

5.14. SALE OF LAND FOR OVERDUE RATES OR CHARGES - LOCAL GOVERNMENT REGULATION 2012 S 140(2)

REPORT AUTHOR	Tara Killeen, Chief Financial Officer
MANAGER	Rachel Brophy, Chief Executive Officer
DEPARTMENT	Finance and Corporate Services

RECOMMENDATION

That Council resolves:

- **In accordance with s 140(2) of the *Local Government Regulation 2012*, to sell the land associated with rating assessment 945832, being Lot 10 SP212667, to recover overdue rates and charges.**
- **to delegate to the Chief Executive Officer its power to take all further steps under Chapter 4, Part 12, Division 3 of the *Local Government Regulation 2012* to effect sale of the land (including, for avoidance of doubt, the power to end sale procedures (s 141(3) of the *Local Government Regulation 2012*))**
- **to further delegate authority to the Chief Executive Officer in accordance with s 257 of the *Local Government Act 2009* to determine and finalise any and all other matters associated with this resolution.**

EXECUTIVE SUMMARY

Recovery of monies owed to Council is an integral component of ensuring financial sustainability of Council operations and more importantly from a risk management perspective, there can be adverse reputational impacts if Council does not demonstrate prudent financial management.

Staff and Council's solicitors have provided many opportunities over the last 10 years for the ratepayer to negotiate with Council to pay their overdue rates and charges, either in full or by way of a repayment plan. However the ratepayer has failed to adequately respond.

It is now recommended that Council resolve to offer this property for sale to recover the overdue rates and charges. At the time of writing this report the rates and charges outstanding are \$41,983.95.

BACKGROUND

In February 2015, Williams Graham and Carman Solicitors were engaged to undertake certain stages of debt recovery on outstanding rates and charges. More recently Council has engaged the services of Collection House Ltd to undertake debt recovery services.

Whilst this is an ongoing process, Council is now at a position where this rating assessment (property) is eligible for sale to recover the outstanding rates and charges.

The following information outlines the procedure undertaken by staff and Council solicitors in the debt recovery process:

- The half yearly rates notices are issued in July and January.
- Rate notices have a due date in August and February respectively. (As per the Local Government legislation s 132(2) rates and charges become overdue on the day after the due date for payment of rates or charges stated in the rate notice)
- Approximately 2 weeks after the due date, reminder letters are issued to those ratepayers who have not paid their rates. Ratepayers are generally given 14 days to respond.
- As soon as possible after the response date, a second final reminder notice is issued to those ratepayers who have not responded to prior correspondence. This letter advises of potential legal action if they do not pay their rates in full or enter into an arrangement to pay their rates over an acceptable period. These ratepayers are given approximately a further 14 days to respond.
- All ratepayers who have failed to respond are then referred to the Council's Solicitors or debt recovery agency for legal action to commence.
- Prior to commencement of court proceedings, a letter of demand is issued providing ratepayers a further 14 days to pay the outstanding debt in full or instigate an acceptable repayment arrangement.
- Those ratepayers who have still not responded will have court proceedings commenced and be served with court documents.
- Council solicitors will proceed to default judgement against ratepayers who have failed to respond.
- It is then a decision for Council to either pursue the recovery of outstanding rates and charges by either Part 12, Division 2 of the *Local Government Regulation 2012* or Part 12 Division 3 of the *Local Government Regulation 2012*.

At the Council Workshop held 22 February 2022 this property was identified for sale to recover overdue rates and charges.

COMMENTS

The *Local Government Regulation 2012* (the Regulation) provides Council with two options to recover outstanding rates and charges, which are:

- Instigating further court proceedings in accordance with Part 12, Division 2 of the Regulation; or
- Selling or acquiring land in accordance with Part 12, Division 3 of the Regulation.

These are two distinct options and the legislation makes it quite clear that these two processes cannot occur simultaneously.

After due consideration it is recommended to proceed with selling land in accordance with part 12, Division 3 of the Regulation.

The land identified for sale is:

Table 1.

Assessment number	945832
Property Owner	C P Buse
Land Title Particulars	LOT 10 SP 212667
Property Address	Unit 10/34-36 St Crispins Avenue, Port Douglas
Rates and Charges Outstanding as at 21 March 2022	\$41,983.95
Payments received whilst in arrears (last payment for Rates received 9.10.2018)	\$7,310.72
Period of arrears	Since January 2012

This property meets the requirements under s 140 of the Regulation for the sale of land to proceed. To ensure all ratepayers are treated equitably, Council needs to progress action pursuant to Local Government Legislation to recover this outstanding debt.

Upon Council resolving to sell the land to recover the outstanding rates and charges, the Regulation defines the actions to occur which are:

- Notice of intention to sell is to be issued by the CEO to the registered land owner and all interested parties in accordance with s 140(3) and s 140(4) of the Regulation.
- In accordance with s 141 of the Regulation if the overdue rates or charges are not paid in full within 3 months after the giving of the notice of intention to sell the land, the local government must start the procedures for selling the land within 6 months.
- In accordance with s 142(2) of the Regulation the land must be first offered for sale by auction.
- Council must end procedures if at any time rates and charges and any applicable expenses incurred in attempting to sell the land are paid in full; if the land is sold or 1 year after the notice of intention to sell is given to the registered owner. This is in accordance with s 141(3) of the Regulation.
- If Council ends the sale of land procedure 1 year after the notice of intention to sell is issued, in accordance with s 141(4) nothing prevents Council from deciding to sell the land again under s 140(2).

PROPOSAL

In accordance with s 140(2) of the *Local Government Regulation 2012*, Council resolution is now sought to proceed to sell the land as listed in this report to recover outstanding rates and charges.

FINANCIAL/RESOURCE IMPLICATIONS

Costs associated with the action of selling this property to recoup outstanding rates and charges are recoverable by Council which will result in an insignificant impact on Council's resources.

The attachment to this report, which has been provided by our debt recovery agency, Collection House Limited, provides further details on the work required to be undertaken and costs involved in proceeding with the sale of land. Collection House Limited will undertake the sale of land process on Council's behalf.

If the land does not sell at auction, Council may enter into negotiations with any bidder who attends the auction to sell the land by agreement. However the price for the land must not be less than the reserve price for the land.

If a sale of land is not achieved on the day of the auction Council may, under s 144 decide to continue to offer the land for sale by another auction or by negotiation.

Upon the successful sale of land in accordance with s 146(1) of the Regulation the proceeds of the sale of land are to be disbursed in the following order:

- (a) To pay any amount agreed for the release of a State encumbrance (a financial or non-financial claim on a property owed to the State) under s 138(4)(b) or (5);
- (b) To pay the expenses of the sale;
- (c) To pay land tax owing on the day of the sale;
- (d) To pay the overdue rates or charges for the land;
- (e) To pay 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;
- (g) To pay any registered encumbrances;
- (h) To pay any body corporate fees;
- (i) To pay the person who owned the land immediately before the sale.

RISK MANAGEMENT IMPLICATIONS

Without actively pursuing ratepayers to fulfill their financial obligation to Council by paying rates and charges, Council cannot deliver equity to the majority of ratepayers who meet their financial commitments to Council in a timely manner. Not actively pursuing overdue rates and charges will affect cash flow and ultimately Council's financial sustainability which has the potential to adversely affect the services delivered to the communities of Douglas.

Throughout the advertising campaign required to promote the auction of the property to the public there is a risk to Council that there may be negative media coverage which may impact the perception of Council within the community.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 3 - We will make sound financial decisions by ensuring robust strategic planning, financial management and reporting.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes-based approach that balances the needs of the community with social and natural justice.

CONSULTATION

Internal: Management Team – Finance and Corporate Services
Finance and Rates Staff

External: Williams Graham Carman Solicitors
Collection House Limited

ATTACHMENTS

1. Table provided by Collection House Limited on 14 February 2022 detailing steps and costs for sale of land process.

LGR 2012 Reference	Step 1	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
S. 140	Giving initial notice of intention to sell to registered owner, and any registered stakeholder including parties holding encumbrances, lessees and trustees	<ul style="list-style-type: none"> • Provision to Council of advice setting out of full details of steps to be undertaken to meet statutory compliance requirements • Review of Councillor resolution for compliance • Title and dealing searches for each of the properties, searches and inquiries to ascertain addresses for all relevant parties (as may be required) • Drafting notices in proper form for signing, and letters to owner and other parties required to be notified • Providing Notice to registered owner of the Land and to other parties required to be notified. General compliance advice to council Dealing with all enquiries received and referral to Council where appropriate.	\$300.00 (exc GST)	Land title and company searches (if required) at cost, no mark-up

LGR 2012	Step 2	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
Ss. 141 and 142	Initiating selling procedures to allow Auction of Land to proceed (to start between 3 and 6 months after giving notice under s140)	<ul style="list-style-type: none"> • Drafting an auction notice for time and place for intended auction • If requested by Council, arranging for advertising notice in local newspaper • Producing Notice and arranging for display on land • Giving Notice to registered owner and other parties required to be notified • Providing copy of Notice to Council to be displayed at Councils public office and on Council's own website • Certification to Council of procedural compliance to date <p>Dealing with all enquiries received and referral to Council where appropriate.</p>	\$550.00 (exc GST)	<p>Local newspaper advertising fee, at cost, no mark-up</p> <p>Bailiff/Sheriff/Process server fee for display of notice on Land</p>

LGR 2012	Step 3 A	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
S. 143	Auction Process	<ul style="list-style-type: none"> • Advice as to obligations under S. 143 in respect of each allotment, including advice as to valuation requirements where relevant • Instruct Valuers for Valuation of land if required • Instructing Auctioneer • Settling Public Auction Terms to be presented at auction • Drafting REIQ Contracts of Sale for Residential, Commercial and CTS properties as required, including Special Condition annexures suitable for auction sale under statute • Instructing security if required Dealing with all enquiries received and referral to Council where appropriate. 	\$300.00 (exc GST)	Valuer fee

LGR 2012	Step 3 B	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
Ss.143 and 145	Auction Day	<ul style="list-style-type: none"> • Attendance at Auction to assist with advice, contract signing and witnessing process, any on-the-day instructions and assisting with stakeholder contact • If land not sold at auction, advice during negotiation with bidders post auction 	\$300.00 (exc GST)	<p>Auctioneer fee (if not engaged directly by council), at cost, no mark-up</p> <p>Any security costs</p>

LGR 2012	Step 4	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
S.144	Properties which do not sell at auction	<ul style="list-style-type: none"> • Drafting a sales notice for Land, to offer for sale by negotiation/treaty • Arranging for advertising Notice in local newspaper • Producing Notice and arranging for display on land • Giving Notice to registered owner and other parties required to be notified • Providing copy of Notice to Council to be displayed at Councils public office and on Council's own website • Amending REIQ Contracts of Sale for Residential, Commercial and CTS properties as required, including Special Condition annexures suitable for private sale by negotiation under statute Dealing with all enquiries received and referral to Council where appropriate. 	\$600.00 (exc GST)	<p>Land title searches (if required) at cost, no mark-up</p> <p>Local newspaper advertising fee, at cost, no mark-up</p> <p>Bailiff/Sheriff/Process server fee for display of notice on Land</p>

LGR 2012	Step 5	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
S.145	Conveyance of land after auction	<ul style="list-style-type: none"> • All matters necessary to effect settlement with buyers including liaising with buyer and buyers conveyancer for settlement • Ensuring compliant Forms 1 and 24 are prepared and arranging for their execution and provision to buyer/buyer's conveyancer • Corresponding with other registered stakeholders and interested parties as to distribution of proceeds • Advice to Council regarding cheque directions, settlement procedure, and distribution of proceeds and any balance held on trust 	\$800.00 (exc GST)	Land title searches (if required) at cost, no mark-up

LGR 2012	Step 6	Work Required to be Undertaken	Costs (Per Lot)	Disbursement Costs
Ss.148 to 151	Dealing with valueless or unsold land if applicable	<ul style="list-style-type: none"> • Advise on whether the Council is competent to hold the land • Drafting a notice of intention to acquire for the Land • Providing Notice to registered owner of the Land and to other parties required to be notified. General compliance advice to council • After 6 months, preparing compliant Forms 1 and 24 for Registrar of Titles to register land as owned by Council • Advice regarding removal from Land record 	\$600.00 (exc GST)	<p>Land title searches (if required) at cost, no mark-up</p> <p>Local newspaper advertising fee, at cost, no mark-up</p> <p>Bailiff/Sheriff/Process server fee for display of notice on Land</p>