Sunday. Rather, it is anticipated the increased coverage would significantly benefit the whole community across a 5 day a week. Therefore, one of the risks of not supporting this request is that the community (including Kalkarni) will be denied an expanded local medical service.

Furthermore, Council also needs to be considerate of risks in relation to:

- a) Not being drawn into the business partnership separation, as mentioned earlier in this report. From an officer perspective, this matter is not the business of the Shire. Rather, the Council’s interest and focus should solely be on facilitating a medical service that best delivers benefit to the Brookton residents.
- b) The views of the Beverley Medical Practice may differ from the Officer’s Recommendation for this report, particular in relation to patient demand and first right of opportunity to expand or extend the existing medical service.

**Community & Strategic Objectives:**

This proposal relates to delivery of core business and services detailed in the Shire of Brookton Corporate Compendium – May 2018, duly appended to the Next Generation BROOKTON Corporate Business Plan <2021.



Specifically, the proposed disposal of Lot 511 aligns to:

*Function 4 Property Management*

*Action 4.3 – Assess Residential Age Care and Medical Facility Tenure*

**Comment**

As mentioned, the request to extend the medical service delivery in Brookton on opposite days to the existing practice is viewed as a positive outcome for the community, notwithstanding some concern may be raised by the Beverley Medical Practice. On this, and as already mentioned, it is interpreted the Council will not be in breach of the current Service Agreement, and therefore suggested it would be remiss to not support this request based on the following the benefits that could be realised:

- An increase in access to a GP Medical Service for local residents.
- Greater level of convenience and choice offered to patients.
- An increase in medical service capacity to support the Kalkarni Residential Aged Care Facility.
- Little to no additional cost being borne by the Shire.

Although, with this acknowledged it is considered that any free use of a consulting room at the Saddleback Medical Centre should be formalised by a formal Agreement, as this will ensure a consistent approach to delivery of service from the Medical Centre over a capped period of 13 months.

Similarly, should the residential accommodation be needed a periodical residential tenancy agreement will need to be applied at the rental value specified in the Schedule of Fees and Charges for the coming financial year.

**OFFICER'S RECOMMENDATION**

***That Council:***

- 1. Endorse the allocation and free use of the 'Vacant Consulting Room' and shared use of the 'Common Area' at the Saddleback Medical Centre as shown in Figure 1 of this report to Doctors Andre and Esther Oladipo for 3 days per week up to 30<sup>th</sup> June 2020, conditional on the execution of a Service Agreement with the Shire of Brookton that details:***

  - a) The 'Vacant Consulting Room' and 'Common Use Area' being made available by the Shire free of charge to the Oladipo's Medical Practice.***
  - b) Continuity of service by the Oladipo's Medical Practice to the Brookton Community (including Kalkarni residents) during the three days of occupation each week.***
  - c) The 3 days per week being alternate days to the two days currently served by Adebayo Services Pty Ltd (Beverley Medical Practice).***
  - d) Use of the consulting room outside of the 3 allotted days being reserved for use by other medical practitioners at the Shire's discretion.***
  - e) No costs or accountability imposed on the Shire of Brookton in relation to the operations and lawful conduct of the Oladipo's Medical Practice.***
  - f) All other provisions that reflect a consistent standard aligned with the Medical Adebayo Services Pty Ltd (Beverley Medical Practice) Service Agreement.***

- 2. Pursuant to Section 5.42 of the Local Government Act, 1995 delegate authority to the Chief executive Officer to prepare the Service Agreement as detailed in 1. above.***

- 3. Authorise the Shire President and the Chief Executive Officer to execute the relevant documentation, and affix the common seal of the Shire of Brookton on this documentation upon the final wording being agreed.**
  
- 4. Endorse occupation for one of the Mokine Residential Units (if desired and available) to the Oladipo's Medical Practice at the weekly rent prescribed in the Council's Schedule of Fees and Charges, and conditional on a periodical Residential Tenancy Agreement being executed.**

(Absolute majority vote required)

**8.05.19.02 PROPOSED SALE OF LOT 511 ON DEPOSITED PLAN 406799 WHITTINGTON STREET BROOKTON – PUBLIC SUBMISSIONS**

<b>File No:</b>	2731
<b>Date of Meeting:</b>	30/05/2019
<b>Location/Address:</b>	Lot 511 on Deposited Plan 406799 Whittington Street Brookton
<b>Name of Applicant:</b>	Shire of Brookton
<b>Name of Owner:</b>	Shire of Brookton
<b>Author/s:</b>	Ian D’Arcy – Chief Executive Officer
<b>Authorising Officer</b>	As above
<b>Declaration of Interest:</b>	The author has an interest in this matter as the CEO being operationally responsible for the Shire functions
<b>Voting Requirements:</b>	Absolute Majority
<b>Previous Reports:</b>	15/11/2018

**Summary of Item:**

This report relates to the proposed sale of Lot 511 Whittington Street Brookton that encompasses the Saddleback Medical Centre and Kalkarni Residential Aged Care facility as a going concern, and involves:

- a) Consideration of public submissions received on the proposed sale; and
- b) Determination by Council having due regard to the public submissions to proceed with the disposal process of this property (or not) in accordance with legislative requirements.

**Description of Proposal:**

In summary, Lot 511 consists of:

- A 1.5 hectare parcel of land;
- The Kalkarni Residential Aged Care Facility, including the allocated 43 bed licences, associated infrastructure, plant, equipment and furniture;
- The Saddleback Medical Centre, also including associated infrastructure, plant, equipment and furniture.

**Figure 1** below illustrates the location of Lot 511 within the Brookton townsite and adjacent to the town oval.

As mentioned, the proposal is to give due consideration to selling Lot 511 through a negotiated process with the current aged care provider to purchase this property, inclusive of all land, buildings, infrastructure, capital items and business interests/licences.



**Figure 1:** Location Plan - Lot 511 Whittington Street Brookton

**Background:**

Since the mid 90's the Shire Council has pro-actively supported the delivery of medical services and age care accommodation, with the initial construction of the Saddleback Medical Centre followed by the Kalkarni Residential Aged Care Facility from the late 1990s to the early 2000s on Crown Reserve 43158.

The Shire initially operated the residential aged care at Saddleback and then reverted to Kalkarni, with an increase in the bed numbers. Then in 2007 the Council engaged Baptistcare (WA) Inc. to deliver this service on its behalf, with the buildings, infrastructure and aged care bed licences continuing to be owned by the Shire.

Subsequently, the Council in 2015 sought approval to excise the medical and age care facilities from the broader parent lot of Reserve 43158, with the view to creating a free-hold land parcel, being Lot 511. The Council's intent at the time was to acquire Lot 511 with the view to possibly on selling the property and associated business interests at a later date.

Upon creation of Lot 511, the Council commenced formal proceedings on acquiring Lot 511 from the State Government (land only), with the free-hold title eventually being granted to the Shire in early 2018.

At the same time the Council entertained discussion on the possibility of:

- Selling the property to an appropriate residential aged care service provider.
- Removing an ever increasing risk tied to compliance of the aged care bed licences, where the Shire as the licence holder needs to have detailed knowledge, expertise and resources to be effective and accountable in delivering high end residential aged care.
- Yielding a financial return from selling Lot 511, with future use of these funds to benefit the Brookton Community.

This discussion also centred on:

- The various options of property disposal including maintaining the status quo, selling or leasing the property to the incumbent provider, or conducting an open tender process to attract the highest bidder.
- Approaching Baptistcare in the first instance to gauge interest in acquiring the property conditional on Local Government processes being met and a negotiated sale price being realised premised on fair market value for the property and business interests.
- Maintaining an open and transparent process in accordance with the *Local Government Act, 1995*, with intent to exist from, as opposed to entering into (being the primary focus of the legislation) the delivery of Residential Aged Care.

As a consequence of these discussions a sworn valuation for Lot 511 was obtained from Knight Frank Commercial Property Consultants. Included in the valuation was land component, buildings, infrastructure, and operational licences for Kalkarni. The final valuation report, completed in March 2018, qualified the value of property and business interests, while also taking into account and explaining in detail:

- The workings and associated complexity of the residential age care market;
- The current market value of the 43 bed residential age care licences as a going concern; and
- The limited value of the Saddleback Medical Centre as a non-commercial entity under the current usage arrangements.

Upon consideration of the final valuation report and adhering to the legislative process, the Councillors at their July 2018 Corporate Briefing Forum (CBF) further discussed the merits of selling Lot 511. This culminated in a Business Plan being prepared for further consideration by the Council on selling Lot 511. It was also acknowledged by Council at the time that a minimum 6 week public consultation/submission period would need to be conducted to gain an understanding of community sentiment, views and concerns before determining to move forward, or not, on the sale process.

Then in October 2018 while finalising the Business Plan, the Commonwealth Government announced a Royal Commission into Aged Care Services across Australia. The Commission publicized its charter to investigate and report on:

- Quality of aged care services including mistreatment, abuse, and systemic failure within the industry.
- How best to deliver aged care services to people with disabilities and those living with dementia.
- Future challenges and opportunities to deliver accessible, affordable and high quality aged care services, including delivery to those people living at home and in regional/remote locations;
- What government, industry, and the wider community can do to strengthen aged care services ensuring a high level of quality and safety;
- How greater choice, control and independence can be afforded to the individual, and improved engagement can be facilitated with families and carers;
- Best practice to deliver sustainable aged care services incorporating innovation and technology, and increased investment in the aged care workforce and capital infrastructure;
- Any matter reasonably incidental to the other matters raised above.

Since inception of the Royal Commission a document titled *“Background Paper 1 - Navigating the maze: an overview of Australia's current aged care system”* has been released that provides an overview of the Aged Care sector, and affords further clarity as to the Royal Commission’s charter. The Council’s attention is directed to the Royal Commission into Aged Care Quality and Safety website using the following address to locate this document:

<https://agedcare.royalcommission.gov.au/publications/Pages/default.aspx>.

Councillors are encouraged to read this Background Paper to gain a sound appreciation of the Aged Care system and the mounting challenges applicable to what is an emerging growth industry in Australia.

Furthermore, the following website link below provides access to numerous articles on matters being considered by the Royal Commission on Aged Care Quality and Safety:

<https://www.australianageingagenda.com.au/category/royal-commission/>

In November 2018 the draft Business Plan incorporating the Executive Summary of the Final Valuation Report – March 2018 was presented to Council with the following motion being passed:

**OCM 11.18-11**

**COUNCIL RESOLUTION**

**MOVED CR WALKER    SECONDED CR MILLS**

***That Council, pursuant to Section 3.59 the Local Government Act, 1995:***

***1. Endorse the draft Business Plan for a Major Land Transaction and Trading Undertaking***

*involving the proposed disposal (sale) of Lot 511 Whittington Street, Brookton (including the Kalkarni Residential Aged Care Facility and Saddleback Medical Centre), as presented in Attachment 13.11.18.01 to this report; and*

*2. Proceed with State wide public notice of its intent and availability to obtain the Business Plan of this proposal in the Western Australian Newspaper, through local print and electronic media, and the convening of a public meeting inviting submissions to be received over a minimum six (6) week period to conclude 31<sup>st</sup> January 2019, with the results to be brought back to Council.*

**CARRIED BY SIMPLE MAJORITY VOTE 6-0**

Subsequently, the Business Plan was advertised in early December 2018 calling for public submissions on the proposal. The background and outcomes of this process is provided in the Consultation section below.

**Consultation:**

The consultation process for this proposal has involved numerous discussions with Councillors at various briefing sessions, as well as an open public submission period (in accordance with Section 3.59(4) of the *Local Government Act, 1995*) incorporating a Question and Answer (Q & A) Session.

The intent of this consultation is for Council to be informed and understanding of:

- The sentiment, concerns and levels of objection or support for the proposal from the local community.
- The contemporary requirements and responsibilities on delivering residential aged care and issues emerging from investigations by the 'Royal Commission into Aged Care Services'.
- The options available and legislative approach to be followed in determining a final position on selling or retaining Lot 511.

While an initial 6 week submission period (involving the Q & A session) was entertained, a 4 week extension was granted by the Shire President and Deputy Shire President to allow sufficient time for individual submission to be received. This culminated in closure for the submissions being the 28<sup>th</sup> February 2019 upon which a total of 62 submissions had been received, 40 objecting, 13 expressing a level of indifference, and 9 indicating support for the proposed sale of Lot 511. A copy of each submission can be found in **Attachment 8.05.19.02A** (under separate cover) for the Council's reference.

However, of concern through this process has been some of the commentary posted on social media and circulated by email to members of the community. This commentary sought to encourage broad public engagement and garner opposition to the proposed sale of Lot 511. The respective posts strongly advocated the Council selling property at the risk of the residential aged care beds being relocated away from Brookton, as almost a given, notwithstanding the Council's stated position in the Business Plan and in the meeting minutes is to retain and enhance the delivery of residential aged care services in Brookton.

This generated wide spread discussion and concern amongst the local community, but most of all it led to intimate concern for some Kalkarni residents and their families that the immediate future of Kalkarni as a residential aged care facility is in question and uncertain, resulting in 3 residents relocating to other residential aged care facilities unnecessarily.

For further commentary on the public submissions and matters raised is offered in the Comment section

of this report.

**Statutory Environment:**

Local Government Act, 1995 (Western Australia)

This process has been conducted in accordance with Section 3.59 of the *Local Government Act, 1995* (the Act), and Regulation 8A(1)(b) of the Local Government (Functions and General) Regulations, 1996 (the Regulations).

Specifically, Section 3.59(5) states:

- (5) *After the last day for submissions, the local government is to consider any submissions made and may decide\* to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.*

**\* Absolute majority required.**

Further, Council is empowered pursuant to Sections 5.16 and 5.42 of the *Local Government Act 1995* to delegate many of its roles and responsibilities to the CEO. This exercise of delegation may be required should Council endorse the Officer Recommendation.

Specifically, Section 5.42 of the Act states:

**5.42. Delegation of some powers and duties to CEO**

- (1) *A local government may delegate\* to the CEO the exercise of any of its powers or the discharge of any of its duties under —*
- (a) *this Act other than those referred to in section 5.43; or*
  - (b) *the Planning and Development Act 2005 section 214(2), (3) or (5).*

**\* Absolute majority required.**

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

Aged Care Act, 1997 (Commonwealth)

In regard to the residential aged care bed licences these are granted to the Shire of Brookton under Commonwealth *Aged Care Act, 1997* and qualified on the Shire being accredited as an approved provider by the Australian Aged Care Quality Agency.

As for transferring the residential age care beds to another provider or facility, this falls to the Commonwealth Department of Health to determine in accordance with legislative requirements. The following email has been received from a Department of Health Representative that details the specific requirements and process for the transfer of the bed licences:

*Good afternoon Vicki*

*Thank you for your query regarding residential aged care licences held by the Shire of Brookton.*

*As the team leader with the responsibility for residential aged care places management in Western Australia, I have been asked to respond to the individual questions raised in your email.*

*Question 1.*

*If the person or organisation purchases the facility (that is the building) – can they take all or some of the 43 beds away from the facility and put them somewhere else?*

*Response*

*Yes. If the Shire agrees to transfer the aged care facility to another approved provider, then the new approved provider can apply to vary the location of some or all of the licences to another site. The approved provider can also choose to transfer the licences to another approved provider.*

*However, transfers or variations require the involvement/approval of the Department and where there are care recipients being provided with care, there are specific requirements under the Aged Care Act 1997 to ensure that their care needs continue to be met.*

*Question 2.*

*What is the process for this?*

*Response*

*If the new approved provider decided to vary (that is, move the location but retain ownership of the licences, they would need to apply to the Department by completing an Application to Vary Conditions of Allocation Form and this would need to be approved by the Department.*

*If the new approved provider decided to transfer the bed licences to another approved provider (as is the case if the Shire decides to sell the facility), then both the transferor and transferee would need to complete a Notification to Transfer Aged Care Places to Another Provider.*

*These forms are available at:*

*<https://agedcare.health.gov.au/ageing-and-aged-care-for-providers-forms/application-to-vary-conditions-of-allocation>*

*<https://agedcare.health.gov.au/ageing-and-aged-care-for-providers-forms/application-to-transfer-aged-care-places-to-another-provider>*

*Question 3.*

*If the owner can transfer the beds, can the beds stay within the region or can they go anywhere?*

*Response*

*The new approved provider can apply to vary or transfer the licences outside of the region. In assessing an application to move licences outside of a region, the department would consider the care needs of each of the regions when making a decision whether to approve the application.*

*Question 4.*

*What is the process?*

*Response*

*As per the response at Question 2.*

*Please do not hesitate to contact me on 9346 5336 if you require further information / clarification.*



*Also, please note if the Shire does decide to sell the facility, the department must receive a Notice to Transfer Aged Care Places to Another Provider signed by both the proposed transferor and transferee at least 60 days before the proposed date of the transfer.*

*Kind regards*

*Shirley McManus  
Assistant Director (acting)  
Health Grants and Network  
Department of Health Western Australia (Commonwealth)  
Tel: 08 9346 5336*

Additionally, under this legislation the Shire and Baptistcare must from the 1<sup>st</sup> July 2019 adhere to the new Aged Care Quality Standards 1 to 8 as detailed on the Commonwealth Department of Health website and summarized below. Please note that 'organisation' in this instance means the Shire of Brookton.

- 1. Consumer dignity and choice** - *The organisation:*
  - ✓ *Has a culture of inclusion and respect for consumers; and*
  - ✓ *Supports consumers to exercise choice and independence; and*
  - ✓ *Respects consumers' privacy.*
- 2. Ongoing assessment and planning with consumers** - *The organisation undertakes initial and ongoing assessment and planning for care and services in partnership with the consumer. Assessment and planning has a focus on optimising health and well-being in accordance with the consumer's needs, goals and preferences.*
- 3. Personal care and clinical care** - *The organisation delivers safe and effective personal care, clinical care, or both personal care and clinical care, in accordance with the consumer's needs, goals and preferences to optimise health and well-being.*
- 4. Services and supports for daily living** - *The organisation provides safe and effective services and supports for daily living that optimise the consumer's independence, health, well-being and quality of life.*
- 5. Organisation's service environment** - *The organisation provides a safe and comfortable service environment that promotes the consumer's independence, function and enjoyment.*
- 6. Feedback and complaints** - *The organisation regularly seeks input and feedback from consumers, carers, the workforce and others and uses the input and feedback to inform continuous improvements for individual consumers and the whole organisation.*
- 7. Human resources** - *The organisation has a workforce that is sufficient, and is skilled and qualified to provide safe, respectful and quality care and services.*
- 8. Organisational governance** - *The organisation's governing body is accountable for the delivery of safe and quality care and services.*

#### **Relevant Plans and Policy:**

The following Local Government plans or policies apply to this matter:

- ✓ Shire of Brookton Aged Friendly Plan 2017
- ✓ Policy 2.12 – Aged Care
- ✓ Policy 2.13 – Liquidity Management Strategy – Aged Care
- ✓ Policy 2.14 – Investment Management Strategy – Aged Care

## Financial Implications:

Presently, the financial implications in relation Lot 511 and associated business interests is:

### 1. Contractual Agreement Revenue/Expenditure

The table below provides a summary of the 2018/19 budgeted annual costs to the Shire in relation to the current contractual arrangements for 511. Of note, all three agreements are scheduled to expire on the 30<sup>th</sup> June 2020.

Contract	Nature of Agreement	Financial Arrangement
Baptistcare Service Agreement	➤ Full time operation of the Kalkarni Residential Aged Care on behalf of the Shire of Brookton	➤ Annual payment <u>by</u> the Shire of \$150,000 incrementally increased by CPI annually
Silver Chain Lease Agreement	➤ Portioned use of Saddleback Medial Centre	➤ Annual Payment <u>to</u> the Shire of \$1 pa.
<i>Adebayo Services Pty Ltd * Agreement</i>  <i>*Submission from Triple A (WA) Pty Ltd – former partner</i>	➤ Provision of part time GP medical service – 2 days per week ➤ Portioned use of Saddleback Medial Centre	➤ Annual payment <u>by</u> the Shire of \$25,000 pa. ➤ Free use to the medical centre.

### 2. Aged Care Profit/Loss

Over the past 10 years the following operating results applicable to the provision residential aged care has been incurred by the Shire:

Year	Profit	Loss
2008/09		\$264,368
2009/10	\$53,729	
2010/11	\$50,756	
2011/12	\$94,360	
2012/13	\$76,271	
2013/14		\$47,903
2014/15		\$298,804
2015/16		\$302,932
2016/17		\$23,311
2017/18	\$35,493	
<b>Total</b>	<b>\$287,299</b>	<b>\$617,707</b>

Source: SoB Annual Financial Statements

In consideration of this table the Council is reminded the profit and loss share under agreement for Kalkarni was amended for 2017/18 financial year. Previously, the service agreement specified sharing of the profit at 50/50% with the service provider, while any loss was covered by the Shire at 100%. In other words over the past two financial years both the profit and loss has been shared equally.

Furthermore, it should be noted the above figures incorporate the annual management fee paid to Baptistcare, but not other budget costs incurred by the Shire as detailed below.

### 3. Other Budget Costs

In addition to the costs incurred in relation to the respective agreements the 2018/19 municipal budget has also included funding allocation for:

- Internal contract management administration amounting to approximately \$58,000 involving officer time across multiple Shire positions.
- Property insurance costs of \$14,000.
- Capital replacement costs of \$320,000. This includes a hot water system replacement, new nurse call system, fire service water pump upgrade.
- Property maintenance costs of approximately \$55,000.

It should be noted these costs constitute a variable from year to year, but as a general trend Council will see an increase in expenses as:

- a) The Shire's existing facilities and infrastructure ages requiring an increased investment in maintenance, refurbishment or upgrade, and in some instances replacement, over the coming years.
- b) The governance and compliance requirements within the Aged Care and Local Government Industries continue to increase, particularly in relation of serviceability and accountability within both sectors.
- c) Inflation continues to have an impact.

### 4. Property and Business Valuation

The sworn value for Lot 511, based on the revised Valuation Report - April 2019, is \$6.31 million (excl. GST) as the nett value to Council. As a breakdown, the property value is \$4.46 million and the bed licences is \$1.85 million, although these values are subject to negotiation and mutual acceptance by the vendor and purchaser in order for the property to be sold.

As to the 'RAD/Bond redeemable value' of \$3.74 million, these funds held on behalf of the residential aged care residents, and while transferable as part of the property/business transaction, this amount but does not constitute moneys paid to Council as part of the nett sale price.

A copy of the Valuation Report – April 2019 prepared by Knight Frank Commercial Property Consultancy is provided as **Attachment 8.05.19.02B**. (under separate cover).

It is worth noting through conversation with the Mr. Chris Murphy (Licenced Valuer) from Knight Frank that in his opinion:

- a) The Kalkarni Residential Aged Care Facility is exceptionally well designed, maintained and operated, and offers a pleasant setting with the ability to expand the facility should this be desired.
- b) The occupancy rate of Kalkarni over the past 4 years has gradually increased to presently 98.3% which is exceptionally high by industry standards, and based on ABS data, Kalkarni is well positioned to serve the Wheatbelt Region over the coming years. As an estimate, it is projected that demand for aged care services in Australia will peak in 2035, approximately 15 years from now.
- c) The Aged Care Industry does not appear to have slowed from an investment perspective, with continued interest in the sector particularly coming from major aged care providers on the east coast of Australia.

- d) The supply of residential aged care beds is well short of demand at the moment, with financial institutions willing to loan funds to accredited aged care providers based on allocation of residential aged care beds being secured. However, these beds must be occupied within a two year period from the date of allocation from the Commonwealth Government.

#### 5. Investment and Expenditure

Although there is no current budget allocation for any of the proceeds, the receipt of funds from the sale of Lot 511 will require a financial investment and expenditure strategy to be prepared and adopted by Council. Importantly, Council will need to manage the allocation of funds from the sale in a responsible and diligent manner, whilst being mindful of the possible implications, including:

- Impact on current and future recurrent grant funding, as identified as a risk;
- Whole of life costs for any new infrastructure and services; and
- Fettering the decision making of future Councils.

Indicatively, the Business Plan advocated that proceeds from the possible sale of Lot 511 could be allocated across three key streams, as listed below. The initial rationale from Council was to spread the funds across areas of projected need, desired opportunity, and future prosperity.

- a) Asset Preservation and Replacement Fund – This fund is to accommodate a percentage of the proceeds from the sale, with the interest generated (through investment) being placed in existing ‘cashback’ reserves set up for the purpose of maintaining, repairing and replacing Shire assets in accordance with the Council’s Asset Management Framework.
- b) Innovations Fund – This fund is to support and complement the Shire’s Integrated Planning and Reporting (IPR) Framework that consists of the Strategic Community Plan and Council’s Corporate Business Plan, inclusive of the ‘Innovations Pathway’ and various other integrated plans of the Shire. The funding will notionally be used as investigative, seed and/or leverage funding for initiatives and projects endorsed by Council and subsequently listed in the Corporate Business Plan.
- c) Future Fund – The Future Fund is primarily set aside for investment using some funds realised from the sale for future benefit. It is anticipated this fund will take the form of a trust account (or similar) with the initial amount allocated being preserved in perpetuity and the interest earned compounding and being re-invested. The fund will be managed by Board of independent trustees appointed by Council.

Also, it is stated in the Business Plan that the percentage (%) of funding allocated will be determined by Council in consideration of the following factors:

- i. Financial projection (forecasting) in the long term based on condition assessment and ‘whole of life’ cost applied to Shire assets;
- ii. Allocation of funding (current) in ‘cashback’ reserves weighted against condition assessment and ‘whole of life’ projection for specific key assets;
- iii. Success (or otherwise) of the ‘Innovations Pathway’ process accounting for number and type of qualified projects and the Council’s acceptance, including involvement as the facilitator or proponent;
- iv. Capacity (resources) to deliver and achieve positive outcomes for the local community, ideally through a partnering mentality;

- v. Community sentiment and opinion on prioritisation of projects and standards of service delivery projected forward.

Notwithstanding the above, community comment through a number of public submissions has expressed concern over the Council's ability to manage the funds from the proposed sale of 511, and provide suitable accommodation for continued allied health services – see Concerns i), n) and o) in Comment section of this report.

In this regard, it is expected independent financial expertise will be needed at a cost to Council to develop a financial strategy aligned to Council's Integrated Planning Framework, should Council proceed with the sale process. However, at this stage there is no provision for this cost.

Further, as stated in the submissions from Silver Chain and Triple A (WA) Pty Ltd, Council may also be requested to assist in the provision of alternative accommodation for these two organisations. It is anticipated this could cost between \$200,000 and \$300,000. Although, again no provision is made at this stage.

#### 6. Negotiation Costs

In moving forward with the current disposal process it is suggested Council allocate an amount of \$100,000 (excl. GST) in the coming 2019/20 budget, taken from the 'Health and Aged Care Reserve', to cover costs and expenses associated with the negotiation process, and review of relevant legal instruments and other documents applicable to the sale of Lot 511, including any liability that may rest with the Shire. These funds would be expended at the discretion of the CEO, in consultation with the Shire President and may also include, Deputy Shire President and Deputy CEO.

#### **Risk Assessment:**

The Council needs to be cognizant that there are a number of risks associated with this matter, as presented below:

1. Being an Approved Residential Aged Care Provider - As an approved provider the Council is obliged to provide a high level of care in a compliant manner to all who reside in Kalkarni. However, with the Shire's lack of capacity, expertise and understanding of aged care, it heavily relies on Baptistcare, as an accredited and experienced aged care provider with considerable experience in this sector, to deliver the day to day operations in relation to Kalkarni. Although, there is a contractual arrangement with Baptistcare, this does not negate the overall responsibility placed on the Shire in relation to the performance of overall aged care delivery at Kalkarni. Therefore, the Shire heavily relies on an amicable working relationship with Baptistcare, built around trust and open communication. While this may not present as a significant issue to most people, a severe lack of performance (ie significant breach against legislation and dispute arising over apportioned blame or a serious incident of abuse of a resident not being reported) could bring about a breakdown in the working relationship that could trigger a range of actions and/or outcomes, including:
  - a) Action being instigated by either party and/or a third party such as a resident or their family, or the Commonwealth Department of Health. In this circumstance it expected the Council and CEO would be covered by insurance cover, notwithstanding such action would be a distraction from the Shire's core business.
  - b) An ongoing strained relationship between the Shire and Baptistcare with diminished trust, communication and air of tension with a negative effect on service delivery and overall

care of residents. This would heightening the Shire's risk at an operational level as well as impact local residents in Kalkarni.

- c) Media exposure (print, air and social) over an act of serious non-compliance (ie severe abuse of a resident) occurring, resulting in:
- i. Corporate reputational damage for the Shire, with detriment to the Shire's image, and popularity of Kalkarni as a preferred facility bringing about a negative effect on long term occupancy and financial performance. This could be profound, depending on the nature of non-compliance, with the financial bottom line yielding a loss and the Council's corporate image tarnished adversely affecting economic development and growth moving forward.
  - ii. Professional reputational damage of elected members and the CEO being questioned over ability and performance by the wider community, when the performance actually rests with the aged care provider.
  - iii. The personal effect on Elected Members and the CEO in not knowing of the non-compliance, yet being ultimately responsibility and carrying the guilt for not preventing or addressing the occurrence in a timely and effective manner.

Accordingly, the sale of Lot 511 as a going concern will remove current liabilities and concerns, as outlined above.

2. Lack of Council and Community Understanding - As mentioned, the aged care Industry is a sensitive and increasingly complex industry that requires complete understanding of emerging trends and needs as the population ages. To a large extent the Shire, as an approved aged care provider, has not kept up to date with trends and matters currently being investigated by the Aged Care Royal Commission. This can also be said about the local community, where the submissions received respectfully do not illustrate a sound understanding of the aged care industry and implications looking forward. Rather, there appears to be a very simplified understanding from many in the community on Residential Aged Care and Home and Community Care (HACC) services, and the role of WA Country Health and other providers play in this sector.

Therefore, in an attempt to place this matter in context reference is made to the recently established Royal Commission on Aged Care. Extracted from its website is its charter to investigate a range issues applicable to the sector, with the intent of forming recommendations on:

- ✓ Quality of aged care services being consistently delivered.
- ✓ Delivery of aged care services in a manageable and sustainable way to meeting increasing need.
- ✓ Future challenges and opportunities in the delivery, accessibility, affordability and high end quality of aged care services remotely.
- ✓ Strengthening the system of aged care services including relationships between all stakeholders.
- ✓ Ensuring that aged care services are person-centred.

In light of this the risk to Council is that the Royal Commission findings and outcomes may well generate an increase in governance and compliance requirements (see Risk 4. below), together with an escalation in costs. This is expected to compel the Shire as an approved aged care provider to have a better understanding of the relevant legislation and subsequent changes thereto, as the Aged Care sector continues to evolve.

3. Competing Interests and Lack of Resources - As the current approved aged care provider for Kalkarni, the Shire (supported by Baptistcare) must abide by the provisions of the Commonwealth *Aged Care Act, 1997*. This includes the relevant principles made under this legislation, as outlined below:

- ✓ *Aged Care Act 1997* itself
- ✓ Approved Provider Principles 2014
- ✓ Quality of Care Principles 2014
- ✓ User Rights Principles 2014
- ✓ Accountability Principles 2014
- ✓ Sanctions Principles 2014

Each of these principals is must be qualified through a reporting and auditing assessment that can prove costly and onerous for both the Shire and Baptistcare.

Additionally, the Shire is also audited each year by the Office of the Auditor General to demonstrate compliance with the *Local Government Act, 1995*. This auditing includes the residential aged care operations, and collectively with the other Local Government services, places additional financial and administrative burden on the Shire's resources.

Some of the functions typically performed by most Local Government, including the Shire of Brookton are:

- ✓ governance and auditing functions
- ✓ strategic planning and economic facilitation
- ✓ financial management and budgeting
- ✓ road construction and maintenance works
- ✓ parks and gardens maintenance works
- ✓ emergency management facilitation, response and recovery
- ✓ community liaison and development
- ✓ building maintenance
- ✓ project management
- ✓ regulatory town planning, building, health and ranger services

While many of the existing 22 Shire employees (5 part time) are qualified and/or experienced within their field, none bar one employee has detailed understanding of the residential aged care sector, and emerging trends within this Industry. This is problematic given this one employee has broad responsibility across a number of other Local Government functions in addition to aged care. This presents a risk in capacity, and in ensuring the Shire is conversant and pro-active in meeting its obligations as the approved residential aged care provider for Kalkarni.

Accordingly, it would be appropriate for Council to increase its resourcing with a dedicated employee having detailed knowledge of aged care, should the Shire retain responsibility for residential aged care delivery.

Furthermore, it would be prudent for the Council following the October 2019 Local Government Elections to receive a holistic briefing on the residential aged care sector to better appreciate the complexity and challenges of this industry moving forward, should it continue to be an accredited provider.

4. Uncertainty regarding Change to Aged Care Sector – The Commonwealth Government's 'Aged

Care Road Map 2015' prescribes a way forward in the evolution of aged care services – refer to **Attachment 8.05.19.02C** (under separate cover).

The Road Map provides a concise direction to pending changes in accessing and improving of the standards aged care delivery. However, with the present Royal Commission into Aged Care it is now expected that further changes (for the better) will be applied as a result of issues and risks being raised through the Royal Commission's investigations.

At present the Commission has received multiple concerns in regard to misconduct, abuse and neglect of residents (including unreasonable restraint), abuse of workers, poor pay and working conditions, and onerous working hours, unrealistic expectations and lack of qualified staff, sub-standard aged care accommodation just to name a few.

These matters are expected to generate significant changes requiring a higher level of delivery and performance, at increase cost to the aged care provider. This generates concern and risk that this Council, as a provider, would need to expend considerable funds on ensuring the revised standards of compliance are met, be it improvements to the residential aged care accommodation or standards of service to residents. This cost would be additional to any further internal resourcing for the Shire, such as a dedicated officer to oversee the residential aged care service contract and daily operations.

Further, this matter needs to be considered in the context of Kalkarni having evolved as a regional facility where presently only 7 of the 43 residents are from Brookton – see Concern g) in the Comment section of this report. Otherwise, the Council through selling Lot 511 will negate any potential risk in regard to future industry changes arising from the Aged Care Royal Commission.

5. Adhering to Legislative Process and Performing Due Diligence – It is important the Council in determining this matter adheres to the prescribed process under the *Local Government Act, 1995* as referenced in Statutory Environment section of this report. A failure to accord with the legislation could result in a proposed sale being nullified.

Similarly, it is also important in selling Lot 511 that Council's Solicitors be engaged to appropriately examine and provide legal advice on the various instruments and agreements applicable to the tenure and management arrangements presently in place. This includes:

- ✓ The Service (Management) Agreement for Kalkarni
- ✓ The Transfer of Aged Care Bed Licences at Kalkarni
- ✓ The Resident (Tenancy) Agreements, including transferability at Kalkarni
- ✓ The Silver Chain and Local Doctor Agreements applicable to the Saddleback Medical Centre
- ✓ Any other agreements for supply of goods and services or other matters of legality in relation to Kalkarni and the Saddleback Medical Facility

6. Adverse Impact on Grant Funding – There is a moderate risk in selling Lot 511 and receiving a large sum of money (in the order of \$7.5M - \$8M) that current and future grant funding for the Shire could be adversely effected. This is raised in a number of the submissions received through the public consultation process. To address this matter, the Council will need to be pro-active in preparing a financial management strategy (or similar) with professional assistance, should it wish to proceed with the property disposal process.



Conversely, in not selling Lot 511 the Council may forego the opportunity to use some of the sale proceeds as:

- i. Leverage funding to secure other sources of grant income for the future projects and infrastructure.
- ii. A support base for future maintenance, repair, improvements and/or replacement of aging community assets.
- iii. Foundation funding for a possible 'Future Fund' to support next generations.
- iv. Contingency funding to offset unforeseen occurrences (ie major natural event having a detrimental impact on the local community).

This too is viewed as a risk for the Council.

7. Possible Loss of Aged Care Beds, Home Care and GP Medical Services – This has been highlighted as a major concern by many in the community that took the time to lodge a submission.

However, this risk is assessed as low given the respective submissions received from Baptistcare, Silver Chain and Triple A (WA) Pty Ltd (local doctor) all indicate a desire to retain their business in Brookton notwithstanding the possible sale of Lot 511 – see 'Concern d.' under the Comment Section of this report.

As for the aged care bed licences being relocated away from Brookton, this is also addressed under the same 'Concern d.' While there cannot be an absolute guarantee that the aged care beds will remain in Brookton indefinitely, it is unlikely a purchaser would make application, nor the Commonwealth Government grant approval for moving the beds out of the region, while Kalkarni is assessed as viable, and the beds remain in need based on projected demand.

8. Failed Negotiations - Should negotiations fail with Baptistcare to purchase Lot 511 at an agreed value and conditions, Council may lose the opportunity for a relatively seamless transition of ownership and recurrent operations. This then presents a minor risk of possible disruption and may generate the need to entertain a number of alternative options, be it continuing with the sale through a formal tender process, or alternatively leasing the property and selling the bed licences, or retaining the status quo. Notably, all of these options may generate other risks.

Furthermore, feedback on this proposal from Mr. Udam Wickremaratne, Portfolio Manager of Liability and Property at LGIS (the Shire's insurer) is offered below:

*"Whilst the Shire has transferred some of the risk by contracting in Baptist care, sans [without] a review of the agreements and legal advice, the Shire will carry a residual risk both from an operational perspective as owner of a facility and a governance/ statutory perspective as the licence holder.*

*Aged care is a complex business and is highly regulated due to the vulnerable nature of the recipients of this service. Despite the complex funding, governance and control environment there is a view that the current system has still failed a vulnerable part of our society, which has led to the current Royal Commission.*

*The Aged Care Royal Commission and negative media coverage is likely to influence perception of increased risk into aged care facilities. From an LGIS Liability perspective we have witnessed increased interest in this area and the Scheme's reinsurers are keen to understand the level of risk posed to Local Government and the potential impact from the Royal Commission. As*

*part of the 19/20 membership renewal we have been undertaking further discussions to assess the level of involvement and impact to the Scheme.*

*It is premature to foresee any material change for members of LGISWA but individual providers in the general insurance market may witness reducing levels of cover, increased costs and coverage not being provided for abuse-you could draw parallels to the insurance market reaction to the Combustible cladding debate, where some insurers are not willing to cover building surveyors for any claims arising from cladding. The situation and the Australian market is not at this level as yet.*

*Unfortunately there has been a number of cases in the aged care sector where a failure in governance and disconnect in operations has resulted in sub-standard care. The general expectation is the Royal commission will look to drive different behaviour with a significant reliance on better regulator supervision, mandatory reporting and a higher level of consumer input.*

*Coverage offered by LGIS Liability would respond in a similar manner to when claims are made by third parties against a local government for personal injuries. As discussed there could be an area where the Scheme may not be able to respond due to the nature of the claims e.g. claims are made on a breach of contractual terms, where council has assumed a risk it normally would not carry, results from a deliberate decision, criminal acts or simply outside the scope of the protection offered etc. We note that you have not raised any circumstances which could give rise to a claim.....*

*This is a complex area and the above does not purport to set out the legal position in any detail. It is designed to provide an overview of the key issues as they stand and in summary form only. Any claim or matter would be subject to its own circumstances."*

Additionally, Mr. Leo Pezzotta, Account Manager of Member Services for LGIS offered the following response on the existing Service Agreement with Baptistcare:

*"We have broadly reviewed the agreement and will restrict our comments generally to the Insurance and Indemnity Clauses. The Insurance clauses are generally well structured but would however comment that given the nature of Care and Services being provided to the residents, the limits of liability with regard to the Public Liability and Professional Indemnity Insurance, appear quite low. We would suggest that the Shire review these limits at the next renewal.*

*In relation to the Indemnity clause which is again well structured, we would suggest that this wording is referred back through to your legal advisors for review. Whilst the Shire has transferred some of the risk by contracting in Baptist care, our reading of the agreement is that Clause 5. Plans and Reports, 5.1 Plans subsection (2) (b) must be submitted to the Council for its approval. With that in mind, if the Council is approving a plan without the skill and expertise to determine whether the correct Care Plan has been drafted to contemporary standards then the Council is arguably approving a defective and negligent plan.*

*This goes to the point below that the Shire still carries a residual risk both from an operational perspective as owner of a facility and a governance/ statutory perspective as the licence holder. Simply, whilst the Indemnity pushes risk away from the Shire, the Shire is also contributing to the risk by approving a process that it may not have the skill to approve. The legal advisor who drafted your Agreement will have better understanding of the interpretation/ intention of the clause.*

*With regard to the remainder of the agreement, given the nature of the services provided, and the requirement to have specialist knowledge and experience of aged care as well as the law associated with the delivery of aged care services, LGIS do not feel we are in a position to offer any other advice of substance.*

*The Shire should seek professional advice, specific to the roles, responsibilities and expectations of local government in respect to the commissioning and delivery of aged care services. Any advice on the allocation of risk pursuant to an agreement with a third party provider and aged-care facility manager will cascade from, and be informed by, this specialist advice.*

*This is a complex area and my comments are general in nature and should not be relied upon as legal advice.”*

### **Community & Strategic Objectives:**

This proposal relates to delivery of core business and services detailed in the Shire of Brookton Corporate Compendium – May 2018, duly appended to the Next Generation BROOKTON Corporate Business Plan <2021.

Specifically, the proposed disposal of Lot 511 aligns to:

#### *Function 4 Property Management*

*Action 4.3 – Assess Residential Age Care and Medical Facility Tenure*

#### *Function 19 Risk Management*

*Action 19.3 – Implement Risk Mitigation Measures*

### **Comment:**

#### **Public Submissions and Officer Comment**

With reference to the public submissions received from members of the community, the key points are summarised below under the principal headings of ‘Primary Concerns’, ‘Alternative Suggestions’, and ‘Collective Positions’, with a corresponding officer comment.

#### 1. Primary Concerns

- a) **Concern** - No consultation with the community prior to releasing the Business plan for comment, which could have informed the Council of the community’s position before proceeding to entertain talks with a prospective purchaser and expend resources and funding on a valuation report and Business Plan.

**Comment** - As outlined in the background section of this report, the Council in 2015 requested the State Government create Lot 511 through excision of land occupied by the Saddleback and Kalkarni facilities from the broader Crown Reserve 43158, with the Council’s intent being to acquire Lot 511 and then possibly on sell the property and associated business interests at a later date. With the freehold lot created by the State Government in October 2016, the Council proceeded to purchase Lot 511 in 2017. The Council decisions relating to these dealings were performed by formal resolution and are well documented in the Council meeting minutes as a public record.

Importantly, through a number of briefings it has also been bestowed upon Council to adhere to due process in the selling of a major asset and business interest, as prescribed under the *Local Government Act, 1995*. Based on this understanding the Council had decided and subsequently sought to collate all relevant information in the form of a Business Plan premised on selling Lot 511, before consulting with the broader community. This was done in order to achieve compliance with the legislation, and ensure members of the community were presented with pertinent information before offering comment on the proposal in an informed manner, as required by the legislation.

- b) **Concern** - A lack of qualified and accurate information within the Business Plan meaning the community has had to rely on a public Q and A session to obtain relevant information, and is yet to be updated on the inaccuracies raised in this session.

**Comment** - While this concern is acknowledged, the focus of the Business Plan was to soundly present a position on a possible sale of Lot 511, as well as provide a prescriptive summary on elements and merits of the proposal to stimulate interest and a response to selling Lot 511 as a going concern.

Even though some members of the community saw the Business Plan as deficient, the Q and A session was always intended to be part of the consultation process (see November 2018 Council motion) to afford clarity on the proposal, and more broadly explain the Council's reasons for possibly selling the subject property and associated business interests. Certainly, from an officer perspective, most if not all questions were answered on the night with it evident not all information made available to the public, including the complete *Valuation Report - March 2018* (available from the Shire Administration on request) had not fully been read and understood.

However, it is accepted the Business Plan could have been more robust in detailing the accuracy of floor plans through to the future allocation of funds received (if the property is sold), albeit the Council was not wanting to pre-empt the future allocation and expenditure of funds received at this stage, acknowledging further work needs to be performed across Council's Asset Management.

In any event, it is intended this report should address many of the concerns raised through the public consultation, in order for Council to make an informed and balanced decision on this matter.

- c) **Concern** - A misguided and ad-hoc process conducted by the Shire to sell a multimillion dollar facility in an 'open' and 'exclusive' manner with no 'in confidence' approach and little to no expertise by the Shire Administration.

**Comment** – The Council has genuinely attempted in good faith to achieve regulatory compliance under Section 3.59 of the *Local Government Act, 1995*, and Regulation 8A(1)(b) of the Local Government (Functions and General) Regulations, 1996.

It should be noted that this process is imposed under the legislation to ensure the Local Government adheres to the principles of fairness and equity based on prevailing market conditions, and recognising Lot 511 is a publicly owned asset. In light of this, the Valuation Report has been prepared and subsequently updated by a licenced and experienced commercial valuer from Knight Frank Property Consultants. In performing the valuation, the valuer has taken into consideration recent sales and market trends within the Aged Care

Industry, particularly in WA, to accurately determine the current market value of the property and aged care bed licences.

This coupled with a high level of sensitivity in the Aged Care Industry, and a desire by Council to achieve a seamless process of transition in ownership to minimise disruption to residents, has seen the approach in the first instance to engage in 'open' negotiation with Baptistcare to achieve an amicable agreement on the purchase of Lot 511. However should this approach fail, the Council does retain the option of defaulting to competitive tender process to progress the sale of Lot 511, should it still be desired.

In any event, what is paramount is not losing sight of the broad interests of the Brookton ratepayers, and any adverse effect on the local residents who reside at Kalkarni.

- d) **Concern** - Inability of the Shire Council to provide a 100% guarantee that Aged Care bed licences will be retained in Brookton if Lot 511 is sold and allied health services will not be diminished or lost through a lack of suitable consulting room accommodation.

**Comment** – Although the Council is the lawful custodian of the 43 aged care bed licences at Kalkarni, it is not technically the owner of these licences. In reality, the aged care beds are owned and allocated by the Commonwealth Government Department of Health through an established process to the Shire as an approved aged care provider. This process is confirmed in an email received from Ms Shirley McManus, Assistant Director (Acting) of the Health Grants and Network Section of the Commonwealth Department of Health (Western Australia) – see Statutory Section of this report.

Ms McManus's email presents an understanding that aged care bed licences can be redistributed (ie reallocated or relocated) if warranted, based on substantiated supply and demand principles. As a rule the Commonwealth aged care beds are generally apportioned to regions (ie WA Agriculture Region), and then allocated to approved Aged Care Providers for use in nominated facilities. Usually, these beds are not able to be moved if there is current and/or projected demand within the designated region the beds are assigned. It is suggested this is the situation with Kalkarni as the current occupancy sits at 98.1% and there is an aging population within in the Central Wheatbelt Region, with people 60+ years of age projected to increase gradually over the next 15 years.

Furthermore, it appears unlikely an Aged Care Provider would pay 3-4 times the value of the aged care bed licences to then relocate these places to another facility at considerably more cost, unless there was a severe shift in demand to warrant such action being taken, and even then, another dedicated facility would need to be available to accommodate the aged care beds.

In any event, it is understood the Commonwealth Government would require:

- ✓ A sound business case that demonstrated moving of the beds would not be detrimental to existing residents and more broadly the assigned Region in the foreseeable future.
- ✓ The aged care beds be occupied within a 2 year period from the date granted otherwise unoccupied beds are returned to the Commonwealth Government, to be placed in a 'Regional Pool' for re-allocation to another provider upon application at any time.

Therefore, in understanding the tenure and allocation process of aged care bed licences, attention is drawn to the respective submissions received from Baptistcare Inc., Silver Chain Group and Triple A (WA) Pty Ltd, with the following comments offered:

- i. Baptistcare – Of note the submission received from Mr Russell Bricknell, CEO of Baptistcare, offers the following comment:

*“Baptistcare welcomes the opportunity to work with the Brookton community, the Shire of Brookton and other providers to build a service model, including the services provided at Kalkarni and Saddleback Medical Centre, which provides a continuum of care for a person as their needs change. The development of a continuum of care will enable people to remain within the Brookton area as their care needs increase. This will deliver better outcomes for people receiving care and the community in general.*

*As noted in the Business Plan, Baptistcare has partnered with the Shire of Brookton over the past 11 years. This long term commitment to Brookton and its community would continue and strengthen were Baptistcare to be the successful purchaser. “*

Further, the letter received from Mr Bricknell dated 29<sup>th</sup> March 2019 in response to a 12 month extension of the service contract for Kalkarni (as shared with Councillors at its April 2019 CBF), also states:

*“I would like to confirm that we [Baptistcare] endorse Council’s decision to extend the agreement for a further 12 months and thank the Council for the opportunity to continue to manage Kalkarni on its behalf.*

*Baptistcare is committed to providing care to the Brookton community in the long term and see this extension as the next step in a much longer commitment to the community.”*

The above quotes afford a clear understanding that Baptistcare, as a possible purchaser of Lot 511, intends to retain and operate aged care services in Brookton over the long term, with a desire to partner and work with key stakeholders (including Council) to achieve a holistic delivery in aged care to the betterment of the broader region.

- ii. Silver Chain (SC) Group - This submission, lodged by Ms Sharon Hearn, Director of Clinical Operations, notes:

*“SC remains committed to the provision of [these] services in Brookton. In the event that the current site was no longer available to SC either because of the proposed sale or the commercial terms cannot be agreed SC would need to seek alternative premises.*

*In that instance SC may require Council assistance in securing suitable premise. SC appreciate yours [CEO] and the Shire’s continuing support in the provision of this important service for the Brookton Community.”*

Again, this response indicates clear intent from Silver Chain that it is seeking to continue delivery of services within and from Brookton, albeit from the Saddleback Medical Centre or another facility with Council’s assistance.

It is accepted that Silver Chain provides an integral service to the local community that is highly valued, and therefore warrants Council providing some form of appropriate

accommodation assistance should Lot 511 be sold, and the Saddleback Medical Centre no longer made available to Silver Chain.

- iii. Triple A (WA) Pty Ltd – The submission from Dr Adebola Oladipo of Triple A (WA) Pty Ltd also advocates a desire to continue GP medical services in Brookton. Notably, this submission states:

*“We appreciate the opportunity given to us to render medical services to Brookton community and we will like to continue rendering medical services to the community.*

*We hope that we will be able to continue rendering our services in the same location if the building is eventually sold.*

*However, if the new owner are not willing to release the section of the building where we render our services, we hope the Shire of Brookton will get us another location to continue medical services to the community.”*

As with the other service providers, it is clearly evident Doctor Oladipo is also seeking to retain a presence and maintain current service delivery in Brookton.

To this end, GP Doctor service is accepted as integral to supporting the local community and the existing residential aged care service in Brookton. Given this importance, the Council may also need to consider establishment of alternative accommodation should the Saddleback Medical Centre no longer be available, and the purchaser of Lot 511 has other intentions for use of the Saddleback building.

In conclusion, it is accepted:

- ✓ The comments from all three service providers dispels the concerns raised by many of the submitters that the aged care beds will be re-located, and the existing allied health services will diminish or be lost as a result of Council selling Lot 511.
  - ✓ The Commonwealth Government ultimately has the ability to determine allocation of bed licences, which means Council is unable to provide a 100% guarantee (in perpetuity) to the current levels of residential aged care in Brookton.
  - ✓ The Council does not have control nor can it significantly influence the actions of these organisations in respect to delivering services to the Brookton community. Their presence in Brookton is primarily based economic factors that can change at any time.
- e) **Concern** - An apparent lack of suitably qualified and experienced staff within the Shire (Management and Administration) to deliver effective service and contract management, recognising Baptistcare is responsible for aged care compliance requirements. The Shire should employ a suitably qualified/accredited employee to effectively manage this service delivery. Conversely, should the sale proceed there should be an immediate reduction in Shire staff.

**Comment** – Should Council retain the aged care bed licences the suggestion of employing a dedicated professional aged care officer on a full time basis to manage the service contract for residential aged care services is supported. The age care sector is specialised and therefore requires a level of skill and knowledge that extends beyond Local Government expertise.

While the Deputy Shire President and Deputy CEO do have varying levels knowledge, experience and understanding in this area, should they not extend beyond their current tenure with the organisation, it is highly probable the Shire will struggle to manage the service, particularly at a time when there is increasing governance and accountability within this industry. Unless the Council is prepared to invest in a suitably qualified and experienced staff member dedicated to oversee and manage the Aged Care Service Contract there is a significant risk that the Shire, as the approved provider, does not have adequately understanding and oversight of the daily operations.

At present the Shire expends approximately 50% of officer time to manage and account for this service. This time is spread across multiple positions within the Shire with many of these positions having little understanding of the Aged Care Industry. With increasing governance requirements it is not practical for the Shire (and particularly Council) to keep abreast of the performance and be satisfied that relative compliance and appropriate standards of care is being provided, without increased oversight from a suitable trained and dedicated officer. However, this will see an increase in the Shire's costs through an appropriate remuneration package in the order of \$150,000 inclusive of salary, employee benefits, on-costs, and accommodation.

With respect to a reduction in officer time should Council proceed with the sale of Lot 511, it is unlikely this would occur given the escalation in the governance and compliance requirements within the Local Government Sector. It is becoming more evident a significant portion of Western Australian Local Governments, including the Shire of Brookton, are failing to meet their statutory obligations as prescribed by local government and other legislation. Notably, this local government has a Full Time Employee (FTE) count of 21 staff well below our neighbouring local governments, with the Shire of Pingelly having 34 FTEs and Shire of Beverley with 33 FTEs.

- f) **Concern** - A dismissive view by the Shire that aged care is not 'core' business of Local Government contrary to that published on the Western Australian Local Government Association (WALGA) website that lists Aged Care as a function of Local Government.

**Comment** – The WALGA website states:

*“The work of Local Government is varied, but it touches almost all areas of our day to day life as citizens – whether we live in cities, towns or country areas.*

*The roles and responsibilities of Local Government differs from state to state, but generally include:*

- *infrastructure and property services, including local roads, bridges, footpaths, drainage, waste collection and management*
- *provision of recreation facilities, such as parks, sports fields and stadiums, golf courses, swimming pools, sport centres, halls, camping grounds and caravan parks*
- *health services such as water and food inspection, immunisation services, toilet facilities, noise control and meat inspection and animal control*
- *community services, such as child-care, aged care and accommodation, community care and welfare services*
- *building services, including inspections, licensing, certification and enforcement*
- *planning and development approval*



- *administration of facilities, such as airports and aerodromes, ports and marinas, cemeteries, parking facilities and street parking*
- *cultural facilities and services, such as libraries, art galleries and museums*
- *water and sewerage services in some states, and*
- *other services, such as abattoirs, sale-yards and group purchasing schemes.”*

The expressed view that the Shire is dismissive in not accepting Residential Aged Care as a core function of Local Government is not accepted. The WALGA site stipulates that aged care is one of many services under the broader description of Community Services, and in reality, there is only 5 or 6 from a total of 138 local governments in Western Australia that are directly responsible for delivery of residential aged care services. This is not dissimilar to the provision of other services such as airports, marinas, ports, abattoirs, and sale yards that are only delivered by a handful of local authorities, and therefore, from an industry perspective, are not fundamental core business of this industry.

To the contrary, it is accepted that functions or services such as municipal administration, cultural services, infrastructure and property services, waste management, recreational facilities, and planning, building and environmental health services are all delivered by the 138 local governments, and generally accepted as typical core business of local government.

- g) **Concern** - A lack of clarity around the risk analysis/management and implications for the Shire Council in relation to the Aged Care Bed Licence, and whether alternative management arrangements have been investigated.

**Comment** – As a brief comment, holding the aged care bed licences for the Shire spans across a range of risks from financial capacity to corporate image. The areas of risk and associated levels of impact are discussed further in the Risk Assessment Section of this report.

As to the consideration of alternative management arrangements, it is acknowledged this consideration has not been a focus of Council. This is due to the residential aged care service being very specialized and highly regulated, with demand for a specific level of skill and knowledge that generally extends beyond the capacity and capability of a small local government. Furthermore, the complexity, continuing change and evolution of the aged care sector, coupled with associated risks, has prompted the Council to consider selling Lot 511 and the associated business interests.

However, it is accepted that Council in partnering with neighbouring local governments could generate a financial benefit from the initial sale of shares in the property and bed licences, although it is unlikely to exempt most of the current risks and liabilities that rest with the Shire of Brookton. Rather, the approach of partnering will merely spread the responsibilities, risks and profit/loss sharing more broadly across the respective local governments, but as an up-side will also more accurately reflect the residential occupancy of Kalkarni as a regional facility, as demonstrated in the table below supplied by Baptistcare:

**Kalkarni Occupancy - January 2019**

<b>Residents</b>	<b>From</b>
7	Brookton
11	Beverley
11	Pingelly
1	Cuballing

1	Corrigin
2	Kulin
4	Perth Metro
1	York
2	Boddington
1	Yearling

h) **Concern** - An over-reaction to risk and liability for Aged Care given a management contract is in place with an accredited service provider and the Shire should have adequate insurance cover for these types of arrangements.

**Comment** – As mentioned, risk and associated levels of impact is discussed in the Risk Assessment section of this report.

i) **Concern** - A lack of clarity concerning suitable and affordable medical facilities should the Medical Centre be sold and new owner not continue with the current arrangement or increase the lease fees for occupation.

**Comment** – While the Business Plan has indicated a sale of Lot 511 could generate a possible adverse impact on occupants of the Saddleback Medical Facility, the Council has sought to not pre-empt the intentions of the prospective purchaser in regard to future use of the Saddleback medical Centre building.

As indicated in the respective submissions from the Silver Chain Group and Triple A (WA) Pty Ltd, any termination in use of the Saddleback Medical Centre will not deter their presence in Brookton. However, such action may result in Council’s assistance being sought to identify and establish alternative suitable business accommodation that adequately suits their needs.

In this context, it is not unusual for a residential house or commercial premise, such as a shop or office, to be successfully converted to consulting rooms or a small medical centre accommodating an array of medical professionals. This usually occurs in the metropolitan area and many country towns, and is accepted by the current occupants who also deliver their services elsewhere in WA using buildings suitably adapted to meet their business needs.

Further, it is reasonable that some level of assistance be provided by Council to retain, and potentially enhance, current service levels.

j) **Concern** - The lack of clarity concerning Social and Cultural implications taking into account social and economic impact will this have on the community (ie local employment, shopping, etc.) and broader impact if the current Aged Care and Health Services diminish or disappear.

**Comment** – The Business Plan was prepared in accordance with the legislation and at the direction of Council with expectation the sale of Lot 511 will enhance, not diminish, the delivery of services. This expectation is evident in promotion of a Wellness Hub listed as a major project in the Shire’s Corporate Business Plan. For this project the Council is identified as the facilitator, while the aged care and health industries hopefully will deliver the enhanced services to the broader region. If successful in initiating this project, the Wellness Hub will generate positive social and economic opportunities, and outcomes, with the primary investment coming from the providers. Largely, Council’s contribution is integral partnering involving facilitation that includes advocating, planning, regulatory guidance and timely approval processes.

While strong concern has been expressed in many of the submissions that the aged care beds will be moved to the detriment of the local economy and community, it is re-iterated that this is not accurate, nor has this assumption been substantiated in any of the submissions received. To the contrary, the Council and incumbent service providers have expressed intent to maintain and progress respective service deliveries in Brookton.

- k) **Concern** - A lack of Alternative Business Case Strategies and why the Shire Council has not fully investigated opportunities involving best practice, possible growth and expansion of residential aged care and medical services as an economic opportunity.

**Comment** – Conversely, the Council has given consideration and support to a Wellness Hub, as outlined in comment h. above, to facilitate growth and expansion in the aged care and health/medical services. In support of this the Shire President and Deputy CEO, accompanied by the CEO of Baptistcare, visited the Commonwealth Departments in Canberra last June to explore avenues of support for a Wellness Hub in Brookton.

- l) **Concern** - A lack of clarity on the tender process to sell the property on the open market ensuring the best price and service can be achieved.

**Comment** – The Council has:

- i. Followed due process as prescribed by the *Local Government Act, 1995* (see Statutory Section of this report and section 3.1 of the Business Plan); and
- ii. Attempted to instil and maintain an open and transparent process in order to deliver a realistic outcome that accords to market price, and is relatively seamless for the residents that currently reside at Kalkarni.

It is recognised this approach is somewhat different to normal commercial dealings in using a competitive tender process where dealings are confidential. Rather, the approach taken has been a conscious decision of Council to obtain a sworn market value, engage the community through a public consultation process, and grant preference to the incumbent residential aged care provider in the first instance. This approach, while not motivated by the highest financial return under the terms of a commercial transaction, was considered by Council as the most appropriate in this instance to achieve the best outcome taking into account all considerations. Respectfully, this is what the Council is elected to do in representing the interest of the whole community.

- m) **Concern** - A lack of response to the concerns raised by the community through this process, with a request that a second community meeting will be called with appropriate and adequate response being provided.

**Comment** – The intention of the public consultation process, including the Q & A session, was to obtain written comment from members of the community in relation to the proposed sale of Lot 511. In accordance with due process, this report now seeks to respond to the concerns raised, as opposed to a second public meeting, and allows Council to consider the varying perspectives and merits on selling Lot 511.

While some members of the community hold the view that Council must accord to the majority view of the public submissions received, this is not necessarily the case.

With respect, the legislation is premised on democratic process where Council is elected to represent the interest of the wider Brookton community. In this context, the Council is compelled to have due regard for the matters raised by community members, but does not have to accept them. More accurately, Council's charter is to account for all matters, not just those raised through the public consultation, and further needs to give strong consideration to validity of the matters or concerns raised.

- n) **Concern** - A lack of foresight, clarity, understanding and planning through a financial strategy on how funds raised from the sale would be managed and expended to benefit the community without misappropriation, nor being quarantined against any future amalgamations.

**Comment** – The Council consciously decided it would not detail expenditure of the funds raised from the sale of Lot 511. The rationale for this position is that it:

- i. May be perceived by members of the community that the proposed sale had been determined as an absolute given when this is not the case.
- ii. Was genuinely interested to hear from members of the community on:
  - Individual thoughts in relation to selling Lot 511; and
  - How members of the Community believe the revenue received from any sale should be spent and/or invested in the interest of the local community.
- iii. Recognised its asset management framework, including specific plans, needs to be further progressed to determine priorities for expenditure in relation to maintaining existing Shire infrastructure (ie Roads/footpaths), buildings and other facilities of a civic nature.

In regard to misappropriation of funding, there is evidence the current Council and past Councils have significantly acted inappropriately in managing public funds. To the contrary, the Shire Council presently manages an annual budget of approximately \$8M with an additional \$5M in cashed back reserves, and has maintained a very responsible and conservative approach to expending public funds over the past 10 years. At present, there is no indication responsible fiscal management would not continue into the future, although this will depend on who the community elects at future local government elections to represent their interests.

As to quarantining the funds, the use of a Financial Trust could be an effective measure in creating a 'future fund' for the Brookton community. However, the Council in considering this matter needs to be mindful that a holistic approach to locking away all of the funding received could be problematic for future Councils. This is because a Financial Trust must have a defined purpose, and is usually regulated by set terms or conditions applied to accessing and expending the funds. If the purpose and terms of the Trust do not align to what is 'genuine need' of a future Council, the funds may not be accessible and used for the betterment of the community aligned back to the determined need.

Therefore, it needs to be understood that while the voters elect the Council to determine matters on their behalf, and in the whole community's best interests, it is not the role of this Council to significantly influence nor fetter the conduct and ability of future elected Councils. Rather, how and where the funding is best spent in the future mostly aligns to the democratic process and need at the time.

- o) **Concern** - No explanation on sale proceeds impacting future grant funding for the Shire.

**Comment** – As already explained, this is a genuine concern that Council will need to be cognizant of should it proceed with the proposed sale of Lot 511. In preparing a dedicated financial strategy for expenditure and/or investment of funds, the impact on future grant funding will need to be a strong consideration, where professional advice will be sought on the allocation of funds and associated implications.

p) **Concern** - No explanation as to why the Council would be selling a profitable business.

**Comment** – It is acknowledged the residential aged care is currently profitable, albeit marginal at 43 bed licences. With Kalkarni's annual budget being approximately \$4M, the Shire's financial return is minimal - see Financial Implications Section of this report.

Presently, at the current scale of Kalkarni and sharing of profit and loss with Baptistcare set at %50, the financial return to the Shire barely covers the Shire's administration expenses. This coupled with an aging residential aged care facility in need of increased maintenance and improvements in the coming years, and expected changes and costs imposed by 'standards' presently under consideration of the Aged Care Royal Commission, indicates the Brookton ratepayers will continue to subsidise this service, even though Kalkarni only accommodates a small number of residents from the Brookton district – see occupancy table as part of Comment e).

Further, the Shire at present does not have capacity (be it resources or technical understanding) to manage aged care on its own, and yield 100% profit from the business. This would require significant investment in the resources required to operate an aged care facility successfully. Presently, the Shire's employment extends to 22 employees, some in a part-time capacity, with most performing an array of roles and functions in a local government context.

Also, of significant importance is that the profitability of this service needs to be weighed against risks, and how these risks when it goes wrong, can impact the level of financial return to the Shire. From an officer perspective, unless the facility is expanded to increase the number of residential aged care beds to substantially improve business viability and profitability, it is not in the interest of the ratepayers for Council to continue at the current scale (43 beds) and under the present management arrangement. Therefore, to maintain responsibility for this service it is suggested Council (acting on behalf of all ratepayers) will need to accept the risks, and could further investigate the expansion of Kalkarni to accommodate an additional 20 - 40 beds. This would then better balance the risks against financial return, although this is not the recommended approach at an officer level given this direction presents other challenges and risks that while not insurmountable, may involve:

- i. The conduct of a formal tender process to extend the aged care provider service;
- ii. Having to raise additional capital (\$M) to extend the existing facility within a 2 year time frame;
- iii. Having to upgrade the existing buildings to accord with current building code standards;
- iv. Having to recruit, train, house and retain sufficiently qualified staff to ensure a holistic quality service is delivered and maintained to industry standards, and individual family and community expectations, should an external service provider not be engaged.

Of note, and as a comparison, Baptistcare has an employment base of 1,200 skilled and professional employees across 11 Residential Aged Care facilities in WA, with the ability to recruit, train, and redeploy staff at short notice should the need arise.

Further, it is understood that the Aged Care Industry presently operates on an optimum bed capacity to achieve long term financial sustainability of between 70 - 120 beds, depending on the location and associated costs. In light of this, and given projected residential aged care demand for the Wheatbelt Region over the next 15 years, there is an opportunity to expand Kalkarni although it is questioned whether this should be performed by the Shire of Brookton.

- q) **Concern** - A lack of recognition of the Shire of Brookton Aged Friendly Plan 2017 – 2021 and Community Audit, where reference is given to the Shire of Brookton, Beverley and Pingelly (BBP) Alliance being formed to work together in considering the needs of an aging population, as supported by the Verso Report 2015.

**Comment** – The BBP Alliance was formed to identify and facilitate future aged care outcomes for the respective communities of each Local Government. Primarily its focus had centered on a collaborative approach to lobbying, and where possible delivering outcomes for each of the BBP communities. This means that as opportunities arose, such as the collective effort to secure additional Independent Living Units under the Royalties for Regions funding program, the BBP would actively work together to secure the available funding. It is understood the BBP Alliance was also integral in encouraging the preparation of an Aged Friendly Plan for each Local Government in recognition of an aging demographic, with implementation of the recommendations from each plan to sit with the respective Local Authorities.

Similarly, the Verso Report 2015 focused on the projection of future aged care demand, and meeting the needs of each Local Government across the various forms of accommodation, and how this can be met.

However, the matter before Council is one of current risk pertinent to this organisation and the Brookton ratepayers more broadly. This matter also takes into account pending changes to the Aged Care Industry, including those that are yet to be fully understood emerging from findings of the Aged Care Royal Commission, and whether this local government is best suited in the context of an approved Aged Care Provider to meet current and future needs.

At present, not all members of the BBP Alliance carry the risks outlined in this report, nor do they all incur any significant administrative or financial burden directly attributed to residential aged care at Kalkarni. From a comparative review of the Shire of Beverley and Shire of Pingelly's financial position it would appear neither organisation is in position to partner with the Shire of Brookton, and share the current and future burden and risks in relation to residential aged care in Brookton. Furthermore, it is apparent that neither organisation has indicated a willingness to explore a level of ownership of Kalkarni, either previously through the BBP Alliance or in a submission as part of this consultation process.

- r) **Concern** - No communication with the BBP Alliance about the concerns of administration and management of Residential Aged Care (Kalkarni) and the proposal to sell the asset.

**Comment** – This Council is not beholden to the BBP Alliance, and therefore should not be obligated to discuss with the neighboring Councils its business interests and associated risks.

As mentioned in the previous response, the BBP Alliance was to maintain a focus on future aged care initiatives, and should not be engaged or involved in the operations and business of the Shire of Brookton, unless invested as a financial partner or invited by this Council to do so. This is not dissimilar to the Shire of Brookton becoming involved in development of capital projects,

investments and business interests, or community programs or initiatives entertained by the Shire's of Beverley and Pingelly, which has not occurred.

- s) **Concern** - No evidence of consultation with an independent Aged Care Consultancy or other Shire based Aged Care Providers [to establish trends and identify better practices - assumed].

**Comment** – It is difficult to appreciate why the Council should have sought independent advice on selling Lot 511 and associated business interests, when the Council initially managed the operations of Kalkarni incurring a financial loss and at great risk until Baptistcare was engaged as the service provider in 2008. Since this time, the Council has come to further realise the substantial increase in compliance requirements for effective delivery of residential aged care, which has prompted the freehold and subsequent purchase of Lot 511 in 2017, with the view to possibly on-selling the property and business interests given the increasing complexity of this industry.

- t) **In Concern** - Risk of Shire losing control of a major employer does not present as a sound approach to sustaining and growing this community.

**Comment** – This concern, like many of the others, is based on assumption the Shire largely controls the actions and activities of Baptistcare. This is not accurate, where by formal agreement Baptistcare is empowered to deliver a residential aged care service at Kalkarni on behalf of the Shire Council, and in do so, must accord with legislative requirements to the satisfaction of the Commonwealth Government.

In this regard the Shire Council, as owner of the bed licences, is in reality beholden to Baptistcare to achieve relative compliance. Should performance of Baptistcare be sub-standard, the Shire runs the risk (as the approved aged care provider for Kalkarni) of having the bed licences withdrawn. With this acknowledged, the Shire while having influence over performance is not integrally involved in operational matters of employing staff and associated conditions of employment, provision of housing and where staff live (either within or outside the Brookton municipality), and the suppliers of goods and services, under its charter as the contracted service provider.

To this end, the agreement with Baptistcare is representative of a partnership arrangement predominantly based on mutual co-operation and trust to deliver a service that if compromised, presents a significant risk to the Shire. While the Council has a legal standing through the current Service Management Agreement to enforce the performance of Baptistcare, the reality is that any non-compliance and associated impacts is reflected on the Shire's performance, as the accredited residential aged care provider and bed licence holder for Kalkarni.

Therefore, for the most part the 'control' the Shire has in this instance is mainly premised on, or supported by:

- i. A legal instrument in the for a service agreement to deliver a residential aged care services at Kalkarni on behalf of the Shire of Brookton;
- ii. Baptistcare adhering to the Commonwealth Government aged care legislation, and an associated risk to its accreditation as an approved aged care provider more broadly;
- iii. Baptistcare's corporate image and reputational risk as a choice aged care provider, acknowledging this organisation operates 11 residential aged care facilities across Western Australia; and

- iv. The fundamentals of profession integrity and trust between the Shire as the principle and Baptistcare as the contractor, and the interests of the Kalkarni residents being the principal consideration by both parties in delivering this service.

u) **Concern** - The buildings on Lot 511 are expensive to construct and maintain and are adversely affected by salt/acid sulphate soils causing fretting of bricks and mortar, and requiring remediation or replacement in another 20 years at considerable cost without Government support.

**Comment** – Upon inspection, evidence of fretting brick work has been identified around some window sills of the Saddleback and Kalkarni buildings. The Shire’s Maintenance Officer has commented that:

- i. Damage to the window sills is not major and could be attributed to a poor batch of mortar;
- ii. This damage can easily be resolved through re-pointing of the corroded mortar;
- iii. There is no visual evidence of any major corrosion to the walls of the buildings.

It is acknowledged that these buildings at almost 20 years of aged don’t appear to require significant remediation or replacement, although detailed investigation of the submitter’s concern has not been entertained at this stage.

v) **Concern** - No evidence the Valuation Report is based on audited figures raising question over the accuracy of the valuation for the property and bed licences.

**Comment** – This concern appears based on an inaccurate assumption. To confirm, the financial information supplied by Baptistcare and presented to the Licenced Valuer by the Shire Administration has been audited by:

- ✓ KPMG Australia to satisfy Commonwealth Government Prudential Audit requirements; and
- ✓ Shire auditors (initially Moore Stephens Accounts and more recently by the Western Australian Office of the Auditor General) under the provisions of the *Local Government Act, 1995* and *Local Government (Audit) Regulations, 1996*.

Further, the current market value is based on accurate performance and recent sales figures from across the aged care sector to determine current market value. This has been confirmed that Knight Frank Commercial Property Consultants who:

- ✓ Operate on a peer review process across their organisation to confirm the accuracy of their valuation work; and
- ✓ Are regularly contracted by residential aged care providers (including other Local Governments) to perform commercial property valuation works and offer advice pertinent to this industry.

w) **Concern** - No reference to the condition of the assets raising question over the accuracy of the valuation for the property and bed licences.

**Comment** – A detailed assessment report has not been considered necessary at this stage as the Council’s intent is to negotiate with the incumbent aged care provider in the first instance. With



Baptistcare being familiar and intimately understanding of the condition of the building and infrastructure, having performed or been involved in the maintenance of Kalkarni over the past 12 years, there has not the need to undertake this analytical assessment.

Therefore, the valuation process has only involved a cursory review and inspection of the property and buildings taking into consideration the condition based on general aged and whole of life expectancy of each structure. This is qualified in the Valuation Report by the Valuer, who has concluded the property and assets are in very good condition.

However, should the Council not proceed sell Lot 511 to Baptistcare, but pursue a competitive tender process, it would be reasonable for a prospective purchaser to be satisfied with the condition of the assets based on a certified condition report by an accredited asset management consultant with independent status.

- x) **Concern** - No understanding of risk to the Aged Care and Allied Health Services proving unviable, inadequately aligned to community expectation and capable of sustained growth for the benefit of the broader community.

**Comment** – In context, the submissions from Baptistcare Inc., Silver Chain Group and Triple A (WA) Pty Ltd do not indicate the sale of Lot 511 presents a significant risk to their continued delivery of aged care and allied health services in Brookton. All three organisations have clearly indicated an intent to remain in Brookton with the view to sustaining, if not growing, their services.

As to how the intention of organisations remaining in Brookton does not align to community expectation to see benefit to the broader community, is unclear. To the contrary, it would appear clear the community expectation to maintain, if not see expansion of, the current service delivery across the aged care and allied health functions locally.

- y) **Concern** - No assurance the purchaser's values and objectives align to those of the community or Council.

**Comment** – Baptistcare has a known and long standing presence in Brookton, with an overall outstanding performance in managing the Kalkarni Residential Aged Care facility on behalf of Council for the past 12 years. This has generated an acceptance of Baptistcare's values and objectives, and confidence in ability, which is demonstrated by Council nominating to negotiate with Baptistcare in the first instance on this proposal.

It is taken that this position has also received a level of support and praise from members of the community during the public Q & A session held in January 2019.

- z) **Concern** - A substantial uplift in profit for the Kalkarni facility between 2015 and forecast 2018 is unexplained raising question over why there is not an increase in expenses and generating concern over standards of aged care.

**Comment** – Other than the 2017/18 financial year, the annual audited financial statements for the Shire during the period specified reflects a loss for each year. This takes into account income and expenditure, as well as the \$150,000 management fee paid to Baptistcare.

As reflected in Concern r), the financial statements for both Baptistcare and the Shire have been independently audited by credible accountancy firms, and accepted by Council and the Department of Local Government as an accurate account of the financial position for Kalkarni.

Also since 2017, the Shire has been required to report on the financial performance of Kalkarni to the Commonwealth Department of Health as part of the prudential auditing function. The Shire's auditors (now the Office of the Auditor General) has also taken a greater interest in Kalkarni and its financial position, with Baptistcare being the contracted service provider, to assess and qualify the impact on the Shire's financial position under the Local Government legislative framework.

As to concerns over the standards of residential aged care at Kalkarni, the Shire's records do not indicate any significant issue or concern in relation to care standards at Kalkarni being compromised to yield a profit, or increase profit, as suggested.

- aa) **Concern** - No assurance given to the tenants Saddleback Medical Centre for continued occupation or support in retaining their services in Brookton.

**Comment** – The Council is not obliged to give an assurance to the existing tenants as the current agreements with Silver Chain and the Local GP are based on a 'peppercorn' arrangement and have a defined time frame.

Further, both tenants have been kept informed of the Council's intentions in relation to this proposal, and are accepting that circumstances may change – refer to Concern d).

## 2. Alternative Suggestions

- a) **Suggestion** - The Shire should own and lease the property (Lot 511) as the landlord, and sell the bed licences for Residential Aged Care to an accredited provider to reduce liability. This will retain the Aged Care and other allied health services in a compliant manner, and negate a 'windfall' of funds that could potentially compromise future grant funding and/or be wasted by future Councils.

**Comment** – While this suggestion has some merit, it does not negate the concern raised by members of the community that the aged care beds could potentially be moved from Brookton. In this scenario, a lease agreement could alleviate much of the risk for Council, but may not assist in 'anchoring' the aged care provider to Brookton. This is because the lease can be terminated with sufficient notice should the Aged Care Provider see merit is moving to a more contemporary facility, either within or outside of the Region.

- b) **Suggestion** - The Shire should strata title the Residential Aged Care and Medical Centre facilities to allow for the Kalkarni Aged Care Facility and beds to be on sold to an approved provider while maintaining the current arrangement with the Doctor and Silver Chain at the Saddleback Medical Centre.

**Comment** – This suggestion also has merit in diminishing the risk that sits with the Shire, although it needs to be understood the strata approach will:

- i. Delay a possible sale of the property by a further 12 – 18 months;
- ii. Require a level of up-front investment to facilitate a built strata process, including the performance of minor works and engagement of a land surveyor;

- iii. Need acceptance of the externals of the building, car parking and garden areas will be common property and shared area, with a strata management arrangement to be established that serves and regulates the strata title landowners.

It is evident this approach will reduce the financial return to the Shire, given the sale will only involve the Kalkarni facility (including bed licences) and not the Saddleback Medical Centre.

It is difficult to predict if this will be palatable to a purchaser, as a built strata arrangement will limit capacity to expand the bed numbers and grow the business/service delivery over the short term.

- c) **Suggestion** - The Shire should investigate consolidation the existing Residential Aged Care with the BBP partners with the view to increasing the service delivery through additional beds (including dementia care and mental health) with three Local Government's working together to cater for their communities.

**Comment** – As previously mentioned, a collaborative approach/partnership with the BBP members would not necessarily diminish the current risks, but rather distribute and share the risks across multiple local governments, as opposed to one. This is not seen as ideal, as none of the Local Governments have the required skill nor expertise to deliver on the broad range of services detailed in this submission.

Furthermore, consideration would need to be given to:

- i. The increased bureaucracy (red tape) spread across administrative accountability and reporting together with associated cost for all three Local Governments; and
- ii. The issue of 'buy-in' based on a cursory look at the 2017/18 financial reports for the Shires of Beverley and Pingelly. It is suggested neither Local Government is in a position to acquire a third share in Lot 511, without placing considerable burden on their ratepayers.

Also refer to Concerns e) and p) that partially relate to this matter.

- d) **Suggestion** - The Shire should sell the property on the open market using a suitably experienced real estate consultant to ensure maximum financial return for the ratepayers.

**Comment** – This is not a typical commercial real estate transaction, and in light of this, the Council has needed to use a valuation firm that has expertise in the aged care sector. It is imperative the advice received appropriately aligns to industry trends, and importantly, the Council can demonstrate it has followed due process in line with Western Australian and Commonwealth legislation.

As to maximising financial return, the valuation report seeks to demonstrate accurate market value and form a basis upon which negotiation with the potential purchaser needs to be entertained. Should the Council accept a lesser sale price than the sworn value it will need to detail its reason for doing so. Otherwise, the intent is to yield a fair price for the property and business interests weighed against market trends and expectations taking into account continuity of services that best meets residents and community needs.

### 3. Collective Positions

- a) **Position** - Council is obliged to listen to and respect the views of the community, particularly on matters of such significance to the broader community.

**Comment** – The Council has entertained a consultation/submission process to gain an understanding of the concerns and views of the community, and as intended by this report is required to have due regard to the matters raised by members of the community.

However, the Council is not bound by the views raised by members of the Community, but should always form a balance understanding and view based on all of the information presented, and then act in the interest of the broader community.

Therefore, specific to this proposal the Council needs to be considerate (with a sense of reality) of various options taking into account the:

- i. Current and projected risks;
- ii. Financial position (costs and possible returns);
- iii. Long term viability and sustainability;
- iv. Interest of residents;
- v. Enhance service delivery (both aged care and allied health services);
- vi. Emerging industry trends; and
- vii. Organisational capacity and competing interests.

Also refer to Concerns a), c) and j) that partially relate to this matter.

- b) **Position** - Further investigation on the implications of any sale of Lot 511 is warranted to ensure the Council and community are sufficiently informed.

**Comment** – Should the Council hold the view the information provided in the Valuation Report, Business Plan and this report, together with attachments and links to supporting documents, is inadequate and further investigation on the implications of selling Lot 511 is warranted, it can resolve to defer this process.

However, before considering such action the Council should be cognisant of the need to:

- i. Provide a rational explanation to support the motion to defer for the Council Meeting minutes;
- ii. Provide clear direction on the further investigation and additional information being sought;
- iii. Refresh the Valuation Report and Business Plan taking into account the new information acquired, with another public consultation process being entertained;
- iv. Possibly instigate a public tender process in relation to the aged care service at Kalkarni, as the current service agreement with Baptistcare is scheduled to conclude at the end of June 2020.

#### 4. Additional Officer Comment

It is recognised the Council has a lot to consider in determining the next course of action in relation to this matter. However, before Councillors draw a conclusion, the following matters are raised, or reiterated, to assist in deliberating on progressing this matter:

- a) The operations of Kalkarni to some degree is constrained by the local government practices. This at times has proven challenging for Baptistcare to align to the Shire's internal and external local

government controls, where there has and continues to be a level of non-compliance, particularly in regard to the protocols of procurement and building maintenance. The continuation of the current arrangement also presents a duplication of process and unnecessary cost in some areas, such as the auditing, where there is a need for a high level of transparency through the multiple layers of legislation and compliance.

- b) The sale of Lot 511 as proposed will ensure continuity of service, while presenting further opportunity for Council to work with the incumbent residential aged care provider on expanding service delivery in Brookton.
- c) As detailed in this report, there are multiple risks of varying severity that are considered central to this matter, and form the basis of the Officer Recommendation provided below. To this end, Councillors are encouraged in determining this matter to give careful consideration to these risks.
- d) The opportunity to realise a sizable financial return from the sale of Lot 511, while retaining the current services is attractive in affording Council opportunity to allocate funds to areas of need and where deemed appropriate for the betterment of the Brookton community. However, Council will also need to be diligent in its approach to managing the funds to ensure the best outcomes can be achieved for the immediate term and into the future.
- e) Should Council see merit in retaining Lot 511 (including associated business interests), as promoted in many of the public submissions, it:
  - i. Will need to be diligent in renewing the current Service Agreement presently awarded to Baptistcare Inc., and most importantly, be accepting of:
    - The severity of risks in maintaining a direct involvement in aged care on a region scale;
    - The particular requirements of an emerging and evolving industry; and
    - The possible implications for what is a small Local Government in continuing as the approved aged care provider for Kalkarni.
  - ii. May wish to consider the possibilities of expanding the residential aged care. In this regard, an 'Alternative Recommendation' is presented with this report for Council to consider.
  - iii. Will need to employ a dedicated officer to oversee the delivery of service, ensure regulatory compliance, maintain an awareness of industry changes and brief the Shire Council and Management on all matters pertinent to the aged care industry.
- f) Should Council wish to entertain another 'alternative' option, such as strata title, selling the bed licences, and leasing Kalkarni but not Saddleback, again, it will need to be diligent in regard to the current Service Agreement for the residential aged care, and also mindful that:
  - i. Any deferment could result in delaying this process by a further 18 months;
  - ii. The valuation and sale (or lease) price may change;
  - iii. An 'alternative' may not prove attractive to prospective aged care provider;
  - iv. Additional expense may be incurred, such as costs applicable to survey, strata documentation, utility connection and meters, and further valuation for example, although in these costs in relation to the overall proposal are not considered significant.

Also, Council is reminded that retention of some, or all, of the buildings will require increased investment in maintenance, although it is accepted that much of this cost may be recovered through partial sale or lease of the buildings.

### Conclusion

The Council has a range of options that it can pursue in relation to Lot 511. However, from an officer perspective the following matters has formed the basis of the 'Officer Recommendation' that promotes Council to proceed with sale of Lot 511, as a going concern:

- i. The delivery of Residential Aged Care is not core business of Local Government, and certainly not at the scale and capacity of the Shire of Brookton;
- ii. Strong consideration to Risks 1 to 4, as detailed in the Risk Implications Section of this report;
- iii. An acceptance the Baptistcare CEO's comments that it is genuinely seeking to embrace the opportunity to expand service delivery through Kalkarni, and establish a Regional Wellness Hub with support from the Shire;
- iv. Acknowledgement the Silver Chain Group and Triple A (WA) are keen to retain their service deliveries in Brookton, with possible assistance provided by the Shire if required; and
- v. Kalkarni presently operates as a regional facility housing only a small number of residents from the Brookton district, yet all the responsibility and cost rests with the Shire of Brookton and its ratepayers.

As to the majority of the concerns raised by the Community, most do not appear to be substantiated when taking into account the comment from the Commonwealth Department of Health, the Valuation Report, Aged Care industry trends and projections, and the stated positions of the three key stakeholders in Baptistcare, Silver Chain and Triple A medical services.

However, it is acknowledged that Kalkarni is presently a viable business with opportunity for growth to support the Wheatbelt Region, and with expertise and a willingness of Council to broaden the service, it could present as a prominent business opportunity and income stream for the Shire in the future, although, this does come with continued challenges and risks to Council and the local community.

### **OFFICER'S RECOMMENDATION**

***That Council, in consideration of the proposed disposal (sale) of Lot 511 Whittington Street, Brookton (including the Kalkarni Residential Aged Care Facility and Saddleback Medical Centre):***

- 1. Acknowledge the public submissions received on this proposal a Major Land Transaction and Trading Undertaking (refer to Attachment 8.05.19.02A to this report); and***
- 2. Proceed (having had due regard to the public submissions in accordance Section 3.59(5) of the Local Government Act, 1995 and taking into account the risks and opportunities as presented in this report) with the formal disposal process of Lot 511, inclusive of assets and business interests as detailed in the Knight Frank Valuation Report - April 2019 (refer to Attachment 8.05.19.02B to this report), and:***
  - a) Progress negotiations with Baptistcare (WA) Inc. (through expert representation) on:***
    - i. A purchase price that is not below the sworn valuation (excl. GST);***
    - ii. A mutual date of settlement; and***
    - iii. Any specific conditions applied to the purchase as part of the negotiation.***

- b) The CEO to report back to Council on the outcome of all negotiations for further***

*consideration and possible acceptance, or otherwise, by formal resolution.*

- c) Entertain further discussions with Silver Chain Group and Triple A (WA) Pty Ltd in regard to assistance for alternative accommodation to suit their business needs, should the Saddleback Medical Centre no longer be available as determined through the negotiation process.*
- d) Engage of the Shire's Solicitors to review and offer advice on due process, legal instruments and formal proceedings applicable to the sale of Lot 511, including present business interests.*
- e) Set aside an initial allocation of \$100,000 (excl. GST) in the 2019/20 budget to be taken from the 'Health and Aged Care Reserve' to cover costs associated with negotiations including (but not limited to) expert representation, further investigation of legalities, any other professional or legal advice and or assistance on this matter, and conveyancing requirements.*
- f) Grant delegated authority to the Shire CEO pursuant to Section 5.42 of the Local Government Act, 1995 to engage a suitably qualified and experienced company (in consultation with the Shire President, and if required Deputy Shire President and Deputy CEO) to represent the Shire in negotiating a sale price and associated conditions of sale for Lot 511, for formal consideration and acceptance by Council.*

(Absolute majority vote required)

#### **ALTERNATIVE RECOMMENDATION**

***That Council, in consideration of the proposed disposal (sale) of Lot 511 Whittington Street, Brookton (including the Kalkarni Residential Aged Care Facility and Saddleback Medical Centre), resolve to:***

- 1. Acknowledge the public submissions received on this proposal as a Major Land Transaction and Trading Undertaking (refer to Attachment 8.05.19.02A to this report);***
- 2. Terminate the disposal process in consideration of Section 3.59(5) the Local Government Act (1995) and having due regard to:***
  - a) The weight of public submissions and broad community sentiment objecting to this proposal.*
  - b) The risks (and associated costs) detailed in this report in retaining ownership of Lot 511, and status the approved aged care provider and the associated aged care bed licences assigned to the Kalkarni Residential Aged Care Facility;*
  - c) The opportunities to expand the Kalkarni Residential Aged Care Facility premised on the development of a 'Wellness Hub' to deliver a holistic Regional Service to the broader Wheatbelt community;*
  - d) The need to:*

- i. Employ a dedicated and experienced Senior Aged Care Officer to oversee and administer Residential Aged Care of the Shire's behalf to:
    - *Co-ordinate the tender process and management of the Residential Aged Care Service Agreement at an operational level to ensure a high standard of service delivery and legislative compliance is maintained;*
    - *Co-ordinate the building and associated infrastructure maintenance and replacement of equipment as required;*
    - *Ensure Council and the CEO are understanding of the Aged Care Industry and informed of changes as this sector evolves; and*
    - *Investigate current and future opportunities to expand this service delivery in accordance with 2c) above.**
  - ii. Conduct a formal tender process over the coming 12 months applicable to the Service (Management) Agreement for Residential Aged Care at Kalkarni.*
- 3. Allocate funds in the 2019/20 budget to employ a dedicated Senior Aged Care Officer and perform a formal tender process, as reflected in 2d) above.**

**Attachments**

***Attachment 8.05.19.02A (under separate cover)***

**<https://www.brookton.wa.gov.au/documents/683/30-may-2019-special-meeting-of-council-attachment-8.05.19.02a>**

***Attachment 8.05.19.02B (under separate cover)***

**<https://www.brookton.wa.gov.au/documents/684/30-may-2019-special-meeting-of-council-attachment-8.05.19.02b>**

***Attachment 8.05.19.02C (under separate cover)***

**<https://www.brookton.wa.gov.au/documents/685/30-may-2019-special-meeting-of-council-attachment-8.05.19.02c>**