

11.1 Confidential potential purchase of land – adjacent to the Willunga golf course

This report requests consideration for the strategic purchase of land adjacent to the Willunga golf course.

This is a new proposal, concept or issue.

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Attachments:	1. Aerial photograph of Allotments 101 and 102 Hall Road, Willunga (1 page) 2. Golf course hole placement concept plan (1 page)

1 Executive summary

1.1 Topic

This report requests consideration for the strategic purchase of land adjacent to the Willunga golf course.

1.2 Context

An opportunity has arisen for the strategic purchase of land adjacent to the Willunga golf course. Since the completion of the housing estate contained within the golf course, the operation of the course has exposed council to ongoing liability issues arising from golf ball strikes to the adjacent residences.

1.3 Financial implications

As detailed in 6.1.2 the total costs involved could be approximately \$1.8 million - \$2 million in total (\$750 000 for the land purchase and up to \$1 million - \$1.25 million for the subsequent redevelopment of a section of the golf course).

1.4 Suggested outcome

It is suggested that Council consider this item in Confidence. Section 90(3)(b) of the *Local Government Act 1999* is suggested as the most appropriate to use for this purpose.

This item is presented as a confidential item because the disclosure of the parameters of the purchase price may increase the risk to council of paying a higher purchase price for the land.

The possible implications/s of not considering this item in Confidence are that the cost of purchase for the land will be escalated due to council being the purchaser based on its need for risk management controls.

2 Recommendation(s)

1. That:

- a. **under the provisions of Section 90(2) of the *Local Government Act 1999* an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. **the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the information at the meeting on the following grounds:**

Section 90(3)(b) information the disclosure of which -

- (i) **could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and**
 - (ii) **would, on balance, be contrary to the public interest;**
 - c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**
2. **That Council note the risk management issues that are currently occurring at the Willunga golf course from wayward golf balls entering the adjacent private residences, particularly on Waverley Drive.**
 3. **That Council approve the strategic purchase of Allotments 101 and 102 Hall Road, Willunga (as a whole) either via direct negotiation or auction.**
 4. **That Council delegate authority to the Chief Executive Officer to negotiate a sale price (either through direct negotiations or auction) for the purchase of Allotments 101 and Allotment 102 Hall Road, Willunga.**
 5. **That the Council delegates authority to the Chief Executive Officer to expend Council funds for the purchase of the land to an upper limit of \$750,000.**
 6. **That Council approve the funding of the purchase of Allotment 101 and Allotment 102 from either the Commercial Activities Reserve or Open Space Reserve Fund (or a mix from both subject to the 2011/12 budget balancing outcomes).**
 7. **That the matter of the potential purchase of land adjacent Willunga golf course having been considered in confidence under Section 90(3)(b) of the *Local Government Act 1999* an order be made under the provisions of Section 91(7) and (9) of the *Local Government Act 1999* that the report item 11.1 Confidential potential purchase of land – adjacent to the Willunga golf course and the minutes and the report relating to discussion of the subject matter be kept confidential until either the settlement of the land purchase is completed or the council is not the successful party to negotiate for the purchase of the land.**

Key factors

3 Engagement

3.1 Community

Council staff hold quarterly meetings with the golf course stakeholders comprising the Willunga Golf Club, golf course professional and restaurant operator. The purpose of the meeting is to ensure continuity of information for the planning and management of the golf course. The future augmentation of the golf course incorporating a long term hole redesign has been discussed with these stakeholders in the context of the risk issues currently being experienced at the course.

3.2 Elected Members

Mayor Rosenberg made us aware that the land was being placed on the market for purchase and that in response there may be an opportunity for Council to deal with the longer term issues at the Willunga golf course. Mayor Rosenberg has continued to be involved in ongoing discussions relating to the sale of the land.

Mayor Rosenberg has been consulted in the preparation of this report as council contact to the Willunga Golf Club.

Cr Chapman has liaised with staff through EM Enquiry on the risk management issues identified in this report.

3.3 Staff

A number of staff throughout the organisation have been engaged in both the management and mitigation of the risk issues and have worked toward a potential solution as outlined in this report.

3.4 Others (including specialist advice)

Neil Crafter – Golf course architect has designed the concept plan as contained in attachment 2.

Local Government Mutual Liability Scheme – as council's insurers have provided legal advice on the risk tolerance levels and support for a proposed engineering solution to the identified risks.

Southwick Goodyear – provision of independent valuation advice.

4 Direction

4.1 Council's Role(s)

4.1.1 Owner/custodian

In our role as owner or custodian council provides a golf course for use by the public. Our role extends to an obligation to avoid nuisance to the adjoining owners to the extent that is reasonably practicable.

5 Sustainability

5.1 Social

The golf course has been voted the best course in South Australia on a range of amenity and affordability aspects. The course provides a high level recreational asset for the residents of the City of Onkaparinga and is also enjoyed by members of the public outside of our City.

6 Resource Implications

6.1 Financial

6.1.1 Current

We currently operate the golf course through the Commercial Activities portfolio within the Property Team and provide funding for capital works and maintenance on the course.

All income derived from the course is returned to us through agreements with both the Willunga Golf Club and Willunga golf course professional.

6.1.2 Future

An ongoing risk is associated with the continuation of wayward golf balls entering properties on Waverley Drive which represents an ongoing liability issue for us. To date, only minor claims for property damage have been paid through our insurance company. Given the probability of property damage into the future is high (without any mitigation measures taking place) avoidance of a claim in nuisance and potentially negligence leading to the payment of damages is likely at sometime in the future. This risk needs to be weighed against the cost of the risk mitigation option outlined in this report in order to alleviate and remove the risk by the creation of a 70 metre buffer.

Should Council approve the purchase of the land there are still further costs associated with the risk mitigation option. Four of the course holes will need to be amended from their current layout to provide for the required buffer distances between fairways and residences as laid out in industry standards and identified in the concept plan at attachment 2.

The golf course augmentation has been estimated to be in the order of \$250,000 - \$300,000 per hole (range of \$1 million - \$1.2 million) in addition to the land acquisition costs (up to \$750,000) and professional fees to undertake detailed design of the new concept.

Therefore, the likely quantum for Council to relieve itself of the current risk issues is likely to be in the order of \$1.8 million - \$2 million in total. These costs identify the worst case scenario for the expenditure required to remediate the risk issues over the longer term.

7 Risk Analysis

The risk matters have been the subject of ongoing discussions between council, the affected residents and the Mutual Liability Scheme.

The following shows the claims history of residences adjacent and within the golf course.

Year	# of claims	Locations	Value of claims
2010-11	5	8, 14, 15, 24, 27 Waverley Drive	\$2800
2009-10	5	10, 11, 13, 18 Waverley Drive 17 Herbert Allen Court	\$1950
2008-09	3	8, 10 Waverley Drive 5 Ruby Court	\$1100
2007-08	5	7, 9, 10 (2), 26 Waverley Drive 25 Herbert Allen Court	\$1360
2006-07	5	8, 10(2), 20 Waverley Drive 23 Herbert Allen	\$1133
2005-06	6	8, 13, 14 Waverley Drive 5 (2) Ruby Court 25 Herbert Allen Court	\$1550
2004-05	5	10, 18, 20, 28 Waverley Drive 25 Herbert Allen Court	\$1100
2003-04	5	10, 18, 20, 30 Waverley Drive 21 Herbert Allen Court	\$1713
2002-03	8	3, 10, 17(2), 24, 26 Waverley Drive 21 Herbert Allen Court	\$1864

Year	# of claims	Locations	Value of claims
		5 Ruby Court	
TOTAL	47		Total of claims \$14,570

8 Discussion

This report considers a strategic land purchase in the context of responding to identified risk issues at the Willunga Golf course which are identified in point 9 in this report. A response to the risks outlined is that a purchase of land is one risk mitigation option which will allow for the longer term planning of the course and provide adequate buffers between the 17th fairway and housing.

Other options for mitigation of risk could include:

- the strategic purchase of dwellings at locations where the risk tolerance is considered to be high; or
- the continued practice of managing the course under the current conditions and acceptance of the known risk of liability and ongoing payment of claims.

8.1 Background

Council owns the land and operates the golf course as a commercial (albeit subsidised) enterprise. The land is subject to agreements with the Willunga Golf Club, golf course professional and the restaurant operator. Council remains solely responsible for the operation and management of the course.

There was a review of the entire course by a golf course architect in or around 1991 and again in 1999 where subsequent works were undertaken as a result of the findings of those reviews.

The 10th to 18th holes of the Willunga Golf course were designed and constructed in 1991 by former Willunga Council and/or its contractors. The 1991 development included the development of housing at Waverley Drive that is wholly contained within the golf course.

9 Risk management issues at Willunga Golf course

There has been a history of complaints relating to the impact of errant golf balls arising from sections of the course, most significantly from the 15th and 17th holes.

During the 1999 review Council engaged a consultant to re-design part of the course to alleviate the impact on houses from the 15th fairway. The works undertaken in 1999, at a substantial cost, appear to have successfully addressed the specific problem arising from the 15th hole.

Regular complaints of stray golf balls continue to be received from a *different* part of the course, adjacent to the 17th fairway.

The 1991 development provided for housing within the golf course which has now been deemed by our golf course architect as having inadequate buffers between

the fairway (particularly the 17th) and the houses on Waverley Drive. The acceptable standard is a 70 metre buffer. We currently have between 10 and 20 metres of buffer distance between the property boundary and the 17th fairway along the length of the rear boundary of the Waverley Drive properties.

There have been several letters of complaint and numerous claims lodged from the owners along Waverley Drive for reimbursement of losses arising from property damage. Many of these have been settled on an 'ex gratia' basis.

We have tried various measures to minimise the risk of balls being hit into the Waverley Drive properties, including substantial tree screening and the installation of a target midway along the fairway of the 17th to encourage players to alter their intended direction of shot. We have been responsive to the complaints and have continued to investigate options to address the ongoing problem.

However, legal advice suggests that as council operates the course as a commercial enterprise, the duty owed to the adjoining owners is a high one to avoid nuisance and potentially negligence. To date the claims have surrounded property damage, however in correspondence to us the residents have foreshadowed that beyond the nuisance factor, the loss of the use and enjoyment of their land together with the heightened risk to their family when utilising their gardens from personal injury will no longer be tolerated. In comparison to court cases involving personal injury from wayward golf balls in instances where the injury has been catastrophic (brain damage) has received an award of damages in the order of \$2.6 million.

The owner of 8 Waverley Drive has provided us with the results of his own monitoring of the frequency of golf balls entering his property. In the 3 months beginning 1 December 2007, he collected 326 golf balls from within the boundary of his property (average of 25 golf balls per week). A further 378 balls were collected between 1 March and 31 May 2008, averaging 29 golf balls per week.

9.1 Liability

We have been advised that there is enough evidence of the continuing impact of the golf balls on the residences to support a claim of nuisance and potentially to establish negligence.

As the owner and operator of a commercial enterprise we owe a duty to take reasonable care to prevent or alleviate the risk of foreseeable injury or damage.

The question in relation to this particular issue is what is required of us to discharge this duty, ie. what is 'reasonable' action? A risk analysis has been undertaken by our insurers and their legal advisors to establish that the probability of harm is very high (should no action be taken). The likely seriousness of the harm is potentially very serious should a wayward ball strike a person. There is caselaw which identifies similar circumstances with substantial damages being awarded for a brain injury caused by a wayward ball striking a person in the head.

In any risk assessment, the burden on the council in implementing a solution to the risk is taken into account when assessing the resources of the council. However, whilst the financial cost of alleviating the risk is still relevant, given that in this

instance our role is in relation to a commercial enterprise and not our role as a public authority the obligation for us to provide a solution is higher.

9.2 Nuisance

A nuisance occurs when one party causes a substantial and unreasonable interference with the enjoyment of land of a particular individual or individuals. The test of reasonableness is relevant to these deliberations by Council in this matter.

Over time, courts have considered what is reasonable in relation to golf balls impacting on private residences. Nationally, courts have decided on a range of cases on the following basis:

State	Year	# of wayward balls	Outcome	Relevant facts
NSW	1998	12 balls per week	Court found that the Club had acted to cause nuisance	The owner purchased home after golf course was in operation.
Queensland	2004	20 balls per week (526 per annum)	Court found that nuisance had continued even after remedial works had taken place and incidence of ball strikes had reduced. Court awarded \$12,000 in damages.	After receiving a letter of demand (but before the court action) the club redesigned the offending hole and planted tree screen, which had the effect of reducing the number of balls to 2-3 per week.
Victoria	1970	36 balls per annum	The Court found that the number of balls was a 'formidable and disturbing total' and that the Council should have known and appreciated the impact of the balls on the property owner. Found in favour of property owner.	Council had previously erected a wire screen to shield the residents' property.

The Local Government Mutual Liability Scheme (as Council's insurers) has been involved with the assessment of risk and management of claims over past years. They have outlined to us that it is imperative that we address the risk of continuing nuisance and/or potential damage to property or personal injury. They have advised that given that Council has been unable to effectively address the risks to date despite the significant efforts, that consultation with a suitable expert with the view to a longer term solution is warranted. In doing so, council will need to consider the costs associated with the implementation of a staged approach to mitigate the risks, namely:

- reasonable timeframes given continuing problems;
- the likelihood of any particular stage leading to an effective outcome;
- continued liaison with affected residents encouraging awareness and where possible continued risk minimisation in the meantime.

10 Interim risk management measures

The main issue is that the 17th fairway is immediately adjacent to the residences on Waverley Drive and does not have the required buffer distances between the fairway and houses.

An amount of \$225,000 was provided in the 2010-11 budget to undertake augmentation works on the 17th hole to address the risk of golf balls entering into adjacent properties.

The design has been the subject of an open tender and is currently contracted to be undertaken for a value of \$89,782. The works will realign the way that golfers aim their shots to try and lessen the opportunity for wayward balls to enter houses. Whilst our golf course architect has stated that these works will go a long way to lessening the risk, until a 70 metre buffer can be achieved the risk will remain. As identified in the risk assessment and scan of legal decisions, any wayward balls into these properties will continue to provide a risk in relation to an action in nuisance. Therefore, these resources do not address the current level of risk and there remains a requirement for us to undertake a more comprehensive risk mitigation strategy. The suggested approach is that we acquire adjacent land parcels to provide the necessary buffer land.

11 Allotment 101 and 102 Hall Road, Willunga

11.1 Land description and relevant details

The land at Allotment 101 and 102 Hall Road, Willunga is to the east of the main component of the Willunga Golf course. Allotment 101 comprises 2.546 hectares and Allotment 102 comprises 1.456 hectares, totalling 4.06 hectares. The parcels have frontage to an unmade road reserve in the ownership of the City of Onkaparinga.

Allotment 101 has an approximate frontage to Hall Road of 104 metres, a frontage to the unmade government road of 194 metres with a depth of approximately 115 metres (across a stepped boundary). Allotment 102 is rectangular in shape with a 125 metre frontage to the unmade government road with a depth of approximately 115 metres.

The land slopes away from Hall Road and each allotment is bisected by a relatively deep tree lined gully that forms a water course north of the subject allotments.

Allotment 102 would require service extensions and road formation and possibly the construction of a culvert over the small gully that bisects the site before development could occur if sold separately to a private party. Access via the unmade government road would be essential.

11.2 Ownership

The land is currently in the ownership of Graeme Spencer Hall (owner of 1 undivided part) and Michael James Doherty and Kathryn Louise Hall as executors of Kenneth Spencer Hall who died on 3 May 2010 (executors of 1 undivided part).

The executors are required to settle the estate and in the process of doing so wish to sell the land.

11.3 Planning considerations

The land is contained within the *Landscape and Community uses* zone of the City of Onkaparinga Development Plan. The zone envisages the development of public and private open space.

The overarching objectives of this zone are:

- a zone accommodating public and private recreational and community uses
- maintenance of the landscape character, either in its natural state or by purposeful design to suit the intended purpose
- buildings restricted to those required in association with community and recreational use of land.

Preliminary advice from our planning team has outlined that:

- a dwelling is not listed as non-complying and would therefore be assessed on merit
- principle 2 of the Landscape and Community uses Zone calls for buildings to provide a low profile and be designed and sited so as not to dominate the character of the locality
- principle 3 of the Landscape and Community uses Zone calls for buildings to be set in extensively landscaped grounds.

In addition, it is currently understood that there are one or two significant trees at the entrance to the unmade road reserve that would require removal in order to allow access to allotment 101, allotment 102 has frontage to Hall Road.

11.4 Valuations

An independent valuation was sourced from Southwick Goodyear when we were approached by the executors of the estate to ascertain our interest in the purchase of the land.

Their assessment of the valuation for the land has been set at \$580,000 as a whole when compared on a market value basis to other comparable sales.

The valuation is set in the context that the land would achieve a higher value if not for a range of constraints that are currently relevant to the land.

Namely, it is assessed that the valuation of Allotment 101 (2.546 hectares) in the market would be \$375,000. In the case of Allotment 102 (1.456 hectares) given the location with no constructed public road frontage and the requirement for service extensions (electricity, water, sewer etc) would be in the order of \$300,000.

The valuers have then applied a discounting factor to account for:

- a reduction to acknowledge the advantage of a sale to a single purchaser
- that council can purchase without a conditional settlement (not subject to finance)
- the risk to the vendor of a long settlement (expected) due to the restrictive zoning, the uncertainty with regard to the construction of a public road by council and perhaps the need to undertake a land division to redefine the boundaries to give each a frontage to Hall Road.

Therefore, the valuer has ascertained that a land value of \$675,000 should be discounted by 15% to \$580 000 in response to these particulars related to this land. In comparison, the sale of a 4.99 hectare land parcel in Taylors Hill Road, Willunga which settled in February 2011 sold for the sum of \$530 000. The Taylors Hill Road land enjoyed a superior aspect, lower development risk but only offered a single parcel.

In contrast, the vendor of the land was asked to provide council with an offer on the land that would be satisfactory to the vendor. The consultants acting on behalf of the estate met with council staff on 2 March 2011. In response to this meeting, a letter dated 23 March 2011 from the executors was received which contained a proposal for us to consider the purchase of the land. In that proposal they considered that the value of the land was \$825,000.

We subsequently corresponded with the executors on 27 April 2011 to outline that their offer and our valuation were substantially at odds and we subsequently requested a consideration by the executors of our valuation and the potential to negotiate an outcome. In addition, the letter requested a four month first right of purchase to council to allow for these negotiations.

In a letter to council dated 6 May, the lawyer on behalf of the executor stated that our request for negotiation was rejected and that the land would be auctioned to the general public.

We are advised that the land will be auctioned on 18 June 2011.

Should Council consider that it is appropriate to purchase the land to deal with the risk issues experienced at the Willunga Golf course a threshold for the purchase price should be provided to give the administration (or a representative) guidance to participate in the auction process. Given the benchmark provided by our independent valuers was in the range of \$580,000 - \$675,000 and the vendor is anticipating a purchase of \$825,000 it is recommended that a range covering the breadth of this advice be considered by Council in settling on a upper limit purchase price.

It is suggested that a ceiling of \$750,000 be provided for negotiations which represents a mid point between our valuers upper limit (\$675,000) and the vendors anticipated sale price (\$825,000).

12 Adjacent unmade road reserve

The unmade road reserve that resides in between Allotments 101 and 102 and the adjacent farming land is owned by the City of Onkaparinga and held as road reserve. There are currently no parties utilising this road reserve for access. The road is not formed in this road reserve and is currently contained as part of the adjacent landowners land. If we were successful in obtaining Allotments 101 and 102, this road reserve could be attached to this land (through a permanent road closure process) to provide a further 0.65 hectares in land area.

13 Proposed golf course layout

We are continuing to investigate the final form and layout of the golf course to mitigate the risk issues. The primary consideration is that the current 17th hole must be moved to allow for adequate buffer distances to be achieved adjacent to the housing on Waverley Drive. A critical analysis is currently being undertaken into whether all four holes will require redevelopment or a lesser solution is available to enable the moving of the 17th fairway. In particular, analysis is continuing into whether an amendment is required for the 16th hole. These investigations will not negate the need for additional land as proposed in this report.

We are also continuing to work on the proposed layout (attachment 2) as the proposed walking distances shown from the 14th hole to the 15th and the 17th to the 18th holes are considered to be unsustainable in the longer term operations of the course.

14 Complementary land uses and potential funding for golf course augmentation

The purchase of Allotments 101 and 102 (if approved) will provide sufficient land to allow for the augmentation of the golf course to provide the required buffer distances between the fairways and houses.

The unmade road reserve, Allotments 101 and 102 combined with the existing golf course land is currently being analysed for future commercial and residential development opportunities.

Investigations into the potential for further housing development (with acknowledgement of providing the required buffer distances from fairways) and/or

ancillary commercial business development may be able to be contained within the expanded landholding. The proposed fairway redevelopment may provide an opportunity to undertake a land division and dispose of some land for residential development. In turn, these developments may provide opportunities in the medium term to offset the funding required for the fairway redevelopment.

In addition there have been very recent discussions regarding the amalgamation of bowling clubs within the Willunga and McLaren Vale districts. Parties involved with the early discussions of amalgamation and the potential for a new bowling club facility have expressed interest in being located upon the land at Allotment 101 or 102. Such a facility could potentially be located within areas that are identified as having no risk of golf ball strikes at the upper part of this land adjacent to the unmade government road.

15 Funding for the potential land purchase

The proposed purchase of the land could be funded from either the commercial activities or open space reserve funds. The purchase of this land meets the criteria for strategic land purchases supported by the criteria approved for both of these funds.

This purchase would need to be balanced against the current discussions of utilising the reserve funds as a balancing option for the budget.

15.1 Commercial Reserve Fund

The commercial businesses of council are funded from the Commercial Activities Reserve. Any profits arising from these entities are placed back into the fund for future operational expenses and works.

The Commercial Reserve Fund currently has a balance of \$1.245 million.

15.2 Open Space Reserve Fund

The Open Space Reserve fund holds funding for the purchase and development of public open space for recreational purposes.

The Open Space Reserve Fund currently has a balance of \$2.4 million.

16 Summary

An opportunity to consider the longer term planning objectives for the Willunga Golf course is currently available due to the land adjacent to the course being placed on the market.

The consideration of whether to purchase is a balance between finding a permanent solution to the current risks associated with the current course layout as opposed to the significant financial outlay associated with the eventual risk mitigation. We have been advised by solicitors acting on behalf of our insurers that the risk associated with a potential claim is high and likely in an action of nuisance and potentially negligence should the current operation of the golf course continue in its current form.

In addition, we are also advised that our duty to the adjacent residents is higher than our ordinary duty of a public authority due to the commercial nature of the golf course business.

However, Council should consider the reasonableness of an estimated long term cost of \$2 million which would wholly ameliorate the current risk in the context of its risk tolerance.

