



SPECIAL MEETING OF COUNCIL AGENDA

4th December 2017

**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 Monday 4th December 2017 in the Council Chambers at the Shire Administration Centre commencing at 7.30 pm.

The business to be transacted is shown in the Agenda.

Ian D'Arcy
CHIEF EXECUTIVE OFFICER
30/11/2017

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

TABLE OF CONTENT

1.12.17 DECLARATION OF OPENING/ATTENDANCE..... 2

2.10.17 ANNOUNCEMENT OF VISITORS 2

3.10.17 PUBLIC QUESTION TIME 2

4.12.17 DISCLOSURE OF INTERESTS 2

5.12.17 BROOKTON SENIOR CITIZENS HOMES – REQUEST TO TRANSFER RESPONSIBILITY TO THE SHIRE OF BROOKTON 3

6.12.17 CONFIDENTIAL REPORTS 13

6.12.17.01 2018 AUSTRALIA DAY AWARDS..... 13

6.12.17 CLOSURE OF MEETING 13

ATTACHMENT 5.12.17 14

1.12.17 DECLARATION OF OPENING/ATTENDANCE

2.10.17 ANNOUNCEMENT OF VISITORS

3.10.17 PUBLIC QUESTION TIME

4.12.17 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.

Financial, Proximity and Impartiality Interests

Item no.	Members/Officers	Type of Interest	Nature of Interest

5.12.17 BROOKTON SENIOR CITIZENS HOMES – REQUEST TO TRANSFER RESPONSIBILITY TO THE SHIRE OF BROOKTON

File No:	ADM 0345
Date of Meeting:	04/12/2017
Location/Address:	Lot 420 White Street and Part of Lot 242 Whittington Street Brookton
Name of Applicant:	Brookton Senior Citizens Homes Inc.
Name of Owner:	As Above
Author/s:	Ian D’Arcy - CEO
Authorising Officer:	Ian D’Arcy - CEO
Declaration of Interest:	The author has no interest in this Item
Voting Requirements:	Absolute Majority
Previous Report:	20/07/2017

Summary of Item:

This report relates to further consideration of the request from the Brookton Senior Citizens Homes Committee Inc. regarding transfer of ownership and management responsibility for the existing Senior Citizens Independent Living Units (ILUs), as required by current Brookton Senior Citizens Homes Inc. constitution.

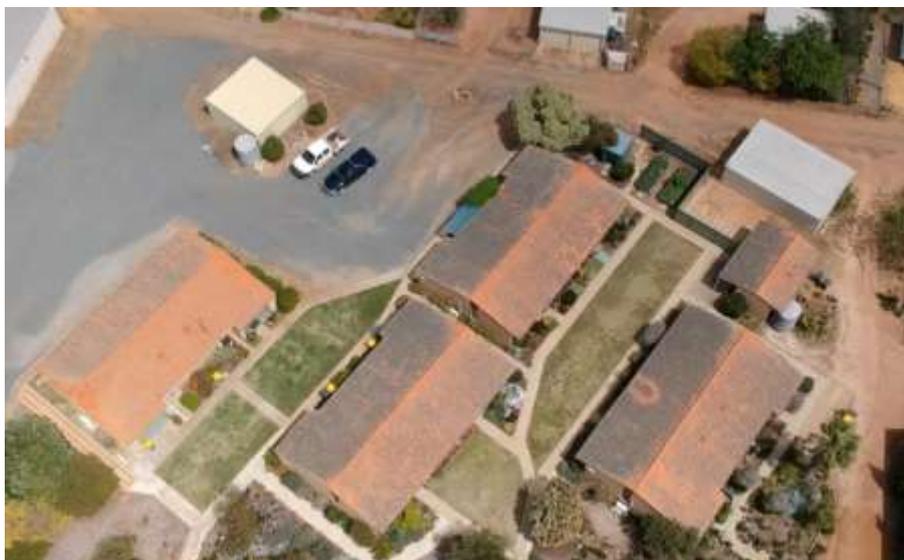
In consideration of this request the Council resolved at its July 2017 Ordinary Meeting to prepare a Business Plan in accordance with Section 3.59 of the *Local Government Act, 1995* that addresses in some detail the asset condition and responsibilities that come with inheriting the respective units.

This Business Plan is presented to Council for its consideration.

Description of Proposal:

This proposal involves Council accepting responsibility for:

- a) The ongoing management and ownership of the following:
 - Lot 420 White Street Brookton that comprises 8 x 1 bedroom self-contained units with free standing lockage garage, and communal laundry; and



- Lot 242 (portion of) that accommodates 3 x 3 bedroom units with carport under the main roof.



b) The appointment and attendance to residential needs of the respective tenants.

To appreciate point a) above, please also see location plan below.

Location Plan of Senior Citizens Units



Background:

In November 2016, the Brookton Senior Citizen Homes Committee Inc. at their Annual General Meeting sought a change of office bearers, but was not successful in filling a number of the positions. This resulted in the Committee Secretary requesting a meeting with Shire representatives to discuss the possibility of transferring the ownership and management responsibilities of the ILUs to Council. Subsequently, a meeting was convened on 14th December 2016, where detail was presented on how the Senior Citizen ILUs could transition to the Shire, should this be the desired approach by the Brookton Senior Citizens Homes Committee. Staff then briefed Council at its Corporate Briefing Forum on the 15th December 2016 on the points raised, and overall understanding of the discussion with a letter being sent on the 16th March 2017 to the Brookton Senior Citizens Homes Inc. Committee offering advice on the way forward.

The CEO and DCEO then met with a representative from the Brookton Senior Citizens Homes Committee on the 8th May 2017. At this meeting it was indicated that further discussions would be entertained by the Senior Citizen Homes Committee on the way forward with regard to the future management of the existing ILUs at their general meeting being convened the next day.

Subsequently, the whole of the Brookton Senior Citizens Homes Committee again met with Shire representatives on Monday 22nd May 2017. At this meeting it was further explained to the Committee that:

- It would need to write to the Shire requesting Council's consideration to accept responsibility to manage the Senior Citizen Units;
- The Council would need to consider the request through due process under the Local Government Act 1995, including the preparation of a business case;
- The business case would examine the age and condition of the assets (including future maintenance, repair and replacement), nature and viability of the rental model, and the age and needs of the residents weighted against design and functionality of the units;
- Based on the outcome of the business case, the Council would then determine its acceptance, or whether a more suitable alternative for managing the units could be identified;
- The White Street units sit on reserve land vested in the Committee, and therefore an approach would need to be made to the State Government for transfer to the Shire of Brookton;
- In the interim the Committee should follow up with the Department of Commerce on the process for dissolving the Committee under its constitution;
- A formal approach to Council will place this matter of the public record, and therefore the Committee will need to consider informing the residents of its pending decision and actions;
- The Shire in any event cannot progress its due diligence without a formal approach to Council being made.

The Committee confirmed it was not in a position to continue managing the units under the present arrangement, and would like:

- To have an alternative management solution in place by its next AGM in November 2017;
- To progress 'dissolving' the Committee in its present form;
- Some members to remain involved in offering assistance to the residents and determine future residential allocation to prospective tenants, if at all possible.

It was also confirmed by the Committee that the majority of the units are:

- Aged and in need of ongoing attention/maintenance,
- Presently receiving a partial refurbishment internally;
- Will require additional maintenance and improvements in the near future, in particular reroofing;
- Not ideally suited to all tenants and their present needs (for example one resident is presently in a wheel chair).

Following this discussion correspondence was received on the 12th June 2017 confirming the Brookton Senior Citizens Homes Committee position on not being able to continue, due to increasing difficulties as volunteers, and lack of resources and technical knowledge to operate effectively.

Subsequently, the Council considered the Senior Citizen Homes Housing Committee request at its July 2017 Ordinary Meeting, where it resolved that a Business Plan be prepared that details the requirement and considerations to be taken into account in accepting responsibility of the respective 11 Independent Living Units (ILU's).

Following this motion, Core Business Australia was then commissioned to undertake a review of the proposal, and prepare the required Business Plan that is now presented to Council as **Attachment 5.12.17** for its consideration.

In summary, the Business Plan addresses the following:

- Land Tenure
- Existing tenancy agreements
- Financial Considerations
- Asset Management/Building Condition
- Residential Occupancy
- Residential Market
- Future Management

More specifically though, there are a two recommendations presented in the Business Plan and detailed below for Council's consideration (should it chose to accept responsibility for management of the ILUs). Both recommendations relate to land tenure, given the ILU's are located on Crown Land.

Recommendation 1. *If the Shire wishes to take control of the 3 x 3 Bedroom Units located on Lot 456 White Street (Res. 43158) from the Brookton Senior Citizen Homes Inc., request Brookton Senior Citizen Homes Inc. to surrender the lease contained in Landgate Document K785635.*

Recommendation 2. *If the Shire wishes to take control of the 8 x 1 Bedroom Units located on Lot 420 White Street (Res. 33591) from the Brookton Senior Citizen Homes Inc., complete the Crown Land Inquiry Form and submit to the Minister for Lands requesting that the Management Order is transferred from the Brookton Senior Citizen Homes Inc. to the Shire of Brookton and also seek the power to lease.*

Of the other matters raised in the Business Plan, these are broadly canvassed in the balance of this report.

Additionally, Council is reminded the overall position of the Brookton Senior Citizens Homes Committee

is un-waivered, with their desire to:

- 'Gift' the existing ILUs to the Shire to manage and maintain on behalf of the residents as soon as possible; and
- Proceed to 'wind-up' the existing management Committee in its current form, yet still maintain a level of involvement with the residents.

To this end, the Brookton Senior Citizens Homes Committee is waiting on Council's position to accept the respective ILUs.

Consultation:

As reflected in the background history there has been a number of meetings and discussions between the Senior Citizen Homes Committee representatives and the Shire staff.

Furthermore, discussions has also occurred between Core Business Australia and Senior Citizen Homes Committee representatives.

Statutory Environment:

Local Government Act 1995

The Council needs to be cognisant of Section 3.59 of the *Local Government Act, 1995* in relation to this matter.

This section of the legislation deals with commercial enterprises by the local government, and while there is no suggestion of a financial land transaction to acquire the Senior Citizens ILUs, it is considered prudent that Council progress the preparation of a Business Plan that adequately addresses, amongst other things, the Shire's ability to manage and maintain the existing units and appropriate service level, including a holistic approach to asset management in a sustainable manner.

For reference purposes Regulation 8A of the Local Government (Functions and General) Regulations 1996 states in part:

The amount prescribed for the purposes of the definition of major land transaction in section 3.59(1) of the Act is —

- (b) *if the land transaction is entered into by any other local government, the amount that is the lesser of—*
 - (i) *\$2 000 000; or*
 - (ii) *10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.*

Further, Regulation 8. relates to exempt land transactions which states in part:

(1) A land transaction is an exempt land transaction for the purposes of section 3.59 of the Act if the local government enters into it —

- (a) *without intending to produce profit to itself; and*
- (b) *without intending that another person will be sold, or given joint or exclusive use of, all or any of the land involved in the transaction.*

In view of these regulations and the Council being 'gifted' the ILUs, there is no obligation for Council to publicise this proposal as a 'major land transaction'. Rather, Council is able to determine its acceptance

(or not) of the request from the Senior Citizen Homes Committee without public notification and comment from the community.

As for managing the funds in relation to the ILUs an amendment to an existing reserve account or creation of a new reserve needs to be undertaken pursuant to Section 6.11 of the *Local Government Act, 1995*.

Specifically, Section 6.11 states:

6.11. Reserve accounts

- (1) *Subject to subsection (5), where a local government wishes to set aside money for use for purpose in a future financial year, it is to establish and maintain a reserve account for each such purpose.*
- (2) *Subject to subsection (3), before a local government —*
 - (a) *changes* the purpose of a reserve account; or*
 - (b) *uses* the money in a reserve account for another purpose, it must give one month's local public notice of the proposed change of purpose or proposed use.*

** Absolute majority required.*

Furthermore, Regulation 17(1) of the Local Government (Financial Management) Regulations, 1996 states:

- (1) *A reserve account is to have a title that clearly identifies the purpose for which the money in the account is set aside.*

In regard to charging of rent for the ILUs, the Council is required to set the amounts for each type of unit in accordance with Section 6.16 of the *Local Government Act, 1995*. This also requires a vote of absolute majority and public notification in local newspaper circulating in the district.

Land Administration Act 1997

In regard to the lease document K785635, Shire staff are in the process of extinguishing this agreement as part of the acquisition and land transfer of the Kalkarni Aged Care facility and Saddleback Medical Centre allotment. Should the Council not accept this offer of ownership and management responsibility of the Senior Citizen ILUs, then a new lease will be prepared in accordance with the *Land Administration Act 1997* that covers the respective 3 bedroom units, but does not inhibit the Age Care/Medical Centre site.

In regard to the transfer of the Management Order for Crown Reserve 33591 that accommodates the existing White Street ILUs, this can be enacted by a request to the Minister for Lands pursuant to Section 46 of the *Land Administration Act, 1997*.

Relevant Plans and Policy:

In Council accepting this proposal, consideration should be given to amending the stated purpose of Council Policy 2.19 – Financial Reserves Policy. It is suggested the purpose of this reserve account be broadened to include 'Independent Living Units' in addition to the Kalkarni Aged Care facility.

Further, in accepting this request the Council will need to establish selection criteria and a procedure

that details how a vacant ILU will be let through a fair and equitable process.

Financial Implications:

Building Values

The value of the ILUs, based on the most recent 'fair value' assessment of the buildings undertaken in June of this year, indicates the one bedroom units in White Street carry a value of \$410,000, and the three bedroom (Mokine) units in Whittington Street have a current depreciated value of \$670,000. These values apply to the buildings only, and equate to an overall present day asset value of just over \$1m.

Further, it should be noted that both land parcels are Crown Reserves owned by the State Government, and therefore carry no resale value. The values obtained are used for depreciation and insurance purposes.

Should Council accept the ILUs, it may be prudent to consider converting the current land holdings to 'free hold' tenure in the same manner as the Kalkarni Residential Aged Care Lodge and Saddleback Medical Centre, as this will:

- Allow Council flexibility to dispose of the property should it consider transferring management to a better resourced organisation in the longer term; or
- Building replacement units in the distant future, which could mean on selling the existing units.

Operational Costs

As reflected in the Business Plan, the Senior Citizen Homes 2016/17 unaudited figures for the ILU's shows a net position of \$161,000 in income. Less annual expenses of \$135,000, this has resulted in a surplus (profit) of \$26,000 for the year. It is understood that these figures are premised on:

- Rent being charged at \$195 per fortnight for the 1 Bedroom units, with garage fees at \$10 for a lockup garage or \$5 for an open garage. The rent for the 3 bedroom units is presently charged \$240 per week, inclusive of vehicle garaging and storage;
- Continued up-keep/maintenance of the units by the Senior Citizen Homes Committee over the years, with recent improvements being refurbished kitchens.

Accordingly, these figures coupled with the high occupancy rate suggests a level of sustainability can be achieved on a prolonged basis. This point is referenced in the Business Plan that advocates no change to the financial viability of the ILUs looking forward, unless Council is seeking to 'up-spec' the units with an increased level of expenditure to improve the standard of comfort for residents, although this is not promoted.

However, as noted, the current financials do not reflect the generous voluntary contribution made by the Senior Citizen Homes Committee members. This is a matter the Council needs to be cognisant of, as staff time in managing and maintaining the ILUs will come as an additional cost to the Shire, estimated in the Business Plan to be \$21,000 per annum to cover staff wages and other administration costs incurred in managing the ILUs.

Asset Management Costs

The Business Plan indicates the ILUs are in excellent condition, accounting for minor maintenance items that need to be addressed both now and on a recurrent basis. In this context the following table extracted from the Business Plan shows the building condition, with the rating of assessment taken from Moloney Condition Rating System provided in the Business Plan document. Based on this system a score of 2 or 3 rates as excellent condition with only a slight decline in condition, while a 4 suggests a good

condition with obvious signs of wear and tear (refer to section 3.1 of the Business Plan).

Unit	Building Name	Long Life Structure	Short Life Structure	Roof Cladding	Roof Frame	Mechanical Services	Fit Out	Walls	Ceiling	Floor
1	Mokine Cottages	2		2	2	2	2	2	2	2
2	Mokine Cottages	2		2	2	2	2	2	2	2
3	Mokine Cottages	2		2	2	2	2	2	2	2
1	40 White St	3		4	3	2	2	2	2	2
2	40 White St	3		4	3	3	2	2	2	2
3	40 White St	3		4	3	2	2	2	2	2
4	40 White St	3		4	3	2	2	2	2	2
5	40 White St	3		4	3	2	2	2	2	2
6	40 White St	3		4	3	2	2	2	2	2
7	40 White St	3		4	3	2	2	2	2	2
8	40 White St	3		4	3	2	2	2	2	2
	Laundry, 40 White St	3		4	3	2	2	2	2	2
	Garage 1, 40 White St		2	2				2		2
	Garage 2, 40 White St		2	2			2	2		2
	Garage and Store, 40 White St		2	2	2		2	2		2

Table 7: Summary of Condition Rating & Maintenance Item Costs per Building Area

In consideration of the above, it is acknowledged that minor maintenance is required across the residential units. Notably, Council has already endorsed (and budgeted for) a part-time maintenance person who can address most of the listed maintenance items in the Business Plan, although a budget allocation will need to be established for this year and subsequent financial years to perform ongoing minor maintenance to the ILUs.

However notwithstanding the excellent condition of the ILUs, there is a projected need for the 8 one bedroom ILUs in White Street to be reroofed in the near future. Although not deemed urgent, Council in accepting management of the ILUs will need to consider a budget allocation in the coming years for this work to be performed on the White Street units.

Furthermore, as stated in the Business Plan, there is also a need for the recurrent maintenance and 'Whole of Life' costing to be considered in relation to all eleven ILUs. The Business Plan estimates this will involve:

- An amount of \$43,353 per annum to be set aside in a reserve account for Asset Renewal, with these funds to be drawn upon for refurbishment works or possible replacements of the ILUs in the future.
- A further \$34, 114 for Annual Consequential Maintenance Demand also being placed in reserve that addresses the routine/ongoing maintenance need.

Overall, this means the Council will need a combined amount of approximately \$77,000 each year (CPI indexed) for continued maintenance, capital upgrades and eventually replacement of the Senior Citizens Units.

Risk Assessment:

The initial risk has been addressed through preparation of the Business Plan that is now being used to guide Council's decision on this matter. However this still remains a minor risk in relation to resident

expectation as the Shire's approach to management of the ILUs may differ from that of Senior Citizen Homes Committee.

Community & Strategic Objectives:

This proposal generally aligns with the Shire of Brookton Strategic Community Plan 2013 – 2023 under:

Outcome 1.6: Quality of life for the aged and disabled.

Strategy 1.6.1: Provide ongoing support for aged care planning, facilities and services to meet our community needs.

Strategy 1.6.2: Support the development of Aged Friendly Communities

Comment

As previously reported, it is clearly evident the Senior Citizens Homes Committee is exhausted and ill-equipped cope with the complexity of the governance required for continued management of the ILUs. To this end, the Committee is presently preparing to hold its Annual General Meeting (last meeting) immediately following Council's decision on this matter.

With this acknowledged, it is broadly canvassed in the Business Plan that the Shire is the logical (and basically only) entity at this stage to inherit the management and maintenance responsibilities for the existing Senior Citizen ILUs.

However, in doing so, the Council must be cognisant of the need to allocate the required funding and resources to ensure a compliant level of servicing is achieved and maintained.

While the Business Plan indicates for the most part that the cost incurred by the Shire will mostly be offset by income received, which is accepted, the standard and type of servicing of the ILUs will be more conventional based on a standard landlord/tenant arrangement. This may require an adjustment in expectation and mind set by the existing residents and former Committee members, who have been very attentive and accommodating to the local resident needs. As promoted in the Business Plan, a group in the form of a 'Friends of Kalkarni' model could be formed to provide assistance and support to the senior citizen residents through the transition phase.

Furthermore, it needs to be well understood that the Council's decision, should it accept management responsibility, will not bind future Councils in deciding to transfer this responsibility to another entity or organisation more suited and better equipped to provide the necessary management of the ILUs and care for the residents. Largely, this matter is raised due to change occurring in the Aged Care sector that supports and promotes the notion of 'aging in place' with increasing levels of dependence on age care services in the home.

OFFICER'S RECOMMENDATION

That Council in respect to the request from the Brookton Senior Citizens Homes Committee Inc. regarding transfer of ownership and management responsibility for the existing Senior Citizens Independent Living Units (ILUs):

- 1. Receive the Shire of Brookton Senior Citizen Independent Living Units Business Plan (Version 1) as presented under separate cover as Attachment 5.12.17 to this report.***
- 2. Accept the ownership and management responsibility for the existing Senior Citizens Independent Living Units (ILUs) located at Lot 420 White Street Brookton comprising of 8 x 1 bedroom self-contained units, and Lot 242 (portion of) that accommodates 3 x 3 bedroom,***

subject to:

- a) **Brookton Senior Citizens Homes Inc. financials being audited by a suitably qualified person, with all debts being settled and all surplus funds being transferred to the Shire of Brookton;**
 - b) **All assets belonging to Brookton Senior Citizens Homes Inc. being transferred to the Shire of Brookton without cost;**
 - c) **All existing tenants of the ILUs being informed Brookton Senior Citizens Homes Committee they will need to sign a Residential Tenancy Agreement (or similar), as required by legislation;**
 - d) **The Brookton Senior Citizens Homes Committee acknowledging in writing that this acceptance is not binding on the current or future Council's, which may at its discretion seek to the transfer the ownership of the asset and/or management responsibility of the residential service by way of sale, lease or other legal agreement to another entity or organisation more suited and better equipped to provide the necessary management of the ILUs and care for the residents of the respective Independent Living Units.**
3. **Proceed pursuant to Section 46 of the Land Administration Act, 1997 to request the Minister for Lands transfer the Management Order for Crown Reserve 33591 from the Brookton Senior Citizen Homes Inc. to the Shire of Brookton with the power to lease for up to 20 years.**
 4. **Amend pursuant to Section 6.11 of the Local Government Act, 1995 the Council's 'Health and Aged Care Reserve' account by adding the words 'and Independent Living Units' to the purpose, with a local notice to this effect to be published one month in the Brookton Telegraph, and Council Policy 2.19 – Financial Reserves to be amended to reflect the same wording.**
 5. **Establish a separate Charter of Accounts (COA) for income to be received and expenses to be paid in relation to the management and maintenance of the Senior Citizen Independent Living Units, with:**
 - a) **All surplus funds received from the Brookton Senior Citizen Homes Inc. to be deposited into the income account; and**
 - b) **All prescribed maintenance and other administration works to be funded from the expenses account.**
 6. **Amend its Annual Fees and Charges pursuant to Section 6.16 of the Local Government Act, 1995 by incorporating the current fortnightly rental amounts for the respective Independent Living Units to 30th June 2018, as detailed below:**

▪ Rental charge for one bedroom unit (White Street)	- \$97.50 per week
▪ Rental charge for lock up garage (White Street)	- \$5.00 per week
▪ Rental charge for open garage (White Street)	- \$2.50 per week
▪ Rental charge for three bedroom unit (Whittington Street)	-\$240.00 per week
 7. **Support the formation of a dedicated support group for the Senior Citizen Residents in Brookton, with the matter to be progressed by the Shire President and CEO in discussion with interested members of the Brookton Senior Citizen Homes Committee.**

(Absolute Majority Vote required)

6.12.17 CONFIDENTIAL REPORTS**RESOLUTION TO CLOSE MEETING**

Council close the meeting to the public in accordance with Section 5.23 (2) (a) as this item relates to a matter that if disclosed would reveal information of a matter affecting an employee or employees.

6.12.17.01 2018 AUSTRALIA DAY AWARDS

File No:	ADM 0336
Date of Meeting:	14 December 2017
Location/Address:	N/A
Name of Applicant:	N/A
Name of Owner:	Shire of Brookton
Author/s:	Courtney Fulwood – Executive Officer
Authorising Officer:	Ian D’Arcy – Chief Executive Officer
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Previous Report:	Nil

Summary of Item:

This item relates to the endorsing of the Australia Day Panel meeting notes held on the 16 November 2017.

6.12.17 CLOSURE OF MEETING



Shire of Brookton Brookton Senior Citizen Independent Living Units Review - Ver 1



DOCUMENT CONTROL

DOCUMENT CONTROL	
Core Business Australia Pty Ltd PO Box 797 BUSSELTON WA 6280 Office: +61 8 9754 0007 Email: bruce@corebusiness.net.au Web: corebusiness.net.au	Document: Independent Living Units review Client: Shire of Brookton
	Project Manager: Bruce Lorimer Author: Ben Talbot Date: November 1 2017
	Synopsis: Condition assessment, maintenance report and financial considerations in relation to the Shire of Brookton taking control of the Independent Living Units, located at Lot 420 White Street and Lot 242 Whittington St Brookton.

CONSULTANTS DISTRIBUTION SCHEDULE

Version No.	Date	Distribution	Reference
Draft 1	November 6 2017	Distributed to the Shire of Brookton for Review and Comment	596 Brookton Independent Living Condition Assessment Report (Ver 1).docx
Draft 1			
Version 1			
Version 2			
Version 3			
Version 4			

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Table of Contents

1.0	Introduction	5
2.0	Project Scope	6
3.0	Methodology.....	7
3.1	Condition Inspection System	8
3.2	Risk Assessment.....	8
4.0	Findings.....	11
4.1	Land Tenure.....	11
4.1.1	Land Tenure Issues.....	12
4.2	Status of existing tenancy agreements.....	12
4.3	Financial Considerations.....	14
4.3.1	Annual Income and Expenditure.....	14
4.3.2	The Current Financial performance and position.....	15
4.3.3	Projected financial returns.....	15
4.4	Asset Management.....	16
4.4.1	Understanding of existing building condition – Condition Assessment	16
4.4.2	Maintenance Items identified	17
4.4.3	Action items, with photos.....	19
4.4.4	Current and future maintenance requirements and projected costs;.....	29
4.4.5	Residential Occupancy.....	31
4.4.6	Opportunities for residents to opt out of the current arrangements and any associated impacts;	31
4.4.7	Opportunities for changes to residential occupancies including the potential to target specific persons such as low income etc.....	32
4.4.8	Future Management.....	32
Attachment 1	Land Tenure Documents.....	33
Attachment 2	Lease between Shire of Brookton and Brookton Senior Citizens Inc.....	38

List of Figures

Figure 1: Location of Lot 456 White Street (on Whittington St) and Lot 420 White St.....	5
Figure 2: Area of ↑43158 Subject to Lease to Brookton Senior Citizen Homes Inc.	11

List of Tables

Table 1: Condition Rating Definitions	8
Table 2: Risk Likelihood Ratings	8
Table 3: Risk Impact Ratings	9
Table 4: Risk Assessment Ratings	10
Table 5: 11 Months of Financial Income.....	14
Table 6: 11 Months of Financial Expenditure	14
Table 7: Summary of Condition Rating & Maintenance Item Costs per Building Area.....	16
Table 8: Identified Maintenance Items.....	18

1.0 Introduction

There are currently 11 Independent Living Units located at Brookton and which are controlled and managed by a not for profit organisation known as Brookton Senior Citizen Homes Inc.

Core Business Australia (CORE) was commissioned by the Shire of Brookton (Shire) to undertake a condition assessment and review of financial implications in relation to the Shire taking over control of the units located at Lot 456 White Street, Reserve 43158 (3 x 3 bedroom units, located on Whittington St) and Lot 420 White Street, Reserve 33591 (8 x 1 bedroom units, located on White Street), Brookton.

The aim of the review being to inform Council on the implications of future control, including ongoing management, current condition, and future maintenance / remedial works that may be required in the short to medium term.



Figure 1: Location of Lot 456 White Street (on Whittington St) and Lot 420 White St

2.0 Project Scope

The Shire commissioned Core Business Australia to undertake the following work;

A review of the Land Tenure and Agreements, including;

- Existing land tenure and associated costs of land transfer;
- Status of existing tenancy agreements (include any special conditions/arrangements for individual tenants).

A review of the Financial Considerations as they present to the Shire

- Outline of the current financial position of the Brookton Senior Citizens Homes
- Projected financial return from the units.

Associated Asset Management

- Give an understanding of existing building condition;
- Outline the current and future maintenance requirements and projected costs;

Residential Occupancy

- Review of issues and needs of residents projecting forward;
- Current and projected levels of occupancy as part of the financial modelling and sustainability;

Residential Occupancy

- Outline the current and projected demand for residential occupancy, including any waiting list;
- Detail the general functionality
- The need and opportunity for residents to transition to higher residential care;
- Outline opportunities for residents to opt out of the current arrangements and any associated impacts;
- Opportunities for changes to residential occupancies including the potential to target specific persons such as low income etc.

Future Management

- Projected additional resourcing for the Shire to perform management responsibilities, inclusive of resident needs and asset management;
- Outline some alternative management arrangement other than Shire (if any);

3.0 Methodology

The methodology to complete the project was as follows:

Task 1 – Project Establishment

The project was undertaken by Greg Leuzzi, Bruce Lorimer and Ben Talbot who commenced the project with a kick-off meeting with the Shire's project team. The purpose of the kick-off meeting was to formalise introductions, reconfirm the project scope, key stakeholders, timeframes, deliverable and access protocols.

Task 2 – Condition Assessment and Cost Maintenance Item

Following the kick-off meeting, Greg set to work on the condition assessment of the buildings. CORE utilised the Moloney Condition Index of 0 (new) to 10 (unserviceable). As part of the assessment process, Greg identified obvious maintenance items and photographed each item.

Task 3 – Review other associated items associated with the transfer

Upon completion of the condition assessment a review of the other associated information was undertaken highlighting costs and management issues related to the senior citizens independent living units.

Task 4 – Prepare Report

Once the maintenance items were costed and other associated items reviewed, Ben prepared a summary report setting out the results and findings along with the recommendations to address each of the areas. The summary report was presented to the Shire in draft for Client review.

Task 5 – Finalise and Issue Final Report

Following review by the Shire, final amendments to the draft report were made and the Final Report was issued.

3.1 Condition Inspection System

The industry-standard Moloney condition rating system was used as the basis for assessing condition (see Table 1).

Condition Rating	Description
0	New asset or component recently rehabilitated to new condition.
1	As New Condition, no visible signs of wear and tear or defects. Often rated as Condition 1 rather than Condition 0 based upon the time since construction rather than observed condition decline.
2	In excellent condition with only very slight condition decline (obvious no longer new).
3	In excellent condition with only very slight condition decline (obvious no longer new).
4	In good condition with some obvious signs of wear and tear but no evidence of deterioration.
5	In fair condition, minor evidence of deterioration of the element which could potentially shorten life.
6	In fair to poor condition with significant evidence of deterioration of the element which could lead to failure.
7	In poor condition with evidence of minor isolated failure which will reduce future life, maintenance costs high.
8	In very poor condition with evidence of multiple failures and the inability to continue to satisfactorily provide the original intended purpose.
9	In extremely poor condition with significant evidence of failure of the element and failure to provide design purpose.
10	Total failure, extreme risk in leaving asset in service.

Table 1: Condition Rating Definitions

3.2 Risk Assessment

A risk ranking was used to ensure that the items discovered in the inspection have been ranked in a sensible priority order.

The risk analysis considers both the likelihood and consequence of events and asset risks. The probability that a risk could occur can be considered using the "Risk Likelihood Ratings" in Table 2.

Code	Likelihood of Occurrence	Current Probability of Condition Based Occurrence	Equivalent Statistical Probability
A	Almost Certain	Within 1 year	0.9
B	Likely	Within 2 years	0.7
C	Moderate	Within 3 - 10 years	0.2
D	Unlikely	Within 10 - 20 years	0.05
E	Rare	> 20 years	0.02

Table 2: Risk Likelihood Ratings

The impact of a risk, on the other hand, can be considered using the “Risk Impact Ratings” in Table 3 below.

	C1 Direct Repair Costs	C2 Environmental Impact	C3 Safety and Health	C4 Public Standing	C5 Property Damage	C6 Third Party Service Provision	C7 Loss of Service
1. Insignificant	<\$5,000	Small reversible environmental harm, permitted by development approval.	No safety or health impact. Injury managed by first aid.	No media attention of damage to reputation.	<\$5,000	<20 Customer hours. Very localised. Little disruptive effect.	<20 Customer hours. Very localised. Little disruptive effect.
2. Minor	\$5,000 To \$20,000	Localised, non-persistent flooding which dissipates or disperses. Localised damage.	Minor safety or health impact on small number of people. Injury dealt with by Doctor, no hospitalisation.	Minimal media attention but minor damage to image in the eyes of a small group of people. May be some local coverage but not front page.	\$5,000 To \$20,000	20 – 500 customer hours. Inconvenience to a small group of residents.	20 – 500 customer hours. Inconvenience to a small group of residents.
3. Moderate	\$20,000 To \$50,000	Serious damage or flooding. Loss of assets.	Serious safety or health impact on small number of people. Injuries require hospitalisation. Minor impact on large number of people.	Negative local media coverage. Community concerned about Council performance.	\$20,000 To \$50,000	500 to 20,000 customer hours. Small disruption to a wider group.	500 to 20,000 customer hours. Small disruption to a wider group.
4. Major	\$50,000 To \$100,000	Damage to or loss of a regionally or nationally important asset. Large scale local loss of assets.	Extensive injuries or significant health or safety impacts, single fatality.	Negative national media coverage. Major decrease in community support. Loss of key staff.	\$50,000 To \$100,000	20,000 to 50,000 customer hours. Significant effect on large group. Political involvement.	20,000 to 50,000 customer hours. Significant effect on large group. Political involvement.
5. Catastrophic	> \$100,000	Loss of a nationally significant asset.	Widespread safety or health impacts, multiple fatalities.	Negative international media coverage, loss of community support. External enquiry. Appointment of Commissioner.	>\$100,000	More than 50,000 customer hours. Significant effect to community at large. Community alienation.	More than 50,000 customer hours. Significant effect to community at large. Community alienation.

Table 3: Risk Impact Ratings

The results of considering the probability and consequence of the risk provide a risk rating of 'low' (green), 'moderate' (yellow), 'high' (light blue), or 'extreme' (red), as a result occurring, are shown in Table 4 below:

LIKELIHOOD	CONSEQUENCES				
	1	2	3	4	5
	Insignificant	Minor	Moderate	Major	Catastrophic
A. Almost Certain	H	H	E	E	E
B. Likely	M	H	H	E	E
C. Moderate	L	M	H	E	E
D. Unlikely	L	L	M	H	E
E. Rare	L	L	M	H	H

Table 4: Risk Assessment Ratings

In completing an initial evaluation of the identified risks, it should be recognised that each risk could have more than one outcome and that each outcome could generate a different level of risk. This highlights the need to evaluate each event outcome separately.

4.0 Findings

4.1 Land Tenure

The titles of both Lot 420 White Street (↑33591) and Lot 456 White St (↑43158), Brookton have been reproduced at attachment 1 along with the associated Reserve Enquiry Detail.

Reserve 33591 is a C Class Reserve with a Management Order granted to Brookton Senior Citizen Homes Inc for the purpose of Aged Persons Homes. It should be noted that there does not appear to be any power to lease associated with the Management Order.

Reserve 43158 is a C Class Reserve with a Management Order granted to the Shire of Brookton for the purpose of Recreation, Tourism, Health, Civic and Community Purposes along with the power to lease for a term not exceeding 21 years, with the consent of the Minister for Lands.

A portion of ↑43158 is subject to a lease between the Shire of Brookton (Lessor) and Brookton Senior Citizen Homes Inc (Lessee).

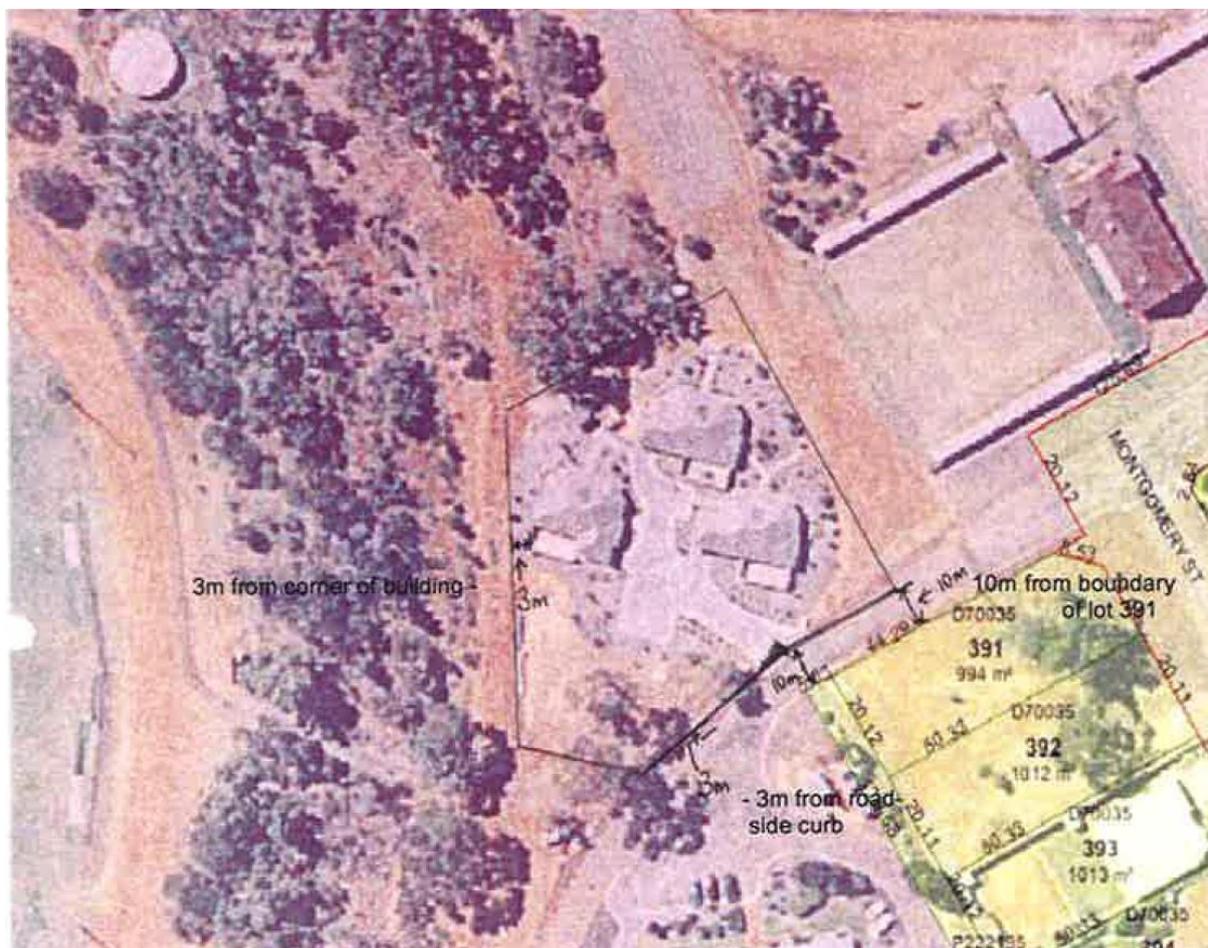


Figure 2: Area of ↑43158 Subject to Lease to Brookton Senior Citizen Homes Inc.

The lease commenced on October 8 2008 and has a term of 21 years with an automatic renewal of a further 21 years, therefore the next opportunity to revise the lease terms is in 2050.

4.1.1 Land Tenure Issues

The Shire of Brookton currently has control of the land comprising ↑43158 (3 x 3 Bedroom Units). If the Shire were to take over control of the Units, it would simply be a matter of the Brookton Senior Citizen Homes Inc surrendering the lease. There would be no costs associated with this.

The Shire does not have control of ↑33591 (8 x 1 Bedroom Units) as control rests with the Brookton Senior Citizen Homes Inc through the Management Order. If the Shire wished to take control of these units, it would simply be a matter of applying to the Minister for Lands (by completion of a Crown Land Enquiry Form) to have the management order transferred to the Shire.

The cost of this exercise needs to be investigated further, however it is thought to be minimal as it is simply a matter modifying the Reserve Management Order. The status of the land would not be changing. As part of this process however, the Shire should also seek the power to lease under the management order as strictly speaking, the units are leased to individual tenants and this power does not appear to be in place currently.

Depending on what the Shire wished to do in the longer term, for example have an external party manage the properties, there would be little point in changing the tenure of the land and the Shire already has the power to lease the 3 x 3 Bedroom Units, once Brookton Senior Citizen Homes Inc surrender the lease.

The only time that it would be worthwhile changing the land tenure, e.g. converting the land to freehold, is if the Shire wanted to sell any or all of the units. This would most probably be seen by the community as unacceptable as the community would lose control of the units.

Recommendation 1. *If the Shire wishes to take control of the 3 x 3 Bedroom Units located on Lot 456 White St (↑43158) from Brookton Senior Citizen Homes Inc., request Brookton Senior Citizen Homes Inc to surrender the lease contained in Landgate Document K785635*

Recommendation 2. *If the Shire wishes to take control of the 8 x 1 Bedroom Units located on Lot 420 White St (↑33591) from Brookton Senior Citizen Homes Inc., complete a Crown Land Enquiry Form and submit to the Minister for Lands requesting that the Management Order is transferred from the Brookton Senior Citizen Homes Inc to the Shire of Brookton and also seek the power to lease.*

4.2 Status of existing tenancy agreements

According to David Bond, President of Brookton Senior Citizen Homes Inc it is understood that all tenancies (except one) are occupied and there has been continuous occupancy in all units, apart from the times when units are being refurbished. At present Unit 7 White St is currently empty and being refurbished.

Mr Bond advises here is a waiting list of eleven couples for the Whittington St apartment and five singles for the White St Units. A waiting list of this nature is quite standard for the units, indicating demand for more units.

When units become available the people on the waiting list are contacted in order of their application date and asked if they are ready to move in. If they are not, then the next person / couple is contacted until the units are occupied. Due to this situation, there is little need to advertise vacancies.

Rent is charged at \$195 per fortnight for the 1 Bedroom units, with garage fees at \$10 for a lockup garage or \$5 for an open garage.

Rent is \$240 per week for the 3 Bedroom units.

Residents pay the rent via direct debit and also pay electricity charges and personal contents insurance.

Costs not passed onto residents include rates and water, building insurance and any maintenance costs.

It is understood that there are no special conditions outside of these agreements.

There are no formal lease agreements in place for the occupation of the units.

4.3 Financial Considerations

4.3.1 Annual Income and Expenditure

The income and expense data for the units was provided for an 11-month period and is reproduced below;

Month	Rent/Power (via Gills)	D/Debits Dot Taylor	J Francis	Mrs Ballad Unit 6	Sandra Dyson	Marianna Kabai	Marion Waldock	Misc.	D&M Day	Mrs Hambly	R&P Cliff	Colin Webb	Resident Bonds	Resident Power	Misc.	Total Amount
Oct-16		390	615	615	410	390	210			960	960	1,440		1,383		7,373
Nov-16		390	410	410	615	585	210			960	960	960				5,500
Dec-16	537	390	410	410	410	390	210			960	960	960		614	1,478	7,729
Jan-17		585	410	410	410	390	315	2,535	440	960	1,440	960	400	352	50,691	60,298
Feb-17		390	420	420	420	395	220		420	960	960	960		434		5,999
Mar-17		410	420	420	420	400	220		630	960	960	960		0		5,800
Apr-17	199	400	420	420	420	400	220		420	960	960	960		466	18,109	24,354
May-17		400	630	630	630	600	220		420	960	1,440	960		661	100	7,651
Jun-17		400	420	420	420	400	220		420	960	960	960		555		6,135
Jul-17		600	210	420	420	400	330	2,600	420	960	1,440	960			398	9,158
Aug-17	326	400	630	420	420	400	220		630	960	960	960		1,341	350	8,017
Total	1,062	4,755	4,995	4,995	4,995	4,750	2,595	5,135	3,800	10,560	12,000	11,040	400	5,806	71,127	148,015

Table 5: 11 Months of Financial Income

Month	White St Electricity	White St Water	Mokine Water	White St Rates	Mokine Rates	White St Insurance	Mokine Insurance	White St Repairs	Mokine Repairs	Bonds	Shire Loan	Capital	MISC	Amount
Oct-16	0		101					322						423
Nov-16	0		0					1,350						1,350
Dec-16	1,306	253	0					4,543	1,680		10,681		128	18,590
Jan-17	1,000	760	0					7,399		400			553	10,112
Feb-17	0	0	0					1,426						1,426
Mar-17	0	977	0					34,779					134	35,890
Apr-17	995	564	162					582						2,303
May-17	0	0	0					28,855					116	28,971
Jun-17	996	559	0					5,356			10,681			17,593
Jul-17	0	0	397			3,703		923					427	5,449
Aug-17	1,602	318	0					26					24	1,969
Total	5,898	3,431	660	0	0	3,703	0	85,560	1,680	400	21,362	0	1,381	124,075

Table 6: 11 Months of Financial Expenditure

4.3.2 The Current Financial performance and position

The above table provide 11 months of expenditure which we understand to be indicative of the normal annual operation of the Brookton Senior Citizen Homes Inc. Extrapolating this to 12 months, the net position would be ~\$161,000 income, \$135,000 expenses and a resulting net surplus of \$26,000.

It should be noted there were two events in both the income and expenses (highlighted in blue) that represent extra ordinary transactions being, the miscellaneous income of \$50,691 and \$18,109 in January and April respectively. This is offset by expenses of \$34,779 in March and \$28,855 in May.

These transactions relate to cashing in of two separate term deposits held by the committee and expenditure on the refit of seven kitchens, vanities and floor covering fit outs in the 1 x Bedroom units.

If these abnormal items are excluded from the operating income and expenditure, the net annual surplus would be closer to \$31,000 if the units are at full occupancy.

4.3.3 Projected financial returns.

From the information provided, including the financial position and overall asset condition status of each unit, the financial performance of the concern should not change with any great significance. The primary issue that may affect the overall expenditure related to the units, would be if the Shire decided to upgrade the facilities to offer a higher level of aged care. The exact overall expense to achieve this is beyond the scope of this report.

Therefore, the projected earnings of the units should perform similarly to this year, as it represents near full occupancy with adequate average maintenance expenditure.

4.4 Asset Management

4.4.1 Understanding of existing building condition – Condition Assessment

The units were inspected to determine the current condition and maintenance issues that should be addressed. A summary of the assessment appears below, along with photographs of the any defects, with associated risk and repair costs.

Unit	Building Name	Long Life Structure	Short Life Structure	Roof Cladding	Roof Frame	Mechanical Services	Fit Out	Walls	Ceiling	Floor
1	Mokine Cottages	2		2	2	2	2	2	2	2
2	Mokine Cottages	2		2	2	2	2	2	2	2
3	Mokine Cottages	2		2	2	2	2	2	2	2
1	40 White St	3		4	3	2	2	2	2	2
2	40 White St	3		4	3	3	2	2	2	2
3	40 White St	3		4	3	2	2	2	2	2
4	40 White St	3		4	3	2	2	2	2	2
5	40 White St	3		4	3	2	2	2	2	2
6	40 White St	3		4	3	2	2	2	2	2
7	40 White St	3		4	3	2	2	2	2	2
8	40 White St	3		4	3	2	2	2	2	2
	Laundry, 40 White St	3		4	3	2	2	2	2	2
	Garage 1, 40 White St		2	2				2		2
	Garage 2, 40 White St		2	2			2	2		2
	Garage and Store, 40 White St		2	2	2		2	2		2

Table 7: Summary of Condition Rating & Maintenance Item Costs per Building Area

4.4.2 Maintenance Items identified

Building	Inspection Date	Maintenance Item	Problem	Recommended Action	Risk Assessment - Likelihood Failure	Risk Assessment - Consequence Failure	Risk Rating	Cost Estimate
Unit 1, Mokine Cottages	03/10/2017	Ceiling	Ceiling to veranda needs minor repair and paint	1 carpenter x 2 hour 1 painter x 1 hour	1	1	Low	\$300
Unit 2, Mokine Cottages	03/10/2017	Cornice	Cracks in cornice	1 Painter x 4 hours.	1	1	Low	\$420
Unit 2, Mokine Cottages	03/10/2017	Wall	Cracks to wall	1 Painter x 1 hours.	1	1	Low	\$110
Unit 3, Mokine Cottages	03/10/2017	Wall	Wall needs patch and paint	1 Painter x 2 hours.	1	1	Low	\$230
Unit 3, Mokine Cottages	03/10/2017	Veranda	Water stains need paint on veranda	1 Painter x 4 hours.	1	1	Low	\$420
Unit 1, White St	03/10/2017	Gutter	Gutter needs replacing	1 labourer x 4 hours	1	1	Low	\$440
Unit 1, White St	03/10/2017	Garden Wall	Crack to garden wall, will need emptying and refill	1 carpenter x 4 hours	1	1	Low	\$450
Unit 1, White St	03/10/2017	Store Door	Damage to Store Door, sand down and paint	1 painter x 2 hours	1	1	Low	\$200
Unit 2, White St	03/10/2017	Door	Damage to bottom of door store, will need to be sanded and filled	1 painter x 2 hours	1	1	Low	\$200
Unit 2, White St	03/10/2017	Garden Wall	Crack to garden wall, will need emptying and refill	1 carpenter x 4 hours	1	1	Low	\$450
Unit 3, White St	03/10/2017	Walls	Paint to walls where new cupboards fitted	1 painter x 2 hours	1	1	Low	\$200
Unit 3, White St	03/10/2017	Door	Store door and architrave need paint	1 painter x 2 hours	1	1	Low	\$200
Unit 3, White St	03/10/2017	Joint	Mortar joints need repointing	1 Labourer x 2 hours	1	1	Low	\$120
Unit 3, White St	03/10/2017	Veranda	Veranda needs re paint	1 painter x 2 hours	1	1	Low	\$200
Unit 3, White St	03/10/2017	Sill Bricks	Two sill bricks loose, re cement	1 Labourer x 1 hour	1	1	Low	\$60
Unit 4, White St	03/10/2017	Mortar Joints	Mortar joints need re pointing	1 Labourer x 2 hours	1	1	Low	\$120
Unit 4, White St	03/10/2017	Walls	Repaint where cupboards were	1 painter x 2 hours	1	1	Low	\$200
Unit 4, White St	03/10/2017	Walls	Paint where new cistern fitted	1 painter x 2 hours	1	1	Low	\$200
Unit 5, White St	03/10/2017	Mortar Joints	Mortar joints need re pointing	1 Labourer x 2 hours	1	1	Low	\$120
Unit 5, White St	03/10/2017	Door	Damage from water to bottom of door to store	1 painter x 2 hours	1	1	Low	\$200

Building	Inspection Date	Maintenance Item	Problem	Recommended Action	Risk Assessment - Likelihood Failure	Risk Assessment - Consequence Failure	Risk Rating	Cost Estimate
Unit 7, White St	03/10/2017	Toilet	Toilet seat broken	1 carpenter x 1 hour	1	1	Low	\$120
Unit 7, White St	03/10/2017	Door	Door and Architrave need painting	1 painter x 2 hours	1	1	Low	\$200
Unit 7, White St	03/10/2017	Stove	Stove needs replacing	Replace with new	1	1	Low	\$550
Unit 8, White St	03/10/2017	Door	Door needs paint	1 painter x 2 hours	1	1	Low	\$200
Unit 8, White St	03/10/2017	Tile	Tile broken and needs replacing	1 carpenter x 1 hour	1	1	Low	\$100
Laundry, White St	03/10/2017	Tiling	Skirting tiles missing from wall under dryer	1 tiler x 2 hours	1	1	Low	\$200
Laundry, White St	03/10/2017	Wall	Wall needs repair and paint	1 painter x 2 hours	1	1	Low	\$200
Garage, White St	03/10/2017	Roof Truss	Roof trusses rusty and need replacing	1 painter x 1 day	3	4	Moderate	\$900
Garage and Store, White St	03/10/2017	Light Fitting	Replace light fitting with protected light	1 Electrician x 1 hour	1	1	Low	\$200
TOTAL SPEND								\$7,510

Table 8: Identified Maintenance Items

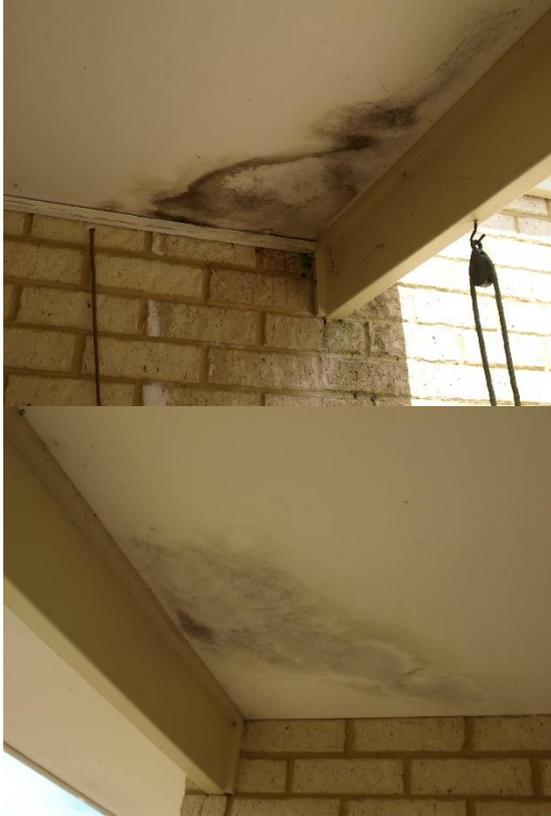
4.4.3 Action items, with photos

Building	Maintenance Item	Problem	Recommended Action	Photo
Unit 1, Mokine Cottages	Ceiling	Ceiling to veranda needs minor repair and paint	1 carpenter x 2 hour 1 painter x 1 hour	

Building	Maintenance Item	Problem	Recommended Action	Photo
Unit 2, Mokine Cottages	Cornice	Cracks in cornice	1 Painter x 4 hours.	

Building	Maintenance Item	Problem	Recommended Action	Photo
	Wall	Cracks to wall	1 Painter x 1 hours.	

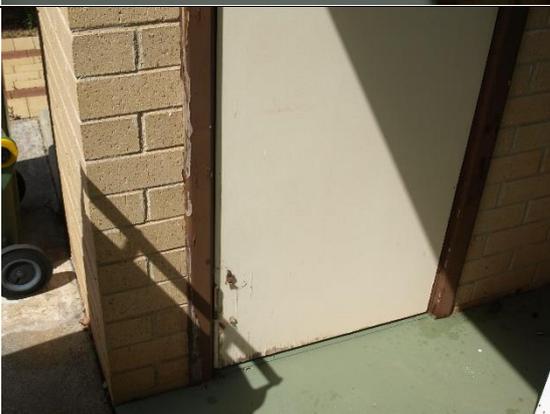
Building	Maintenance Item	Problem	Recommended Action	Photo
Unit 3, Mokine Cottages	Wall	Wall needs patch and paint	1 Painter x 2 hours.	

Building	Maintenance Item	Problem	Recommended Action	Photo
	Veranda	Water stains need paint on veranda	1 Painter x 4 hours.	
Unit 1, White St	Gutter	Gutter needs replacing	1 labourer x 4 hours	
	Garden Wall	Crack to garden wall, will need emptying and refill	1 carpenter x 4 hours	

Building	Maintenance Item	Problem	Recommended Action	Photo
	Store Door	Damage to Store Door, sand down and paint	1 painter x 2 hours	
Unit 2, White St	Door	Damage to bottom of door store, will need to be sanded and filled	1 painter x 2 hours	
	Garden Wall	Crack to garden wall, will need emptying and refill	1 carpenter x 4 hours	

Building	Maintenance Item	Problem	Recommended Action	Photo
Unit 3, White St	Walls	Paint to walls where new cupboards fitted	1 painter x 2 hours	
	Door	Store door and architrave need paint	1 painter x 2 hours	
	Joint	Mortar joints need repointing	1 Labourer x 2 hours	
	Veranda	Veranda needs re paint	1 painter x 2 hours	

Building	Maintenance Item	Problem	Recommended Action	Photo
	Sill Bricks	Two sill bricks loose, re cement	1 Labourer x 1 hour	
Unit 4, White St	Mortar Joints	Mortar joints need re pointing	1 Labourer x 2 hours	
	Walls	Repaint where cupboards were	1 painter x 2 hours	
	Walls	Paint where new cistern fitted	1 painter x 2 hours	

Building	Maintenance Item	Problem	Recommended Action	Photo
Unit 5, White St	Mortar Joints	Mortar joints need re pointing	1 Labourer x 2 hours	
	Door	Damage from water to bottom of door to store	1 painter x 2 hours	
Unit 7, White St	Toilet	Toilet seat broken	1 carpenter x 1 hour	
	Door	Door and Architrave need painting	1 painter x 2 hours	

Building	Maintenance Item	Problem	Recommended Action	Photo
	Stove	Stove needs replacing	Replace with new	
Unit 8, White St	Door	Door needs paint	1 painter x 2 hours	
	Tile	Tile broken and needs replacing	1 carpenter x 1 hour	
Laundry, White St	Tiling	Skirting tiles missing from wall under dryer	1 tiler x 2 hours	

Building	Maintenance Item	Problem	Recommended Action	Photo
	Wall	Wall needs repair and paint	1 painter x 2 hours	
Garage, White St	Roof Truss	Roof trusses rusty and need replacing	1 painter x 1 day	
Garage and Store, White St	Light Fitting	Replace light fitting with protected light	1 Electrician x 1 hour	

4.4.4 Current and future maintenance requirements and projected costs;

The Shire engaged APV Valuers and Asset Management, to conduct a valuation of the Noncurrent assets of the Shire in accordance with the Australian Accounting standards as at the 30/06/2017.

The value of the two sets of units is presented below;

White Street Units

	Main Building Area (m ²)	Rate	Calculation	Secondary Area (m ²)	Rate	Calculation	Total Gross Replacement Cost	Estimated Fair Value	Estimated Accumulated Depreciation
Units 1&2	114	\$1,600	\$182,400	33	\$600	\$19,800	\$232,530	\$93,012	\$139,518
Units 3&4	114	\$1,600	\$182,400	33	\$600	\$19,800	\$232,530	\$93,012	\$139,518
Units 5&6	114	\$1,600	\$182,400	33	\$600	\$19,800	\$232,530	\$93,012	\$139,518
Units 7&8	114	\$1,600	\$182,400	33	\$600	\$19,800	\$232,530	\$93,012	\$139,518
Laundry	19	\$1,200	\$22,800	12	\$600	\$7,200	\$34,500	\$13,800	\$20,700
Garage Northern	54	\$300	\$16,200			\$0	\$18,630	\$7,452	\$11,178
Garage Central	36	\$300	\$10,800			\$0	\$12,420	\$4,968	\$7,452
Garage Southern	72	\$300	\$21,600			\$0	\$24,840	\$9,936	\$14,904
								\$408,204	\$612,306
							Adopt:	\$410,000	

Mokine Cottages

	Main Building Area (m ²)	Rate	Calculation	Secondary Area (m ²)	Rate	Calculation	Total Gross Replacement Cost	Estimated Fair Value	Estimated Accumulated Depreciation
Unit 1	127	\$1,600	\$203,200	36	\$600	\$21,600	\$258,520	\$206,816	\$51,704
Unit 2	127	\$1,600	\$203,200	36	\$600	\$21,600	\$258,520	\$206,816	\$51,704
Unit 3	127	\$1,600	\$203,200	36	\$600	\$21,600	\$258,520	\$206,816	\$51,704
Paving	470	\$100	\$47,000			\$0	\$54,050	\$43,240	\$10,810
Fencing	60	\$100	\$6,000			\$0	\$6,900	\$5,520	\$1,380
								\$669,208	\$167,302
							Adopt:	\$670,000	

Table 6: APV valuation of Independent Living units

In order to ascertain a fair value for ongoing maintenance the Whole of Life estimator was utilised; this is as outlined below;

Core Business Australia Whole of Life Cost Estimator

Existing Building Renewal Cost 1,705,680

Annual Average Renewal Demand (AARD) of Existing Building

Component	% Value	Component Value	Life	Intervention	Renewal %	Annual Renewal
Structure	60%	1,023,408.00	100	8	1.25%	12,793
Roof	5%	85,284.00	30	8	4.17%	3,554
Mechanical Services	15%	255,852.00	25	8	5.00%	12,793
Fit Out	20%	341,136.00	30	8	4.17%	14,214

Total	100%	1,705,680			ARRD1 =	43,353
Total Renewal Demand over 20 years						867,054

Annual Consequential Maintenance Demand @ 2%

34,114

For this exercise, APV's Total Gross Replacement Cost of each unit (excluding outbuildings, fencing and paving) was used in the Whole of Life (WoL) estimator. The WoL estimator calculates annual average Renewal Demand, i.e. the amount on average that the asset owner is likely to need to spend on building asset renewal, e.g. roof replacement, fitout replacement etc.

For the 11 units this calculates to be \$43,353/annum. This will not need to be spent every year, however some years will need to be more and some will be less. We believe this is a good estimate and evidenced by what was spent on Capital Renewal last year, i.e. \$63k on kitchen and bathroom fitout.

The Annual Consequential Maintenance Demand of \$34,114 is calculated based on 2% of the Renewal Value (Gross Replacement Value) of the Units. In the previous financial year ~\$23k was spent on maintenance.

From the WoL Estimator, the combined Renewal and Maintenance Demand is estimated to be in the order of \$77,000 per annum.

The combined estimated surplus (excluding one off Capital Items) and existing maintenance expenditure is ~\$83,000 per annum. This is in line with what is predicted by the model, therefore it appears the financial model currently in place is sustainable. It should also be noted that the Brookton Senior Citizen Homes Inc Income / Expenditure for 2016 / 17 includes \$21k in loan repayments. If control of the units is handed over to the Shire, it is envisaged this payment will no longer be required (unless it is a self-supporting loan that the Shire needs to repay). This money will then be freed up for other things.

One of the issues is that Brookton Senior Citizen Homes Inc volunteers look after the day to day running of the two facilities, including collecting rents, arranging repairs etc. Once control is handed to the Shire, these volunteers may no longer be available, in which case the Shire will need to resource this. The \$21k going toward the Shire's loan repayment may be able to be directed towards paying part of an FTE to take on this role, however this would only be the case if the Shire is not reliant upon the \$21k income or it is not repaying a self-supporting loan.

We were unable to obtain an audited Balance Sheet from Brookton Senior Citizen Homes Inc so it is unclear if there are further cash reserves that could be used to pay of loans etc.

4.4.5 Residential Occupancy

As previously outlined the units have very rarely been unoccupied and have an sustained waiting list. With an overall aging population in Australia the present occupancy and demand for the accommodation should remain strong into the foreseeable future.

One of the key considerations of the units is that of the need and opportunity for residents to transition to higher residential care.

The units were designed and constructed as domestic units, with no set adherence to the BCA standards for specific aged care living. As such, the units provide for a low level of care, fundamentally capable occupants.

Without considerable investment by the Shire the units would need to remain as they are in relation to the occupancy they provide for.

Should residents need to progress into more intense aged care living, this would need to be addressed on a case by case basis.

4.4.6 Opportunities for residents to opt out of the current arrangements and any associated impacts;

At present there are no "formal" lease agreements in place with any of the residents, simply an agreement, therefore should any of the resident's desire to leave the units, they could.

This however does not seem to present a significant risk, given the waiting list and the long occupancy of each of the present patrons.

It may, however, at the Shires discretion, be prudent to formalise lease arrangements with tenants going forward, thus giving both parties some surety around tenancy and service levels. However, the power to lease ability should first be put in place under the Management Order for the reserve in relation to the 1 x Bedroom units.

4.4.7 Opportunities for changes to residential occupancies including the potential to target specific persons such as low income etc.

Given the current demand for the dwellings and the overall demographic of occupants, it would seem unlikely that much would be gained by targeting markets in different social make ups. Based on the Management Order purposes, there appears to be nothing preventing the 3 x Bedroom Units being rented to any demographic however the 1 x Bedroom Units can only be used for aged persons as per the Management Order on Reserve 33591.

Further research (particularly in relation to the 3 x 3 Bedroom Units) should be undertaken to ascertain with what money they were built as they may have been funded through a funding program that ties their future usage.

4.4.8 Future Management

Taking over management of the units would present an additional resource burden on the Shire, however it does not appear to be too onerous, particularly if the Shire can manage the finances and still utilise some of the volunteers of the Brookton Senior Citizen Homes Inc group to co-ordinate activities such as building repairs and attending to specific resident needs.

Understanding the overall requirement would involve further consultation with the current committee. It would seem unlikely that the time required would outweigh the benefit to the Shire and the surety it would provide to community peace of mind if the Shire maintained control of the two facilities.

Within the outlined model all maintenance tasks have been costed to be performed by third parties leaving a minor burden to existing Shire staff members.

One solution to the ongoing management could be to incorporate the formation of Shire run management committee, similar to that being run currently by the senior citizens but under the guidance and governance arrangements of the Shire.

This could potentially minimise demand on current staff members and my assisting in transitioning from the current arrangement.

A third option is the utilisation of an outsourced aged care management provider which may be better equipped to handle the management of the facilities. This would also need to be investigated further before decisions are formalised as the implications on current and future residents, as well as the Shire as the asset holder, would need to be investigated in detail.

Attachment 1 Land Tenure Documents



WESTERN AUSTRALIA

REGISTER NUMBER	
456/DP221214	
DUPLICATE EDITION	DATE DUPLICATE ISSUED
N/A	N/A

**RECORD OF CERTIFICATE
OF
CROWN LAND TITLE**
 UNDER THE TRANSFER OF LAND ACT 1893
 AND THE LAND ADMINISTRATION ACT 1997
NO DUPLICATE CREATED

VOLUME	FOLIO
LR3120	894

The undermentioned land is Crown land in the name of the STATE OF WESTERN AUSTRALIA, subject to the interests and Status Orders shown in the first schedule which are in turn subject to the limitations, interests, encumbrances and notifications shown in the second schedule.




REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 456 ON DEPOSITED PLAN 221214

**STATUS ORDER AND PRIMARY INTEREST HOLDER:
(FIRST SCHEDULE)**

STATUS ORDER/INTEREST: RESERVE UNDER MANAGEMENT ORDER

PRIMARY INTEREST HOLDER: SHIRE OF BROOKTON OF POST OFFICE BOX 42, BROOKTON
(XE H617561) REGISTERED 8/12/2000

**LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)**

1. H617559 RESERVE 43158 FOR THE PURPOSE OF RECREATION, TOURISM, HEALTH, CIVIC AND COMMUNITY PURPOSES REGISTERED 8/12/2000.
- H617561 MANAGEMENT ORDER. CONTAINS CONDITIONS TO BE OBSERVED. WITH POWER TO LEASE FOR ANY TERM NOT EXCEEDING 21 YEARS, SUBJECT TO THE CONSENT OF THE MINISTER FOR LANDS. REGISTERED 8/12/2000.
2. H693850 CAVEAT BY MINISTER FOR HEALTH AS TO PORTION ONLY. LODGED 15/3/2001.
3. K785635 LEASE TO BROOKTON SENIOR CITIZENS' HOMES INC OF PO BOX 200, BROOKTON EXPIRES: SEE LEASE. AS TO PORTION ONLY. REGISTERED 28/11/2008.
4. L244346 LEASE TO BROOKTON TENNIS CLUB INC OF POST OFFICE BOX 83, BROOKTON EXPIRES: SEE LEASE. AS TO PORTION ONLY. REGISTERED 2/3/2010.
5. M398469 LEASE TO SILVER CHAIN GROUP LTD OF 6 SUNDERCOMBE STREET, OSBORNE PARK EXPIRES: SEE LEASE. AS TO PORTION ONLY. REGISTERED 10/9/2013.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required. Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF CROWN LAND TITLE-----

STATEMENTS:

The statements set out below are not intended to nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

END OF PAGE 1 - CONTINUED OVER

ORIGINAL CERTIFICATE OF CROWN LAND TITLE

REGISTER NUMBER: 456/DP221214 VOLUME/FOLIO: LR3120-894 PAGE 2

SKETCH OF LAND: LR3120-894 (456/DP221214)
PREVIOUS TITLE: 1968-952, LR3002-362
PROPERTY STREET ADDRESS: 14 WHITE ST, BROOKTON.
LOCAL GOVERNMENT AUTHORITY: SHIRE OF BROOKTON
RESPONSIBLE AGENCY: DEPARTMENT OF PLANNING, LANDS AND HERITAGE (SLSD)

NOTE 1: A000001A LAND PARCEL IDENTIFIER OF BROOKTON TOWN LOT/LOT 456 ON SUPERSEDED
PAPER CERTIFICATE OF CROWN LAND TITLE CHANGED TO LOT 456 ON DEPOSITED
PLAN 221214 ON 16-SEP-02 TO ENABLE ISSUE OF A DIGITAL CERTIFICATE OF TITLE.

NOTE 2: THE ABOVE NOTE MAY NOT BE SHOWN ON THE SUPERSEDED PAPER CERTIFICATE
OF TITLE.

NOTE 3: K725149 CORRESPONDENCE FILE 01911-1992-01RO

NOTE 4: N428932 DEPOSITED PLAN 406799 LODGED

10/18/2017

Reserve Enquiry Detail

Reserve Enquiry Detail [5100L]

[Screen Friendly](#) [Print Page](#)

Reserve	43158	Legal Area (ha)	25.4452
Name		Status	Current
Type		Current Purpose	RECREATION, TOURISM, HEALTH, CIVIC AND COMMUNITY PURPOSES
Notes	WITH POWER TO LEASE FOR ANY TERM NOT EXCEEDING 21 YEARS SUBJECT TO THE CONSENT OF THE MINISTER FOR LANDS.		
File Number	01896-1915-02RO (H317557)		

Class	Responsible Agency	Date of Last Change
C	DEPARTMENT FOR PLANNING AND INFRASTRUCTURE	06/02/2001

Management Orders	Document	Land Use	Local Government Authority
SHIRE OF BROOKTON	H617561	CIVIC PURPOSES COMMUNITY CENTRE HEALTH PURPOSES RECREATION TOURISM PURPOSES	BROOKTON, SHIRE OF

Add Item	CLT Number	Parcel Identifier	Street Address	Suburb	File Number	PIN	Area (sqm)	Map Viewer
<input type="checkbox"/>	LR3120-894	Lot 456 On Plan 221214	14 WHITE ST BROOKTON		01911-1992-01RO	1343565	254452.0	

Reserve Number 43158

Previous Certificates of Title	Historic Crown Allotments
LR3002-362 Cancelled	BROOKTON Town lot/Lot 456

Gaz Page/Document	Date	Type	Text
H617557	08/12/2000	Vesting Revoked	REVOKED ORDER DATED
H617558	08/12/2000	Current Area	25.4452
H617558	08/12/2000	Lot/Town Lot	BROOKTON LOT 456
H617559	08/12/2000	Current Purpose	RECREATION, TOURISM, HEALTH, CIVIC AND COMMUNITY PURPOSES
H617561	08/12/2000	Current Vesting	VEST:SHIRE OF BROOKTON W P L (21YRS) APPROVAL OF MINISTER REQUIRED
H617561	08/12/2000	Historical Vesting	VEST: SHIRE OF BROOKTON
H617561	08/12/2000	Vesting Revoked	REVOKED ORDER DATED 8.12.2000
	08/12/2000	Survey Number	DIA:91018, LA PLAN: 21214
4851	20/09/1994	Historical Vesting	VEST:SHIRE OF BROOKTON
4858	20/09/1994	Class	C
4858	20/09/1994	Formerly	PORTION LOT 444
4858	20/09/1994	Correspondence File Number	01896-1915-02RO (H317557)
4858	20/09/1994	Historical Area	1.2948
4858	20/09/1994	Historical Purposes	FRAIL AGED HOSTEL
4858	20/09/1994	Original Gazettal and page	ORIGINAL GAZETTE
4858	20/09/1994	Previous Lot/Locations	BROOKTON LOT 447
4858	20/09/1994	Public Plan	BJ33 (2) 40.19 & BJ33 (2) 1.19 (H617557)
4858	20/09/1994	Street Name	BROOKTON HIGHWAY (H617557)
	20/09/1994	Historical Purposes	FRAIL AGED HOSTEL



REGISTER NUMBER 420/DP181394	
DUPLICATE EDITION N/A	DATE DUPLICATE ISSUED N/A

VOLUME **LR3003** FOLIO **103**

**RECORD OF QUALIFIED CERTIFICATE
OF
CROWN LAND TITLE
UNDER THE TRANSFER OF LAND ACT 1893
AND THE LAND ADMINISTRATION ACT 1997
NO DUPLICATE CREATED**

The undermentioned land is Crown land in the name of the STATE OF WESTERN AUSTRALIA, subject to the interests and Status Orders shown in the first schedule which are in turn subject to the limitations, interests, encumbrances and notifications shown in the second schedule.




REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 420 ON DEPOSITED PLAN 181394

**STATUS ORDER AND PRIMARY INTEREST HOLDER:
(FIRST SCHEDULE)**

STATUS ORDER/INTEREST: RESERVE UNDER MANAGEMENT ORDER

PRIMARY INTEREST HOLDER: BROOKTON SENIOR CITIZENS HOMES INC

**LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)**

- RESERVE 33591 FOR THE PURPOSE OF AGED PERSONS HOMES MANAGEMENT ORDER. CONTAINS CONDITIONS TO BE OBSERVED.

Warning: (1) A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required. Lot as described in the land description may be a lot or location.
(2) The land and interests etc. shown hereon may be affected by interests etc. that can be, but are not, shown on the register.
(3) The interests etc. shown hereon may have a different priority than shown.

-----END OF CERTIFICATE OF CROWN LAND TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: DP181394
 PREVIOUS TITLE: LR3003-103
 PROPERTY STREET ADDRESS: 40 WHITE ST, BROOKTON.
 LOCAL GOVERNMENT AUTHORITY: SHIRE OF BROOKTON
 RESPONSIBLE AGENCY: DEPARTMENT OF PLANNING, LANDS AND HERITAGE (SLSD)

NOTE 1: K758499 CORRESPONDENCE FILE 10169-1911-01RO

Reserve Enquiry Detail [6100L]

[Screen Friendly](#) [Pr](#)

Reserve	33591	Legal Area (ha)	0.4047
Name		Status	Current
Type		Current Purpose	AGED PERSONS HOMES
Notes			
File Number	10169/11		
Additional Reserve Information	RESERV COMPRISES LOT 420 ON DEPOSITED PLAN 181394 (K758499)		

Class	Responsible Agency	Date of Last Char
C	DEPARTMENT FOR PLANNING AND INFRASTRUCTURE	03/11/2008

Management Orders	Document	Land Use	Local Government Autho
BROOKTON SENIOR CITIZENS HOMES INC		AGED PERSONS HOMES	BROOKTON, SHIRE OF

Add Item	CLT Number	Parcel Identifier	Street Address	Suburb	File Number	PIN	Area (sqm)	Map
<input type="checkbox"/>	LR3003-103	Lot 420 On Plan 181394	40 WHITE ST BROOKTON		10169-1911-01RO	670247	4047.0	

Reserve Number	33591
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Previous Certificates of Title	Historic Crown Allotments
	BROOKTON Town lot/Lot 420

Gaz Page/Document	Date	Type	Text
3301	12/09/1975	Current Vesting	VEST BROOKTON SENIOR CITIZENS HOMES
3320	12/09/1975	Original Gazettal and page	ORIGINAL GAZETTE
	12/09/1975	Current Area	0.4047
	12/09/1975	Class	C
	12/09/1975	Current Purpose	AGED PERSONS HOMES
	12/09/1975	Correspondence File Number	10169/11
	12/09/1975	Lot/Town Lot	BROOKTON,420
	12/09/1975	Public Plan	BROOKTON (02) 01.19
	12/09/1975	Street Name	WHITE ST
	12/09/1975	Survey Number	D:81394

This product is for information purposes only. A search of the original documentation is required for all legal purposes
Western Australian Land Information Authority (Landgate)

Attachment 2 Lease between Shire of Brookton and Brookton Senior Citizen Homes Inc

ID 2473

file # 82.

Lease

Shire of Brookton
Lessor

Brookton Senior Citizens' Homes Inc
Lessee

HARDY•BOWEN
LAWYERS
Level 1, 28 Ord Street, West Perth 6005
PO Box 1364, West Perth WA 6872
Tel + 61 8 9211 3600 Fax + 61 8 9211 3690
Our Ref MJH: CMP: 50282

Table of Contents

Clause	Page No
1. Definitions and Interpretation	1
1.1 Definitions	1
1.2 Interpretation	3
2. Operative Part	3
3. Lessee's Covenants	4
3.1 Rent	4
3.2 Interest on overdue moneys	4
3.3 Outgoings	4
3.4 Other liabilities	4
3.5 Cost of Lease	4
3.6 Use of Property	5
3.7 Entry by Lessor and others	6
3.8 Alterations and installations	6
3.9 To report certain matters to the Lessor	7
3.10 No assignment	7
3.11 Trust	8
3.12 Comply with Acts	8
3.13 Public risk insurance	9
3.14 Other insurance	9
3.15 Not to invalidate insurance	10
3.16 Indemnities	11
3.17 Yielding up	12
3.18 Not to lodge caveat or other interest against Title to Land	13
3.19 Alcohol	13
3.20 Incorporated association	14
4. Lessor's Covenants	14
4.1 Quiet enjoyment	14
4.2 Repairs and Maintenance	14
5. Mutual Agreements	14
5.1 Default by Lessee	14
5.2 Damages for breach of essential term	15
5.3 Abatement of Rent	15
5.4 Destruction of Premises	15
5.5 Lessor may remedy Lessee's default	15
5.6 Lessor not liable to third parties	16
5.7 Notices	16
5.8 Holding over	16
5.9 Waiver	16
5.10 Severance	16
5.11 Act by agent	16
5.12 Exercise of powers	17
5.13 Non-merger	17
5.14 Proper law	17
5.15 Effect of execution	17
6. Dispute Resolution	17
6.1 Notice of Dispute	17

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Table of Contents

Clause	Page No
6.2 Appointment of representative	17
6.3 Best endeavours to resolve Dispute	17
7. Arbitration.....	18
7.1 Notice to arbitrate	18
7.2 Final decision.....	18
7.3 No entitlement to commence an action	18
7.4 Costs of arbitration.....	18
8. Renewal of Term	18
8.1 Notice of renewal	18
8.2 Execution of deed of extension of Lease	18
9. Amendments to Lease	18
10. Whole of Agreement.....	19
11. Moratorium Negatived.....	19
12. Goods and Services Tax.....	19
12.1 Definitions.....	19
12.2 Lessee must pay.....	19
12.3 GST invoice.....	20
13. Western Australian Planning Commission Consent	20
14. Special Terms	20
Schedule 1.....	21
Schedule 2 - Fixtures and Fittings.....	22
Annexure 1 - Plan of Property.....	24
Annexure 2 – Maintenance Requirements.....	25

This Deed of Lease made at *BROOKTON* on *8th OCTOBER 2008*

Parties Shire of Brookton of 14 White Street, Brookton, Western Australia ("Lessor")

The lessee mentioned in Schedule 1 ("Lessee")

Recitals

- A. The Lessor has the care, control and management of the land pursuant to Management Order # H617561, granting power to lease for any term not exceeding 21 years, subject to the written consent of the Minister for Lands.
- B. This Lease has been entered into under and in accordance with section 3.58 of the *Local Government Act 1995*.
- C. The Lessor has agreed to lease and the Lessee has agreed to take a lease of the Property upon the terms and conditions contained in this Deed.

The parties agree

1. Definitions and Interpretation

1.1 Definitions

In this Lease, unless the contrary intention appears, the following expressions shall have the following meanings:

"Act" includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority;

"Annexure 1" means Annexure 1 of this Lease;

"Annexure 2" means Annexure 2 of this Lease;

"CPI Adjusted Rent" shall be calculated by using the following formula:

$$(a) \quad A = \frac{L}{E} \times PR$$

A means the reviewed rental

L means the Index Number (as hereinafter defined) for the quarter immediately prior to the date fixed for the current review date provided for pursuant to this clause

E means the Index Number (as hereinafter defined) for the quarter immediately prior to the review date immediately prior to the current review date

PR means the annual rental payable immediately prior to the current review date

(b) "Index Number" shall mean for the purposes of this Lease the rent sub-group of the Consumer Price Index for Perth (Capital City) as published by the Australian Bureau of Statistics (hereinafter called "the Bureau");

- (c) In the event that there is any suspension or discontinuance of the rent sub group of the Consumer Price Index or its method of calculation is substantially altered then "index number" shall mean the number selected by an actuary appointed by the Lessor from the Fellows of the Institute of Actuaries of Australia to accurately reflect changes in the prevailing levels of prices in the category dealt with by the Consumer Price Index during the period prior to such suspension or discontinuance;

For the purpose of calculating the first reviewed annual rent to be payable the last review date shall be deemed to have been on the Date of Commencement;

"Date of Commencement" means the date mentioned in Item 4 of Schedule 1;

"Dispute" means a dispute referred to in subclause 6.1;

"Encumbrances" means:

- (d) all mortgages, charges, writs, warrants, caveats (and the claims stated in any caveat) and any other right or interest of any third party affecting the Land or any part of the Land;
- (e) all reservations (if any), existing easements and restrictive covenants contained in the Crown Grant of the Land or referred to in or registered as an encumbrance on the Certificate of Title to the Land; and
- (f) all easements, restrictive covenants and encroachments (if any) affecting the Land or any part of the Land whether or not they are noted on the Certificate of Title to the Land,
- (g) and includes, without limitation, the encumbrances (if any) described in Schedule 1;

"fixtures and fittings" includes the items mentioned in Schedule 2;

"Lessee" means the Lessee mentioned in Item 1 of Schedule 1 and includes, where not repugnant to the context, the servants and agents of the Lessee;

"Lessee's Covenants" means each and every covenant contained or implied in this Lease to be observed or performed by the Lessee;

"Lessor" means the Lessor and includes, where not repugnant to the context, the servants and agents of the Lessor;

"Lessor's Powers" means each and every right, power and remedy exercisable by the Lessor under this Lease;

"Outgoings" means the charges mentioned in subclause 3.3;

"Premises" means the premises mentioned in Item 3 of Schedule 1 and includes, where not repugnant to the context, any part thereof;

"Property" means the property mentioned in Item 2 of Schedule 1 and includes, where not repugnant to the context, any part thereof;

"Rent" means the rent mentioned in Item 7 of Schedule 1 and any agreed variation of the rent determined in accordance with the provisions of this Lease from time to time;

"Schedule 1" means Schedule 1 of this Lease;

"Schedule 2" means Schedule 2 of this Lease;

"Term" means the term of this Lease mentioned in Schedule 1 including any renewal or extension of the term in accordance with the provisions of this Lease from time to time;

"this Lease" means this lease including any schedules and annexures and as amended from time to time by the Parties in writing; and

"Tobacco Product" means tobacco, a cigarette or a cigar or any other product the main, or a substantial ingredient of which is tobacco and which is designed for human consumption or use.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect the interpretation or construction of this Lease; and

unless the context indicates the contrary intention:

- (b) every covenant or agreement expressed or implied in this Lease in which more than one person covenants or agrees shall bind each person jointly and severally;
- (c) a reference to any party shall mean and include a reference to that party and the party's successors, personal representatives and transferees and a reference to a corporation or body includes a reference to the corporation or body's successors and assigns;
- (d) words importing the singular include the plural (and vice versa) and words denoting individuals include corporations (and vice versa);
- (e) a reference to a clause, a subclause, a paragraph, a schedule or an annexure is reference to a clause, a subclause, a paragraph, a schedule or an annexure of this Lease and as amended in accordance with the provisions of this Lease from time to time;
- (f) a reference to any Act or to any section or provision thereof includes a reference to that Act, section or provision as amended, replaced, varied or substituted from time to time; and
- (g) where any act, matter or thing is to be done under this Lease on a Saturday or Sunday, then that act, matter or thing may be done on the Monday immediately following the relevant Saturday or Sunday or in the event of a public holiday in Western Australia the act, matter or thing may be done on the working weekday immediately following that public holiday.

2. Operative Part

The Lessor HEREBY LEASES to the Lessee and the Lessee hereby takes on lease the Property, subject to the Encumbrances, from the Date of Commencement for the Term at the Rent and subject to and upon the covenants, conditions and stipulations contained in this Lease.

3. Lessee's Covenants

The Lessee covenants with the Lessor:

3.1 Rent

To pay the Rent (free from all deductions) in the manner and at the times mentioned in Schedule 1 to the Lessor at its address or as the Lessor may in writing from time to time direct.

3.2 Interest on overdue moneys

Without prejudice to the rights, powers and remedies of the Lessor that are otherwise provided for under this Lease, to pay to the Lessor on demand interest on any moneys that are due but unpaid for SEVEN (7) days by the Lessee to the Lessor on any account whatsoever under this Lease. Interest shall be calculated from the due date for the payment of the moneys in respect of which the interest is chargeable until payment of these moneys in full and interest shall be recoverable as if it was Rent in arrears. For the purpose of this subclause "interest" means the prevailing rate of interest charged on an overdraft of at least \$100,000 by a bank at which the Lessor keeps an account, calculated daily and capitalised on the last day of each calendar month.

3.3 Outgoings

To duly and punctually pay all rubbish collection, water, electricity, and sewerage and any other fees or charges which now or during the Term shall be charged upon or in respect of the Property or be payable by the owner or occupier in respect thereof upon the respective days or times upon which the same shall become due and payable.

3.4 Other liabilities

To the extent permissible at law, to pay upon demand to the Lessor by way of reimbursement an amount equal to any moneys paid or outlaid by the Lessor in respect of any liability imposed on the Lessee under this Lease.

3.5 Cost of Lease

To pay an amount equal to the Lessor's reasonable and proper costs (including solicitors' costs) and all duties, fees, charges and expenses of and incidental to the instructions for and the preparation and completion of this Lease. The Lessee shall be solely responsible for all stamp duty payable on this Lease and in respect of any renewal of the Term, and any application for the consent of the Lessor and of or incidental to any and every breach or default by the Lessee under this Lease and in or incidental to the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lessor under or by virtue of this Lease and the reasonable fees of all professional consultants reasonably and properly incurred by the Lessor in consequence of or in connection with any breach or default by the Lessee under this Lease.

3.6 Use of Property

(a) **Generally**

Not to use or permit the Property and Premises to be used for any other purpose but to use the Property and Premises only for the purpose mentioned in Item 8 of Schedule 1 and for no other purpose whatsoever.

(b) **Maintenance**

To keep and maintain the Property in good order and repair (fair wear and tear accepted) and to maintain and not interfere with the vegetation or timber on the land without the prior consent of the Lessor.

(c) **Offensive activities**

Not to do, exercise or carry on or allow any person to do, exercise or carry on in the Property any noxious, noisome or offensive act, trade, business, occupation or calling or any act, matter or thing whatsoever which may cause nuisance, damage or disturbance to the Lessor or occupier of any building in the neighbourhood.

(d) **Lavatories etc.**

Not to use or allow to be used the lavatories, toilets, sinks and drainage and other plumbing facilities on the Property for any purposes other than for which they were constructed or provided.

(e) **Chemicals etc.**

Not to use or allow to be used any chemicals or inflammable gases, fluids or substances on the Property except where reasonably necessary in the normal course of the Lessee's business or the use of the Premises for the permitted use of the Premises.

(f) **Signs**

Not, without the prior written consent of the Lessor (which consent shall not be unreasonably withheld), to construct, display, affix or exhibit on the Property any signs, , embellishments, advertisements, names or notices visible from outside the Property without the consent of the Lessor.

(g) **Removal of rubbish**

To keep the Property free from rubbish and to store and keep all trade waste, trash and garbage in proper receptacles.

(h) **Pest control**

To take all reasonable precautions to keep the Property free of rodents, vermin and pests.

(i) **Not to pollute**

To do all things necessary to prevent pollution or contamination of the Property by garbage, refuse, waste matter, oil and other pollutants.

3.7 Entry by Lessor and others

To permit entry to the Property at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when notice shall not be required):

(a) **To inspect**

By the Lessor and its agents, servants and contractors to view or inspect the property or premises for the purpose of facilitating Shire services or to inspect the state of repair thereof for the purposes of ensuring compliance by the Lessee with all or any of the Lessee's Covenants

(b) **To repair**

By the Lessor and its agents, servants and contractors with workmen and others and all necessary materials and equipment for the purpose of complying with any request, requirement, notification or order of any authority having jurisdiction or authority over or in respect of the Property or Premises for which the Lessee is not liable under this Lease or for which the Lessee is liable but has failed to carry out or for the carrying out of repairs, renovations, maintenance, modifications, extensions, alterations or replacements to the Premises and all plant, machinery and other building equipment within the Premises PROVIDED THAT in the exercise of this right the Lessor shall use its best endeavours not to cause any undue inconvenience to the Lessee.

3.8 Alterations and installations

(a) **Generally**

Not to make or suffer to be made to the Premises any alterations or external projection or any structural alterations or to cut, maim or injure or suffer to be cut, maimed or injured any of the principal structure or walls or any part thereof without the prior written consent of the Lessor PROVIDED THAT such consent shall not be withheld in the case of any structural alterations or additions required to be made to the Premises by any local or statutory authority by reason of the particular use to which the Premises are put by the Lessee, but any such structural alterations or additions shall be effected at the sole cost of the Lessee to a specification approved in writing by the Lessor prior to the commencement of the said structural alterations or additions.

(b) **Carried out in workmanlike manner**

That all buildings, erections, improvements and alterations to be constructed and all works carried out or executed on the Premises by the Lessee shall be constructed, carried out or executed by the Lessee in a proper and workmanlike manner and under the supervision and to the reasonable satisfaction of the Lessor's building surveyor (or such other officer of the Lessor as the Lessor may appoint) and in the event of any dispute the certificate of the building surveyor (or such other officer of the Lessor) shall be final and binding upon the parties.

3.9 To report certain matters to the Lessor

(a) Change in office bearers

Where the Lessee is an incorporated association, to advise the Lessor of the name, address and phone number of the persons then appointed or elected to the position of President, Secretary and Treasurer (or like positions) within the Lessee, as soon as practicable after:

- (i) the Date of Commencement; and
- (ii) any change in those details.

3.10 No assignment

Any renewal of the Lease, any additional lease terms and conditions or assignment, mortgage, charge or otherwise, including subleasing, are subject to the approval of the Minister for Lands being first obtained in writing.

Not to assign, license, mortgage, charge or otherwise part with the possession of the Property or Premises or any part of the Property or Premises or in any way dispose of the benefit of this Lease without the prior written consent of the Lessor PROVIDED THAT:

(a) Consent not unreasonably withheld to assignment

If the Lessee wishes to assign the whole of the Property or Premises and the benefit of this Lease the Lessor shall not unreasonably withhold its consent to that assignment if:

- (i) the proposed assignee is a respectable, responsible and solvent person (the onus of proof of which shall be upon the Lessee);
- (ii) the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party prepared and completed by the Lessor's solicitors at the reasonable cost of the Lessee in all respects and the covenants and agreements on the part of any assignee shall be deemed to be supplementary to this Lease and shall not in any way relieve the Lessee from its liability under this Lease;
- (iii) all Rent and Outgoings then due or payable shall have been paid and there shall not be any existing unremedied breach of any of the Lessee's Covenants;
- (iv) the assignment contains a covenant by the assignee with the Lessor that the assignee will at all times during the continuance of the Term duly observe and perform all the Lessee's Covenants; and
- (v) the Lessee pays to the Lessor all proper and reasonable costs, charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility and solvency of any proposed assignee.

(b) **Corporate assignee**

If the assignee is a company then it shall be a condition of the Lessor's consent to any deed of assignment that the directors or the substantial shareholders of that company guarantee to the Lessor the observance and performance by the assignee of the Lessee's Covenants.

(c) **No release of assignor**

The covenants and agreements of any assignee shall be deemed to be supplementary to the Lessee's Covenants and shall not in any way relieve or be deemed to relieve the Lessee from the Lessee's Covenants;

PROVIDED FURTHER THAT if the Lessee is a corporation any change in the beneficial ownership of a substantial holding (within the meaning of section 9 of the *Corporations Act 2001 (Cth)*) in the corporation or any related body corporate within the meaning of section 50 of the *Corporations Act 2001 (Cth)* shall be deemed to be an assignment of the Property or Premises and the benefit of this Lease for the purposes of this subclause;

AND IT IS EXPRESSLY AGREED AND DECLARED that sections 80 and 82 of the *Property Law Act 1969* are hereby excluded; and

The Lessee acknowledges and agrees that the failure by either the Lessee or any other relevant party to comply strictly with each of the conditions, stipulations and requirements contained in paragraphs (a) or (b) will constitute reasonable grounds upon which the Lessor may withhold its consent to any assignment of this Lease proposed by the Lessee.

3.11 Trust

To not without the prior written consent of the Lessor:

- (a) hold the Lessee's interest in this Lease on trust for any party other than pursuant to the trust (if any) specifically mentioned in Item 13 of Schedule 1;
- (b) declare a trust of the Lessee's interest in this Lease; or
- (c) vary, amend, alter or revoke the terms contained in any trust deed or add to or vary the beneficiaries of the trust or distribute or join in the distribution of any or all of the capital of the trust or in any other way vest the trust.

Any holding in trust or declaration of trust, amendment, alteration, revocation or distribution contrary to this subclause shall be deemed to be an assignment of the Lease to which all of the provisions of paragraphs 3.10(b) and (c) and shall apply.

3.12 Comply with Acts

(a) **Generally**

Notwithstanding anything to the contrary contained or implied in this Lease, to comply with all Acts relating to the Property and Premises or the use thereof **PROVIDED THAT** the Lessee shall not be under any liability in respect of any structural alterations required by any Act other than caused or contributed to by the Lessee's particular use or occupation of the Property and Premises.

(b) **Fire regulations**

In the positioning of partitions or any fixtures or fittings installed by the Lessee on the Premises, to comply with all Acts relating to fire detection and alarm and to pay to the Lessor the reasonable cost of effecting any alterations to the thermal detectors or other fire alarm installations which may be necessary to comply with any Act or any requirements of the Fire & Accident Underwriters' Association, the Insurance Council of Australia and the Fire and Emergency Services Authority of Western Australia.

(c) **Use of Premises**

The Lessor gives no warranty as to the use to which the Premises may be or are suitable to be put. The Lessee acknowledges that it has satisfied itself as to the requirements of all Acts in relation to the use of the Premises and enters into this Lease with full knowledge of and subject to any prohibitions under any Act. The Lessee shall at its cost obtain any necessary consents required pursuant to any Act to enable it to occupy the Premises for the purposes of its business.

3.13 Public risk insurance

To effect and keep effected in respect of the Property and Premises in the joint names of the Lessor and Lessee adequate public risk insurance (including insurance against the risks referred to in subclause 3.16) for the time being in an amount not less than the amount mentioned in Item 9 of Schedule 1 in respect of any one claim or such higher amount as the Lessor shall from time to time reasonably require with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) and to notify the Lessor of the policy details as soon as practicable after the Date of Commencement and to ensure that the insurance conforms with the reasonable requirements from time to time of the Lessor of which the Lessee is given notice and:

- (a) if required by the Lessor to produce, on demand, a true copy of the policy in respect of public risk insurance to the Lessor and true copies of the receipts for the last premium;
- (b) to deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a true copy of a certificate by the insurer in respect of the public risk insurance and the currency of the policy; and
- (c) not to alter the terms or conditions of the policy without the written approval of the Lessor and to promptly deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of any public risk insurance policy effected by the Lessee pursuant to this subclause.

3.14 Other insurance

[Delete either Option A or Option B]

[Option A – Arrangement of Insurance Policies by Lessee]

- (a) During the Term to effect and keep effected policies of insurance with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) in the joint names of the Lessor and the Lessee in relation to any risk relating to the Lessor's ownership or interest in the Property or Premises and which shall include, without limitation, premiums in respect of insurance for fire

(including, without limitation, architects' and other consultants' fees and the cost of demolition and removal of debris). As soon as practicable after the Date of Commencement, to deliver to the Lessor a true copy of a certificate from the Lessee's insurer certifying that the Lessee is insured in the manner specified in paragraph (a) or evidence, to the satisfaction of the Lessor, of the existence of the policies for the insurance specified in paragraph (a), and true copies of the receipts relating to payment of the premiums in relation to such policies.

- (b) If required by the Lessor to produce, on demand, true copies of the policies for the insurance specified in paragraph (a) and true copies of the receipts for the last premiums.
- (c) To deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a true copy of a certificate from the Lessee's insurer certifying that the Lessee is insured in the manner specified in paragraph (a) and stating the period for which it is so insured.
- (d) Not to alter the terms or conditions of the policies for the insurance specified in paragraph (a) without the written approval of the Lessor and to promptly deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of those policies.

[Option B – Arrangement of Insurance Policies by Lessor and Payment of Insurance Premiums by Lessee to Lessor]

- (a) Duty and punctually to pay all insurance premiums paid by the Lessor on behalf of itself or the Lessee or on behalf of both of them in relation to any risk relating to the Lessor's ownership or interest in the Property or Premises and which shall include, without limitation, premiums in respect of insurance for fire (including, without limitation, architects' and other consultants' fees and the cost of demolition and removal of debris), Lessor's fixtures and fittings and plate glass, public risk or liability to the public, fixed shopfronts installed by the Lessor and plate glass, sprinkler leakage and water damage and loss of Rent (including, without limitation, loss of the other amounts payable under clause 3).
- (b) Payment shall be made on or before the respective days or times upon which each amount becomes due or payable PROVIDED THAT the Lessee's liability for these payments shall commence on the Date of Commencement subject to any proportionate payment from the Date of Commencement or to the expiration of the Term.

3.15 Not to invalidate insurance

Not to do or allow any act, matter or thing upon the Property or Premises or bring or keep anything on the Property or Premises whereby any insurance relating to the Property or Premises may be rendered void or voidable or whereby the rate of premium on such insurance shall be or be liable to be increased and the Lessee shall pay all additional premiums of insurance on the Property or Premises (if any) required on account of the additional or increased risk.

3.16 Indemnities

(a) **Generally**

To take and be subject to the same responsibilities in regard to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Premises.

(b) **Indemnity**

To indemnify and keep indemnified the Lessor and The Minister for Lands, employees, agents and servants from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with the loss of life, personal injury, illness and or damage to property, arising from or out of any occurrence in or upon or at the Property or Premises or the use of the Property or Premises by the Lessee or any part thereof or to any person or the property of any person using or entering on or near the Property or Premises howsoever occasioned or occurring (loss, injury, illness, damage or destruction caused or occasioned by any negligent act, default or omission of the Lessor or its servants, agents or contractors excepted).

(c) **Abuse of installations**

To indemnify and keep indemnified the Lessor from and against any and all loss or damage whatsoever occasioned by the neglect, use, mis-use or abuse of:

- (i) water, electricity or gas supplied to the Property or Premises; or
- (ii) installations, fixtures or fittings for water, gas or electricity,

by the Lessee or by any servant, agent, contractor or invitee of the Lessee, and that the Lessee will pay for all damage or injury to the Property or Premises or to the Lessor or to any other person in consequence of any breach or non-observance of the provisions of this paragraph.

(d) **Insurance moneys**

Without prejudice to the generality of paragraph (a) (to the extent that the terms and conditions of any insurances effected by the Lessee or any moneys paid to the Lessor out of insurances effected by the Lessee do not fully indemnify the Lessor from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any of the matters referred to in subparagraphs (i), (ii) and (iii) of this paragraph) to indemnify the Lessor and keep the Lessor indemnified from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any loss or damage to property or death or injury to any person of any nature or kind and however or wherever sustained that:

- (i) is caused or contributed to by the use or occupation of the Property and Premises except to the extent caused or contributed to by the negligence or act, default or omission of the Lessor;

- (ii) results from any act, default or omission by the Lessee under this Lease; or
- (iii) results from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease.

3.17 Yielding up

(a) **Peaceably yield up**

Upon the expiration or sooner determination of the Term, to peaceably surrender and yield up to the Lessor the Property and Premises clean and free of rubbish and in a state of repair and condition that is entirely consistent with all of the Lessee's Covenants having been fully complied with.

(b) **Removal of Lessee's fixtures**

Subject to any clause to the contrary, at or prior to the determination or termination of the Term to take, remove and carry away from the Premises all signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than airconditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and the Lessee shall on such removal forthwith make good to the satisfaction of the Lessor any damage which may be occasioned by such removal.

(c) **Liquidated damages for failure to remove fixtures, etc.**

Without limiting the Lessee's obligations under paragraphs (a) and (b) in any way, if, after receiving a notice from the Lessor given on or at any time after the determination or termination of the Term demanding that the Lessee remove any sign, fixture, plant, equipment or other article not removed in accordance with paragraph (b) ("**Removal Notice**") the Lessee fails to comply with all of its obligations under paragraph (b) within FIVE (5) days of the date of receipt of the Removal Notice then the Lessee shall:

- (i) pay the Lessor on demand by way of liquidated damages an amount per day equal to 1/365th of the Rent payable by the Lessee immediately prior to the expiration or sooner determination of the Term (as the case may be) ("**Removal Rent**"); and
- (ii) the Removal Rent shall be paid by the Lessee to the Lessor from and including the date on which the Removal Notice was received by the Lessee up to and including the day on which the Lessee has fully complied with all of its obligations under paragraph (b).

(d) **Abandonment of fixtures**

Further or in the alternative to the Lessor's rights and powers under paragraph (c), the Lessor may, at any time after the expiration or sooner determination of the Term, give the Lessee a notice ("**Abandonment Notice**") requiring the Lessee to remove all fixtures, fittings, plant, equipment or other articles not previously removed by the Lessee in accordance with paragraph (b) ("**Remaining Items**"). On the Lessee's receipt of an Abandonment Notice, the Lessee shall have TWO (2) days within which to remove all

Remaining Items and failing removal within that TWO (2) day period, all Remaining Items still on the Premises or in the Lessor's custody shall be deemed absolutely abandoned by the Lessee and shall automatically become the absolute property of the Lessor and may be sold by the Lessor at any time and without further notice or obligation to the Lessee. The Lessor shall be entitled to keep the proceeds of any sales and those proceeds shall not be taken into account to reduce any arrears, damages or other moneys for which the Lessee may be liable. All reasonable costs incurred by the Lessor in respect of any sale shall be paid by the Lessee on demand.

Nothing shall preclude the Lessor from giving a Removal Notice and recovering the Removal Rent in accordance with paragraph (c) and later giving the Lessee an Abandonment Notice at any time pursuant to this paragraph. The Lessee's obligation to pay the Removal Rent shall cease immediately upon the Lessee's receipt of an Abandonment Notice. Nothing however, shall release the Lessee from liability to pay any Removal Rent that is in arrears on the date that the Lessee receives an Abandonment Notice.

3.18 Not to lodge caveat or other interest against Title to Land

(a) **Interpretation**

In this subclause, a reference to a Certificate of Title to the Land includes a reference to a Certificate of Crown Land Title if the Land is Crown land.

(b) **No absolute or subject to claim caveat**

Not to lodge an absolute caveat or a subject to claim caveat over the Land or any part of the Land or against the Certificate of Title to the Land to protect the interest of the Lessee and the Lessee IRREVOCABLY APPOINTS the Lessor and every officer and employee of the Lessor for the time being authorised in that behalf by the Lessor jointly and severally, to be the true and lawful attorney for the Lessee in its name and on its behalf to execute and to lodge at the Department of Land Information a withdrawal of any absolute caveat or subject to claim caveat AND the Lessee RATIFIES AND CONFIRMS and AGREES TO RATIFY AND CONFIRM all that the attorney shall do or cause to be done under or by virtue of this subclause and shall indemnify the Lessor in respect of any loss arising from any act done under or by virtue of this subclause and the Lessee will pay the Lessor's reasonable costs (including solicitors' costs) and expenses of and incidental to the withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Land or the Certificate of Title to the Land as provided by this subclause.

(c) **Not to register dealings**

Not to lodge or cause to be lodged any lease, sublease, mortgage, charge or other dealing against the Certificate of Title to the Land without the prior written consent of the Lessor.

3.19 Alcohol

[(a) **Consumption of alcohol**

Not to use or allow the Property or Premises to be used for the sale of alcohol without first obtaining the written consent of the Lessor and the Lessor shall determine any application for its consent in accordance with the Alcohol Policy.]

3.20 Incorporated association

Where the Lessee is an incorporated association, to maintain its incorporation under the *Associations Incorporation Act 1987*.

4. Lessor's Covenants

The Lessor covenants with the Lessee, subject to the Lessee observing and performing the Lessee's Covenants:

4.1 Quiet enjoyment

That the Lessee shall and may, except as provided in this Lease, peaceably possess and enjoy the Property and Premises during the Term without any interruption or disturbance from the Lessor or any other person lawfully claiming by, from or under the Lessor.

4.2 Repairs and Maintenance

The Lessor agrees to comply with the obligations set out in Annexure 2, if any.

5. Mutual Agreements

The parties agree as follows:

5.1 Default by Lessee

If:

- (a) the Rent, or any other debts owing to the Lessor, shall be unpaid for SEVEN (7) days after it is due (whether demand for payment shall have been made or not); or
- (b) the Lessee shall breach any of the Lessee's Covenants and the breach shall continue for FOURTEEN (14) days after notice has been served on the Lessee by the Lessor; or
- (c) the Lessee being a company shall enter into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or a receiver or manager is appointed; or
- (d) the Lessee being an incorporated association shall have its incorporation cancelled, be wound up or cease to be an association eligible to be incorporated under the *Associations Incorporation Act 1987*; or
- (e) the Lessee ceases or threatens to cease carrying on business; or
- (f) the Lessee being a natural person shall commit an act of bankruptcy,

then and in any of these cases the Lessor may at any time thereafter and without any notice or demand enter and repossess the Property or Premises and the Term and the estate and interest of the Lessee in the Premises shall immediately determine but without prejudice to any rights of the Lessor under this Lease and at law and without releasing the Lessee from liability in respect of any of the Lessee's Covenants.

Upon re-entry by the Lessor, the Lessor shall, after the Lessee has failed to comply with a written notice to remove its property within THREE (3) days, have the absolute right to remove any property left in or about the Premises and the Lessee shall indemnify the Lessor from and against all damage to that property and any reasonable costs that may be incurred by the Lessor as a consequence including but not limited to the costs of removal and storage.

5.2 Damages for breach of essential term

The Lessor and the Lessee agree that the covenants by the Lessee contained or implied in:

- (a) subclauses 3.1 and 3.3 to pay the Rent and Outgoings respectively at the times and in the manner provided;
- (b) paragraph 3.6(a) to use the Premises only for the purpose described in that paragraph; and
- (c) subclause 3.10 not to assign, sub-let, license, mortgage, charge or otherwise part with possession of the Premises or any part of the Premises or in any way dispose of the benefit of this Lease except as provided for,

are (subject to the following proviso) essential terms of this Lease and the breach, non-observance or non-performance of any one of those covenants, terms or conditions shall be deemed to be a fundamental breach of the provisions of this Lease on the part of the Lessee PROVIDED THAT the presence of this subclause in this Lease shall not mean or be construed as to meaning that there are no other essential terms in this Lease.

5.3 Abatement of Rent

If the Property or Premises or any part thereof shall during the Term be destroyed or so damaged as to render the Premises unfit for occupation or use then in any such case the Rent or a fair and just proportion according to the nature and the extent of the damage sustained shall from the date of such damage or destruction until the Premises shall be reinstated and made fit for occupation or use be suspended and cease to be payable and any dispute concerning this provision shall be determined by a single arbitrator appointed by the parties in accordance with the provisions of the *Commercial Arbitration Act 1985* PROVIDED THAT the Rent shall be paid without any abatement until the date of the award of the arbitrator or agreement between the parties (whichever is the earliest) whereupon the Lessor will refund to the Lessee any Rent overpaid by the Lessee.

5.4 Destruction of Premises

If the Premises shall during the Term be destroyed or substantially damaged so as to require rebuilding or reconstruction of the Premises either party may by notice in writing to the other terminate this Lease as from the date of the giving of such notice without prejudice to the Lessor's rights in respect of any antecedent breach of the Lessee's Covenants by the Lessee.

5.5 Lessor may remedy Lessee's default

If the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has agreed to pay, do or effect, then on each and every occasion the Lessor shall be entitled without prejudice to any rights or powers the Lessor may have, to pay the money or to do or effect the thing by itself as if it were the Lessee and for that

purpose the Lessor may enter upon and remain on the Property or Premises for the purpose of doing or effecting any such thing and any moneys expended by the Lessor shall be repayable by the Lessee to the Lessor upon demand.

5.6 Lessor not liable to third parties

The Lessor shall not be responsible for any loss, damage or injury to any person or property of the Lessee or any other person in or about the Property and Premises unless the same shall arise from the negligence of the Lessor.

5.7 Notices

Any notice required to be served under this Lease shall be sufficiently served on:

- (a) the Lessee if:
 - (i) forwarded to the Lessee by post to the address of the Lessee mentioned in this Lease; and
- (b) the Lessor if addressed to the Lessor and left at or sent by post to the Lessor's address mentioned in this Lease or such other address as may be notified to the Lessee from time to time,

and any notice sent by post shall be deemed to be given at the time when it ought to have been delivered in due course of post unless the contrary is shown.

5.8 Holding over

If the Lessee remains in possession of the Premises after the expiration of the Term then the Lessee shall be a monthly tenant of the Lessor at a rent equivalent to the Rent payable by the Lessee at the expiration of the Term and otherwise on the same terms and conditions of this Lease. Any holding over may be determined by either party giving one month's written notice to the other party of its intention to determine the holding over at the expiration of the period of notice or such other date as may be stated in the written notice.

5.9 Waiver

No waiver by the Lessor of any of the Lessee's Covenants shall operate as a waiver of another breach of the Lessee's Covenants.

5.10 Severance

In the event of any part of this Lease being or becoming void or unenforceable whether due to the provisions of any Act or otherwise then that part shall be severed from this Lease to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any severance.

5.11 Act by agent

All acts and things which the Lessor or the Lessee is required or empowered to do under this Lease may be done by the Lessor or the Lessee (as the case may be) or the solicitor, agent, contractor or employee of the Lessor or the Lessee (as the case may be) as authorised by the Lessor or Lessee (as the case may be).

5.12 Exercise of powers

The Lessor may exercise the Lessor's Powers without any proof of default by the Lessee or the continuance of that default or any notice being required (other than as provided in this Lease) and notwithstanding any laches, neglect or previous waiver by the Lessor in respect of any of the Lessee's Covenants or the exercise of any of the Lessor's Powers.

5.13 Non-merger

The terms or conditions of this Lease or any act, matter or thing done under or by virtue of or in connection with this Lease or any other agreement between the parties to this Lease shall not operate as a merger of any of the rights and remedies of the parties in or under this Lease or in or under any such other agreement all of which shall continue in full force and effect.

5.14 Proper law

This Lease shall be governed by the law of Western Australia.

5.15 Effect of execution

This Lease shall be binding upon each person or party who has executed it notwithstanding:

- (a) the failure of any other person named as a party to execute it;
- (b) the avoidance or unenforceability of any part of this Lease; or
- (c) the avoidance or unenforceability of this Lease or any part of this Lease against any signatory or intended signatory.

6. Dispute Resolution

6.1 Notice of Dispute

In the event of a dispute between the Lessor and the Lessee concerning this Lease in any way, or concerning the rights and liabilities of the Lessor or the Lessee, the affected party may give the other a written notice setting out the material particulars of the Dispute.

6.2 Appointment of representative

Each party shall appoint a senior officer, or other person, with authority to negotiate and reach settlement, and the parties' representatives shall personally meet in Perth within TEN (10) business days of the date of the receipt of the notice calling for such a meeting.

6.3 Best endeavours to resolve Dispute

The parties' representatives in good faith, and using their best endeavours at all times, shall attempt to resolve the Dispute.

7. Arbitration

7.1 Notice to arbitrate

Provided that a party has not given a notice under subclause 6.1, or if it has that the Dispute has not been resolved under subclause 6.3, then:

- (a) any party to that dispute shall give notice in writing to the other party; and
- (b) at the expiration of SEVEN (7) days, unless the matter is settled in the interim, the Dispute shall be submitted to the arbitration of a single arbitrator who shall be a person appointed by the President of the Institute of Arbitrators (Western Australian Division).

7.2 Final decision

The arbitrator's award shall be final and binding on the parties.

7.3 No entitlement to commence an action

No party is entitled to commence or maintain an action upon a Dispute until the matter in dispute has been referred to and determined by the arbitrator, and then only for the amount or relief to which the arbitrator, by her or his award, finds that party is entitled.

7.4 Costs of arbitration

The costs of the submission, reference or award are in the discretion of the arbitrator.

8. Renewal of Term

8.1 Notice of renewal

If the Lessee wishes to renew the Term and gives the Lessor written notice not earlier than SIX (6) calendar months but not later than THREE (3) calendar months prior to the expiration of the Term and if at the time of giving such notice there is no outstanding breach or non-observance of any of the Lessee's Covenants and if in the meantime the Lessor's right of re-entry has not otherwise arisen, then the Lessor will at the cost of the Lessee grant to the Lessee a renewal of the Term for the further period specified in Item 6 of Schedule 1 and otherwise on the same terms and conditions as are contained or implied in this Lease other than this right of renewal subject always to the provisions of this subclause.

8.2 Execution of deed of extension of Lease

Upon the valid exercise of the option to extend this Lease, the Lessee shall, prior to the expiration of the then current Term, execute a deed recording the extension of this Lease. The deed shall be prepared by the Lessor's solicitors in a form approved by the Lessor at the reasonable expense of the Lessee in all respects including payment of all stamp duty and the Lessor's solicitors' reasonable costs and disbursements.

9. Amendments to Lease

This Lease may only be amended by the agreement of the Parties in writing.

10. Whole of Agreement

The Lessee acknowledges and declares that in entering into this Lease the Lessee has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor in respect to the suitability of the Property and that the covenants and provisions contained in this Lease as amended from time to time by the Parties in writing expressly or by statutory implication cover and comprise the whole of the agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions whether in respect of the Property or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement.

11. Moratorium Negatived

The application to this Lease of any moratorium or other Act whether State or Federal having the effect of extending the Term, reducing or postponing the payment of the Rent hereby reserved or any part of the Rent, or otherwise affecting the operation of the covenants, conditions and stipulations on the part of the Lessee to be performed or observed, or providing for compensation, rights or privileges at the expense of the Lessor in favour of the Lessee or any other person, is hereby expressly excluded and negatived.

12. Goods and Services Tax

12.1 Definitions

In this Lease:

"Basic Consideration" means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

"GST" has the meaning that it bears in the GST Act;

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

"GST Adjustment Rate" means the amount of any increase in the rate of tax imposed by the GST Law;

"GST Law" has the meaning that it bears in section 195-1 of the GST Act;

"GST Rate" means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

"Input Tax Credit" has the meaning that it bears in section 195-1 of the GST Act;

"Tax Invoice" has the meaning which it bears in section 195-1 of the GST Act;

"Taxable Supply" has the meaning which it bears in section 195-1 of the GST Act.

12.2 Lessee must pay

(a) GST

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Premises or any goods, services or other Taxable Supply supplied under this Lease then, as from the date of any such introduction or application:

- (i) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
 - (ii) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.
- (b) **Increase in GST**

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with paragraph 12.2(a)(ii).

12.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to subclause 12.2, the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

13. Western Australian Planning Commission Consent

If for any reason this Lease requires by law the consent of the Western Australian Planning Commission then this Lease is made expressly subject to and is conditional upon the granting of the consent of the Western Australian Planning Commission.

14. Special Terms

The special terms covenants and conditions (if any) set out in Item 12 of Schedule 1 shall be deemed to be incorporated in this Lease as if fully set out herein and in the event of there arising any inconsistency with the terms, covenants and conditions contained in this Lease then the terms, covenants and conditions set out in Item 12 of Schedule 1 shall prevail.

Schedule 1

1. The Lessee

Brookton Senior Citizens' Homes Incorporated
PO Box 200, Brookton WA 6309
Company/Incorporation No.....

2. The Property

The portion of Lot 456 on Deposited Plan 221214, Crown Reserve #43158, Certificate of Crown Land Title Volume 3120 Folio 894, vested in the Shire of Brookton for the purpose of Recreation, Tourism, Health, Civic and Community Purposes and subject to Management Order # H617561, that is the land on which stands Mokine Cottages as is more particularly delineated for the purpose of identification only on the plan annexed to this Lease and marked Annexure 1.

3. The Premises

The building known as [insert name] situate at [insert] on part of the Land as is more particularly delineated for the purpose of identification only on the plan annexed to this Lease and marked "Annexure 1" and includes all carpets and floor coverings, curtains and blinds and other fixtures and fittings belonging to the Lessor therein and all additional or modifications and replacements for the time being.

4. Date of Commencement

This...*EIGHTH*.....day of...*OCTOBER*.....of the year 2008.

5. Term

For a term not exceeding Twenty One (21) years.

6. Term of Renewal

For a term not exceeding Twenty One (21) years.

7. Rent

The sum of One Hundred Dollars (\$100) Payable annually on the Date of Commencement and each anniversary of the Date of Commencement and to be reviewed annually on and from each anniversary of the Date of Commencement for the duration of the Term and any Term of Renewal in accordance with the CPI Adjusted Rent. However, if such a review would result in the Rent being calculated to be a lesser amount than the Rent applicable during the immediately preceding year then the Rent will remain unchanged for that year.

8. Permitted use of Property and Premises

For the purpose of Community Housing for Senior Citizens.

9. Public Risk Insurance

Ten Million Dollars (\$10,000,000)

Schedule 2 - Fixtures and Fittings

There are no fixtures or fittings supplied by the Lessor.

Executed by the parties as a deed

The Common Seal of Shire of Brookton was affixed in the presence of:



[Handwritten Signature]
Signature of President

[Handwritten Signature]
Signature of Chief Executive Officer

MR B. J. COOTE
Name of President in full

GARY CLARK
Name of Chief Executive Officer in full

The Common Seal of Brookton Senior Citizens' Homes Inc was affixed in accordance with its Constitution in the presence of:



[Handwritten Signature]
Signature of authorised sealing officer/Secretary

[Handwritten Signature]
Signature of authorised sealing officer/President

Carolyn J. Whittington
Name of authorised sealing officer/Secretary

KIM HILLSDON MILLS
Name of authorised sealing officer/President



[Handwritten Signature]
7/14/2008

Annexure 1 - Plan of Property

North



Pink Area is portion of Reserve # 43158

Brookton Senior Citizens' Homes Inc. – Lease of portion of Reserve #43158.

24

Annexure 2 – Maintenance Requirements

To keep the Property and Premises tidy and in good order and repair, to the satisfaction of the Lessor.