

**ADELAIDE HILLS COUNCIL
COUNCIL MEETING
Tuesday 25 October 2016
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.3

Originating Officer: Paul Francis, Manager Finance

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

a) That under the provisions of section 90(2) of the *Local Government Act 1999* an order is made that the public be excluded from the meeting, with the exception of:

- CEO, Andrew Aitken
- Director Corporate Services, Terry Crackett
- Director Engineering & Assets, Peter Bice
- Director Community & Customer Service, David Waters
- Director Strategy & Development, Marc Salver
- Executive Manager Governance & Risk, Lachlan Miller
- Minute Secretary, Pam Williams

in order to consider Agenda Item 19.3: Sale of Land for Non-Payment of Rates in confidence.

- b) The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified in (a) above, be excluded to enable Council to consider the report at the meeting on the following grounds:
- c) Section 90(3) (i) of the Local Government Act, 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 will take place, involving the council or an employee of the council, the disclosure of which could reasonably be expected to impact on legal processes required to progress the sale of land.
- d) 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 s184 of the *Local Government Act 1999*.

This report discloses a group of eleven 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 that:

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

A9536 – VG 3304970448	James Michael SIMPSON	\$5,821.75
A10444 – VG 330651100*	David Noel CLARK	\$6,657.49
A10407 – VG 3306131250	Terry Dale CAVANAGH	\$7,617.34
A14113 – VG 3300496080	Margaret Winifred SEXTON	\$14,340.69
A11667 – VG 3304182329	Richard Oliver FALKNER AND Carina Marie-Therese ANGELO	\$13,598.75
A12502 – VG 330226905*	John Charles Ikin BADGER	\$11,393.16
A17292 – VG 4711792006	Neil Anthony and Heather Louise SHURVEN	\$11,460.96
A16935 – VG 4714243002	Stephen Andrew and Lisa Paige MOYLE	\$9,671.48
A16988 – VG 471432200*	Calvaresi Develoments Pty Ltd	\$9,257.67
A19758 – VG4710643762	France Benjamin CONSTANCE	\$7,770.11
A7070 – VG 5671406100	Geoffrey Holbrook and Rosalie Maye TURNER	\$8,972.33

3. Sale of Land for Non-Payment of Rates – Period of Confidentiality
That having considered at Agenda Item 19.3 in confidence under sections 90(2) and 90(3) (i) of the *Local Government Act 1999*, 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.
4. Pursuant to section 91(9) (a) of the *Local Government Act 1999*, that Council delegates the duty to conduct an annual review of the confidentiality order to the Chief Executive Officer, or his sub-delegate.
5. Pursuant to section 91(9)(c) of the *Local Government Act 1999*, that Council delegates the power to revoke the confidentiality order to the Chief Executive Officer, or his sub-delegate.

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 *Local Government Act 1999* and the *Local Government (Financial Management) Regulations 2011*.

➤ Risk Management Implications

Conducting the rates recovery process 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.

At the time of writing this report the value of outstanding rates on the properties totalled \$106,561.73. Payment of these rate arrears will reduce the level of outstanding loans and positively impact on the Net Liabilities Ratio included in the Long Term Financial Plan.

➤ Customer Service and Community/Cultural Implications

Not applicable.

➤ Environmental Implications

Not applicable.

➤ Engagement/Consultation with Committee, Regional Subsidiary, Advisory Group and 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 1891* 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 currently 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.

Given the substantial amount of work required to progress the sale process a limited number of properties were initially selected for progression in early 2015 based on the value of rate arrears, the likely level of a successful sale and where interest has previously been expressed.

As a consequence of progressing to sale for the initial group of 11 properties all outstanding rates totalling in excess of \$125k were settled with only one property progressing to actual sale. This property being an unmade road reserve in Forreston.

This report is now seeking approval to progress the sale of land for overdue rates process for a further 11 properties. The following table contains the ratepayer details held within the rating system for these properties and a brief update of the current circumstances applicable:

A9536 – VG 3304970448 - James Michael SIMPSON	
Lot 105 Sec: P39 DP:61998 CT:5916/701 – 41 Sprigg Road CRAFTERS	
This property is believed to be occupied by the owner. Rates have been in arrears since Sept 2013.	\$5,821.75
A10444 – VG 330651100*– David Noel CLARK	
Lot 95 Sec: P849 FP:158541 CT:5353/423 – 26 Nation Ridge Road ALDGATE	
This property is believed to be occupied by the owner. Rates have been in arrears since Sept 2012. The owner has been in contact with Council but not reached agreement for payment.	\$6,657.49
A10407 – VG 3306131250 – Terry Dale CAVANAGH	
Lot 2 Sec: P759 FP:146378 CT:5265/37 – 27 Emery Road ALDGATE	
This property is believed to be occupied by the owner. The ratepayer is currently paying \$20 per week and has not responded to any correspondence seeking an increase to his weekly payment. Rates have been in arrears since September 2012.	\$7,617.34
A14113 – VG 3300496080 – Margaret Winifred SEXTON	
L 2 Sec: P359 FP:1295556 CT:5780/565 – 9 Ayr Street BRIDGEWATER	
This property is believed to be occupied by the owner. Rates have been in arrears since March 2011. The property was placed on the market in September 2016.	\$14,340.69
A11667 – VG 3304182329 – Richard Oliver FALKNER AND Carina Marie-Therese ANGELO	
Lot 8 Sec: P45 DP:10517 CT:5477/976 – 5 St Wilfred Drive STIRLING	
This property is believed to be occupied by one of the owners. Rates have been in arrears since June 2011. The owner has advised the property was placed on the market in September 2016.	\$13,598.75
A12502 – VG 330226905*– John Charles Ikin BADGER	
Lot 25 Sec: P93 DP:53955 CT:5790/339 – 10 Kemp Road ALDGATE	
This property is believed to be occupied by the owner. Rates have been in arrears since December 2012.	\$11,393.16
A17292 – VG 4711792006 – Neil Anthony and Heather Louise SHURVEN	
Lot 5 Sec: P5518 FP:15965 CT:5169/856 – 1301 Lower North East Road HOUGHTON	
The property is believed to be occupied by the owner. Rates have been in arrears since September 2012.	\$11,460.96
A16935 – VG 4714243002 – Stephen Andrew and Lisa Paige MOYLE	
Lot 1 Sec: P50 FP:108929 CT:5194/674 – 2302 Kersbrook Road KERSBROOK	
The property is believed to be occupied by the owner. Rates have been in arrears since December 2012.	\$9,671.48
A16988 – VG 471432200* – Calvaresi Develoments Pty Ltd	
Sec: 613 HDP:105700 CT:5264/692 – 392 Mount Gawler Road INGLEWOOD	
The property is believed to be occupied by the owner. Rates have been in arrears since September 2013.	\$9,257.67

A19758 – VG4710643762 – France Benjamin CONSTANCE	
Lot 13 Sec: P6594 CP:22978 CT:5946/276 – 3 Astia Place BIRDWOOD	
The owner is overseas. The partner is believed to occupy the property. Rates have been in arrears since September 2013.	\$7,770.11
A7070 – VG 5671406100 – Geoffrey Holbrook and Rosalie Maye TURNER	
Lot 102 Sec: P5125 DP:14139 CT:5243/122 – 1 Wood Street LOBETHAL	
The property is believed to be occupied by the owner. Rates have been in arrears since March 2012.	\$8,972.33

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 8 August 2016 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. (Recommended)
- 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).