

5.4.1 LATE ITEM: Leederville Gardens Retirement Village – Board Membership

Ward:	North	Date:	10 September 2015
Precinct:	Leederville	File Ref:	SC1670; SC313
Attachments:	Nil		
Tabled Items:	Nil		
Reporting Officer:	J Anthony, Manager Community Development		
Responsible Officer:	R Boardman, Director Community Services		

OFFICER RECOMMENDATION:

That Council:

1. NOTES that the terms of appointment for Mayor John Carey, Councillors Roslyn Harley, John Pintabona and Emma Cole (Deputy), as serving Board Members of Leederville Gardens Inc. will expire on 15 October 2015;
2. NOTES that Administration will call for expressions of interest for members of the public to nominate to serve on the board of Leederville Gardens Inc;
3. NOTES that Administration will be submitting a further report for Council to consider nominations from members of the public and to appoint three Board Members to serve on the Leederville Gardens Inc. Board for a term of three years.

PURPOSE OF REPORT:

To inform Council of the expiry of term of Council's current nominated Council Member representatives to the board of Leederville Gardens and the method for filling those vacancies on the board.

BACKGROUND:

Leederville Gardens Retirement Village is a 66 unit independent living retirement village that was opened in 1993. The Village is located at 37 (Lot 100) Britannia Road, Leederville, which Leederville Gardens Inc. (Association) is registered as the proprietor of the estate in fee simple.

In 1995, the Board of Leederville Gardens appointed Eldercare Pty Ltd to manage the village, which was part of the St Ives Group at the time. The marketing agent at that time was Fitzgerald Realty, which is an associated entity of Eldercare Pty Ltd.

At the Ordinary Meeting of Council held on 20 November 2001, Council resolved:

"That;

- (i) *the report on the Management of Leederville Gardens Retirement Village Inc be received;*
- (ii) *this report be submitted as an agenda item for the next Leederville Gardens Retirement Village Inc Board;*
- (iii) *the Council instructs the Town of Vincent Board Members to support the proposal for the management of the Leederville Gardens Retirement Village Inc to be awarded to the Town of Vincent;*

- (iv) *in the event that (ii) and (iii) above are approved, the Chief Executive Officer be authorised to implement the necessary legal and administrative arrangements to manage the Leederville Gardens Retirement Village Inc;*
- (v) *the Chief Executive Officer be authorised to make public this report (or any part thereof) at the appropriate time; and*
- (vi) *the Council write to all Board Members and the Management organisation and inform them of Council's decision and that the Council wishes to assume responsibility for management of the Leederville Gardens Retirement Village Inc."*

On 23 April 2002, a further report was presented to Council, outlining the following:

- the outcome of the establishment of a working group by the Leederville Gardens Board, which included the then Town's Chief Executive Officer; and
- a proposed administrative structure for the Town to undertake the management role for Leederville Gardens.

At that meeting, Council resolved as follows:

"That the Council;

- (i) *ENDORSES the action taken by the Chief Executive Officer to implement the necessary legal and administrative arrangements for the Town's management of the Leederville Gardens Retirement Village (Inc); and*
- (ii) *notes that the Town's management of the Village is effective from 1 July 2002."*

The City of Vincent has been the appointed Manager of the Leederville Gardens Retirement Village since 1 July 2002.

DETAILS:

The operations of the Retirement Village are governed by the:

- (a) Retirement Villages Act 1992 (WA);
- (b) Retirement Villages Regulations 1992 (WA); and
- (c) Fair Trading (Retirement Villages Code) Regulations 2015 (WA).

Leederville Gardens (Inc) operates under a constitution, originally established in 1991. The constitution has been amended on a number of occasions, with the latest amendment in 2012. In respect to the Board of Management, the Constitution prescribes that:

- "5(d) *The City may in its discretion nominate up to six (6) persons to be members of the Association. Three (3) may be Board Members and three (3) Deputy Board Members. At no time may more than three (3) City nominated members sit at a General, Special or Annual General Meeting. Such persons shall remain members of the Association only for so long as that person serves as a Board Member or Deputy Board Member."*
- "7(a) *The Board shall comprise up to six (6) Board members, three (3) of whom shall be appointed by the City and three (3) of whom shall be elected by the members. The President of Leederville Gardens Residents' Association Inc. may be invited to attend Board meetings in the capacity of an ex-officio member with no voting rights."*

- '10 *The Board shall at its first meeting following every annual general meeting appoint:*
 (a) *A Chairman from amongst the three (3) members appointed by the City;*
 (b) *a Vice Chairman from amongst the elected members,*
 both of whom shall hold office until the conclusion of the first meeting of the Board held after the annual general meeting next following their appointments.
 Both of such office bearers shall be eligible for re-appointment”
- "14 *The Board may, in its discretion appoint either a manager or managers to manage any property of the Association or it may contract a company or corporation to manage the property of the Association.”*

Historically, since the inception of the village in 1992, the three Board Members that the City appoints have been Council Members, one of whom has been the sitting Mayor, who has also assumed the role of Chair. Under the Constitution, the City may in its discretion nominate and appoint up to six persons to be members of the Association, but those persons need not be limited to Council Members alone, or at all.

There is a dual role where Council Members appointed to sit on the Board occupy half of the Board, with the Chairperson being the Mayor and holding the casting vote. This effectively provides the City with an advantage by having majority control of the Board. Whilst this arrangement is viewed as fortuitous by some residents (who find comfort in the fact that the City's nominated Board Members have traditionally always been Council Members), it may not be in the best interests of the incorporated body in carrying out the Association's objectives and purposes independently. The participation of Council Members on the Board and the City's management of the facility has also led to building a false sense of City ownership in the facility/village.

In view of the dual role of Council Members also serving as Board Members, there is also the potential for a conflict of interest to arise. An example is the apparent encroachment of the Village onto Britannia Reserve. How this occurred and the extent/manner it is pursued could be treated differently to other situations, due to the close relationship of the organisation/Board.

The other three Board positions, which are elected on three year terms, expire consecutively each year so that only one Board Member's term will expire each year and be vacant for nomination and appointment by vote of the members of the Association.

In preparing for the Annual General Meeting held each year at the end of September, nominations were announced for two vacancies this year. One vacancy was due to an expiry of a three year term, whilst the other is for a one year term as a result of a member resigning prior to the expiry of his term in 2016. This has resulted in a casual vacancy needing to be filled up to September 2016.

The current Council Members on the Board are Mayor John Carey (Chair), Cr Roslyn Harley, Cr John Pintabona and Cr Emma Cole (Deputy). All have indicated their intention not to renominate and will be submitting their resignations effective 15 October 2015 at the expiry of the current term.

The following steps are being taken to fill the upcoming Council Member vacancies on the Board of Leederville Gardens:

Through an expression of interest

1. Call for nominations for the vacant Board positions;
2. Submit nominations to the (proposed rescheduled) Council Meeting of Council on 27 October 2015 to seek approval to appoint three Board members from members of the public;
3. Convene a meeting of the Board in late October or early November 2015, following Council's appointment of its three new Board Members

This will not preclude any of the Council Members from nominating for a Board position in their own right. If no nominations are received from the public, then Council may need to consider appointing Council Members to serve on the Board as an interim measure.

CONSULTATION/ADVERTISING:

The pending vacancies for the three City appointed Board positions will be advertised in the local community newspapers, *The West Australian* newspaper and through the retirement living industry networks to seek suitable candidates.

LEGAL/POLICY:

- Retirement Villages Act 1992 (WA);
- Retirement Villages Regulations 1992 (WA);
- Fair Trading (Retirement Villages Code) Regulations 2015 (WA); and
- Associations Incorporation Act 1987.

A review of retirement village laws was completed in November 2010 resulting in a substantial body of work being undertaken to implement some of over 100 recommended reforms for change.

The first stage of reforms in the *Retirement Villages Amendment Act 2012* commenced on 1 April 2014 and together with some changes to the *Retirement Villages Regulations 1992* (RV Regulations) implemented a number of reforms.

Changes to the RV Regulations reflected in the *Retirement Villages Amendment Regulations 2015* and to the *Code of Fair Practice for Retirement Villages* reflected in *Fair Trading (Retirement Villages Code) Regulations 2015* are to be implemented later in October 2015.

RISK MANAGEMENT IMPLICATIONS:

MEDIUM/HIGH: Given that the appointment of Board Members by Council will only be considered at the (proposed rescheduled) Ordinary Meeting on 27 October 2015, there will be a short period from 16 to 27 October 2015 where there will be vacancies on the Board, resulting in a lack of a quorum. This will not impact the day to day management and activities of the Retirement Village and no Board Meetings are scheduled during this period. If no nominations are received from the public, then Council may need to consider appointing Council Members to serve on the Board as an interim measure.

STRATEGIC IMPLICATIONS:

In keeping with the City's *Strategic Plan 2013-2023*, the following Objective states:

"Community Development and Wellbeing"

- 3.1 *Enhance and promote community development and wellbeing;*
- 3.1.3 *Promote health and wellbeing in the community*
- 3.1.6 *Build capacity within the community to meet its needs."*

SUSTAINABILITY IMPLICATIONS:

Nil.

FINANCIAL/BUDGET IMPLICATIONS:

Leederville Gardens Board Members are not paid Board positions.

Funds are available in the City's operational budget to cover the costs associated with advertising an expression of interest to call for nominations for members of the public to serve on the Board of Leederville Gardens.

COMMENTS:

Calling for and considering nominations from members of the public to serve on the Leederville Gardens Board is consistent with the Associations constitution and will eliminate the existing unavoidable risk and conflict of interest associated with Council Members being Board Members.