

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 13 June 2023
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 18.1

Responsible Officer: Mike Carey
Manager Financial Services
Corporate Services

Subject: Sale of Land for the Recovery of Unpaid Rates

For: Decision

1. Sale of Land for the Recovery of Unpaid 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 Chief Executive Officer, David Waters
- Acting Director Community Capacity, Rebecca Shepherd
- Director Corporate Services, Terry Crackett
- Director Development & Regulatory Services, Natalie Armstrong
- Director Infrastructure & Operations, Peter Bice
- Executive Manager Governance & Performance, Lachlan Miller
- Governance & Risk Coordinator, Steven Watson
- Manager Financial Services, Mike Carey
- Minute Secretary, Tara Moyes

be excluded from attendance at the meeting for Agenda Item 18.1: (Sale of Land for the Recovery of Unpaid Rates) in confidence.

The Council is satisfied that it is necessary that the public, except for 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 (SA)*, 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 the Recovery of Unpaid Rates – Confidential Item

SUMMARY

At the meeting held on 24 November 2020 Council adopted a *Debt Recovery Policy* that supports the sale of land where rates have been in arrears for three (3) years or more as outlined within S184 of the *Local Government Act 1999 (SA)* (the “Act”).

This report discloses a group of nine (9) ratepayers who are more than three (3) years in arrears with rates totalling \$121,984.

Council approval is required to undertake a process to recover the rate arrears through sale of the properties.

RECOMMENDATION

Council resolves:

1. That the report be received and noted.
2. Authorises the Chief Executive Officer to proceed with the sale of land process by issuing Pre-Section 184 letters where relevant and Formal Notices pursuant to Section 184(1) – (4) of the *Local Government Act 1999 (SA)* for the nine (9) properties listed, with rates arrears greater than three (3) years and totalling \$121,983.50.

Assessment	Valuation Reference	Address	Amount Outstanding
A1170	VG 0312255002	118 Yarrabee Road GREENHILL	\$10,151.85
A1557	VG 0312509017	62 Basket Range Road URAILDA	\$11,432.86
A9918	VG 3304664504	121-123 Old Mount Barker Road STIRLING	\$20,561.12
A15384	VG 4713662002	56 Mount View Road MOUNT TORRENS	\$22,284.47
A17086	VG 4711486105	47 Hurst Road PARACOMBE	\$14,864.20
A19605	VG 3304662509	125 Old Mount Barker Road STIRLING	\$10,602.38
A19606	VG 3304662250	127 Old Mount Barker Road STIRLING	\$11,811.05
A20517	VG 3303152611	20 Renown Avenue CRAFTERS WEST	\$10,308.77
A20553	VG 3302399102	15 Fern Hill Road BRIDGEWATER	\$9,966.80

3. Authorises the Chief Executive Officer, pursuant to Sections 184 (5) – 184 (19) of the *Local Government Act 1999 (SA)*, to proceed with the sale of the nine (9) properties included in this report and described above, and to undertake any steps necessary to complete the sale(s).

1. BACKGROUND

Council's *Debt Recovery Policy* together with Council's *Rating Policy* provides the framework to:

- set out Council's principles in regard to the management of debt and to ensure that money owed to Council is collected as soon as possible through efficient and effective debt recovery practices; and
- assist in ensuring a strategic, equitable, accountable, consistent and transparent approach to Council's debt management, collection decisions and practices but also retain the flexibility to respond to the unique circumstances of individual customers.

As the impact of the current financial climate is being felt within parts of the community, Council continues to support those affected through the updated *Rating Policy* and separate *Debt Recovery Policy* to provide guidance on financial hardship and emphasise a number of alternative arrangements available to ratepayers.

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 expects to be able to discharge those obligations if payment arrangements were changed.

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.

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

Alternative arrangements highlighted in the relevant policies include:

- Ratepayers can arrange with Council to pay their rates weekly, fortnightly or monthly instead of quarterly instalments, to provide for a smaller, more regular payment option via BPAY, phone or internet
- Council will also accept a regular reduced payment toward council rates taking into consideration other financial commitments. In these circumstances where a ratepayer shows commitment by maintaining the payment arrangement, fines & interest may be considered for remission
- Postponement for seniors is highlighted as an available option for relevant ratepayers
- Postponement of the payment of arrears rates where ratepayers are eligible for Seniors Postponement
- Postponement of payment of rates in whole or in part for a set period due to hardship
- The consideration of postponement of rates on a long term basis in the rare circumstances where a ratepayer has demonstrated serious and long term hardship and where there is no chance of improvement in the ratepayers' financial circumstances.

As advised to Council's Audit Committee in August 2022, following a two year pause, legal action and debt recovery follow up by Council's debt collection agency has recommenced for the 2022-23 financial year, noting that the Administration still is retaining responsibility for all applications currently received who are on agreed payments plans and who are making payments in line with those plans.

The recommencement of debt recovery action also includes Council seeking to progress to sale any land that meets the criteria under S184 of the Act. As detailed in **Appendix 1**, Section 184 of the Act allows Council, if an amount payable by way of rates in respect of land has been in arrears for three (3) years or more, to sell the land.

This practice has been undertaken by Council annually during the period from 2015-16 to 2018-19 but was also put on hold in line with the pause in legal action and debt recovery practices as a result of Bushfires and Covid impacts. It is noted that Council has found that very few of the properties actually get sold following the commencement of this Section 184 process as interested parties including mortgagees are more likely to clear the debt before the finalisation of sale occurs.

Before a Council sells land, 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 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 the 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.

If the outstanding amount is not paid in full within the time allowed under c) above, then Council may proceed to have the land sold.

The land will be sold at a public 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 obtain.

If the owner cannot be located, then surplus funds are treated as unclaimed monies under the *Unclaimed Monies Act 1891 (SA)* once all other creditors have been satisfied.

As outlined in Council's *Debt Recovery Policy*, should a ratepayer be experiencing financial hardship it is possible to postpone the recovery process to avoid progression to sale. However for the properties identified in this report, Council has not received any correspondence or contact over a number of years.

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 (SA)*. This is a process established by legislation that enables a Council to reconsider all the evidence relied on to decide, including new evidence if relevant. This process is 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.

2. ANALYSIS

➤ Strategic Management Plan/Functional Strategy/Council Policy Alignment

Strategic Plan 2020-24 – A brighter future

Goal 5 A Progressive Organisation

Objective 03 Our organisation is financially sustainable for both current and future organisations.

Priority 03.1 Ensure the delivery of agreed strategic plan requirements whilst meeting endorsed long term targets for a sustainable operating surplus and level of debt.

➤ 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 because of the recovery 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.

These costs can include, legal fees, valuation fees, real estate agent fees, advertising, marketing, search fees, conveyancing, and auctioneer fees etc.

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 \$121,984. The recovery 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.

➤ **Sustainability Implications**

Not applicable

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: Not Applicable

Council Workshops: Not Applicable

Advisory Groups: Not Applicable

External Agencies: Not Applicable

Community: Not Applicable

➤ **Additional Analysis**

Council re-commenced external debt recovery processes in September 2022, following a two-year postponement period due to the COVID pandemic and the 2020 bushfires.

A total of 428 assessments with outstanding rates totalling \$1.332m are being managed by Credit Solutions. This sum does not include an additional \$185k of rates that have been deferred under the Seniors Postponement Scheme. Total rates currently outstanding represents 3.7% of 2022-2023 rates revenue.

Credit Solutions is an Adelaide-based agency that specialise in debt collection. They are registered through the LGA Procurement Group, are well versed in the *Local Government Act 1999* and are a service provider to many South Australian councils.

The following table contains the ratepayer details held within the rating system for the proposed nine (9) properties and a brief update of the current circumstances applicable:

A1170 – VG 0312255002 – 118 Yarrabee Road GREENHILL	
Lot 93 Sec: P925 DP:4802 CT:5186/801 – 2022/23 CV \$435,000	
This residential property is a deceased estate and believed to be vacant. The Public Trustee are currently administering the estate and have advised that there are insufficient funds in the estate to pay the arrears of rates. The last payment received to this rate account was \$366.30 on 8 October 2018. A mortgagee is listed on the Certificate of Title.	\$10,151.85
A1557 – VG 0312509017 – 62 Basket Range Road URAIDLA	
Lot 30 Sec: P123 DP:128853 CT:6271/825 – 2022/23 CV \$305,000	
This file was first referred to Credit Solutions in January 2017 and has exhausted the external debt collection process. This primary production property is believed to be occupied by the owner. The last payment received to this rate account was \$6,986.99 on 9 May 2016. There is no mortgagee listed on the Certificate of Title.	\$11,432.86
A9918 – VG 3304664504 – 121-123 Old Mount Barker Road STIRLING	
Lot 30 Sec: P1203 DP:60205 CT:5916/64 – 2022/23 CV \$1,375,000	
This residential property is a deceased estate with no known executor and appears to be occupied. This file was first referred to Credit Solutions in October 2018 and over the years there has been zero response to any correspondence issued by Credit Solutions or Council. The last payment received to this rate account was \$1,634.65 on 2 March 2018. There is no mortgagee listed on the Certificate of Title.	\$20,561.12

A15384 – VG 4713662002 – 56 Mount View Road MOUNT TORRENS	
Lot 9 Sec: P188 FP:3731 CT:5093/873 – 2022/23 CV \$860,000	
This file was first referred to Credit Solutions in January 2017 and all debt recovery processes have now been exhausted. The last payment received to this rate account was \$60 on 3 July 2018. This residential property is believed to be occupied by the owner and there is a mortgagee listed on the Certificate of Title.	\$22,284.47
A17086 – VG 4711486105 – 47 Hurst Road PARACOMBE	
Lot 100 Sec: P5656 DP:30373 CT:5299/556 – 2022/23 CV \$800,000	
This file was referred to Credit Solutions in October 2017 and all debt recovery processes have now been exhausted. Records indicate the primary production property is owned by a de-registered company and has been listed for sale by LJ Hooker Glynde since 2018. It is not known whether the residence on the property is occupied or not. There is no mortgagee listed on the Certificate of Title. The last payment received to this rate account was \$3,000 on 28 April 2022.	\$14,864.20
A19605 – VG 3304662509 – 125 Old Mount Barker Road STIRLING	
Lot 31 Sec: P1203 DP:60205 CT:5916/65 – 2022/23 CV \$560,000	
This vacant land property is a deceased estate with no known executor. This file was first referred to Credit Solutions in October 2018 and over the years there has been zero response to any correspondence issued by Credit Solutions or Council. The last payment received to this rate account was \$789.95 on 2 March 2018. There is no mortgagee listed on the Certificate of Title.	\$10,602.38
A19606 – VG 3304662250 – 127 Old Mount Barker Road STIRLING	
Lot 32 Sec: P1203 DP:60205 CT:5916/66 – 2022/23 CV \$670,000	
This residential property is a deceased estate with no known executor and appears to be occupied. This file was first referred to Credit Solutions in October 2018 and there has been zero response to any correspondence issued by Credit Solutions or Council. The last payment received to this rate account was \$921.65 on 2 March 2018. There is no mortgagee listed on the Certificate of Title.	\$11,811.05
A20517 – VG 3303152611 – 20 Renown Avenue CRAFTERS WEST	
Lot 78 Sec: P962 DP:2739 CT:6165/402 – 2022/23 CV \$305,000	
This vacant land property was referred to Credit Solutions in October 2017 and all debt recovery processes have now been exhausted. The owners have been difficult to track down over the years and have made no attempt to address the arrears of rates. The last payment received to this rate account was \$50 on 11 May 2020. There is a mortgagee listed on the Certificate of Title.	\$10,308.77
A20553 – VG 3302399102 – 15 Fern Hill Road BRIDGEWATER	
Lot 44 Sec: P85 DP:8131 CT:5488/268 – 2022/23 CV \$700,000	
The owners occupy this residential property. The file was first referred to Credit Solutions in August 2019 and all debt recovery processes have now been exhausted. A Pre-Section 184 letter prepared by Oakbridge Lawyers was provided to the owners in August 2022 and February 2023 in support of their application to the ATO for advance release of their superannuation. This appears to have been unsuccessful as the rate arrears remain unpaid. Two payments were received in the past twelve months for \$100 each. There is a mortgagee listed on the Certificate of Title.	\$9,966.80

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

Other Section 184 eligible properties

Excluding the nine (9) assessments that have been raised for sale, the remaining assessments held with Credit Solutions, are at various stages of the external debt collection process.

Whilst a small percentage of these accounts have been in arrears for a period exceeding three (3) years, it is important to note that Council is unable to progress these as part of the Section 184 process because all reasonable attempts to recover the debt have not yet been exhausted.

3. OPTIONS

Council has the following options:

- I. To endorse the sale of land for unpaid rates as identified (Recommended).
- II. To not endorse the sale of land for unpaid rates as identified (Not Recommended)

4. APPENDIX

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

3. Sale of Land for the Recovery of Unpaid Rates – Duration 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 18.1 in confidence under sections 90(2) and 90(3)(k) 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* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	Until either the negotiations for sale are completed or a settlement reached or until legal proceedings have concluded, but no longer than 12 months.
Related Attachments	Until either the negotiations for sale are completed or a settlement reached or until legal proceedings have concluded, but no longer than 12 months.
Minutes	Until either the negotiations for sale are completed or a settlement reached or until legal proceedings have concluded, but no longer than 12 months.
Other (presentation, documents, or similar)	Nil

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

Appendix 1

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

Local Government Act 1999—6.1.2022

Chapter 10—Rates and charges

Part 1—Rates and charges on land

Division 9—Imposition and recovery of rates and charges

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
 - (ba) to the holder of any caveat over 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) subject to subsection (14a), all mortgages, charges and caveats; and
 - (b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.
- (14a) The title vested in a purchaser under subsection (13) will not be free of a caveat held by an agency or instrumentality of the Crown, unless that agency or instrumentality consents to its discharge.
- (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.
- (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).