

 <p>Adelaide Plains Council</p>	21.2 Confidential Item
29 January 2019	

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, General Manger – Governance and Communications, General Manager – Development and Community, General Manager – Finance and Economic Development, Acting General Manager – Infrastructure and Environment, Governance Officer and Executive Assistant 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.”

	21.2	Sale of Land for Non-Payment of Rates
	Department: Report Author:	Finance and Economic Development General Manager – Finance and Economic Development
Date: 29 January 2019	Document Ref:	D19/654

EXECUTIVE SUMMARY

- The purpose of this report is:
 - To update Council in relation to the properties that it resolved to sell for non-payment of rates at its Ordinary Meeting on 18 September 2017; and
 - For Council to consider the sale of additional land for non-payment of rates.
- Rates are the principal source of funding for Council services, representing approximately 76% of the total operating income in 2017/2018.
- 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 Council’s *Rates Arrears and Debtor Management Policy* adopted by the Council on 19 June 2017:-

“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 29 January 2019, receives and notes the report and in doing so:-

- 1. Authorises the Chief Executive Officer to instruct Kemps Credit Solutions, through its Solicitors, Scott Lawyers, to take action pursuant to Section 184 of the *Local Government Act 1999* to recover outstanding rates for the properties listed in Attachment 2 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 properties for non-payment of rates is recoverable from sale proceeds. Potential recovery of \$49,059.05 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 Council rates, this would send the wrong message to other rate payers 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.

Attachments

1. Update in relation to properties that Council resolved to sell for non-payment of rates on 18 September 2017.
2. List of additional properties which, as at 31 December 2018, had three (3) years of overdue rates.

DETAILED REPORT

Purpose

The purpose of this report is:

- To update Council in relation to the properties that it resolved to sell for non-payment of rates at its Ordinary Meeting on 18 September 2017; and
- For Council to consider the sale of additional land for non-payment of rates.

Background/History

Section 184(1) of the *Local Government Act 1999* (the Act) provides:-

“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”.

Council, at its Ordinary Meeting on 18 September 2017, resolved (in confidence) to sell twelve (12) properties with combined long-overdue rates of \$85,075.60 pursuant to section 184 of the Act.

Out of twelve (12) properties, two (2) deceased estate properties were sold by the Council and seven (7) other properties were sold privately and through mortgagee repossession orders since September 2017. One (1) property has reduced its rates liability through subsequent part payments, and in doing so has prevented the commencement of the section 184 process.

These actions resulted in the recovery of \$67,441.80 (79% of the of the total overdue rates presented to the Ordinary Meeting on 18 September 2017) by the end of December 2018.

No action was taken in relation to two (2) properties, as they are currently occupied.

Attachment 1 to this Report shows the status update of the properties presented to the Ordinary Meeting on 18 September 2017, as at 31 December 2018.

Discussion

Council’s main source of revenue is Council rates. Council’s rates revenue, as a percentage of total income rose to 76% in the 2017/2018 Financial Year, from 70% in 2010/2011 Financial Year.

Overdue rates add pressure on the ratepayers who pay their rates on time, by way of extra interest expenses on short-term borrowings that Council has to make to bridge funding shortfalls.

Management continually reviews its rate debtors and where necessary issues Final Notices, or negotiates payment plans with these debtors in line with Council’s *Rates Arrears and Debtor Management Policy*.

However, there are some property owners who do not pay council rates on time, or at all, resulting in over three (3) years of outstanding Council rates (long-overdue rates).

These property owners typically do not respond to reminder letters and are not prepared to speak with Council staff to negotiate a payment plan, or in some instances do not honour the payment agreements entered into with the Council. In addition, these ratepayers, do not respond to communications from Council's debt collection agency or abide with court actions to recover overdue rates. It is these property owners that have become a financial burden to the community.

Attachment 2 to this Report identifies a further nine (9) properties with rates that have been overdue for three (3) years or more, to a total of \$49,059.05. It is for Council to consider the option of sale of land for non-payment of rates in relation to these properties.

Should Council resolve to pursue sale for non-payment of rates in relation to any or all of the properties listed above, the following steps will be undertaken:-

1. Management will instruct Scott's 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.
2. Where there is no mortgagee, Management will instruct Scott's Lawyers to send a formal letter to the property owner informing them of Council's intention to commence the sale of land process for unpaid rates.
3. Vacant dwellings will proceed to sale for unpaid rates as per section 184 of the Local Government Act 1999.
4. Management n will not actually 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 payment plan.
5. 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.

Conclusion

Management has ensured that all reasonable attempts to collect the outstanding rates have been made, in accordance with Council's *Rates Arrears and Debtor Management Policy*. The overdue rates are considered non-recoverable via other collection avenues.

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 and Attachment 2 to Agenda Item 21.2 – *Sale of Land 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.”**