

48	7 June 10	Proposed Sale of Property	Reason: a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);	Documents and minutes	Process concluded	Extend Confidential Order to September 2011. The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked	5 Sept 11	NA	RELEASE 5 Sept 11
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133 CONFIDENTIAL REPORTS

133.1 REPORT TITLE: CONFIDENTIAL - PROPOSED SALE OF PROPERTY
DATE OF MEETING: 7 JUNE 2010
AUTHOR: NARELLE JEFFERY
AUTHOR'S TITLE: GENERAL MANAGER COUNCIL SERVICES
FILE NUMBER: 124305
DEPARTMENT: COUNCIL SERVICES
DEPARTMENT
MANAGER: NARELLE JEFFERY

Moved Councillor Gamble that Council:

1. Pursuant to Section 90(3)(a)
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, General Manager Governance and Projects, General Manager Vision and Compliance, General Manager Council Services, Senior Finance Officer, Senior Rates and Property Officer, Senior Project Manager, Infrastructure, and the Minute Secretary be excluded from attendance at the meeting for Agenda Item (17.1).

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of ratepayers, in that details of their personal financial situation will be disclosed.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of details would be ultra vires to Clause 184 of the Local Government Act 1999.

Seconded Councillor Wilksch and CARRIED

Moved Councillor Gamble:

2. That the Council pursuant to Section 184 of the Local Government Act 1999 approves of the following steps to occur to enable the recovery of unpaid Council rates (plus interest and fines) from the owners of the property at 16 Princes Road, Mount Barker, and delegates to the Chief Executive Officer the powers and otherwise authorises the CEO to undertake steps (a) – (g) and (i)-(k) in accordance with the descriptions of each 'step' below:

- (a) to send a letter of Final Demand to the owners of the property at 16 Princes Road, Mount Barker advising that if the amount of outstanding rates of \$8405.50 is not paid within fourteen (14) business days from the date of the letter the Council will commence proceeding to sell the land pursuant to Section 184 of the Local Government Act 1999 (Attachment 1).
- (b) upon the expiry of the letter of Final Demand after the stated fourteen (14) business days from the date of the letter and without payment or an approach to the Council to organise alternative payment methods to serve a formal Notice on the owners of the property at 16 Princes Road, Mount Barker (Attachment 2).
- (c) to send a copy of the letter of Final Demand (Attachment 3) and Notice (Attachment 4), in the event that the Notice is required to be sent, to the Commissioner of State Taxation who has a caveat on the land under the Certificate of Title.
- (d) upon the expiry of the Notice after the stated one month of service of the Notice, to sell the land for non payment of Council rates pursuant to Section 184 of the Local Government Act 1999.
- (e) to consider any offer intended to avoid the sale from the owners of the property at 16 Princes Road, Mount Barker during the sale process.
- (f) to engage legal and conveyancing assistance for the sale of the property.
- (g) to engage a real estate agent to sell the property on behalf of the Council in the first instance on the basis of an auction.
- (h) to set a reserve amount for the sale of the property based on an independent valuation from a valuer with a further report to be provided to the Council seeking approval of the actual reserve amount to be set.
- (i) to advertise on at least two occasions in The Advertiser the property for sale by auction on a date to be determined, and provide a sign on the property to satisfy requirements to notify Mr and Mrs Nicholson of the impending sale process.
- (j) to sell the property by a private sale in the event the sale of the property by auction fails.

- (k) to distribute the proceeds of the sale in accordance with the Local Government Act 1999 as follows:
 - a. payment of costs of the Land and any other costs incurred and proceeding with the sale of the land;
 - b. discharging any liabilities to Council in respect of the Land;
 - c. discharging any liability to the Crown for rates, charges or taxes;
 - d. discharging any liability secured by registered mortgages, encumbrances and charges of which the Council has notice;
 - e. payment to the owner of the Land.

3. Pursuant to Section 91(7)

That having considered Agenda Item 17.1, in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7)(b) of the Act orders that the documents and all minutes be retained in confidence and that the revocation of confidentiality be delegated to the Chief Executive Officer to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

Seconded Councillor Wilksch and CARRIED

17. CONFIDENTIAL REPORTS

17.1 REPORT TITLE: CONFIDENTIAL - PROPOSED SALE OF PROPERTY

DATE OF MEETING: 7 JUNE 2010

AUTHOR: NARELLE JEFFERY

AUTHOR'S TITLE: GENERAL MANAGER COUNCIL SERVICES

REPRESENTORS: NIL

FILE NUMBER: 124305

ATTACHMENTS:

- 1 – LETTER OF FINAL DEMAND TO PROPERTY OWNERS**
- 2 - NOTICE TO PROPERTY OWNERS**
- 3 – COPY OF LETTER OF FINAL DEMAND TO COMMISSIONER OF TAXATION**
- 4 – COPY OF NOTICE TO COMMISSIONER OF TAXATION**

DEPARTMENT: COUNCIL SERVICES

**DEPARTMENT
MANAGER: NARELLE JEFFERY**

PURPOSE

To seek Council's approval for the sale of the property at 16 Princes Road, Mount Barker due to the non payment of rates by the owners of the property since 2005.

RECOMMENDATION

That Council:

1. Pursuant to Section 90(3)(a)
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, General Manager Governance and Vision, General Manager Vision and Compliance, General Manager Council Services, Senior Rates and Property Officer, Manager Governance and Business Processes and the Minute Secretary be excluded from attendance at the meeting for Agenda Item (17.1).

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of ratepayers, in that details of their personal financial situation will be disclosed.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of details would be ultra vires to Clause 184 of the Local Government Act 1999.

2. That the Council pursuant to Section 184 of the Local Government Act 1999 approves of the following steps to occur to enable the recovery of unpaid Council rates (plus interest and fines) from the owners of the property at 16 Princes Road, Mount Barker, and delegates to the Chief Executive Officer the powers and otherwise authorises the CEO to undertake steps (a) – (g) and (i)-(k) in accordance with the descriptions of each 'step' below:
 - (a) to send a letter of Final Demand to the owners of the property at 16 Princes Road, Mount Barker advising that if the amount of outstanding rates of \$8405.50 is not paid within fourteen (14) business days from the date of the letter the Council will commence proceeding to sell the land pursuant to Section 184 of the Local Government Act 1999 (Attachment 1).
 - (b) upon the expiry of the letter of Final Demand after the stated fourteen (14) business days from the date of the letter and without payment or an approach to the Council to organise alternative payment methods to serve a formal Notice on the owners of the property at 16 Princes Road, Mount Barker (Attachment 2).
 - (c) to send a copy of the letter of Final Demand (Attachment 3) and Notice (Attachment 4), in the event that the Notice is required to be sent, to the Commissioner of State Taxation who has a caveat on the land under the Certificate of Title.
 - (d) upon the expiry of the Notice after the stated one month of service of the Notice, to sell the land for non payment of Council rates pursuant to Section 184 of the Local Government Act 1999.

- (e) to consider any offer intended to avoid the sale from the owners of the property at 16 Princes Road, Mount Barker during the sale process.
- (f) to engage legal and conveyancing assistance for the sale of the property.
- (g) to engage a real estate agent to sell the property on behalf of the Council in the first instance on the basis of an auction.
- (h) to set a reserve amount for the sale of the property based on an independent valuation from the real estate agent with a further report to be provided to the Council seeking approval of the actual reserve amount to be set.
- (i) to advertise on at least two occasions in The Advertiser the property for sale by auction on a date to be determined, and provide a sign on the property to satisfy requirements to notify Mr and Mrs Nicholson of the impending sale process.
- (j) to sell the property by a private sale in the event the sale of the property by auction fails.
- (k) to distribute the proceeds of the sale in accordance with the Local Government Act 1999 as follows:
 - a. payment of costs of the Land and any other costs incurred and proceeding with the sale of the land;
 - b. discharging any liabilities to Council in respect of the Land;
 - c. discharging any liability to the Crown for rates, charges or taxes;
 - d. discharging any liability secured by registered mortgages, encumbrances and charges of which the Council has notice;
 - e. payment to the owner of the Land.

3. Pursuant to Section 91(7)

That having considered Agenda Item 17.1, in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7)(b) of the Act orders that the documents and all minutes be retained in confidence and that the revocation of confidentiality be delegated to the Chief Executive Officer to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

BACKGROUND

Section 184 of the Local Government Act 1999 sets out the process by which rates can be collected through a sale of land, where those rates have been outstanding for 3 years or more. Section 184 provides that:

(1) If an amount payable by way of rates in respect of land has been in arrears for three years or more, the Council may sell the land.

From an examination of the quarterly rates notices issued to the principal ratepayers (Mr and Mrs Nicholson), rates have been outstanding since 28 January 2005 being a period of over 3 years. The current rating liability for this property is \$8405.50.

The owners of the property located at 16 Princes Road, Mount Barker have been pursued by Council staff over a number of years for the non payment of Council rates.

DISCUSSION

The property located at 16 Princes Road, Mount Barker is currently an unoccupied dwelling which has in the past been occupied by squatters who have caused damage to the dwelling and have left rubbish in and around the dwelling.

Council staff have made a number of attempts to contact the owners of the said property to enable payment of the outstanding rates owed on the property. Indicated below are a number of avenues and contacts made by Council staff to the owners of the property.

- Contact was made with Mrs Shirley Nicholson in January 2008 where she advised there had been no contact between her and her ex husband as part owner of this property since 1999.
- Council staff discussed with Mrs Nicholson the current position of the property in relation to pending sale for non payment of rates and suggested that she seek legal aid to establish if she could sell the property without the ex husbands involvement.
- Mrs Nicholson was advised that the property was occupied by squatters.
- Mrs Nicholson was contacted by Council staff again in March 2008 when she advised that her lawyers were handling the eviction of the current tenants and then will give her direction in the process to get the property into her name.

- Mrs Nicholson asked that the sale for non payment of rates be placed on hold at this stage, however, she advised that she was not prepared to make any payments at this time until the ownership issue was resolved. Mrs Nicholson advised her intention was to gain total ownership, tidy up the property and sell.
- A copy of the Certificate of title was obtained for 16 Princes Road Mount Barker and found there to be no mortgage held over the property. The Certificate of Title does indicate that the Commissioner of State Taxation has a caveat on the land.
- A letter advising of possible sale of land due to non payment of rates and Council's process in doing this was sent to Mrs Nicholson on 5 January 2010.
- Mrs Nicholson was phoned once again in late January 2010 and she didn't seem concerned whether or not Council sold her property for non payment of rates.
- Council staff have been unable to locate Mr Nicholson (joint owner of the property).
- A trace was actioned by Council staff to locate Mr Nicholson on 27 April 2010 which proved unsuccessful in locating him.
- Council's Environmental Health Officers inspected the property in May 2010 due to complaints from neighbours and have indicated that the property is currently in an unsanitary condition under the Public and Environmental Health Act 1987.

Legal advice has been sought in relation to the sale of this property for non payment of Council rates. In accordance with Section 184 of the Local Government Act 1999, Council is able to sell a property for non payment of Council rates if they have been in arrears with no payment for a period of three years or more.

In order to ensure that the sale process cannot be successfully challenged by the owner of the Land, it is recommended that each step is subject to consideration of the Council and approved by Council resolution (refer Recommendation 4). The key steps for Council approval are:

- Endorsement of an authority to send the final demand letter
- Approval to serve the formal Notice
- Approval of the legal and conveyancing assistance
- Approval of the real estate agent
- Consideration of any offer intended to avoid the sale
- Approval of the reserve amount

- Approval of the private sale if the auction fails
- Approval of all steps in the auction process including the advertising and the timelines, and
- Approval of the Council's costs and distribution of proceeds upon sale.

POLICY IMPLICATIONS

1. Financial/budget

The outstanding rates liability in relation to 16 Princes Road, Mount Barker is \$8405.50.

The cost of the sale process is reimbursed to Council through the sale of the property, in accordance with Section 184 (1f) of the Local Government Act 1999.

2. Legal

Council has sought legal advice in relation to the process to ensure compliance with the Local Government Act 1999 and Land and Business (Sale and Conveyancing) Act 1994.

3. Staffing/Work Plans

Staff will manage the administrative process with assistance required for legal, conveyancing and a real estate agent to undertake the auction of sale of the property.

4. Environmental

The property has been vacant for a period of time and has had squatters and is in an unsightly condition. Council's Environmental Health Officers have inspected the property and identify that the property is in an unsanitary condition under the Public and Environmental Health Act 1987.

5. Social

This property remaining vacant has created concern for the adjoining neighbours due to the unsightly nature of the property affecting the amenity of the street and the previous use of this property by squatters.

6. Strategic Plans

Goal Area 5 – Council Leadership

7. Risk Assessment

This report provides Council with the process to ensure that due process is followed.

8. Asset Management

Not applicable as this property is not a Council asset.

COMMUNITY CONSULTATION**1. Customer Needs Analysis**

As per the requirements of Section 184 of the Local Government Act 1999 and identified in the body of the report.

2. Promotion/Communications

As per the requirements of Section 184 of the Local Government Act 1999 and identified in the body of the report.

CONFIDENTIAL

Attachment 1

Attachment 1 to Item 17.1

[TO BE ENGROSSED ON COUNCIL LETTERHEAD]

1 June 2010

Mr Edward and Mrs Shirley Nicholson
16 Princes Road
MOUNT BARKER SA 5251

and

Unit 110/16 Maloney Street
EAST LAKES NSW 2018

By Registered Post

Dear Mr and Mrs Nicholson

OUTSTANDING RATE DEBTS – FINAL DEMAND

You are the owner sand principal ratepayers of land compromised in Certificate of Title Register Book Volume 5475 Folio 969, known as 16 Princes Road, Mount Barker. Rates have not been paid in respect of this property for over 5 years.

Section 184 of the *Local Government Act 1999* empowers the Council to sell land where an amount payable by rates in respect of that land has been in arrears for three or more years. The amount of rates, fines and interest owed in respect of this property is \$8,405.50.

We are instructed to advise that if this amount is not paid within fourteen (14) business days from the date of this letter (i.e. on or before the close of business on **[Insert]**), the Council will commence proceeding to sell the land pursuant to section 184 of the Act.

If you are unable to make payment of the outstanding amount in full within the abovementioned period, you may contact Neville Gay, at the Council on 8391 7207 to discuss alternative payment arrangements which will, of course, need to be to the satisfaction of the Council.

We have also provided a copy of this letter to the Commissioner of State Taxation (SA) who has a registered caveat over your land.

Yours sincerely

Andrew Stuart
CHIEF EXECUTIVE OFFICER

Attachment 1

Attachment 2 to Item 17.1

[TO BE ENGROSSED ON COUNCIL LETTERHEAD]

1 June 2010

Commissioner of State Taxation
GPO Box 2149
ADELAIDE SA 5001

Dear Sir

OUTSTANDING RATES DEBTS – FINAL DEMAND – CAVEAT

A search of the relevant Certificates of Title (Volume 5475 Folio 969) shows that you have a caveat over land owned by Edward and Shirley Nicholson, located at 16 Princes Road, Mount Barker in the Council's area.

The Council is owed a sum by way of arrears of rates (plus fines and interest on those arrears) which enables it to commence a statutory process to sell the land to recover the amounts owed to it. To commence the statutory process, the Council must serve formal notice on the land owner(s).

We **enclose** a copy of final demand sent to Edward and Shirley Nicholson for rates owed to the Council.

If the Council's demands are not met within the stipulated period by payment of the amount due, it intends, pursuant to section 184 of the *Local Government Act 1999* (SA) to proceed to sell the land to recover the debt owed to it. If the land is sold, your caveat will be extinguished under the *Local Government Act 1999* (SA).

At this point in time this communication is of an advisory nature only, given your registered interest in the land.

Yours sincerely

Andrew Stuart
CHIEF EXECUTIVE OFFICER

Attachment 3 to Item 17.1

Attachment 2

[COUNCIL LETTERHEAD]

NOTICE***Local Government Act 1999*****SECTION 184 – SALE OF LAND FOR NON-PAYMENT OF RATES**

To: Edward and Shirley Nicholson
Of: 16 Princes Road
MOUNT BARKER SA 5251

and

Unit 110/16 Maloney Street
East Lakes NSW 2018

You are the owners and principal ratepayers of land comprised in Certificate of Title Register Book Volume 5475 Folio 696, Allotment 12, Deposited Plan 9808 known as 16 Princes Road, Mount Barker ("the Land").

The Land appears in the Council's Assessment Record as Assessment Number A3230 0.

Rates for the Land have been in arrears since 7 March 2005, a period of approximately 5 years. Section 184 of the Local Government Act 1999 enables the Council to sell the Land where an amount payable by way of rates in respect of the Land has been in arrears for three or more years. (A copy of section 184 is attached to this Notice).

The present amount of rates, (plus fines and interest payable pursuant to Section 181(8) of the *Local Government Act 1999*) owed to the Council for A3230 0 is: **\$8,405.50**

IF THE AMOUNT OF \$8,405.50 IS NOT PAID IN FULL WITHIN ONE MONTH OF SERVICE OF THIS NOTICE, THE COUNCIL INTENDS TO SELL THE LAND FOR NON-PAYMENT OF RATES PURSUANT TO SECTION 184 OF THE LOCAL GOVERNMENT ACT 1999.

A copy of this Notice will also be sent to the holders of any registered mortgage over the Land.

Dated **[Insert Date]**

Andrew Stuart
CHIEF EXECUTIVE OFFICER

Attachment 2

Attachment 4 to Item 17.1

[TO BE ENGROSSED ON COUNCIL LETTERHEAD]

1 June 2010

Commissioner of State Taxation
GPO Box 2149
ADELAIDE SA 5001

Dear Sir

SALE OF LAND FOR NON-PAYMENT OF RATES

You are a caveator in respect of a property comprised in Certificate of Title Register Book Volume 5475 Folio 969, known as 16 Princes Road, Mount Barker.

Rates have been outstanding in relation to this land for over three years. As such, the District Council of Mount Barker has resolved to sell the property pursuant to its powers contained in the *Local Government Act 1999* (SA).

Please find **enclosed** a copy of the Notice issued pursuant to section 184 of the *Local Government Act 1999* (SA) and sent to the owners of the subject land, Edward and Shirley Nicholson.

Yours sincerely

Andrew Stuart
CHIEF EXECUTIVE OFFICER

