	REPORT TO LEADER UPON URGENT DECISION TO BE CONSIDERED ON 26 SEPTEMBER 2007				
	<table border="0"> <tr> <td>Key Decision</td> <td style="text-align: right;">Yes</td> </tr> <tr> <td>Forward Plan Ref No</td> <td style="text-align: right;">N/A</td> </tr> </table>	Key Decision	Yes	Forward Plan Ref No	N/A
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Corporate Priority – Creating Healthy and Vibrant Communities	<table border="0"> <tr> <td>Cabinet Portfolio Holder</td> <td style="text-align: right;">Councillor Jane Mortimer</td> </tr> </table>	Cabinet Portfolio Holder	Councillor Jane Mortimer		
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JOINT REPORT OF: Strategic Director of Corporate Services – SDCS/07/073, Head of Legal and Democratic Services – HLDS/07/053 and Head of Property Services – HPrp/07/058

WARDS AFFECTED: EASTFIELD, SEAMER, FALSGRAVE PARK

SUBJECT: RELEASE OF COVENANT AFFECTING LAND OWNED BY SCARBOROUGH FOOTBALL CLUB

RECOMMENDATION (S):

That the Council accept the offer of the Liquidator to sell the McCain Stadium to the Council at a “fair market price”.

REASON FOR RECOMMENDATION (S):

To ensure that the purposes for which the restrictive covenants on the football ground were established are maintained

HIGHLIGHTED RISKS:

The value of the covenants on the land to the Borough may be lost.

1. INTRODUCTION

1.1 In 1960 the Council sold the football stadium at Seamer Road to Scarborough Football Club Limited. However, the land was subject to the following covenants:

- (a) That the land was only to be used for the purpose of football or other sport or pastime or purposes ancillary thereto without the previous written consent of the Council

- (b) That no building be constructed on the land without the Council's consent
- (c) That the land be maintained in a suitable condition for use as a ground for football or other sport or pastime or purposes ancillary thereto

- 1.2 In addition the Council retained first right to buy back the land at fair market price, within a calendar month of it being offered the land, subject to it paying a fair market price. In the absence of agreement upon a fair market price the price is to be determined by either a jointly instructed "umpire" (appointed in accordance with Arbitration legislation) or in the alternative two referees.
- 1.3 A fair market price would take account of the ability of the Council to enforce the covenants on the land and other factors that touch upon the value of the land.
- 1.4 Were the Council to determine not to purchase the land the Liquidator will pursue his application to the Lands Tribunal to release the covenants on the land with the intention.

2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN

- 2.1 This report is relevant to the objective of improving the quality of life, through active participation in leisure and cultural activities.

3. BACKGROUND AND ISSUES

ISSUES

- 3.1 The detailed background and risk matrix relevant to this decision is found in the report to Cabinet of 19 June 2007 which is numbered respectively: SDCS/07/32, HLDS/07/32 and HPrp/07/37
- 3.2 Subsequent to the preparation of that report, on 20 June 2007 Scarborough Football Club Ltd were wound up by the High Court with debts of approximately £2,100,000.00. In addition Administration costs in the sum of approximately £400,000.00 were incurred before the Company was wound up.
- 3.3 The Liquidator thereafter indicated his intention to apply to the Lands Tribunal to remove the covenants upon the land referred to in paragraph 1.1 above.
- 3.4 On 9 July 2007 Council delegated to the Leader authority on behalf of the Council, if so advised, to:
 - (a) oppose the Liquidator's application to the Lands Tribunal for removal of the Council's covenants upon the ground;
 - (b) progress such other arrangements as may facilitate the protection of the interests of the Community in ensuring the continuing provision of land for sport or other pastimes or purposes ancillary thereto; and
 - (c) determine whether to exercise the right of pre-emption to purchase the McCain Stadium or otherwise protect the Council's interest in the ground.

- 3.5 The Leader was required to have regard to advice from the Strategic Director of Corporate Services, the Head of Legal and Democratic Services and the Football Advisory Group comprising the Group Leaders of the Council before making this decision.
- 3.6 On 5 September the Council received an offer from the Liquidator to sell the McCain Stadium to the Council at a “fair market price” in accordance with the right of pre-emption referred to at paragraph 1.2 above.
- 3.7 On 19 September 2007 the Football Advisory Group comprising the Group Leaders of the Council met and unanimously recommended that the Leader accept this offer, subject to first obtaining Counsel’s advice upon the enforceability of the Council’s covenants on the land, to protect the purposes for which the restrictive covenants on the football ground were established.
- 3.8 On 24 September 2007 advice was received from Counsel that provides confidence that the Council is able defeat the Liquidator’s application to the Lands Tribunal to have the Covenants discharged.

4. CONSULTATION

- 4.1 This report has not been the subject of formal consultation given the time constraints.

5. ASSESSMENT

- 5.1 Were the Council to seek to buy the ground the liquidator, on behalf of the creditors, would be obliged to seek the maximum capital receipt for the ground. Failing agreement on a fair market price, valuation would be referred to an arbitrator for determination of a fair market price.
- 5.2 A fair market price is assessed as at the date of acceptance of the offer. It would need to take into account the current restriction that exists upon the use of the ground through the covenants. Counsel’s advice has been obtained upon the covenants and that advice has provided comfort to the authority in relation to the enforceability of the covenants.
- 5.3 In addition there are a number of additional factors that will impact upon and need to be taken into account in valuing the land. . For example, Members will be familiar with Planning Policy R5 which provides that existing sport, recreation and leisure facilities that are well utilised by the community will be safeguarded and development that would involve the loss of such facilities will not normally be permitted unless a convenient replacement facility is identified and made available for use or existing facilities can be enhanced through the redevelopment of a small part of the site.
- 5.4 In the absence of agreement with the Liquidator upon what is a fair market price it is anticipated that this issue will be referred to a jointly instructed umpire.

- 5.5 If the Council does not take the opportunity to exercise its right of pre-emption the liquidator would be obliged to pursue sale of the ground to alternate purchasers. In such circumstances, the Council would be be reliant upon the defending the covenants through the Lands Tribunal and the planning process to ensure the future provision of leisure land for sport, recreation and leisure within the Borough.

6. IMPLICATIONS

6.1 Policy

- 6.1.1 The Council has previously sought to protect land including the football ground on Seamer Road for sport within the Borough by the imposition of covenants.

6.2 Legal

The Legal implications of this report are set out within the body of this report.

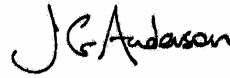
6.3 Financial Implications

- 6.3.1 To agree to release the covenants the Council would need to consider the loss in value of its interest in the land arising from loss of the covenants and acquiring an alternate
- 6.3.2 The Council is able to borrow funds under the Pridential Borrowing regulations. This allows all Councils to incur such borrowing as it considers to be affordable. It is the Council's current policy not to incur borrowing for capital schemes, given the financial pressures on the revenue budget.
- 6.3.3 Therefore, were a purchase of the ground contemplated, in order to fund any potential purchase, the Council would need to be satisfied that this represents an exceptional situation and that such borrowing is "affordable".
- 6.3.4 In practical terms the "borrowing" that the Council would incur would be from internal investments it already holds, and would represent "internal borrowing". No external borrowing would be incurred, rather the level of investments held on deposit would be reduced. The impact of this is that there would be a loss of interest receipts, of the order of £60,000 for every £1m of internal borrowing. It is considered that this can be accomodated from the overall treasury management activity, which continues to perform well, showed a surplus as part of 2006/07 accounts, and recent interest rate rises have also had a beneficial impact.
- 6.3.5 Were a decision made to incur borrowing, in the medium term the Council should ideally look to repay back any internal borrowing therefore for purchase of the site to be contemplated it would need to seen as an opportunity that ultimately led to a capital receipt in some form. Either directly related to the site or otherwise.

6.3.6 In addition to capital costs, in the event of purchase of the ground the Council would incur business rates on the ground, the sum in the current year is £8,880. There is provision that could meet these costs within the treasury management budget.



**Strategic Director
of Corporate Services**



**Head of Legal and
Democratic Services**



**Head of Property
Services**

Author: Ian Anderson, Legal and Democratic Services
Telephone No: 01723 232348
0870 230 4160 No: 08702 384159
E-mail address: ian.Anderson@scarborough.gov.uk

Background Papers:
None

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Ian Anderson, on 01723 232348 or email ian.anderson@scarborough.gov.uk