

9.4 Sale of Land to Recover Overdue Rates and Charges - Chapter 17, Part 2, Division 5, Section 713 Local Government Act, 1993

REPORT BY THE REVENUE COORDINATOR
TO 13 DECEMBER 2023 ORDINARY MEETING
GOV400103, A0340011

RECOMMENDATION

That Council:

1. receive the report by the Revenue Coordinator on the Sale of Land to Recover Overdue Rates and Charges - Chapter 17, Part 2, Division 5, Section 713 Local Government Act, 1993;
2. agree to sell under Chapter 17, Part 2, Division 5, Section 713 of the Local Government Act, 1993, the lands held under the following Property Numbers: 1161, 2589, 3275, 6662 and 13737 and note that the General Manager has signed the General Manager's Certificates for each of the properties;
3. approve Friday 3rd May 2024, as the date for the Auction;
4. authorise the General Manager to appoint an Auctioneer and determine the time and venue for the Auction on 3rd May 2024;
5. authorise the General Manager to arrange the publication of the mandatory advertisement in accordance with Section 715(1) Local Government Act 1993;
6. authorise the General Manager to exercise delegated authority to deal with matters arising out of the sale process so as to ensure continuous and smooth running of the Sale process;
7. authorise the General Manager to determine any reserve prices;
8. authorise the General Manager to negotiate the sale of any property, by private treaty in accordance with Section 716(2) Local Government Act 1993, which fails to sell at the Auction on 3 May 2024;
9. authorise the General Manager to consider arrangements for payment of rates and charges and to withdraw properties from the Auction where satisfactory arrangements have been accepted or where a property no longer meets the requirements for sale under Chapter 17, Part 2, Division 5, Sections 713-726 of the Local Government Act, 1993;
10. authorise the General Manager to execute the contract documents on behalf of Council in relation to all properties that are sold at the Auction on 3rd May 2024 and to execute the contract documents on behalf of Council in relation any properties that fail to sell at the Auction, but are subsequently sold by private treaty, as negotiated by the General Manager at Recommendation 8;

11. **authorise the General Manager to take such action, if necessary, (including court proceedings if required) as may reasonably be required to give vacant possession of any properties sold at the Auction on 3rd May 2024 and to take such action, if necessary, (including court proceedings if required) as may reasonably be required to give vacant possession to any properties that fail to sell at the Auction, but are subsequently sold by private treaty, as negotiated by the General Manager at Recommendation 8;**
 12. **authorise the General Manager and Mayor to sign all documentation necessary to facilitate the processes under Chapter 17, Part 2, Division 5, Sections 713-726 of the Local Government Act 1993 and; to sign all documentation relating to any properties that fail to sell at the Auction, but are subsequently sold by private treaty, as negotiated by the General Manager at Recommendation 8;**
 13. **authorise the Common Seal of Council be affixed to all documentation necessary to facilitate the processes under Chapter 17, Part 2, Division 5, Sections 713-726 of the Local Government Act 1993 and; to all documentation relating to any properties that fail to sell at the Auction, but are subsequently sold by private treaty, as negotiated by the General Manager at Recommendation 8; and**
 14. **authorise the General Manager to appoint a legal representative in this matter.**
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Executive summary

This report seeks Council's resolution to sell the lands comprised in the five (5) General Manager's Certificates, appended as Attachments 2-6 to this Report, to recover overdue rates and charges pursuant to Chapter 17, Part 2, Division 5, Section 713 of the Local Government Act 1993 (the Act).

Disclosure of Interest

Nil

Detailed report

There have been exceptional circumstances over recent years which have influenced some ratepayers' ability to pay rates and charges, including natural disasters, Covid-19 and more recently inflation and interest rate increases. However, these recent circumstances are not the predominant cause of long-standing debts of over 5 years. Whilst Council undertakes recovery action in accordance with the Debt Management and Recovery Policy (the Policy), there are properties that have rates and charges outstanding for greater than 5 years which have not been able to be collected to date.

Section 713(1) of the Act states that a rate or charge is overdue if it has remained unpaid for more than 1 year from the date on which it became payable in the case of vacant land, and in the case of any other land, it has remained unpaid for more than 5 years. A council may, in accordance with the provisions of the Act, sell any land on which any rate or charge is overdue subject to satisfying certain pre-conditions set out in the Act.

Pursuant to Chapter 17, Part 2, Division 5, Section 713 of the Act, Council is in a position to sell, by public auction in the first instance, 5 properties which have accrued rates and charges in excess of 5 years. There are various reasons why Council has not been able to recover the outstanding rates

and charges owing on these properties. All other recovery action initiated in accordance with the Policy has been unsuccessful in attempts to collect the overdue amounts in relation to these properties.

Additional steps have been taken in recent months over and above those outlined in the Policy in an attempt to contact the property owners. Letters advising of the potential sale of these properties were issued via registered and ordinary post in November 2023.

The General Manager's Certificates have been prepared in respect of each property confirming the age and amount of the outstanding debts. The Certificates have been sighted and certified by the General Manager pursuant to Section 713(3) of the Act and are appended as Attachments 2-6 to this Report.

The properties recommended to be included in the proposed sale are summarised below:

LOCALITY	AMOUNTS PAYABLE BY WAY OF OVERDUE RATES AND	AMOUNTS PAYABLE BY WAY OF RATES & CHARGES (OTHER THAN OVERDUE RATES AND	TOTAL AMOUNT DUE (to 30/6/2024), interest calculated to 7/11/2023)
Mudgee	\$439.99	\$18,658.70	\$19,098.69
Barigan	\$299.82	\$11,843.71	\$12,143.53
Cope	\$1,205.04	\$8,700.53	\$9,905.57
Bocoble	\$564.26	\$8,070.74	\$8,635.00
Bombira	\$446.02	\$7,409.80	\$7,855.82
TOTAL DUE	\$2,955.13	\$54,683.48	\$57,638.61

Schedule 1, appended as Attachment 1 to this Report, provides detailed information in relation to the individual properties. Plans of each property are appended as Attachments 7-11.

In accordance with Section 715 of the Act, Council is required to undertake an extensive process prior to selling a property at public auction for overdue (greater than 5 years) rates and charges:

1. Before selling land under this Division, the Council must:
 - a) fix a convenient time (being not more than 6 months and not less than 3 months from the publication in a newspaper of the advertisement referred to in paragraph
 - b) and a convenient place for the sale;
 - c) give notice of the proposed sale by means of an advertisement published in the Gazette and in at least one newspaper;
 - d) take reasonable steps to ascertain the identity of any person who has an interest in the land; and
 - e) take reasonable steps to notify each such person (and the Crown, if the land concerned is owned by the Crown) of the council's intention to sell the land under this Division.

2. If, before the time fixed for the sale:
 - a) all rates and charges payable (including overdue rates and charges) are paid to the council; or

- b) an arrangement satisfactory to the Council for payment of all such rates and charges is entered into by the rateable person, the council must not proceed with the sale.

Section 715 (1)(a) provides that once Council has resolved to sell land for overdue rates and charges, it must conduct the sale not more than six months and not less than three months after the date of publication of the appropriate advertisement. An advertisement under Section 715(1) of the Act notifying a proposed sale of land for unpaid rates and charges is to contain certain information, including that Council proposes to sell lands for unpaid rates and charges at public auction, the name of the auctioneer and the proposed place, date and time of the auction.

Should Council proceed with the sale it is intended to place the advertisement by Friday, 2 February 2024 to enable the sale to take place on Friday, 3 May 2024.

Auctioneer and Venue and Time for Auction

The sale of land is to be conducted by public auction. It is recommended that the General Manager appoint an auctioneer in accordance with Council's Procurement Policy to conduct the auction on 3rd May 2024 and, also determine the venue and time for the auction upon the appointment of the auctioneer.

Legal Matters

It is recommended that the General Manager appoint a legal representative in accordance with Council's Procurement Policy to deal with all legal matters relating to the sale

In an auction situation the contract is entered into at the fall of the hammer. While the transfer will need to be executed under Seal, it is not necessary for the contracts to be executed under Seal.

It is recommended that the General Manager be authorised to sign the contracts on Council's behalf at the fall of the hammer. The General Manager would then have authority to sub-delegate that task should he so wish.

Land that fails to sell at the auction may be sold by private treaty by Council.

Reserve Prices

It is recommended that the appointed auctioneer make recommendations to the General Manager in relation to any reserve prices, and that the General Manager set appropriate reserves where he sees fit.

Payment of Rates before the Date of the Sale

Section 715 (2)(a) and (b) provides that where, before the date of the sale, the full amount of the outstanding rates is paid, or Council accepts an arrangement for payment suitable to it, the subject land must be withdrawn from the sale.

Full payments present no problems. However, where a partial payment is made and arrangements are tendered for the balance to be paid after the due date of the sale, complications may arise.

Usually such arrangements are made at a time when it is not possible to refer the matter to Council for a decision, sometimes only a day or two before the auction date.

It is recommended that the General Manager be given delegated authority to consider arrangements for payment of rates and charges.

Community Plan implications

Theme **Good Government**

Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

Strategic implications

Council Strategies

Not Applicable

Council Policies

Debt Management and Recovery Policy
Step 6 in the debt recovery procedure.
Procurement Policy

Legislation

Pursuant to Chapter 17, Part 2, Division 5, Section 713 of the Act.

Financial implications

The successful auction of all of the properties listed would mean that \$57,638.61 in outstanding rates and charges would be removed, either by way of full monetary payment and/or write-off, from Council's outstanding debtors listing.

No budget variations are required for this recommendation.

Associated Risks

Notwithstanding that a sale of land auction to recover overdue rates and charges provides a last resort procedure for Council to recoup the monies owing after exhausting all other recovery method procedures, some unfavourable publicity, comments or actions may follow.

All legal matters will be referred to the appointed legal representative and the Auction will be conducted by a suitably qualified auctioneer.

IAN CLAYTON
REVENUE COORDINATOR

LEONIE VAN OOSTERUM
DIRECTOR CORPORATE SERVICES

23 November 2023

- Attachments:*
1. Schedule 1 - Listing and Detail of Properties Proposed to be Auctioned. (Confidential - separately attached)
 2. 1161 - Mudgee - Signed General Managers cert. (Confidential - separately attached)
 3. 2589 - Barigan - Signed General Managers cert. (Confidential - separately attached)
 4. 3275 - Cope - Signed General Managers cert. (Confidential - separately attached)
 5. 6662 - Bocoble - Signed General Managers cert. (Confidential - separately attached)
 6. 13737 - Bombira - Signed General Managers cert. (Confidential - separately attached)
 7. Plan 1 - Property 1161 - Mudgee. (Confidential - separately attached)
 8. Plan 2 - Property 2589 - Barigan. (Confidential - separately attached)
 9. Plan 3 - Property 3275 - Cope. (Confidential - separately attached)
 10. Plan 4 - Property 6662 - Bocoble. (Confidential - separately attached)
 11. Plan 5 - Property 13737 - Bombira. (Confidential - separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER