

9.2 LOT 479 MINGARI STREET MUNNO PARA

Contact Person: Mr Thornton Harfield

Why is this matter confidential?

Subject to an order pursuant to Section 90 (3) (b) of the Local Government Act 1999, this matter is confidential because commercial negotiations are ongoing and at this time are not a matter of public interest.

A. COUNCIL/COMMITTEE TO MOVE MOTION TO GO INTO CONFIDENCE

No action – this motion passed in the open section.

B. THE BUSINESS MATTER

9.2 LOT 479 MINGARI STREET MUNNO PARA

Responsible Executive Manager : Mr Thornton Harfield

Report Author : Mr Paul Alberton

Delegated Authority : Matters which cannot be delegated to a Committee or Staff.

PURPOSE

The purpose of this report is to seek Council endorsement to place Lot 479 Mingari Street, Munno Para (former Munno Para Bowling Club) onto the market, following Kaufland's withdrawal from their contract with Council to purchase the land.

STAFF RECOMMENDATION

1. Council instruct the Acting Chief Executive Officer, or delegate, to sell the land at Lot 479, Mingari Street, Munno Para with the final contract for sale to be provided to the Council for consideration prior to execution of the contract.
2. In the event that Kaufland approaches the City of Playford, Council supports ongoing negotiations with Kaufland for the purchase of the land at Lot 479, Mingari Street, Munno Para. These negotiations should not impede the sale of the land as outlined in part 1 of this recommendation and should exclusivity be sought by Kaufland it will be captured within a suitable contract that adequately compensates Council for the exclusivity being provided to Kaufland.

EXECUTIVE SUMMARY

Kaufland has formally advised Council, via their legal team on Friday 28 June 2019, that they will not be proceeding with the sale of land thereby terminating the terms of their land sale contract with Council and ceasing the Non-Government Funded DPA process.

It is now proposed to place the land back onto the market in accordance with Council's Sale and Disposal of Land and Other Assets Policy, via a Public Tender process.

1. BACKGROUND

In February 2015 Council resolved to revoke the community land classification and sell the land at Lot 479 Mingari Street, Munno Para - previously known as the Munno Para Bowling Club.

The purpose of the sale was to raise funds to invest into the Playford Sports Precinct, specifically the construction of the Playford Bowling Club, Playford Tennis Centre and Adelaide United Training Centre. It also facilitated the amalgamation of the Munno Para Bowls Club with the Elizabeth Bowls Club to form the new Playford Bowling Club, allowing for a more efficient management of Council assets. The sale rationalised two district level bowling facilities into one regional (higher) standard facility, capable of hosting more participants and higher-level competitions.

Council initiated a Development Plan Amendment (DPA) to rezone the site from residential zoning to the Commercial Zone to support future development.

Following an Expression of Interest process, an agreement was executed between Council and Emmett Construct Pty Ltd who was the preferred purchaser. The rezoning of the land to the Commercial Zone was finalised on 27 June 2017.

Emmett subsequently assigned the property to Kaufland in February 2018. The contract agreement allowed Kaufland 12 months to ascertain if they were able to develop a store that met their requirements and an additional payment of \$350,000 was negotiated and received by Council as compensation for extending the settlement date (holding cost).

In November 2018, Kaufland approached Council to extend the contract agreement for a further three months and to seek a new DPA process to amend the policy to provide capacity for more retail floor area.

The new agreement included the condition that if a further Deed of Variation is entered into, Kaufland would have to pay Council \$75,000 within 28 days of the new arrangement being entered. The three month extension period expired and Kaufland wanted to continue with a further Deed of Variation thus triggering a default payment to Council of \$75,000 which was received.

As the planning system only provides for the Minister or Council to initiate a DPA process, Kaufland commenced a Non-Government Funded DPA process with the City of Playford in accordance with Council policy. The policy requires that a Statement of Justification be prepared by the third party for Council's consideration. The Statement of Justification was received by Council at the Strategic Planning Committee on 14 May 2019, where Council subsequently endorsed the preparation of a Statement of Intent.

The policy requires that Kaufland enter into a funding agreement with the City of Playford to carry out the legislative requirements of a DPA process prior to Council considering the Statement of Intent.

Since the 14 May Strategic Planning Committee, Council staff have worked with Kaufland staff to draft the DPA funding agreement and Statement of Intent. At this point the funding agreement remains unsigned which prevents the Statement of Intent being progressed to Council.

Kaufland has now formally advised Council, via their legal team on Friday 28 June 2019, that they will not be proceeding with the sale of land thereby terminating the terms of their land sale contract with Council and ceasing the Non-Government Funded DPA process.

2. RELEVANCE TO STRATEGIC PLAN

5: Smart Sport Program

Outcome 5.3 Access to elite sporting facilities

3: Smart Jobs & Education Program

Outcome 3.1 Growth and diversification of local jobs matched with relevant education and training

Outcome 3.2 Commercial and industrial growth

The sale of the subject land for the purposes of commercial development will ensure the land will contribute to growth in local job opportunities, commercial growth and to realise Council's investment into the Playford Sports Precinct.

3. PUBLIC CONSULTATION

Public consultation is not required.

4. DISCUSSION

- 4.1** Council has received \$425,000 in holding fees since the contract was assigned to Kaufland in February 2018. Council will keep these funds.
- 4.2** In addition to the holding fees, Council has separately received \$400,000 as a deposit. Due to the non-satisfaction of the contract, Kaufland will receive back the deposit in full and any interest incurred. This money is held in trust with Norman Waterhouse Lawyers and its return to Kaufland will not affect Council's budget.
- 4.3** Since February 2019 Council staff have been in ongoing discussions with Kaufland's representatives over two main issues: the Special Conditions of the contract (requiring a payment of \$30,000 per month paid in advance to Council for holding costs being compensation to service the capital investment in the Sports Precinct) and the timing of the DPA process. The conditions of the land sale contract meant that Kaufland were obliged to pay Council's holding costs while waiting for the DPA process to be undertaken.
- 4.4** Council's Non-Government Funded DPA Policy requires Kaufland to enter to an agreement with Council, to fund Council for undertaking the administration of the DPA process and necessary investigations / studies, where there is no guarantee that the outcome will satisfy their development requirements.
- 4.5** It is the understanding of staff that Kaufland executive made a decision not to proceed with the land sale and Council was informed of this decision on Friday 28 June 2019, two days before the contract of sale was to expire on 30 June.
- 4.6** The latest land valuation (February 2019) valued the subject land at \$7,190,000 GST Exclusive. This compares to the original contract Council entered into with Emmetts in 2016 for \$8,200,000 GST Exclusive.

5. OPTIONS

Recommendation

1. Council instruct the Acting Chief Executive Officer, or delegate, to sell the land at Lot 479, Mingari Street, Munno Para with the final contract for sale to be provided to the Council for consideration prior to execution of the contract.
2. In the event that Kaufland approaches the City of Playford, Council supports ongoing negotiations with Kaufland for the purchase of the land at Lot 479, Mingari Street, Munno Para. These negotiations should not impede the sale of the land as outlined in part 1 of this recommendation and should exclusivity be sought by Kaufland it will be captured within a suitable contract that adequately compensates Council for the exclusivity being provided to Kaufland.

Option 2

Council retains the land at this point in time with its ongoing use and ownership to be revisited at another time.

6. ANALYSIS OF OPTIONS

6.1 Recommendation Analysis

6.1.1 Analysis & Implications of the Recommendation

The development of this site will benefit the community by activating a key site, creating local job opportunities and accommodating new services.

The recommendation fulfils the resolution made by Council on 23 April 2013:

- The land to be sold on the open market in its current form for the best commercial return subject to the successful revocation of community land classification.
- Council undertake an expression of interest process for the sale of the land and the outcomes to be reported back for the information of the Council.
- The General Manager Asset Services be delegated the authority to enter into a sales contract for the sale of the land.
- That any financial proceeds from the sale of Lot 479 Mingari Street Munno Para be reinvested into the development of community facilities within the Elizabeth Regional Sports Precinct.

Council will commence a new Expression of Interest process with the intention of attracting a development that complies with the existing zoning. It is important that this process commences in a timely manner to reduce the time the land remains vacant and unused.

There has been significant community interest in the Kaufland development and Council will need to provide some communications around their withdrawal and the future development within the site.

6.1.2 Financial Implications

Council has already invested the anticipated \$8.2M revenue from the land sale into the Playford Sports Precinct.

As a result, the interest cost incurred on this \$8.2M is approximately \$30K per month. Negotiating holding costs payments while the land was under contract has offset these costs. Without a contract in place with this holding cost provision, Council is incurring this cost directly. The recently endorsed Long Term Financial Plan, has accounted for the \$360k per annum impact for the next 2 years anticipating sale of the land to settle in 2021/22. This has had an immediate impact on the debt level forecasted for 2019/20 lifting it to \$173M.

6.2 Option 2 Analysis

6.2.1 Analysis & Implications of Option 2

Should Council decide to not actively pursue sale of the land this would be an opportunity risk in that the benefits of sale described in option 1 would not be achieved.

Additionally, not actively pursuing this sale would require careful consideration in messaging to the community given the fact that to date the community has understood that this land sale was to fund the Sports Precinct.

6.2.2 Financial Implications

Non-sale of the land would provide no relief to Councils debt level and would ensure that the interest costs of approximately \$360K per annum become a part of our ongoing cost of debt.

C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM 9.2 IS TO BE KEPT IN CONFIDENCE

Purpose

To resolve how long agenda item 9.2 is to be kept confidential.

STAFF RECOMMENDATION

Pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999, the Committee orders that the following aspects of Item 9.2 be kept confidential in accordance with the Committee's reasons to deal with this item in confidence pursuant to Section 90 (3) (b) of the Local Government Act 1999:

- Report for Item 9.2
- Attachment(s) for Item 9.2
- Minutes for Item 9.2

This order shall operate until the next scheduled annual review of confidential items by Council at which time this order will be reviewed and determined in accordance with Section 91(9)(a) of the Local Government Act 1999.