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ITEM 20 PRIVATE LEASES OVER CROWN LAND REQUIRING WRITE OFF OF COUNCIL RATES

This report recommends Council write off certain land rates that have become unrecoverable. Council does not usually write off rates and extra charges on property as the debt is normally deemed to be a 'charge on the land' and, therefore, passes with the ownership of the property. The exception to this is where the Crown leases otherwise unrateable land and the lessee becomes liable for the rates that are then raised. Where a Crown tenant fails to meet the payment obligations, Council pursues normal recovery processes but is unable to pursue the landowner (the Crown) as it would with other privately owned property.

RECOMMENDATIONS

1 Council approves the writing off of land rates and charges totalling $48,374.73 on Assessment Nº 214845-5.

2 Council approves the writing off of land rates and charges totalling $14,891.16 on Assessment Nº 76160-6.

3 Council approves the writing off of land rates and charges totalling $2,580.93 on Assessment Nº 80231-9.

REPORT AUTHORISATIONS

Report of: Brian Jenkins, Chief Financial Officer
Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

The following provides an outline for the three assessments proposed to be written off.

Assessment 214845-5, located at 132 West Dapto Road, Kembla Grange NSW 2526. OneSteel Trading Pty Ltd (Onesteel) leased the above Crown land. Onesteel was part of the Arrium Group of 95 subsidiary companies that had administrators appointed in 2016. Council's lawyers subsequently issued a summons on Council's behalf in December 2016. In turn, Council's lawyers received a response from lawyers acting under instructions of the administrators of OneSteel. Those lawyers advised that OneSteel executed a deed of Company Arrangement (DOCA) on 4 November 2016 and the DOCA makes all claims prior to 7 April 2016 subject to a moratorium. Under the moratorium, creditors for debts related to the period prior to 7 April 2016:

- Require leave of the court to commence or proceed with legal action against OneSteel.
- Can only pursue the debt through the DOCAs proof of debt process.

The lawyers proposed, based on the dates of the debt to Council, the administrators pay a total $18,764.97 which comprised a portion of 4th Quarter Financial Year 2015-2016 rates post 7 April 2016, as well as the full amount of 1st Quarter Financial Year 2016-2017 rates and filing fees, service fees and solicitor's fees claimed under the statement of claim. The administrator's lawyers also requested that Council discontinue the claim against OneSteel and that should legal action continue it will be defended on the basis that it is invalid due to the DOCA. On legal advice, Council subsequently agreed to these terms, received payment and discontinued proceedings.

In 2017, Council received a request from the administrators to file a proof of debt claim. Council completed a proof of debt for the full value of remaining rates unpaid at that point being $40,227.41. Interest has continued to accrue at statutory rates since the valuation was cancelled and the amount outstanding currently stands at $48,374.73. Later that same year, Council received correspondence from the administrators who rejected our proof of debt in full. The basis for this was that in August 2017 the

NSW Department of Industry, Lands and Forestry issued a surrender of Permissive Occupancy and back dated the surrender to September 2014. We sought legal advice in relation to Council's position and options available. The advice was that Council had grounds to push to have the proof of debt accepted on the basis that under the DOCA, administrators had already admitted liability and paid for some rates and charges post the back dated cancellation date and that the rates were made and levied in accordance with the Local Government Act and remained payable.

During 2018, there were several emails back and forth with the administrators to clarify the debt owing and the period it pertained to. In 2019, Council received formal correspondence from the administrators advising the proof of debt amount of $4,873.76 is provable in the DOCA and assessed that $35,353.65 is not provable and formally rejected. Subsequent legal advice to Council was that they may be correct on the point of rates that accrue after the debt of the DOCA are referable back to the company. If liability was denied on the basis that the permissive occupancy termination was backdated to 2014, it may not be correct.

In 2020, it appears Council's proof of debt was accepted as correspondence was received from the liquidators as dividends in respect of the $40,227.41 claimed had been declared and ranked. The amount allowed was $4,873.76 and Council was paid 14.9 cents in the dollar to the value of $726.20. This amount has already been received with the balance of $48,374.73 to be written off.

Assessment 76160-6, located at Lot 74 Princes Highway, Maddens Plains NSW 2508, comprising Lot 74 DP 752054, Lot 160 DP 752054. The subject site is Crown land. An original lease had an end date of 1991 to Evans and Johnson but appears to have been extended and renegotiated with Birch and Tarrant. The lease was associated with those lessees (Birch and Tarrant) and known as the Boomerang Golf Course, with a dam and pump. Birch and Tarrant sold the Golf Course operation to Sterling Linx Pty Ltd in 2014. The lease was subsequently terminated in December 2015 and Crown Lands have no record of a new lease in the name of Sterling Linx Pty Ltd.

The parcel of land is owned by the NSW State Government and would normally be exempt from rates. As there was a lease for Lot 74 DP 752054, Lot 160 DP 752054, a value was provided by the Valuer General and the property became rateable with the lessee being responsible to pay the rates. The lease was terminated in December 2015 and Council is unable to contact the lessee and the amount of $14,891.16 does not transfer to the State as it would with privately owned land. Council has issued rate notices, instalment notices, reminders and final notices in accordance with Council policy. The rates that remain unpaid cover the period from 2009 until the lease was terminated in December 2015.

Although the recovery process has been followed, Council started to receive returned mail in 2013 and contact was initially achieved via email with the property manager in August 2013 with a new postal address and contact details, however, there was no payment forthcoming. As the mail had been returned, Council has not been able to commence further legal action as there is no legal address to serve the previous lessee with the legal documents.

Assessment 80231-9, located at Lot 342 Parkes Street, Helensburgh NSW 2508. This issue involves a licence for a vegetable garden. The licence commenced in 1998 with Council issuing rate notices, instalment notices, reminders and final notices accordingly, with rates being paid up until 2011 and then remaining unpaid until the licence was terminated in July 2016. Due to the nominal value of the licence, it took some time to reach Council's legal action threshold and Council subsequently issued a statement of claim and obtained a court judgment in 2016. Upon review of the matter, it appears the information received from the Valuer General's office supplied to Council with the valuation to use for rating purposes, was in the name of Barry Robinson & Deanne Robinson, with a mailing address in Helensburgh. Reviewing the rating information, it appears the mailing address is owned by Lionel Barry Robinson and Betty Deane Robinson (the latter now deceased), effectively meaning the legal action is against person(s) who do not exist and the information supplied by the Valuer General is incorrect. As it appears, therefore, Council has no way of enforcing the judgment debt, it is recommended Council write off the current debt of $2,580.93.

PROPOSAL

Under the Local Government Act 1993, land owned by the NSW State Government is exempted from rates unless the land is leased for private purposes. As the three above properties are subject to a lease/licence from the State, the properties became rateable and the lessee/licensee are responsible to pay the rates charged on those lands.

The Local Government (General) Regulation 2005, clause 131 outlines the procedures for writing off rates and charges. There are no avenues of recovery for Council and it is therefore recommended that the total amount of $65,846.82 be written off by Council resolution.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2028 goal “We are connected and engaged community”.

It specifically delivers on core business activities as detailed in the Financial Services Service Plan 2019-20.

CONCLUSION

It is recommended that Council resolves to write off the rates arrears totalling $65,846.82 as Council is unable to recover the rates arrears.