

COUNCIL MEETING

MINUTES

(Open to the public)

Monday 30 May 2022

Online - Delivered via Webex Events.

Commencement 6:45pm

Attendance

Councillor Jane Addis (Mayor)
Councillor Jim Parke
Councillor Felicity Sinfield
Councillor Wes Gault
Councillor Di Gillies
Councillor Lisa Hollingsworth
Councillor Cynthia Watson
Councillor Susan Biggar
Councillor Garry Thompson
Councillor Nick Stavrou

Apologies Councillor Victor Franco

<u>Officers</u>	Phillip Storer	Chief Executive Officer
	Daniel Freer	Director Places and Spaces
	Carolyn McClean	Director Community Support
	Scott Walker	Director Urban Living
	Mans Bassi	Director Customer and Transformation
	Mary-Anne Palatsides	Executive Manager People Culture & Development
	Amy Montalti	Chief Financial Officer
	Bryan Wee	Manager Governance and Legal
	Nick Lund	Manager Liveable Communities
	Ashlee Camm	Organisation Design Lead
	Michelle Forster	Active Ageing Lead
	Elizabeth Manou	Senior Governance Officer
	Kate Oliver	Maddocks Lawyers
	Fiachra Twomey	Maddocks Lawyers

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2. Declaration of conflict of interest of any councillor or council officer

Refer to Item 3.1 Aged Services Reform - Councillor Hollingsworth

3. Presentation of officer reports

3.1 Aged Services Reform

Purpose

The purpose of this report is to seek a Council resolution to confirm the "in principle" Council resolution made on 11 April 2022 in relation to the future of Council's aged care services. The 11 April 2022 report is at **Attachment 1**.

To ensure a smooth and well managed transition for all clients, the proposed date for the conclusion of the transition of in-home Commonwealth Home Support Program (CHSP) services (domestic assistance, personal care, respite care, meal preparation, property maintenance and property modifications) to the alternative provider as nominated by the Australian Government is recommended to be changed from 30 June 2022 to 31 July 2022. The Australian Government has advised they would support Council continuing to deliver services for an additional period of one month for client transition purposes, given the original timelines for transition has been reduced due to the Fair Work Commission (FWC) hearing and additional time for consultation.

Background

At the Council meeting on 11 April 2022, Council resolved on an "in principle" basis to:

1. Transition the in-home CHSP services of domestic assistance, personal care, respite care, meal preparation, property maintenance and property modifications, by 30 June 2022 to the Australian Government's nominated provider.
2. Work with the Australian Government and *mecwacare* to ensure the smooth transition of Council's current in-home CHSP clients by 30 June 2022.
3. Support any client not wishing to transition to *mecwacare* to transition to an alternative provider by 30 June 2022.

The resolution was "in principle" to allow for the resolution of a dispute between Council and the Australian Services Union (ASU) about compliance with the consultation provisions in Council's enterprise agreement at the FWC.

Following a FWC hearing, the FWC instructed (Decision of 3 May 2022, [2022] FWC 998) Council to provide additional information relating to the proposed change to affected employees and their representatives by 9 May 2022 and then afford the affected employees or their representatives a period until 23 May 2022 to provide a response. By incorporating feedback from employees (within this report) and their representative (**Attachment 2**), Council has now complied with all aspects of the FWC Order.

The 11 April 2022 Council report at **Attachment 1**, provides a comprehensive background to this report.

Key Issues

1. Council's standard of service delivery

The ASU feedback suggests that a council run aged care service is superior on a number of levels. Councils, who provide CHSP services, are no different to any other provider, receive no special treatment from the funding body, are bound by the same program (quality and safety) and contractual requirements, and are subject to the same audit against the Aged Care Quality Standards. Likewise, councils, like others within the aged care industry and health sector, are not immune to the workforce shortages, challenges and turnover occurring throughout the State and country, and have difficulty in managing the available workforce.

There are currently at least 194 providers delivering in-home aged care services within the municipality. These are made up of a least 24 Australian Government funded CHSP providers and over 170 private providers. Council is not unique in its service offering and quality of service, and there are other providers able to deliver high-quality integrated services to meet the needs of older people. Since the Australia Government assumed responsibility for aged care in 2016 (this was previously a Victorian Government responsibility), Local Government in Victoria is no longer the sole provider of funded services in Boroondara. This has resulted in a 58% decline over five years in clients receiving services from the City of Boroondara. This demonstrates Boroondara residents actively chose to receive in-home aged care services from other providers. This trend has increased over these five years.

2. Other councils' business models

The ASU has referred to the business models of other councils, which have been developed. Whilst Council cannot extensively comment on their models and decisions, it is important to note that each council has a different operating context, have developed their services over a number of years and the profile of agencies delivering CHSP services within their community is not identical. No council aged care service or local government area or context is the same.

There are now 28 councils which have concluded they are unable to operate as a sustainable commercial business under the consumer-led Support at Home Program and the Municipal Association of Victoria has recently commented publicly in the media (Herald Sun article, 'End of an era: regional councils exit in-home aged care', 5 May 2022) that their view is it is surprising that councils in Victoria have been able to keep operating in a rapidly changing environment which will be fully commercialised on 1 July 2023.

3. Competitive Neutrality Policy

The assertion of the ASU that the National Competition Policy (NCP) is irrelevant in these circumstances, is incorrect. The NCP and the Competitive Neutrality Policy would apply to the provision of aged care services by Council under the individualised model of Support at Home as Council's aged care services are a 'significant business activity' to which NCP applies. Hence, were Council to remain a provider beyond 30 June 2023, Council would be required to implement Competitive Neutrality Measures, most likely in the form of a public interest test to address its competitive advantage, created by rate payer subsidies, to be able to offer competitive pricing in a commercial industry.

Given there are some 170 private providers and 25 Australian Government funded providers, there is a sufficiently broad range of service providers and services available for potential users of the Support at Home that will be able to cater for their needs, hence there is no detriment to the community and as such Council cannot establish a policy position that can be tested through a public interest test. Simply, this means Council would have to charge cost reflective pricing which would be cost prohibitive to users, and, in particular, would be inaccessible for vulnerable and financially disadvantaged people.

4. Skills base and service delivery

Council disagrees with the ASU assertion that 'under the reforms councils would be able to choose which levels of services it provides'.

The Royal Commission into Aged Care Quality and Safety (the Commission) recommends (Recommendations 31 and 35) providers of the Care at Home category of services (including domestic assistance, personal care, and property maintenance) within the new aged care system would need to provide a coordinated and integrated range of care and supports across the following domains, and where the client has multiple providers, the 'lead' provider would be required to provide the Care Management:

- care management - Coordination with multiple providers, connect to assistance outside of aged care, conduct check-ins
- Clinical oversight - monitor care needs, coordinate with the health system and conduct check ins.
- living supports: cleaning, laundry, preparation of meals, shopping for groceries, gardening and home maintenance
- personal, clinical, enabling and therapeutic care: nursing care, allied health care and restorative care interventions
- palliative and end-of-life care.

Council does not have the skills base to provide a coordinated and integrated range of care as recommended by the Royal Commission, nor does it have the expertise to 'lead' service delivery across multiple agencies or provide clinical oversight. Council does not require carers to be proficient or trained in areas such as: mental health first aid, health records training and medication management. These and likely other areas of skill would reasonably be expected to be required in circumstances where there are clients with more complex care needs. Additionally, it could be reasonably anticipated that a broader staffing profile would be required including nursing and occupational therapy disciplines.

5. Client engagement

Council does not agree with the assertion by the ASU that appropriate consultation with clients and family members did not occur.

At a Council meeting on 29 November 2021, Council resolved to consult with clients and affected staff on a proposed staged transition of select CHSP services to an alternative provider as nominated by the Australian Government. A comprehensive three week consultation with all clients was then undertaken between 22 February 2022 and 7 March 2022. Capturing and sharing feedback with Council, prior to a formal decision on the proposal, was essential to ensure councillors could include this in their consideration of the proposal.

All clients in receipt of Council's in-home CHSP services were individually consulted on the proposal to transition their services to *mecwacare*, the entity nominated by the Australian Government should Council resolve to no longer provide these services. The details of the consultation are contained within the body of this report.

6. Worker conditions

The ASU refers to the variable employment conditions across the sector. However, all Australian Government-funded CHSP providers are bound by the same *Service Provider Responsibilities* as outlined in the 'Commonwealth Home Support Programme - Program Manual 2020–2022'.

These include quality audits and employee training:

- Quality audits
 - o The Aged Care Quality and Safety Commission undertakes all quality reviews of aged care services provided in the community, including the CHSP service providers (pg. 72).
 - o The Aged Care Quality Standards support service providers to maintain the high quality of service delivery expected by all providers of aged care (pg. 72).
- Service providers are required to meet staffing and training requirements under the Standards (pg. 74).

Whilst many would view councils as providing favourable terms and conditions for those engaged to deliver services in line with the CHSP, this does not negate the challenges presented to Council, and importantly our clients, with respect to the changes associated with the introduction of the Support at Home Program by the Australian Government.

The Aged Care industry is underpinned by the terms and conditions set by Aged Care Award 2010. This industry wide instrument sets the minimum terms and conditions of employment for those engaged within the Aged Care industry.

It is not appropriate for Council to comment on the rates of pay by other organisations, however it is worth noting that many Not-for-Profit organisations offer additional favourable terms that Council cannot, such as salary packaging concessions enabling employees within the sector to access a more competitive take home pay.

7. Financial viability

The ASU state "it is disingenuous for Council to say it cannot afford to continue providing aged care services for financial reasons". Council is not considering this proposal for financial reasons and has never stated "affordability" as a reason for proposing to exit from some CHSP services. The reasons are solely associated with the new, competitive marketplace model of in-home aged care being introduced by the Australian Government and the significant obstacles Council would face under the new model.

With less than 9% of older people living in Boroondara accessing the CHSP services Council is proposing to exit, Council is committed to its 'Add life to your years – Healthy ageing in Boroondara plan' for all residents who wish to participate by ensuring this proposal does not impact on the community-based aged care programs and services provided by Council. Council will continue to focus on and provide services unique to local government, and which are available to a far greater number of older people than those receiving CHSP services from Council. It is important to note Council's Active Ageing programs are not offered by other providers whereas CHSP services are offered by many providers in Boroondara.

Other key issues arising since 11 April 2022 Council report

- Delaying the transition until 1 July 2023 will not benefit other local organisations, such as BASS Care and Samarinda, who presented to Council on 11 April 2022, as they are not currently registered to deliver the services. Importantly, Council will not be able to support a transfer of clients at 30 June 2023 to other organisations as the sector will be fully commercialised. There is also no guarantee these organisations would be able to secure registration with the Australian Government for the CHSP services prior to 30 June 2023 and that even if they were, there is also no guarantee the Australian Government, through its own selection processes, would nominate them as an alternative provider to Council's services. It is solely a decision of the Australian Government, and Council has no influence over who the Australian Government nominates as an alternative provider and the Australian Government has nominated *mecwacare* for the provision of CHSP services in 2022-23. It should be noted Council does not have a service agreement for 2022-23 with the Australian Government.
- Officers have identified an opportunity for Council to support residents who may have enquiries about the introduction of the Support at Home program during 2022-23 as part of Council's active ageing services. This support would entail the provision of information about the introduction of the Support at Home program using Council's communication channels and individual support to residents who may be seeking clarity about navigating the changing national system and/or information relevant to their individual needs.
- All feedback from employees and the ASU provided during the extension of time granted by the FWC, has been considered in the development of this report. However, after due consideration there is no change to the officer's recommendation except that due to impact of the FWC process on the original timelines, it is recommended the transition to the alternative provider, as nominated by the Australian Government, is delayed by one month to 31 July 2022. This allows for sufficient time to support our clients to transition successfully while maintaining their continuity of care. The draft 2022/23 Council Budget currently provides for business as usual therefore there is no significant budget impact in extending the transition date for the service until 31 July 2022. Council has consulted with both staff and the ASU concerning the extension of an additional month. Two staff made contact that related to their individual circumstances, which will be accommodated to the extent possible.

Councillor Hollingsworth declared a general conflict of interest in accordance with section 127 of the Local Government Act 2020. Councillor Hollingsworth declared the nature of the interest is "her mother and mother-in-law are currently receiving services from aged care providers within Boroondara."

Councillor Hollingsworth retired from the meeting at 6:48pm before the consideration and vote on this item.

MOTION

Moved Councillor Watson

Seconded Councillor Stavrou

That Council resolve to:

- 1. Transition the in-home CHSP services of domestic assistance, personal care, respite care, meal preparation, property maintenance and property modifications, by 31 July 2022 to the Australian Government's nominated provider.**
- 2. Work with the Australian Government and mecwacare to ensure the smooth transition of Council's current in-home CHSP clients by 31 July 2022.**
- 3. Support any client not wishing to transition to mecwacare to transition to an alternative provider by 31 July 2022.**
- 4. Continue to support current clients, throughout the transition year (2022/23), to navigate the Aged Care system to ensure they are able to access the supports and services which best meet their needs.**

CARRIED

The meeting concluded at 7:16pm

Confirmed

Chairperson

Date


