

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 24 April 2018
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.1
Originating Officer: Mike Carey - Manager Financial Services
Responsible Director: Terry Crackett – Director Corporate Services
Subject: Sale of Land for Non-Payment of Rates
For: Decision

1. Sale of Land for Non-Payment of Rates – Exclusion of the Public

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- Acting CEO, David Waters
- Acting Director Engineering & Assets, Chris Janssan
- Director Strategy & Development, Marc Salver
- Director Corporate Services, Terry Crackett
- Executive Manager Governance & Performance, Lachlan Miller
- Manager Financial Services, Mike Carey
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 19.1: (Sale of Land for Non-Payment of Rates) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3) (i) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds that we take place, involving the council or an employee of the council, the disclosure of which could reasonably be expected to prejudice the legal processes required to progress the sale of land.

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 and discussion confidential.

2. Sale of Land for Non-Payment of Rates – Confidential Item

SUMMARY

At the meeting of Council held on 15 December 2015 a Debt Recovery Policy was adopted that supports the sale of land for unpaid rates where arrears are in excess of the 3 year requirement outlined within S.184 of the *Local Government Act 1999*.

This report discloses a group of eight ratepayers who are more than three years in arrears, and therefore this report seeks authorisation to sell their properties to discharge their rate obligations.

RECOMMENDATION

Council resolves:

1. That the report be received and noted
2. Initiates proceedings to sell the following properties in accordance with S.184 of the *Local Government Act 1999*:

A2005 – VG 0313029103	Sharon Lesley REEVES	\$11,121.32
A6451 – VG 5672602488	Matthew Marcus & Pauline Melissa CAMP	\$9,160.93
A9755 – VG 3305368002	Deborah Constance FOSTER	\$9,085.05
A14527 – VG 3304125455	Natalie Jane MOLINARA	\$12,821.50
A14711 – VG 4710652001	Donald John SCHUTZ	\$7,147.96
A15066 – VG 4711034002	Darren Carl MUELLER	\$11,405.24
A20150 – VG 5671519906	Bradley BOERTH	\$9,243.61
A15748 – VG 4710512009	Christopher & Dianne Heather BADEN	\$6,622.43

1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal 4	A Recognised Leading Performer
Key Issue 4.2	Management and Risk Responsibility
Key Action 4.2.6	Manage and maintain the sustainable financial position of Council

➤ Legal Implications

The sale of land for non-payment of rates is supported by Section 184 of the *Local Government Act 1999* and the *Local Government (Financial Management) Regulations 2011*.

➤ **Risk Management Implications**

Conducting the rates recovery process outlined will assist in mitigating the risk of:

Ensuring finances and assets are managed to support changing community needs in a sustainable cost effective way.

Inherent Risk	Residual Risk	Target Risk
Medium (4D)	Low (2E)	Low (2E)

A reduction in the level of debt held by Council as a result of outstanding rates will ensure that financial resources can be deployed in areas that align with Council's Strategic Management Plans.

➤ **Financial and Resource Implications**

All costs associated with undertaking the sale of land process are recoverable from the proceeds of sale. Costs are estimated at \$3,000 per property and will include advertising, legal fees, search fees and conveyancing, and a further 2% of sale value in auctioneer's fees.

Leading up to the sale of land process, debt recovery costs, as incurred, are added to the rate debt outstanding.

At the time of writing this report the value of outstanding rates on the identified properties proposed for sale totals \$76,608. Payment of these rate arrears will reduce the level of outstanding debts and positively impact on the cash flow of the organisation.

➤ **Customer Service and Community/Cultural Implications**

Not applicable

➤ **Environmental Implications**

Not applicable

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

Council Committees: Not Applicable
Advisory Groups: Not Applicable
Administration: Not Applicable
Community: Not Applicable

2. BACKGROUND

Local Government Act

As detailed in Section 184 of the Act (**Appendix 1**), if an amount by way of rates in respect of land has been in arrears for more three years or more, Council may sell the land.

The process that is required to be undertaken before sale states that Council must send a notice to the principal ratepayer at the address appearing in the assessment record:

1. stating the period for which the rates have been in arrears;
2. stating the amount of the total liability for rates presently outstanding in relation to the land; and
3. stating that if the amount is not paid in full within one month of service of the notice (or such longer time as the council may allow), Council intends to sell the land for non-payment of rates.

It also considered prudent to attach a copy of the notice in a conspicuous place on the land and to advertise the proposed sale in a newspaper circulating within the state.

The land is sold at auction after advertising the sale twice in a newspaper circulating throughout the state. If an inadequate price is offered at auction, then the land may be sold by private contract for the best price that Council can reasonably obtain.

If the owner cannot be located, then surplus funds are treated as unclaimed monies under the Unclaimed Monies Act once all other creditors have been satisfied.

3. ANALYSIS

At a briefing of Council held on 3 December 2015 it was identified that there were 60 properties with arrears in excess of the 3 year period that would enable a progression to sale in accordance with the Act. These properties had a total level of rate arrears approximating \$905k.

A subsequent Debt Recovery Policy was subsequently endorsed by Council on 15 December 2015 in which support for proceeding with the sale of land process was provided. As a result of this policy there has been a steady improvement in outstanding rate debtor balances at year end as seen in the table below, with properties with arrears in excess of the 3 year period reduced to an amount just over \$600k.

Rate Debtor Comparison across Financial Years \$'000			
Debtors	June 2015	June 2016	June 2017
Rates General	1,908	1,539	1,333
Rates Postponed	20	25	55
	1,928	1,564	1,388

Although there is an amount of work required to progress the sale process, an additional eight properties have been selected for progression based on the length of time in arrears, the value of rate arrears and the likely level of a successful sale.

The following table contains the ratepayer details held within the rating system for the proposed eight properties and a brief update of the current circumstances applicable:

A2005 – VG 0313029103 – Sharon Lesley REEVES	
Lot 96 Sec: P1139 FP:129250 CT:5369/263 – 202 Gully Road PICCADILLY	
This property is believed to be occupied by the owner. Rates have been in arrears since December 2014.	\$11,121.32
A6451 – VG 5672602488 – Matthew Marcus & Pauline Melissa CAMP	
Lot 215 Sec: P5036 DP:28776 CT:5061/918 – 18 Sandalwood Drive WOODSIDE	
This property is believed to be occupied by the owner. Rates have been in arrears since December 2014.	\$9,160.93
A9755 – VG 3305368002 – Deborah Constance FOSTER	
Lot 73 Sec: P1145 FP:158119 CT:5393/659 – 7 Old Mount Barker Road CRAFTERS	
This property is believed to be occupied by the owner. Rates have been in arrears since June 2014.	\$9,085.05
A14527 – VG 3304125455 – Natalie Jane MOLINARA	
Lot 7 Sec: P45 DP:40187 CT:5212/403 – 7 Pirralilla Place STIRLING	
This property is believed to be occupied by the owner. Rates have been in arrears since December 2014.	\$12,821.50
A14711 – VG 4710652001 – Donald John SCHUTZ	
Lot 95 Sec: P6594 DP:25360 CT:5432/899 – 22A Olivedale Street BIRDWOOD	
This property is believed to be occupied by the owner. Rates have been in arrears since December 2014.	\$7,147.96
A15066 – VG 4711034002– Darren Carl MUELLER	
Lot 19 Sec: P6507 DP:16610 CT:5478/548 – 11 Sinkinson Court MOUNT TORRENS	
This property is believed to be occupied by the owner. Rates have been in arrears since March 2014.	\$11,405.24
A20150 – VG 5671519906 – Bradley BOERTH	
Lot 23 Sec: P5116 FP:156205 CT:5511/272 – 20 Jeffrey Street LOBETHAL	
The property is believed to be occupied by the owner. Rates have been in arrears since September 2013.	\$9,243.61
A15748 – VG 4710512009 – Christopher & Dianne Heather BADEN	
Lot 8 Sec: P6046 DP:4411 CT:5695/479 – 26 Randell Terrace GUMERACHA	
The property is believed to be occupied by the owner. Rates have been in arrears since September 2013.	\$6,622.43

As can be seen from the above, whilst all of these properties are residential properties that are currently occupied, all attempts to recover the outstanding rates have been unsuccessful.

It is anticipated that once the formal process has been commenced for sale that most, if not all, of the rates outstanding will be settled (including additional costs incurred).

It should also be noted that a separate letter was issued to each of the ratepayers in the week beginning 12 February 2018 advising them of Council's intention to progress towards sale should arrangements not be made in the interim. No arrangements have been forthcoming.

As outlined in Council Debt Recovery Policy, should a ratepayer be experiencing financial hardship it is possible to postpone the recovery process to avoid progression to sale. For the purposes of the policy “financial hardship” means a situation where a ratepayer is unable, reasonably, because of prolonged illness or unemployment, or other reasonable cause, to discharge their financial obligations to the Council and the ratepayer reasonably expects to be able to discharge those obligations if payment arrangements were changed.

Financial hardship does not include circumstances where a person is simply unwilling to make payment.

Cases of financial hardship will be considered by application on an individual basis and always with a view to the ratepayer re-establishing financial capability and, wherever possible, meeting their financial obligations.

If an application for relief is refused, the applicant may seek a review of the decision by a more senior officer or the CEO.

An Internal Review of a Council decision is also available under section 270 of the *Local Government Act 1999*. This is a process established by legislation that enables a Council to reconsider all the evidence relied on to make a decision, including new evidence if relevant. This process is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means.

4. OPTIONS

Council has the following options in relation to this report:

- To endorse the sale of land for unpaid rates as identified.
- Not to endorse the sale of land for unpaid rates.

5. APPENDIX

- (1) Extract of Section 184 of the *Local Government Act 1999* - Sale of Land for Overdue Rates

Appendix 1

*Extract of Section 184 of the Local Government Act
1999 - Sale of Land for Overdue Rates*

184—Sale of land for non-payment of rates

- (1) If an amount payable by way of rates in respect of land has been in arrears for three years or more, the council may sell the land.
- (2) Before a council sells land in pursuance of this section, it must send a notice to the principal ratepayer at the address appearing in the assessment record—
 - (a) stating the period for which the rates have been in arrears; and
 - (b) stating the amount of the total liability for rates presently outstanding in relation to the land; and
 - (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the council may allow), the council intends to sell the land for non-payment of rates.
- (3) A copy of a notice sent to a principal ratepayer under subsection (2) must be sent—
 - (a) to any owner of the land who is not the principal ratepayer; and
 - (b) to any registered mortgagee of the land; and
 - (c) if the land is held from the Crown under a lease, licence or agreement to purchase—to the Minister who is responsible for the administration of the *Crown Lands Act 1929*.
- (4) If—
 - (a) a council cannot, after making reasonable inquiries, ascertain the name and address of a person to whom a notice is to be sent under subsection (2) or (3); or
 - (b) a council considers that it is unlikely that a notice sent under subsection (2) or (3) would come to the attention of the person to whom it is to be sent,the council may effect service of the notice by—
 - (c) placing a copy of the notice in a newspaper circulating throughout the State; and
 - (d) leaving a copy of the notice in a conspicuous place on the land.
- (5) If the outstanding amount is not paid in full within the time allowed under subsection (2), the council may proceed to have the land sold.
- (6) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the council may set a reserve price for the purposes of the auction).
- (7) The exception under subsection (6) relating to land held from the Crown will not apply if the Minister responsible for the administration of the *Crown Lands Act 1929* grants his or her consent to the sale of land by public auction.
- (8) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating throughout the State.
- (9) If, before the date of such an auction, the outstanding amount and the costs incurred by the council in proceeding under this section are paid to the council, the council must call off the auction.

- (10) If—
- (a) an auction fails; or
 - (b) an auction is not to be held because the land is held from the Crown under a lease, licence or agreement to purchase,
- the council may sell the land by private contract for the best price that it can reasonably obtain.
- (11) Any money received by the council in respect of the sale of land under this section will be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
 - (b) secondly—in discharging any liabilities to the council in respect of the land;
 - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes, or any prescribed liability to the Crown in respect of the land;
 - (d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (e) fifthly—in discharging any other mortgages, encumbrances and charges of which the council has notice;
 - (f) sixthly—in payment to the owner of the land.
- (12) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (13) If land is sold in pursuance of this section, an instrument of transfer or conveyance (as appropriate) under the council's common seal will, on registration, operate to vest title to the land in the purchaser.
- (14) The title vested in a purchaser under subsection (13) will be free of—
- (a) all mortgages and charges; and
 - (b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.
- (15) An instrument of transfer or conveyance in pursuance of a sale under this section must, when lodged with the Registrar-General for registration, be accompanied by a statutory declaration made by the chief executive officer of the council stating that the requirements of this section in relation to the sale of the land have been observed.
- (16) If it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section (or other relevant instrument), the Registrar-General may register a transfer or conveyance despite the non-production of the duplicate (or instrument), but in that event will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.
- (17) A reference in this section to land or title to land is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.

- (18) This section does not authorise the sale of non-rateable land on account of the non-payment of a service charge.
- (19) This section does not apply where the payment of rates has been postponed under, or in accordance with, another provision of this Act (until the postponement ceases to have effect or unless the rates become rates in arrears under the terms of the relevant provision).

3. Sale of Land for Non Payment of Rates – Period of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 19.1 in confidence under sections 90(2) and 90(3)(i) of the *Local Government Act 1999*, resolves that an order be made under the provisions of Sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until either the negotiations for sale are completed and a settlement reached or until legal proceedings have concluded, but no longer than 12 months.

Pursuant to Section 91(9)(c) of the *Local Government Act 1999*, that Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.