



# **Ordinary Meeting**

**24 April 2007**

**SUPPLEMENTARY**

**REPORT**

**ITEM NO: S1**

**SUBJECT: SPRINGWOOD BOWLING AND RECREATION CLUB**

**FILE NO: H00362/C02479**

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**Recommendations:**

1. *That the Council amend the Positive Covenant 6666939 by removing the definition relating to the market value and replacing the current definition which will facilitate the outcome sought by the Springwood Bowling and Recreation Club (the Club) but retaining the right of first refusal to repurchase the site.*
  2. *That the Council note a valuation by a qualified Valuer has been obtained and that further negotiations with the Springwood Bowling and Recreation Club Directors have taken place.*
  3. *That the Council note that the valuer considers the difference between the unimproved valuation of the premises with the current covenant and the proposed amended covenant in today's dollar terms is \$500,000.*
  4. *That the Council note that legal advice has been obtained and that the covenant can be amended to achieve the Council intention by removing the definition of market value.*
  5. *That no further compensation be required from the Springwood Bowling and Recreation Club as research supports the position that they did not originally pay a discounted price for the unimproved value of the land with the Positive Covenant in place.*
  6. *That it be noted that the Springwood Bowling and Recreation Club have met all costs of the replacement of the two tennis courts and associated facilities.*
  7. *That the Common Seal of Council be affixed to the necessary documents relating to this matter.*
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**Minute by Mayor**

At the meeting on 3 April 2007 the Council considered a report by the Group Manager, Community & Corporate regarding the request by the Springwood Bowling and Recreational Club (the Club) to lift or amend the Positive Covenant imposed on the site sold to them in 1999.

The Council resolved

- "1. *That the Council supports pursuing Option 3 and indicate its intent to the Springwood Bowling and Recreation Club (the Club) that it supports amending Positive Covenant 6666939 by removing the definition relating to the definition of market value and replacing the current definition with a new definition to facilitate the outcome sought by the Club but retaining the right of first refusal to repurchase the site.*

2. *That the Council in the community interest obtains in return for amending the positive covenant (that in effect limits the Council ability to reclaim the land should the Club cease to operate for private recreation for any reason in the future) a monetary compensation based on the difference between the unimproved valuation of the premises with the current covenant and the proposed amended covenant in today's dollar terms.*
3. *That the General Manager seeks legal advice on the proposed amended wording of Positive Covenant to achieve Councils intent in Recommendation 1.*
4. *That the General Manager obtains qualified valuations for the unimproved value of the land based on the present and proposed new covenant and negotiates with the Club on an acceptable level of compensation for the Council for the potential opportunity loss in the future and having regard to the intent of the findings of the Public Hearings in 1998 and also having regard for the community services provided by the Club.*
5. *That delegation be given to the Mayor and the General Manager to negotiate the alteration of the Positive Covenant 6666939 and the amount of any compensation having consideration for the valuations, previous compensation and any community factors, the outcomes of which are to be referred to Council, if needs be at an extraordinary meeting to expedite a decision."*

(Minutes No 82, 3 April 2007)

Since that date Council staff and registered Valuers have researched the circumstances of the initial valuation and held meetings with the Directors of the Club.

The price paid for the Club was \$655,000 which was the land value in June 1999 as valued by a Registered Valuer. Terms of the sale as set out in the Council report dated 22 June 1999 were:

- "(a) The final sale price to be negotiated with the Club being no less than \$550,000 or the amount of Council's revised valuation, which ever is the greater;*
- (b) A Section 88B Instrument being created together with a Covenant registered on the Title of the property to restrict the use of the premises to a bowling club and ancillary uses open to members of the public;*
- (c) A caveat be registered against the Title to give Council first right to purchase the property in the event of its subsequent sale, the sale price to Council being on the basis of the value of the land only at its current Private Recreation 6(c) zoning; and*
- (d) The Springwood Bowling and Recreation Club Limited being responsible for all costs of the replacement of the two tennis courts and associated facilities currently on Lot 4 DP 226942."*

(Minute No 299, 22 June 1999)

The land was valued without improvements and the valuation figure was \$655,000. The improvements on the site were the clubhouse, the bowling greens, car park and tennis courts. The improvements were valued at \$1,095,000. The Club rebuilt the tennis courts at Spring Street, Springwood at a cost of approximately \$252,846, which means that the total cost of the arrangement to the club was in the vicinity of \$906,846.

Council's valuer concludes that the difference between the value of the vacant land today with the Positive Covenant in place and the value of the land today without the Positive Covenant is \$500,000. This is the figure that has been communicated to the Club.

At a meeting with the Directors of the Club, they advised that while they did not disagree with the valuer they were of the opinion that they had paid market value of the land in 1999 taking into account the zoning but not giving any discount for the impost of the Positive Covenant and therefore should not now have to pay for the covenant being lifted.

Both the General Manager and I agree with this line of reasoning. Research supports that the valuer did not take into account the disadvantageous affect of the Positive Covenant.

Therefore, I am recommending that the Council consider this matter and agree to alter the Positive Covenant to retain the safeguard of the right to repurchase the property but to allow the purchase price to include the improvements on the site.

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