


 <p>Adelaide Plains Council</p>	21.2 Confidential Item
27 September 2021	

21.2 Sale of Land for Non-Payment of Rates

RECOMMENDATION

“that:-

- 1. Pursuant to section 90(2) of the *Local Government Act 1999*, the Council orders that all members of the public, except Chief Executive Officer, Acting General Manager – Governance and Executive Office, General Manager – Development and Community, General Manager – Infrastructure and Environment, General Manager – Finance and Business, Administration and Executive Support Officer/Minute Taker and Information Technology Support Officer be excluded from attendance at the meeting of the Council for Agenda Item 21.2 – *Sale of Land for Non-Payment of Rates*;**
- 2. Council is satisfied that pursuant to section 90(3)(a) of the *Local Government Act 1999*, Item 21.2 – *Sale of Land for Non-Payment of Rates* concerns information of a confidential nature the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), constituting information relevant to the sale of land for non-payment of rates; and**
- 3. Council is satisfied that the principle that Council meetings should be conducted in a place open to the public has been outweighed by the need to keep the information, matter and discussion confidential.”**

 Adelaide Plains Council	21.2	Sale of Land for Non-Payment of Rates
	Department: Report Author:	Finance and Economic Development General Manager – Finance and Economic Development
Date: 27 September 2021	Document Ref:	D21/41074

EXECUTIVE SUMMARY

- The purpose of this report is to provide Council with a list of properties with over three (3) years of rates outstanding and to consider the sale of those properties for non-payment of rates.
- The amount of rates in arrears between more than 3 years and first quarter instalment of 2021/2022 Financial Year currently amount to \$200,639. This includes interest and fines applied to outstanding amounts.
- Rates are the principal source of funding for Council services, representing approximately 80% of the total operating income in 2021/2022.
- Therefore, Council has an obligation to ensure that long-term outstanding rates do not become a heavy financial burden to the community given its reliance upon this income.
- In accordance with Clause 3.3.8, Council’s *Rates Arrears and Debtor Management Policy* adopted by the Council on 24 February 2020:-

“Council may proceed to sell the land where any rate or charge is overdue and has remained in arrears for more than three (3) years from the date on which it became payable in accordance with Section 184 of the Local Government Act 1999”.

RECOMMENDATION

“that Council, having considered Item 21.2 – *Sale of Land for Non-Payment of Rates*, dated 27 September 2021, receives and notes the report and in doing so:-

- 1. Authorises the Chief Executive Officer to take action pursuant to Section 184 of the *Local Government Act 1999* to recover outstanding rates in accordance with Rates Arrears and Debtor Management Policy from properties listed in Attachment 1 to this Report;**
- 2. Pursuant to Section 38 and 44 of the *Local Government Act 1999* authorises the Chief Executive Officer and the Mayor to execute the necessary documents in relation to the sale of the respective properties (if any) under common seal; and**
- 3. Authorises the Chief Executive Officer or his delegate to call for Expressions of Interest from Licensed Real Estate Agents/Auctioneers to undertake the Auction of those properties that**

proceed to Public Auction (if any) to recover outstanding rates pursuant to Section 184 of the Local Government Act 1999.”

BUDGET IMPACT

Estimated Cost:	Not Applicable. Any costs associated with the sale of land under Section 184 of the <i>Local Government Act 1999</i> for non-payment of rates is recoverable from sale proceeds. Leading up to the sale of land process, debt recovery costs, as incurred, are added to the rate debt outstanding. Costs are estimated at \$3,000 per property and will include advertising, legal fees, search fees and conveyancing, and a further percentage of sale value in auctioneer’s/real estate agent’s fees. Potential recovery of \$200,639 of long-overdue rates.
Future ongoing operating costs:	Not Applicable
Is this Budgeted?	Not Applicable

RISK ASSESSMENT

If Council does *not* exercise its power under the *Local Government Act 1999* to recover long-overdue rates, this would send the wrong message to other ratepayers who are paying their rates on time, who may decide to not pay their rates accordingly.

On the other hand, the community may see that Council is neglectful with not having proper systems in place to recover its debts. Albeit, if Council decides to sell properties under Section 184 of the Act for non-payment of rates, Council may attract criticism and scrutiny from the community and the media if the properties concerned are residential dwellings currently being occupied. However it is only as a last resort that this action occurs.

Attachments

1. List of properties which, as of 13 September 2021 with over three (3) years of overdue rates.

DETAILED REPORT

Purpose

The purpose of this report is to provide Council with a list of properties with over three (3) years of rates outstanding and to consider the sale of those properties for non-payment of rates.

Background/History

Section 184 of the *Local Government Act 1999* states:-

- (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.*

Council, at its Ordinary Meeting held on 18 September 2017, resolved (in confidence) to sell twelve (12) properties with combined long-overdue rates of \$85,076 pursuant to section 184 of the *Local Government Act 1999*. Out of twelve (12) properties:-

- two (2) deceased estate properties were sold by the Council;
- eight (8) properties were sold privately or through mortgagee repossession orders;
- one (1) property owner has paid in full its rates liability through subsequent part payments, and in doing so has prevented the commencement of the Section 184 process;

- one (1) owner (primary production property) part paid their arrears preventing Section 184 process. However, due to non-payment since, have fallen behind again.

At the adjourned ordinary meeting held on 4 February 2019, Council resolved (in confidence) to sell 9 properties pursuant to Section 184 of the *Local Government Act 1999*, to recover \$73,577 of rates outstanding for more than three (3) years. Following the Council decision:-

- seven (7) property owners have paid their overdue rates in full,
- one (1) had made substantial payments prevented the commencement of the Section 184 process, and
- one (1) vacant dwelling was sold under Section 184.

Discussion

Adelaide Plains Council's main source of income is rates revenue which represents approximately 80% of the total operating income in 2021/2022 Financial Year. Therefore, any overdue rates would add pressure on ratepayers who pay their rates on time, by way of extra interest expenses on short-term borrowings Council has to make to bridge funding shortfall.

Council management is continually reviewing its rate debtors and where necessary has issued Final Notices or negotiated payment plans.

However, there are some property owners that avoid these responsibilities and do not pay council rates. They are not prepared to speak with Council management or debt collection agency staff. Even if they do make payment agreements, previous experience suggests that they have not honoured the payment plans. It is these property owners that have become a financial burden to the community.

Accordingly, Council management is proposing that Elected Members consider action pursuant to Section 184 of the Local Government Act 1999 to sell properties in **Attachment 1** to recover long outstanding rates. This relates to 26 properties with combined overdue council rates of \$200,639 inclusive of quarter one (1) instalment of 2021/2022 Financial Year.

Should Council resolve to pursue sale for non-payment of rates in relation to any or all of the properties listed in the **Attachment 1**, Council management will send a preliminary letter to the property owner advising Council's intention to commence the sale of land for unpaid rates process, should the outstanding balance not be paid within 30 days. If no response is received to the preliminary letter, the following steps will be undertaken:

1. Management will instruct Council's debt collection agency Credit Solutions Pty Ltd, through its Solicitors, Oakbridge Lawyers, to send formal letters to the registered mortgagee and owner of these properties informing them of Council's intention to commence the sale of land process for unpaid rates if the total amount outstanding is not paid in full within one month of service of the notice.
2. If overdue rates are not paid within one month or an appropriate payment plan is not entered into with council management to reduce the outstanding debt together with ongoing rate commitments, vacant dwellings will proceed to sale for unpaid rates as per section 184 of the *Local Government Act 1999*.
3. Council Management will not proceed with the sale of land if a dwelling is currently occupied unless Council instructs Management to do so. However it is likely that notice of Council's

intention may trigger the mortgagee/owner into paying the outstanding council rates or entering into a suitable payment plan.

4. Any fees associated with this process will be added to the property debt and will be recovered when council rates are paid or the property is sold.

Further considerations

The process for the sale of land for non-payment of rates is onerous and time consuming and will require additional resources to complete the process. Further, to sell a land with occupied residence creates an added complication.

A high percentage of overdue rates on occupied residential land are paid by either the owner or the mortgagee prior to an auction, however when the sale of residential land is required there are additional considerations.

Where the dwelling is occupied by an owner or a tenant, Council may auction the land with the owner or tenant in residence. If vacant possession cannot be obtained by Council, the purchaser has the opportunity to rescind the contract and have the deposit returned, or proceed with settlement and obtain vacant possession themselves. Expenses related to the process of obtaining vacant possession are fully recoverable by Council at settlement pursuant to Section 184(11) of the *Local Government Act 1999*.

Conclusion

Management has taken all reasonable attempts to collect the outstanding rates in accordance with Council's *Rates Arrears and Debtor Management Policy*. However, given the age and the payment history, the overdue rates in **Attachment 1** are considered non-recoverable via debt collection agency.

It is for Council to consider whether to pursue sale of land for non-payment of rates, an option that is available pursuant to section 184 of the *Local Government Act 1999*.

References

Legislation

Local Government Act 1999

Council Policies

Rates Arrears and Debtor Management Policy

RECOMMENDATION

“that Council, having considered the matter of Agenda Item 21.2 – *Sale of land for Non-Payment of Rates* in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, resolves that:-

- 1. Attachment 1 to Agenda Item 21.2 – *Sale of Properties for Non-Payment of Rates* remains confidential and not available for public inspection until further order of Council;**
- 2. Pursuant to section 91(9)(a) of the *Local Government Act 1999*, the confidentiality of the matter will be reviewed every 12 months; and**
- 3. Pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke this confidentiality order to the Chief Executive Officer.”**