

CONFIDENTIAL REPORT

1. 12.5 REPORT TITLE: HAHNDORF RESORT

**AUTHOR'S TITLE: GENERAL MANAGER CORPORATE AND
COMMUNITY SERVICES**

REPRESENTORS: NONE

FILE NUMBER: 210534

ATTACHMENTS: 1. CONFIDENTIAL MINUTES 1 MARCH 2004

DEPARTMENT: CORPORATE AND COMMUNITY SERVICES

**DEPARTMENT
MANAGER: MALCOLM CROUT**

PURPOSE

To update Council on legal advice obtained on recovery of the outstanding rates and charges debt of the Hahndorf Resort and the manner in proceeding with this matter.

RECOMMENDATION

1. That pursuant to Section 90(2) (i) of the Local Government Act 1999 the District Council of Mount Barker orders that the public be excluded from attendance at the meeting to consider in confidence matters of litigation that Council, on reasonable grounds, believes will take place.
2. That the Chief Executive Officer, General Manager Corporate and Community Services, General Manager Strategy and General Manager Development and Technical Services and the Minute Secretary be permitted to remain in the room.
3. That Council notes the report.
4. That Council authorise the Chief Executive Officer to take whatever actions are required in the circumstances and incur reasonable expenditure to pursue payment of the outstanding rates, interest and fines owed under assessment 17694, and
5. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that all documentation and information, including this report and any attachments and the minutes of the meeting relating to this item, be kept confidential until 5 July 2005.

BACKGROUND

From the 6th November 2002, at a number of workshops and subsequent confidential Council meeting agenda items, Council has been informed of matters pertaining to the outstanding rates on the property known as Hahndorf Resort.

On the 1 March 2004 Council authorized the Chief Executive Officer or his delegate to take whatever legal means available to pursue recovery of the outstanding rates and charges.

The General Manager Corporate and Community Services and the Senior Rates and Property Officer discussed the outstanding debt with management of the Hahndorf Resort, Parkwind Pty Ltd, and advised that failure to pay would result in legal action for recovery of the debt. Hume Taylor, the solicitors for Parkwind, subsequently requested further information relating to the debt and Council responded by advising that they were seeking advice.

The previous Council report pertaining to this matter is included as Attachment 1 to Item 12.5.

DISCUSSION

The General Manager Corporate and Community Services and the Senior Rates and Property Officer discussed recovery of this debt with two potential agents, being Kemps Mercantile Pty Ltd and Norman Waterhouse Lawyers. Subsequent to these discussions, in consultation with the Chief Executive Officer, Normans were chosen as the preferred recovery agent for the following reasons:

- Norman Waterhouse had provided information on this matter previously and to use another collection agent would break continuity of advice.
- Norman Waterhouse provide an inclusive service, whereas Kemps would need to engage a solicitor and this would mean instructing another party.
- Norman Waterhouse specialise in advice to Local Government, and Michael Kelledy has particular experience in the rating provisions and the application of Section 184 of the Local Government Act 1999.

Subsequently, Michael Kelledy and Emmalene Gottwald of Norman Waterhouse were briefed on the matter and their recommendation was to pursue the debt by means of the application of Section 184 of the Local Government Act 1999. The Senior Rates and Property Officer has provided the subject files to Normans, who are selecting the relevant information on which to proceed with recovery. Officers are reviewing other information, which may have an impact on the case.

Once all necessary information is obtained, Norman Waterhouse will verify the following course of action, following a review of all relevant material, with the first substantial advice being provided around the end of June.

- Norman Waterhouse will respond to Hume Taylor's request for further information, providing them with fully particularised information and 14 days to respond. If necessary, the Council will at this juncture also take action to redress any deficiencies in the rate processes to date.
- Subject to the response from Hume Taylor, at the expiry of the 14 days, Norman Waterhouse will be in a position to serve notice on Hume Taylor of Council's intention to apply the provisions of S184 in recovery of outstanding rates.
- Norman Waterhouse anticipate the debtor may seek an injunction to at best halt and at worst delay the process, in which case there will be a process of discovery and the debtor may seek to have the matter heard in the Supreme Court as a consequence of the quantum of the debt.

There are some issues that need to be considered in this action, and Michael Kelledy has provided the following advice:

- There is a period of non-billing (1996-2001), which does not mean that the debt for that period is not owed, but that it has not yet been legally demanded. However, this means that Council will not be able to claim fines and interest for the amount outstanding during that period. A requirement is that we are able to provide evidence of declaration and gazettal of the rates for each year and that valid rate notices were issued to the principal ratepayer for the property. The Senior Rates and Property Officer will confirm that information.
- At the appropriate time and prior to serving notice, Norman Waterhouse will review Council's legal position by reviewing with a barrister whom will represent Council in any legal challenge concerning the decision of Council.
- The later adjustment of rates payable from multiple to single occupation for a period are both issues of consideration, but should not impact negatively on the recovery of the overdue rates. They may impact on a portion of fines and interest as yet to be determined.
- Recovery of costs, as defined in the Act, will occur from the time of commencing the S184 process. In seeking an order for reimbursement, as much preparation cost as is reasonable up to the time of commencement of the process will be claimed.

The outstanding rates, interest and fines total \$427,550 as at the time of writing this report. The capital value of the land as valued by the Valuer General is \$3.5Million.

PUBLIC RELATIONS

The Hahndorf Resort is a significant business in the district and publicity on this legal action may receive a negative reaction from the press and community. While this will be a matter of public interest, there are matters concerning the flow of information, which may have the potential to prejudice this case. For this reason any public comment will be made only by the Mayor or the Chief Executive Officer in consultation with Norman Waterhouse.