

**ADELAIDE HILLS COUNCIL  
ORDINARY COUNCIL MEETING  
Tuesday 25 June 2019  
CONFIDENTIAL AGENDA BUSINESS ITEM**

**Item:** 19.4  
**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

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**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:

- CEO, Andrew Aitken
- Director Infrastructure & Operations, Peter Bice
- Director Development & Regulatory Services, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community Capacity, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Manager Financial Services, Mike Carey
- Governance & Risk Coordinator, Steven Watson
- 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*:

<b>A2490 – VG 0311997004 – 30 Old Cherryville Road CHERRYVILLE</b>	<b>\$5,032.51</b>
<b>A6904 – VG 5679037012 – 118 Hiscock Road WOODSIDE</b>	<b>\$8,858.75</b>
<b>A9302 – VG 330568200*– 190 Range View Drive CAREY GULLY</b>	<b>\$6,416.90</b>
<b>A10453 – VG 3306218006 – 168 Leslie Creek Road MYLOR</b>	<b>\$11,599.40</b>
<b>A15000 – VG 4710937007 – 9 Cromer Road BIRDWOOD</b>	<b>\$9,757.29</b>
<b>A17292 – VG 4711792006 – 1301 Lower North East Road HOUGHTON</b>	<b>\$9,170.96</b>
<b>A18330 – VG 4713918602 – 207 Cudlee Creek Road CUDLEE CREEK</b>	<b>\$9,552.10</b>
<b>A16867 – VG 4714030007 – Isaac Road CUDLEE CREEK</b>	<b>\$8,343.18</b>

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## 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 in the order of \$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 \$68,731. 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  
*Council Workshops:* Not applicable  
*Advisory Groups:* Not Applicable  
*Administration:* Manager Property Services  
Property Officer  
*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 in December 2015 it was identified that there were more than 50 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 \$900k.

A 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 some improvement in outstanding rate debtor balances at year end from 2015, with properties with arrears in excess of the 3 year period now reduced to an amount of just over \$600k.

Rate Debtor Comparison across Financial Years \$'000					
Debtors	June 2014	June 2015	June 2016	June 2017	June 2018
Rates General	1,629	1,908	1,539	1,333	1,476
Rates Postponed	22	20	25	55	75
	<b>1,651</b>	<b>1,928</b>	<b>1,564</b>	<b>1,388</b>	<b>1,551</b>
Rate Revenue	<b>31,389</b>	<b>32,312</b>	<b>33,811</b>	<b>34,301</b>	<b>35,513</b>
% Outstanding to Rates Raised	<b>5.3%</b>	<b>6.0%</b>	<b>4.6%</b>	<b>4.0%</b>	<b>4.4%</b>

Council has now investigated the next tranche of properties with greater than 3 years rates outstanding for Section 184 progression including discussion with our internal Property Services Department as many of these relate to deceased estates.

This investigation has identified an additional eight properties for progression to Section 184 sale 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:

<b>A2490 – VG 0311997004 – 30 Old Cherryville Road CHERRYVILLE</b>	
<b>Lot 3 Sec: P1191 FP:129957 CT:5336/140</b>	
This property is believed to be occupied by the owner. The ratepayer is currently paying \$25 per week and has indicated that they are unable to increase the payment. Rates have been in arrears in excess of 3 years.	<b>\$5,032.51</b>
<b>A6904 – VG 5679037012 – 118 Hiscock Road WOODSIDE</b>	
<b>Lot 12 Sec: P394 DP:51086 CT:5620/193</b>	
Council has previously tried to recover rate arrears through Debt Collection; however the Bailiff has been unable to serve the notice. Rates have been in arrears for 3 years.	<b>\$8,858.75</b>
<b>A9302 – VG 330568200*– 190 Range View Drive CAREY GULLY</b>	
<b>Lot 81 Sec: P350 FP:129535 CT:5271/788</b>	
This property is believed to be a rental property. Rates were previously paid out by the Mortgagee during a S.184 process in 2016. Rates have been in arrears for a further 3 years.	<b>\$6,416.90</b>
<b>A10453 – VG 3306218006 – 168 Leslie Creek Road MYLOR</b>	
<b>Lot 71 Sec: P852 FP:159348 CT:5463/255</b>	
This property is believed to be occupied by the owner. Ad hoc payments have been received but no contact or commitment has been received from the ratepayer through Council's Debt Recovery process. Rates have been in arrears for 3½ years.	<b>\$11,599.40</b>
<b>A15000 – VG 4710937007 – 9 Cromer Road BIRDWOOD</b>	
<b>Lot 2 Sec: P6595 FP:5783 CT:5501/82</b>	
This property is believed to be occupied by the owner. Ad hoc payments are being made but no payment plan has been agreed by the ratepayer. Rates have been in arrears for 4 years.	<b>\$9,757.29</b>
<b>A17292 – VG 4711792006 – 1301 Lower North East Road HOUGHTON</b>	
<b>Lot 5 Sec: P5518 FP:15965 CT:5169/856</b>	
This property is believed to be occupied by the owner. Rates have been in arrears for 3 years. Previous S.184 action was taken in 2016 resulting in the owner paying the debt. No amount has been received since the payment closed the previous S.184 action.	<b>\$9,170.96</b>
<b>A18330 – VG 4713918602 – 207 Cudlee Creek Road CUDLEE CREEK</b>	
<b>Lot 101 DP:51349 CT:5649/696</b>	
The property is believed to be occupied by the owner. Rates have been in arrears for 4 years. Only one payment of \$500 has been received since March 2015.	<b>\$9,552.10</b>

<b>A16867 – VG 4714030007 – Isaac Road CUDLEE CREEK</b>	
<b>Sec: 174 CT:6116/177; Sec: 175 CT:6116/177;</b>	
The property is vacant land. Rates have been in arrears for more than 6 years. Owner left the area in the early 1900s and adjoining owner (distant relative) who previously paid the rates no longer uses the land and does not wish to be responsible for rates. Department of Natural Resources has made enquiries regarding this piece of land but legislation requires the sale of land for non-payment of rates.	<b>\$8,343.18</b>

As can be seen from the above, whilst all of these properties except one are residential properties that are currently occupied, 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 27 May 2019 advising them of Council's intention to progress towards sale should arrangements not be made in the interim. No arrangements have been forthcoming at the time of this report.

#### Remaining Properties

Once the additional eight properties are considered for progression to a Section 184 sale, this will leave in the order of 30 properties, largely relating to deceased estates, where Council will consider undertaking alternative measures to address rates outstanding.

It is therefore proposed that once Council's internal property section has determined the best course of action for these properties, these will be brought to the Audit Committee for further discussion at its August 2019 meeting. It is noted that out of the 30 approx properties remaining, in the order of 10 properties will need to be considered for conversion to public roads.

#### Financial Hardship

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

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# **Appendix 1**

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

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## 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 19.4 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.**