

19.1 SALE OF LAND FOR OVERDUE RATE AND CHARGES

Objective Reference:

Authorising Officer: Deborah Corbett-Hall, Chief Financial Officer

Responsible Officer: Deborah Corbett-Hall, Chief Financial Officer

Report Author: Thomas Turner, Team Leader Accounts Receivable and Payments

Attachments: 1. SO14 Schedule

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) *other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.*

PURPOSE

To request Council resolve to sell the properties identified in the attachment for overdue rates and charges.

BACKGROUND

Section 140(1)(c) of the *Local Government Regulation 2012* (Regulation) provides that land may be sold for unpaid rates and charges if some of the rates or charges have been overdue for at least 3 years, or 1 year if the land is vacant or used only for commercial purposes and judgment has been obtained.

The 40 properties listed in the attached schedule meet the requirements of section 140(1)(c). They are put forward to Council to resolve to sell, as collection and recovery action has failed to bring the accounts into order.

A Property Summary attachment has not been compiled for this report as the SOL14 Schedule contains all of the information that qualifies the properties listed for the sale of land process.

ISSUES

All properties presented in the attached schedule are considered non recoverable by any other means. In each case:

- All cost effective avenues have been explored to recover the overdue rates and charges.
- Where communication is established with the property owner it has resulted in no payments, or of no consequential value to reduce the arrears and the arrears position continues to worsen.
- Some of the rates and charges have been overdue for at least 3 years, or 1 year for vacant land and judgment has been obtained.

The following tables provide Council with an overview of the properties that are listed in the schedule.

Table 1 categorises the properties by use and identifies the number of properties where a mortgage is listed on the Certificate of Title (Title).

Table 1

Property Use	No of Properties	No of Properties with a Mortgage Listed
Residential – owner occupied	12	11
Residential – non owner occupied	8	4
Vacant land	20	6
Total	40	21

Under the Regulation, properties sold at auction are clear of any encumbrance. Collection and recovery activity has shown that a mortgagee will not pay the outstanding rates and charges until they receive a Notice of Intention to Sell (NIS). Once they have the NIS it is in their interests to assist the customer to clear the rate arrears in order to protect their security (the property) for the loan, otherwise they are left with an unsecured debt when Council sells the property. Of the 20 residential properties, 15 have a mortgagee noted on the Title. Six of the vacant land properties have a mortgagee noted on the Title.

Table 2 identifies the known factors in attempting to recover the outstanding rates and charges from the properties listed in the schedule.

Table 2

	Residential Owner Occupied	Residential Non Owner Occupied	Vacant Land
Unable to make contact/locate owner	2	1	6
Owner will not pay	10	5	11
Deregistered Company		1	1
Deceased Estate		1	2

Ratepayers faced with significant rate arrears will sometimes seek to pay the overdue rates and charges by accessing money tied up in superannuation funds. However, superannuation funds have tightened their practices and will only release funds in payment of rate arrears when the customer is able to provide as evidence a NIS.

Table 3 identifies the default service address by property use of the registered owner/s.

Table 3

Service Address	Residential Owner Occupied	Residential Non Owner Occupied	Vacant Land
Interstate			5
Overseas			1
Queensland		4	13
Redland City	12	4	1

There is limited recovery action that can be taken against a ratepayer who resides interstate or overseas. In the majority of instances, it is a waste of public funds to take legal action against a ratepayer who resides outside of Queensland, because the cost and effectiveness of the legal action generally outweighs the benefit. Of the 40 properties, 6 properties have a default service address outside of Queensland.

STRATEGIC IMPLICATIONS

Legislative Requirements

Chapter 4, Part 12, Division 3, Subdivision 2, sections 140 to 146 of the *Local Government Regulation 2012* detail the legislative requirements of selling land for overdue rates or charges.

- Section 140 of the Regulation sets out the criteria for consideration to sell land for overdue rates and charges, and the process for doing so, namely:
 - There are overdue rates or charges on the land where some or all of the rates or charges are at least 3 years overdue, or if the land is not the subject of current court proceedings and is vacant or used only for commercial purposes and judgment has been obtained, at least 1 year overdue.
 - The decision to sell land for overdue rates or charges must be resolved and as soon as practical all interested parties to the land must be given a notice of intention to sell the land.
 - Section 140(4) lists the information that must be contained in the notice.
- Section 141 of the Regulation specifies that interested parties, which have been given a notice of intention to sell, have (generally) 3 months to pay in full the overdue rates or charges. If the overdue rates or charges are not paid within this period, sale procedures under section 142 must commence within 6 months of giving the Notice of Intention to Sell. However, procedures to sell must end if the overdue rates and charges plus all expenses incurred in attempting to sell the land are paid.
- Section 142 sets out the Procedures for selling land.
 - The local government must first offer the land for sale by auction.
 - The local government must prepare an auction notice stating the time and place of the auction and a full description of the land.
 - At least 14 days, but not more than 35 days, before the day of the auction, the local government must—
 - a) give a copy of the auction notice to everyone who was given a notice of intention to sell the land; and
 - b) advertise the auction notice in a newspaper that is circulating generally in the local government area; and
 - c) display the auction notice in a conspicuous place in the local government's public office, until the day of the auction; and
 - d) display the auction notice in a conspicuous place on the land unless it is not reasonably practicable to do so because the land is in a remote location or difficult to access.
- Section 143 sets out how the auction is to be conducted:
 - The local government must set a reserve price for the auction that is at least—
 - a) the market value of the land; or
 - b) the higher of the following—
 - i) the amount of overdue rates or charges on the land;
 - ii) the value of the land.
 - If the reserve price is not reached at the auction, the local government may enter into negotiations with the highest bidder at the auction to sell the land by agreement.
 - However, the price for the land under the agreement must be more than the highest bid for the land at the auction.
 - If the highest bidder at the auction does not agree to buy the land, the land is taken to have been sold at the auction to the local government for the reserve price.

- However, this part of the Regulation does not apply if the land is held on a tenure the local government is not competent to hold.
- Section 144 sets out the procedures after sale of land if land is taken to have been sold at auction to the local government.
- Section 145 sets out the procedures after the sale of land where the land has been sold to other than the local government.
- Section 146 sets out the application of the proceeds from the sale.
 - The proceeds of the sale must be disbursed in the following order—
 - a) to pay any amount agreed for the release of a State encumbrance under section 138(4)(b) or (5);
 - b) to pay the expenses of the sale;
 - c) to pay land tax owing on the day of sale;
 - d) to pay the overdue rates or charges for the land;
 - e) to pay any other amounts relating to the land that the owner of the land owed the local government immediately before the sale;
 - f) to pay any rates or charges, other than overdue rates or charges, for the land;
 - g) to pay any registered encumbrances, other than State encumbrances, in order of their priority under the *Land Title Act 1994*;
 - h) to pay any body corporate fees that the owner of the land owed immediately before the sale;
 - i) to pay the person who owned the land immediately before the sale.
 - If any of the proceeds of sale remain unclaimed after 2 years, the local government must pay the proceeds to the public trustee as unclaimed money.

Risk Management

Financial Services has consulted with other departments prior to forming the final list of properties presented to Council. Each account has been reviewed by the Team Leader Accounts Receivable and Payments with overview from the Finance Manager – Financial Operations to ensure each property meets the eligibility criteria for sale of land for overdue rates and that all reasonable attempts to collect the outstanding arrears have been completed.

Financial

As at 14 January 2019, the total balance of rates and charges outstanding for the properties identified in the attached schedule is \$438,156.

Costs associated with the sale of land for overdue rates and charges have been budgeted for in the 2018-2019 financial year. Some costs are recoverable from properties that are sold at auction, such as advertising, auction expenses and title searches.

People

Nil impact expected as the purpose of the report is to submit to Council a list of properties for resolution to sell the land for overdue rates and charges.

Environmental

Nil impact expected as the purpose of the report is to submit to Council a list of properties for resolution to sell the land for overdue rates and charges.

Social

Nil impact expected as the purpose of the report is to submit to Council a list of properties for resolution to sell the land for overdue rates and charges.

Alignment with Council's Policy and Plans

This report has a relationship with the following items of the 2018-2023 Corporate Plan:

8. Inclusive and ethical governance

8.2 Council produces and delivers against sustainable financial forecasts as a result of best practice Capital and Asset Management Plans that guide project planning and service delivery across the city.

8.3 Implementation of the Corporate Plan is well coordinated across Council and through a delivery mechanism that provides clear line of sight, accountability and performance measurement for all employees

CONSULTATION

Consulted	Consultation Date	Comments/Actions
Chief Financial Officer	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. Contents noted. No concerns were raised.
General Counsel	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. No concerns were raised.
General Manager Infrastructure and Operations	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. No concerns were raised.
General Manager Community and Customer Services	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. No concerns were raised.
General Manager Organisational Services	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. No concerns were raised.
Development Control Officer	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at

		auction. No concerns were raised.
Principal Strategic Planner	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. Confirmed vacant land lots are capable of having a dwelling house built on them. Council has expressed interest in acquiring some of the vacant land listed but are happy to proceed to auction.
Senior Conservation Officer	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. No concerns were raised.
Group Manager Environment and Regulation	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. Senior Property Officer confirmed that there are no requests for a land exchange on the listed properties.
Service Manager Financial Operations	20 November 2018	Email sent requesting feedback on any concerns with properties under consideration for sale at auction. No concerns were raised.

OPTIONS

Option One

That, pursuant to Section 140(2) of the *Local Government Regulation 2012*, Council resolves to:

1. sell the lands described in the attachment for overdue rates and charges and
2. treat confidential the report and attached documents in accordance with sections 171(3) and 200(5) of the *Local Government Act 2009* and that the documents remain confidential unless Council decides otherwise by resolution.

Option Two

Council resolves to note the content of the report and officers continue to attempt recovery of the outstanding rates and charges through collection activity such as telephone, letter and legal action.

OFFICER'S RECOMMENDATION

That, pursuant to Section 140(2) of the *Local Government Regulation 2012*, Council resolves to:

1. sell the lands described in the attachment for overdue rates and charges; and
2. treat confidential the report and attached documents in accordance with sections 171(3) and 200(5) of the *Local Government Act 2009* and that the documents remain confidential unless Council decides otherwise by resolution.

SO14 Schedule

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