



LATE REPORTS TO COUNCIL

20 December 2016

3. Late Reports to Council

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Department:	Finance
Submitted by:	Chief Financial Officer
Reference:	LR - Item 8
Subject:	Payment of outstanding rates and charges by the Anglican Special District of Bundarra

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

Objective:	Council is operated efficiently and effectively.
Strategy:	Operate in a financially responsible and sustainable manner.
Action:	Collect all rates and charges in line with payment requirements and undertake debt recovery action for outstanding accounts.

SUMMARY:

The Anglican Special District of Bundarra was granted possessory title on Lot 2 Section 31 DP 758181, a block adjacent to other Anglican property in Bundarra, on 31 August 2016. As at 14 December 2016, outstanding rates and charges relating to this block total \$11,283.84. This amount includes 2016 costs of \$3,612.91 and 2012 costs of \$425.94 relating to the sale of the block for unpaid rates together with interest accrued on the outstanding balance. The Anglican Special District of Bundarra is seeking a reduction of \$3,754.70 in the amount payable, relating to the sale costs of \$3,612.91 and interest of \$141.79 that has accrued since it was last advised of the outstanding balance on 1 August 2016.

OFFICER'S RECOMMENDATION:

1. That Council reverses the allocations of \$3,612.91 and \$425.94 in costs against assessment 52903 as these costs can only be recovered from the proceeds from the sale of unpaid rates;
2. That Council makes no reduction to the amount of interest charged on outstanding rates and charges payable by the owner of Lot 2 Section 31 DP 758181.

BACKGROUND:

Council resolved at the 22 February 2016 meeting to offer for sale by public auction land on which rates had not been paid for a period of five years. Included in that auction was Lot 2 Sec 31 DP 758181.

REPORT:

Every year council considers undertaking the sale of land for long overdue rates and charges. In February 2016 Council resolved to sell nine properties for rates that had been outstanding for five years or more. One of those properties was Lot 2 Sec 31 DP 758181 located in Muirhead Street Bundarra. This property was also included in the advertisement for the sale of land for overdue rates and charges in May 2012 but was withdrawn prior to the auction date.

A summary of the matters relating to these two sales is outlined below:

Date	Description of matter
11.5.12	Property advertised for sale in the Armidale Express but withdrawn from sale prior to the auction date. There does not appear to be any records indicating why the property was withdrawn from sale.
14.9.12	Letter from Bundarra Anglican Church on behalf of The Corporate Trustees of the Diocese of Armidale advising they were aware that the subject lot was not owned by the Church and whether any prior rate payments by them had been applied to Lot 2.
16.9.13	Letter from USC to Bundarra Anglican Church advising that the previously consolidated lots 1-2, 4 and 11 DP 758181 were split on 24 July 2009 with title to Lot 2 reverting to the original owner, Mr E G Clerk and that rates now accumulating on Lot 2 were unpaid.
13.2.15	Letter to USC from AW Simpson on behalf of the Anglican Special District of Bundarra and The Corporate Trustees of the Diocese of Armidale advising that they were in receipt of the letter dated 16.9.13 (see above) and that they had been instructed to make Application for Possessory Title to Lot 2 on behalf of the Church.
27.1.16	NSW Land & Property Information (LPI) receive original application for Possessory Title after which LPI requisitioned the Diocese for additional evidence in relation to the application.
22.2.16	Council resolved to offer for sale by public auction land on which rates had not been paid for a period of five years. Included in that auction was Lot 2 Sec 31 DP 758181.
7.4.16	Standard letter (to adjoining property owners) from USC to The Corporate Trustees of the Diocese of Armidale advising of the proposed sale of land for unpaid rates.
5.5.16	Letter from the Secretary, St Mary's Anglican Church Parish Council advising USC that the property was the subject of a possessory title application and that AW Simpson were working through the process and hoped to have it resolved shortly.
Note:	Section 715 of the Local Government Act 1993 stipulates that: “(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.”
12.5.16	APJ Law, solicitors for USC, called AW Simpson, the lawyers representing the church, to advise that the property would go to auction if all outstanding rates were not paid prior to the due date.
15.6.16	APJ Law left a further message at the office of AW Simpson advising that the property would go to auction on the following weekend.
18.6.16	Property sold at auction to a third party. The contract for sale stipulated a thirty-five day settlement period.
29.6.16	LPI advises APJ Law of the following information in relation to the possessory title application: a) On 27.1.16 LPI received original application for Possessory Title after which LPI requisitioned the Diocese for additional evidence in relation to the application; b) On 13.4.16 LPI assessed the application (after receiving further information) and was satisfied that the Diocese was in adverse possession of the Land; c) LPI therefore advised the Diocese that the only action required to finalise

	<p>the application was to advertise in the Sydney Morning Herald and a local newspaper by 15 July 2016;</p> <p>d) On 16.6.16 PI performed a review of the application and noted that they had not yet received notification of the required publications. If the Diocese failed to provide the required publication evidence by 15.7.16, the Possessory Title application will be rejected. However, if the Diocese does provide the publication evidence before 15.7.16 the possessory title application will be approved.</p>
18.7.16 and 19.7.16	LPI advises APJ Law that an extension was granted to the Diocese to 16.9.16 to advertise the application in the SMH and a local newspaper. This extension was granted due to a verbal conversation with AW Simpson.
20.7.16	LPI advise APJ Law that publication of the notices occurred in the SMH on 19/7/16 and Northern Daily Leader on 23/7/16.
1.8.16	<p>APJ Law sends a letter to AW Simpson advising that the contract for the sale of Lot 2 to the third party has been rescinded. APJ Law also propose, on behalf of USC, that to prevent the need to lodge a Caveat on Title:</p> <p>“1. That the Diocese make immediate payment for the outstanding rates and interest owing on the Property in the amount of \$7529.14 being for rates to 1 August 2016; and</p> <p>2. That the Diocese make immediate payment for all professional costs and incidentals associated with this matter given that the Property was previously offered to the Diocese.”</p>
4.8.16	AW Simpson respond to letter from APJ Law.
15.8.16	<p>Meeting between USC and representatives of the Anglican Diocese of Armidale and the Bundarra Special District.</p> <p>The preparer of this report has been advised that:</p> <ol style="list-style-type: none"> a. Mr Cowan had allowed the church six months within which to sell the property without Council taking further action; and b. That Mr Cowan did not state that other charges would not be added to the total outstanding as at the date of the meeting.
15.8.16	Letter from St Mary’s Anglican Church thanking Mr Cowan for his time and formally asking that the payment of rates on Lot 2 in the amount of \$7,529.14 be postponed until settlement of the sale of the lot.
23.9.16	Letter from St Mary’s Anglican Church Bundarra advising that the Possessory Title application had been successful and that Lot 2 had now been registered in the name of the Corporate Trustees of the Diocese of Armidale.
15.11.16	Meeting between USC and representatives of the Anglican Diocese of Armidale and the Bundarra Special District seeking a reduction in the amount payable relating to Lot 2. On the date of the meeting the amount outstanding totalled \$11,252.52 but the Diocese was seeking to reduce this amount to somewhere between \$Nil and \$7,529.14. USC advised that it could only reduce the total outstanding if it was approved by Council.
6.12.16	<p>Letter from the Registrar of the Diocese of Armidale:</p> <ol style="list-style-type: none"> a. Formally requesting that Council waive any recovery of the legal costs it has incurred in relation to Lot 2 (being a total of \$2,642.40); b. Formally requesting that the interest that has accrued on the amount outstanding since the beginning of August 2016 be waived (being a total of \$141.79);

	c. That until Lot 2 can be sold it accepts full responsibility to meet all future rate assessments on this block of land.
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Various sections of the Local Government Act 1993 deal with the write-off of rates and charges and those sections that might apply in this circumstance follow:

Section 564 *Agreement as to periodical payment of rates and charges*

- (1) A council may accept payment of rates and charges due and payable by a person in accordance with an agreement made with the person.
- (2) The council may write off or reduce interest accrued on rates or charges if the person complies with the agreement.

Section 567 *Writing off of accrued interest*

The council may write off accrued interest on rates or charges payable by a person if, in its opinion:

- (a) the person was unable to pay the rates or charges when they became due and payable for reasons beyond the person's control, or
- (b) the person is unable to pay the accrued interest for reasons beyond the person's control, or
- (c) payment of the accrued interest would cause the person hardship.

Section 607 *Writing off of rates, charges and accrued interest*

The regulations may specify circumstances, in addition to those for which provision is made in this Chapter, in which a council may write off rates and charges and interest accrued on unpaid rates and charges.

The Local Government (General) Regulation 2005 also provides guidance on the write-off of rates:

Clause 131 *Procedures for writing off rates and charges*

- (1) The council must, from time to time, by resolution, fix the amount of rates and charges above which any individual rate or charge may be written off only by resolution of the council.
- (2) An amount of rates or charges of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subclause (1), rates and charges can be written off only by resolution of the council.
- (3) A resolution or order writing off an amount of rates or charges must:
 - (a) specify the name of the person whose debt is being written off, and
 - (b) identify the account concerned, and
 - (c) specify the amount written off,or must refer to a record kept by the council in which those particulars are recorded.
- (4) An amount of rates or charges can be written off under this clause only:
 - (a) if there is an error in the assessment, or
 - (b) if the amount is not lawfully recoverable, or
 - (c) as a result of a decision of a court, or
 - (d) if the council or the general manager believes on reasonable grounds that an attempt to recover the amount would not be cost effective.
- (5) The fact that an amount of rates or charges is written off under this clause does not prevent the council concerned from taking legal proceedings to recover the amount.

(6) The general manager must advise the council of rates and charges written off by written order of the general manager.

132 *Details of written off rates and charges to be included in annual report*

The council's annual report must include the amount of rates and charges written off during the year

Based on the clauses above, only section 564 appears to apply to the circumstances of this case. This section would allow Council to write off or reduce interest accrued on outstanding rates or charges if an agreement is reached for the payment of rates and charges.

The recommendations to Council are:

1. That Council reverses the allocations of \$3,612.91 and \$425.94 in costs against assessment 52903 as these costs can only be recovered from the proceeds from the sale of unpaid rates;
2. That Council makes no reduction to the amount of interest charged on outstanding rates and charges payable by the owner of Lot 2 Section 31 DP 758181.

COUNCIL IMPLICATIONS:

1. Community Engagement/ Communication

N/A

2. Policy and Regulation

- Local Government Act 1993;
- Local Government Regulations (General) 2005;

3. Financial (LTFP)

Potential loss of over \$3,700 in rates and charges.

4. Asset Management (AMS)

N/A

5. Workforce (WMS)

N/A

6. Legal and Risk Management

N/A

7. Performance Measures

N/A

8. Project Management

N/A

Prepared by staff member: Simon Paul
Approved/Reviewed by Manager: Andrew Hopkins
Department: Finance
Attachments