



To: Members of the McLaren Vale & Districts War Memorial Hospital

Options considered for the future use of the hospital

One of the most common questions raised at recent meetings to discuss the closure and future use of the hospital is what options did the Board consider before arriving at its conclusion that the hospital should be merged with James Brown Memorial Trust (Kalyra).

The comments below are provided to clarify what options were considered and why the transfer of assets to Kalyra is the preferred option.

What are the legal requirements?

The hospital is incorporated under the provisions of the Associations Incorporation Act 1985 as amended. This legislation is specifically designed to cater for the needs of not for profit community organisations many of which, like the hospital, are also registered charities.

Upon the winding up of a body incorporated under the Act it must, as provided in Section 43(2)(a) of the Act, distribute any residual assets in accordance with 'the rules of the association'. In the hospital's case this means according to provisions of its constitution. Specifically, this means Clause 17(a) which reads:

- a) If after the winding up of the Hospital there remains 'surplus assets' as defined in the Act, such surplus assets ***shall be distributed to any organisation which has similar objects*** and which has rules which prohibit the distribution of its assets and income to its members.

This requirement cannot be waived or varied and imposes immediate constraints upon what the Board and members can decide to do with the surplus assets.

What options did the Board consider?

Bearing in mind the legal constraints imposed upon it, the Board considered a number of options.

Redevelop the hospital to meet modern standards

It is clear that the hospital infrastructure is ageing and requires an enormous amount of work to modernise the facilities. Inspections of the hospital by licensing authorities have identified numerous areas where work is required to improve and upgrade the facility.

The cost of constructing or redeveloping a modern hospital is not less than \$500,000 per bed meaning that it would cost not less than \$10 million, probably much more, to meet the required standards.

The hospital would be unable to raise the capital required for this purpose because there is no plausible business case by which to persuade a lender that a 25-bed private hospital could operate profitably.



Also, the hospital cannot sell or otherwise transfer the current bed licences to another entity. It must surrender the licences to the Department for Health and Ageing and any other entity seeking to acquire licences must do so by application to the Department.

That entity would then need to meet the standards imposed by the Department in order to secure new licences and would therefore be confronted with the same costs mentioned previously.

Government role in the hospital

The hospital opted many years ago to remain a private hospital and cannot now reasonably expect that the State Government will assume responsibility for its operations.

The State Government is investing significant resources into its public hospitals in Adelaide's South.

It is important to note that State Government funding over a number of years has helped the hospital to stay open, but realistically even with this support the hospital is not viable.

Sell the hospital to a private hospital operator

It is theoretically possible to sell the hospital to another private hospital operator, but this could only occur if the relevant legal requirements could be met. This means that the private operator must be a not for profit organisation and have similar objects.

In practice, no private operator will be willing to buy an old and small peri-urban hospital which has no reasonable prospect of ever generating a surplus and for which it would need to incur a multi-million-dollar expense to ensure it met modern building and operational requirements.

Redevelop the hospital as a 'health hub'

This option would entail using the old hospital building to provide consulting and treatment rooms for doctors and allied health professionals.

While this option is theoretically possible it would require the Board to initially undertake significant internal renovations and refurbishment at a considerable cost. The revenue that could be earned from this source is difficult to predict but it could provide a modest return on the initial investment.

However, the Board would need to hire a facilities management company or similar to manage the premises as this is not something which could sensibly be done by a Board composed of unpaid volunteers. Overall, the Board felt that this option represented a sub-optimal use of the facility as well as carrying some financial and other risks.

Sell the site for redevelopment for either commercial or residential purposes

This is a feasible option for the site, but the Board felt that the community would react very adversely to such a proposal.

A private developer would seek to maximise their return on investment from a cleared site and so it is not clear that the interests of existing users of the site such as the Wellbeing Clinic, SA Ambulance Service, the



Hospital Volunteers and others could be protected under this option. In addition, the heritage listed Tsong Gyaiau building would need to be protected which would impose some constraints upon any development of the site.

This option is likely to mean the site would no longer be used for the benefit of the community.

If such a sale were to be negotiated it could be expected to yield a significant multi-million dollar return for the hospital. The problem would then be what to do with the money because the relevant legal and constitutional provisions require that it '*shall be distributed to an organisation that has similar objects.*'

On balance, the Board felt that this was not the best option for the future.

Merge with another entity with similar objects

The idea of merging with James Brown Memorial Trust (Kalyra) which is a similar entity, and which already has a presence in McLaren Vale arose relatively recently. However, it was immediately apparent that this option has some distinct advantages:

- the hospital and Kalyra already have a very long-standing relationship whereby the hospital provides meals to residents of Kalyra's residential aged care facility;
- in addition, Kalyra has a significant presence in the community as the owner and operator of both the residential aged care facility and retirement villages;
- established under the provisions of its own Act of Parliament, Kalyra is a not-for-profit organisation and a registered charity with a strong focus on support for the disadvantaged, especially older people;
- the objects of Kalyra clearly align with those of the hospital thus satisfying the requirements of Section 43(2)(a) of the Act and Clause 17(a) of the constitution;
- Kalyra has the financial strength and resources needed to redevelop the site in line with community needs and wishes;
- Kalyra has expressed a willingness to respect the history of the hospital as a war memorial and to protect the interests of the hospital Volunteers Op Shop, the Wellbeing Clinic, the SA Ambulance Service station, and the community radio station as well as preserve and renovate the Tsong Gyaiau building; and
- Kalyra has indicated that it will seek to redevelop the site in close consultation with the wider community.

The Board considers that this option represents the best way forward for the future.

What 'gifting' the hospital to Kalyra means

The giving of a gift to someone is commonly understood as meaning that the object given is free and clear of any encumbrances or conditions. This is not what will occur in this case.

It is important to understand that in 'gifting' the assets of the hospital to the James Brown Memorial Trust, the hospital is also 'gifting' considerable liabilities and obligations as well.



In particular, the hospital building is now over 70 years old and in need of either significant and costly redevelopment and renovation or, potentially at least, demolition and replacement with new purpose-built facilities.

Also, the Tsong Gyaou building needs substantial renovation to become useable for purposes such as consulting rooms or office space. It is now over 150 years old, and it is reasonable to expect that any redevelopment process will be both costly and time consuming.

As mentioned previously, the 'gift' will also come with conditions relating to existing users of the site that will impose some limitations on what Kalyra can do with the site in both the short and longer term.

The process of 'gifting' therefore needs to be understood as a conditional process which the Board will negotiate and embed in a legally binding agreement before it finally agrees to the transfer of assets to Kalyra.

Summary

The Board considered several options for the future use of the hospital. It did so while having due regard to the legal and constitutional constraints imposed upon it. It believes that for the reasons given above the transfer of the hospital's assets to the James Brown Memorial Trust represents the best way forward for the community.

Very importantly, the 'gifting' of the hospital to the Trust needs to be understood as a conditional process, subject to the negotiation of a satisfactory and legally enforceable agreement to protect the history and current users of the site.

The Board will not proceed with the transfer of assets unless and until it is completely satisfied that the conditions described above have been met.