

ITEM 6. SALE OF PRIVATE LAND TO RECOVER UNPAID RATES

FILE NO: X007532

SUMMARY

This report seeks endorsement to proceed with the sale of a number of privately-owned properties to recover unpaid rates and property debts owed to Council that cannot otherwise be successfully resolved.

The *Local Government Act 1993* (the Act) requires councils to levy annual rates on all rateable parcels of land within their local government area, and to effectively and efficiently recover these funds to support council operations. To ensure security of this primary funding source, the Act provides that unpaid rates and charges form a lien over the property and empowers councils to sell private lands to recover debts that remain unpaid for five years, with any excess funds from sale returned to the owners.

The City's debt recovery processes are designed to be fair and reasonable, and to ensure that all ratepayers make their required contribution to fund Council's operations. A proactive approach results in the timely recovery of the vast majority of rates and charges within the normal course of business. All issues are dealt with as they arise and the imposition of late payment fees on our ratepayers is minimised.

Despite these efforts, there remain a small number of long overdue accounts that cannot be resolved through the normal process, and where all avenues of debt recovery action have been exhausted. This includes properties where the owners cannot be located/are unresponsive and properties owned by companies that have since been deregistered. Council's endorsement to progress sale of these private parcels of land, which continue to accumulate additional unpaid charges without any prospect of recovery, will enable these long overdue debts to be addressed.

A summary schedule of all the private properties and relevant arrears, currently totalling \$379,777, is provided in confidential Attachment A, with full details of each individual property provided within confidential Attachment B.

RECOMMENDATION

It is resolved that:

- (A) Council authorise the sale of land listed in confidential Attachment A to the subject report, and detailed individually in confidential Attachment B to the subject report, for unpaid rates and charges in accordance with sections 713 to 716 of the Local Government Act 1993; and
- (B) authority be delegated to the Chief Executive Officer to negotiate and finalise the sale of land and enter into any contracts or other documents required to finalise the sales.

ATTACHMENTS

Attachment A: Summary schedule of properties to be sold to recover unpaid rates and charges (Confidential)

Attachment B: Rates and other details of each property to be sold (Confidential)

(As Attachments A and B are confidential, they will be circulated separately from the agenda paper and to Councillors and relevant senior staff only.)

BACKGROUND

1. The *Local Government Act 1993* (the Act) requires Council to levy annual rates on all rateable parcels of land within the local government area unless the land is specifically exempt from rating. Exemptions are limited, but include land owned by the Crown and land owned and used for benevolent purposes.
2. Land rates constitute local government's primary source of funding, and councils are therefore required to levy and recover their rates in an equitable, effective and efficient manner. The City's debt recovery processes are designed to be fair and reasonable, and to ensure that all ratepayers make their required contribution to fund Council's operations.
3. A proactive approach results in the timely recovery of the vast majority of rates and charges within the normal course of business. All issues are dealt with as they arise, and the imposition of late payment fees on our ratepayers is minimised. The City consistently achieves one of the highest rates recovery ratios in metropolitan NSW, a fact regularly reinforced by external auditors in their annual review of the Councils financial reports, and one of the key measures of operational efficiency measured and overseen by the Office of Local Government.
4. Despite the City's efforts, there remain a small number of long overdue accounts that remain outstanding, in some cases unaddressed since 2004. These debts cannot be resolved through the normal processes and all avenues of debt recovery action have now been exhausted. This includes properties where the owners cannot be located/are unresponsive and properties owned by companies that have since been deregistered.
5. The Act provides that any unpaid rates and charges form a lien over the property and empowers councils to sell private lands to recover debts that remain unpaid for five years. Any excess funds from the sale, over and above that due to the City (including costs incurred by the City in the process of selling the property), will be held by the City on Trust to be later claimed by interested parties.
6. Council's endorsement to progress public auction of these private parcels of land, which continue to accumulate additional unpaid charges without any prospect of recovery, will enable these long overdue debts to be resolved and facilitate the funds from sale of the lands to interested parties in accordance with sections 713 to 716 of the Act.
7. The properties and overdue amounts are summarised in confidential Attachment A. Full details of all outstanding rates and charges, property maps, photos and the City's debt recovery efforts for each individual property, are provided in confidential Attachment B.
8. If endorsed, City staff will make a final attempt to notify the registered owners of the proposal to sell these properties in accordance with legislative requirements, including written correspondence to prospective owners and residents, and by affixing a notice directly to the properties.
9. Council will not proceed with the sale of the land if all outstanding rates and charges are paid in full, or if a satisfactory payment arrangement is made prior to the auction date.

10. If the City proceeds to auction the properties, then relevant property valuations, conveyancing and contracts of sale will be prepared and appropriate notification will be publicly advertised in the NSW Government Gazette and relevant newspapers.
11. The actions and proposed timings are set out in the table below:

Legislative Requirement	Action	Proposed Date
Section 713 of the Act	Council Resolution	June 2017
<i>Take reasonable steps to ascertain the identity of any person who has an interest in the land</i>	Title search already conducted and ownership confirmed. We have also had Council officers attend the outside of the properties in order to gain further information on the ownership status. Further reasonable steps will be taken to make contact with the owners or other parties with an interest in the land prior to the auction.	Prior to auction
<i>Take reasonable steps to notify each such person of the council's intention to sell the property</i>	1) Issue letter to last known address by registered post after Council's approval.	June 2017
	2) Affix a Notice on the property after Council's endorsement in June 2017.	July 2017
<i>Fix a convenient time and place for the sale</i>	1) Obtain a minimum of three quotes from Real Estate Agents for ascertaining property valuation, marketing campaign and conduct the auction.	July 2017
	2) Arrangements will be made to address conveyancing requirements and for preparing contracts for sale of land.	July 2017
	3) Council and the agent will together determine the time and place of the sale. This will be mentioned in the NSW Government Gazette.	July 2017
<i>Give notice of the proposed sale by means of an advertisement published in the Gazette and in at least one newspaper.</i>	1) Advertise in newspapers.	July 2017
	2) Advertise in the NSW Government Gazette.	July 2017
	Auction to be held	Oct/Nov 2017

KEY IMPLICATIONS

12. Properties sold by Council are sold in their present condition and it is the duty of any prospective buyer to undertake their own searches beyond those required by legislation.
13. The sale of properties by Council preserves any legal rights attached to the property, including any legally created rights of way, as the purchaser buys the land subject to the existence of these rights.
14. Sale of land can also serve a social and environmental purpose, as rubbish is often dumped on these land parcels which can be used for illegal or antisocial purposes.

BUDGET IMPLICATIONS

15. The properties that are the subject of this report, have a current balance of \$397,777 in overdue rates and charges. If unresolved, these properties will continue to be levied for new rates each year and continue to accrue additional interest charges that will never be recovered.
16. This situation reduces the rates revenue that Council receives each year in order to fund operational requirements, and continually increases the financial liability that is accruing upon each property.
17. The sale process is cost neutral to the City as the legislation allows all costs incurred in connection with the sale of these properties, including valuation fees, conveyancing costs and agent's commission to be recovered from the proceeds of sale. An estimate of \$200,000 has been provided by the City's Properties unit for these costs.
18. The properties have an expected market value in excess of overdue rates and it is expected that the City will recover the full amount of overdue rates and charges, as well as all costs associated with the sale of the properties. Residual proceeds resulting from the sale, over and above these amounts, will be set aside in a trust account in accordance with the Act. They will be refunded back to the owners, if they can be located, or paid over to the Office of State Revenue in accordance with the requirements of the Unclaimed Money Act.
19. Should the proceeds of sale ever prove insufficient to recover all rates, charges and debts, then section 719 of the Act provides that the amount available will be apportioned between the rates, charges and debts and the debts will be taken to be fully satisfied.

RELEVANT LEGISLATION

20. Local Government Act (NSW) 1993 – section 377(1)(h) and Part 2, Division 5 - Sale of land for unpaid rates and charges
21. All attachments contain confidential commercial information which, if disclosed, would confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business.
22. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

23. Local Government (General) Regulation 2005 – Clause 133.
24. Unclaimed Money Act 1995.

CRITICAL DATES / TIME FRAMES

25. The auction date for the sale of land for unpaid rates must be within six months, and not less than three months, from the date of gazettal in the NSW Government Gazette advising of Council's intention to sell the land to recover unpaid rates and charges.
26. It is intended to auction the properties by 30 November 2017.

OPTIONS

27. Council could elect not to proceed with the sale of any, or all of these properties, and allow the rates and charges to continue to accrue.
28. This option is not recommended as it will not realise the outstanding rates and charges, nor resolve the underlying issue, as City staff and debt recovery agents have already exhausted all avenues to contact the property owners without success.

PUBLIC CONSULTATION

29. In accordance with Section 715 of the Act, Council is required to:
 - (a) give notice of the proposed sale by means of an advertisement published in the Gazette and in at least one newspaper; and
 - (b) take reasonable steps to ascertain the identity of any person who has an interest in the property; and
 - (c) take reasonable steps to notify each such person.

BILL CARTER

Chief Financial Officer

Suzi Flynn, Revenue Manager