

1. HAGLEY NURSES' HOME - DEED OF COVENANT

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The purpose of this report is for the Council to reach a resolution regarding the issue of car parking at the Hagley Nurses' Home and to agree to enter into negotiations with the Canterbury District Health Board to conclude the terms of a Deed of Covenant which contains a restrictive covenant regarding Board use of the Home land.

BACKGROUND

At its October 2002 meeting the Council considered a report from the writer regarding a proposed Deed of Covenant between the Council and the Canterbury District Health Board regarding future use of the Hagley Nurses' Home land and building.

The Council resolved to rescind a November 2000 resolution to promote a local Bill regarding the Home and further resolved to sign a draft Deed of Covenant attached to the report subject to further negotiations being held with the Canterbury District Health Board with a view to the possible deletion of clause 1(d) referring to other reasonably ancillary uses.

DEED OF COVENANT

Paragraph 1 of the Deed of Covenant provided:

"The Board covenants with the Council that Hagley Nurses' Home will not be used for any purpose other than:

- (a) The provision of personal health services, disability support services and public health services, with or without pecuniary reward;*
- (b) The education of health service providers;*
- (c) The accommodation of patients and/or the immediate families of those patients;*
- (d) Such other uses reasonably ancillary to the uses described in clauses 1(a) and (b) such as, without limitation, car parking and the provision of recreational facilities for patients and employees of the Board."*

The concern expressed at the Council meeting was that paragraph 1(d) as drafted would enable the Canterbury District Health Board to use the Nurses' Home land for general hospital car parking, and not just car parking generated by activities on the Nurses' Home land.

To address this concern, it is recommended that paragraph 1 be redrafted as follows:

"The Board covenants with the Council that Hagley Nurses' Home will not be used for any purpose other than:

- (a) The provision of personal health services, disability support services and public health services, with or without pecuniary reward;*
- (b) The education of health service providers;*
- (c) The accommodation of patients and/or the immediate families of those patients;*
- (d) Such other uses reasonably ancillary to the uses described in clauses 1(a) and (b) such as, without limitation, the provision of recreational facilities for patients and employees of the Board;*
- (e) Car parking arising out of the use of the Hagley Nurses' Home for the purposes referred to in subparagraphs (a) to (d) above."*

It will be noted that new paragraph 1(e) confines the car parking on the Nurses' Home land to the uses that can be carried out on that land and that general hospital car parking unrelated to the Nurses' Home would not be permitted on the Nurses' Home land.

APPLICATION TO MODIFY OR EXTINGUISH THE COVENANT

One other question that arose at the Council meeting was the ability of the Canterbury District Health Board to apply to the High Court under the Property Law Act 1952 to modify or extinguish a restrictive covenant such as that proposed in the draft deed.

A memorandum dated 23 October 2002 from Denis Sheard of Buddle Findlay on this topic is attached. It will be noted that in paragraph 6 he states his view that the chances of any success in such an application by the Canterbury District Health Board are very low to the point where the possibility should be discounted.

Councillor Crighton informed the Committee that in the Ngai Tahu Claims Settlement Act the property is referred to as the Hagley Nurses' Home. The Committee agreed that, in the interests of consistency, the same name should be used in the Deed of Covenant.

Recommendation: That the Christchurch City Council enter into negotiations with the Canterbury District Health Board to modify the draft Deed of Covenant by the inclusion of the new paragraph 1 as set out above.