



Minutes of Audit (Finance and Risk) Committee Meeting

13 May 2014

I hereby certify that the Minutes of the Audit (Finance and Risk) Committee meeting held on 13 May 2014 are a true and accurate record of the proceedings contained therein.

Chairperson Confirmed

Date: _____

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1. DECLARATION OF OPENING

The Chairperson declared the meeting open at 3.01pm.

2. RECORD OF ATTENDANCE / APOLOGIES

ATTENDANCE

Cr K Wright	Councillor (Chairperson)
Cr J Moulden	Shire President
Cr B Robinson	Councillor
Cr D Spackman	Councillor
G Gaffney	Chief Executive Officer
N Octoman	Director Corporate Services
M Tonkin	Executive Assistant to the Chief Executive Officer (Minute Taker)
S Binnie	Finance Officer

APOLOGIES

Nil

LEAVE OF ABSENCE PREVIOUSLY APPROVED

Nil

3. DECLARATION OF INTEREST

- Financial Interest

Nil

- Impartiality Interest

Nil

- Proximity Interest

Nil

4. ACCEPTANCE OF MINUTES OF PREVIOUS MEETING

4.1 AUDIT (FINANCE AND RISK) COMMITTEE MEETING MINUTES 24 FEBRUARY 2014

RECOMMENDATION

That the minutes of the Audit (Finance and Risk) Committee meeting of 24 February 2014 be accepted as a true and accurate record of proceedings.

COMMITTEE RESOLUTION

Minute: AC295

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the minutes of the Audit (Finance and Risk) Committee meeting of 24 February 2014 be accepted as a true and accurate record of proceedings.

Carried Unanimously 3/0

5. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS / NOTICES OF MOTIONS

Nil

6. OFFICER'S REPORTS

6.1 STANDING ITEM - SUNDRY DEBTORS

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Paul Tily
REPORTING OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	FM.07.2

PURPOSE

To review status of sundry debtors, including airport debtors, and sundry debts in legal process.

BACKGROUND

The listing of 90+ Day Sundry Debtors was provided at the Ordinary Council Meeting on a monthly basis until March 2009 when Council resolved that the 90+ days debtor list be removed from the Council Agenda as a standing item and be presented to the then Audit Committee for consideration and to make recommended actions to Council as this falls within the scope of the committee's purpose.

In line with the more strategic focus of the new Committee the report in April 2012 only included debtor balances at 90+days and over \$500.

To further progress this strategic focus this item has been changed to provide summary information regarding all sundry debts including airport landing fees administered by Avdata on the Shire's behalf. Sundry debtors in legal process have also been incorporated into this item to provide a complete picture of sundry debtors.

Further changes were recommended to the Committee at the February 2014 meeting to modify the report by remove the categories previously reported and to report sundry debtors as a whole, with airport debtors still being identified separately and that only debtors in excess of \$20,000 be provided with more detail. These changes were supported by the Committee and have been implemented in this report

STATUTORY IMPLICATIONS

This item in a Council Meeting needs to be discussed behind closed doors under Section 5.23.(2)(e)(iii) of the *Local Government Act 1995* because the item may disclose information about the business, professional, commercial or financial affairs of a person and because the item also contained legal advice to the Council.

POLICY IMPLICATIONS

No policy implications apply in relation to this item.

FINANCIAL IMPLICATIONS

Legal fees may be incurred to recover debts or revenue written off if debt recovery is considered not economically viable.

STRATEGIC IMPLICATIONS

The costs associated with legal fees to recover debt need to be weighed up against the debt to ensure and economically viable action is being taken.

COMMUNITY CONSULTATION

Community consultation is not required in relation to this item.

COMMENT

Sundry Debtors (General) Summary – 29 April 2014

Categories	90 Days		60 Days	30 Days	Current	Total
	No	\$	\$	\$	\$	\$
Sundry Debtors	65	317,847	132,980	294,669	565,609	1,311,105

Note: The information in the above table is from the Shire's Debtors System, the revenue is recognised when the debt is raised.

Sundry Debtors (Airport Landing Fees) Summary – 29 April 2014

Categories	90 Days		60 Days	30 Days	Current	Total
	No	\$	\$	\$	\$	\$
Kununurra Airport	21	5,416	71,357	97,539	103,106	277,418
Wyndham Airport	1	118	486	2,543	3,025	6,172
Total		5,534	71,843	100,082	106,131	283,590

Note: The information in the above table is provided by Avdata. Airport Landing Fees are not detailed in any of the Shire's systems. They are invoiced and collected on the Shire's behalf by Avdata. The revenue is recognised when the cash is deposited in the Shire's bank account.

ATTACHMENTS

Sundry Debtors detailed report as at 29 April 2014 (*Confidential attachment provided under separate cover*)

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee reports to Council that the actions being undertaken by the administration in regard to sundry debtors including sundry debts in legal process are sufficient and appropriate.

Cr D Spackman entered Council Chambers at 3.03pm.

COMMITTEE RESOLUTION

Minute: AC296

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the Audit (Finance and Risk) Committee reports to Council that the actions being undertaken by the administration in regard to sundry debtors including sundry debts in legal process are sufficient and appropriate.

Carried Unanimously 4/0

6.2 STANDING ITEM - RATES DEBTORS

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates
REPORTING OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	FM.11.1

PURPOSE

To review the status of rates debtors and those rates debts that are in the legal process.

BACKGROUND

At the Ordinary Council Meeting, 16 October 2007, Council moved the following resolution:

Minute No. 7936

That Council direct the CEO to provide a written report to Council under confidential cover each month in regard to all debts currently in legal process.

Carried Unanimously 5/0

At the Ordinary Council Meeting, 18 March 2008, Council moved the following:

Minute No: 8148

Moved: Cr J Parker Secoded: Cr F Mills

That Council:

- 1. notes the confidential report provided to it in relation to debts owed to Council and under legal action.**
- 2. directs the Executive Manager Corporate Services to provide a written report to the Audit Committee under confidential cover at each Audit Committee meeting in regard to all debts currently in legal process.**
- 3. requests the Audit Committee to make recommendations to Council as required and appropriate in relation to the report provided under confidential cover regarding debts currently in legal process.**
- 4. resolves that this requirement replaces the previous requirement on the CEO to report information to Council.**

Carried Unanimously 8/0

This requirement is now fulfilled by a combination of this report and item 5.1 Standing Item – Sundry Debtors.

The Outstanding Rates Debtors over three years report has also been incorporated into the confidential attachment to this item to give a complete picture of rates debtors.

STATUTORY IMPLICATIONS

This item in a Council Meeting needs to be discussed behind closed doors under Section 5.23. (2) (e) (iii) of the *Local Government Act 1995* because the item may disclose information about the business, professional, commercial or financial affairs of a person and because the item also contained legal advice to the Council.

POLICY IMPLICATIONS

No policy implications apply in relation to this item.

FINANCIAL IMPLICATIONS

Legal fees may be incurred to recover debts or revenue written off if debt recovery is considered not economically viable.

STRATEGIC IMPLICATIONS

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4: Business innovation, efficiency and improved service.

Strategy 1.4.3: Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not required in relation to this item.

COMMENT

Rates and Services Debtors Summary

Rates & Services Levied 2013/2014 (including arrears)	Rates & Services Debt at 22 April 2014	Overdue at 22 April 2014
\$ 9,706,224.97	\$732,391.46	\$749,274.29

Rates for the financial year of 2013/14 were raised and issued on 13 August 2013. Interim rating occurs periodically throughout the year.

ATTACHMENTS

Rates Debtors - Detailed Report (Confidential Attachment provided under separate cover)

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee reports to Council that the actions being undertaken by the administration in regard to rates debtors, including rates debts in legal process are sufficient and appropriate.

COMMITTEE RESOLUTION

Minute: AC297

Moved: Cr B Robinson

Seconded: Cr J Moulden

That the Audit (Finance and Risk) Committee reports to Council that the actions being undertaken by the administration in regard to rates debtors, including rates debts in legal process are sufficient and appropriate.

Carried Unanimously 4/0

6.3 LEASES

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Natalie Octoman, Director Corporate Services
REPORTING OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	CP.07, CP.16

PURPOSE

To consider the attached Confidential Lease Report as at April 2014.

BACKGROUND

The Shire of Wyndham East Kimberley administers over thirty five leases ranging from airport leases, community and commercial leases.

In December 2007 the Audit (Risk and Finance) Committee resolved:

Minute No. A066

Moved: Cr Keith Wright

Seconded Cr Frederic Mills

1. that the Audit Committee note that the responsibility for the management of leases and periodical contracts is that of the Executive Manager Corporate Services.
2. that the Audit Committee note that the Executive Manager Corporate Services monitors the leases and coordinates the lease data base and reporting to Executive Managers, the Audit Committee and Council.
3. that the Audit Committee request staff to present an updated Lease Spreadsheet certified by Executive Manager Corporate Services to each Audit Committee meeting as a standing item.

Carried Unanimously 4/0

STATUTORY IMPLICATIONS

Local Government Act 1995
Part 5, Division 2

5.23. Meetings generally open to public

- (1) Subject to subsection (2), the following are to be open to members of the public —
 - (a) all council meetings; and
 - (b) all meetings of any committee to which a local government power or duty has been delegated.
- (2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following -
 - (a) a matter affecting an employee or employees; and

- (b) *the personal affairs of any person; and*
 - (c) *a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and*
 - (d) *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and*
 - (e) *a matter that if disclosed, would reveal -*
 - (i) *a trade secret; or*
 - (ii) *information that has a commercial value to a person; or*
 - (iii) *information about the business, professional, commercial or financial affairs of a person,*
where the trade secret or information is held by, or is about, a person other than the local government; and
 - (f) *a matter that if disclosed, could be reasonably expected to —*
 - (i) *impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or*
 - (ii) *endanger the security of the local government's property; or*
 - (iii) *prejudice the maintenance or enforcement of a lawful measure for protecting public safety;*
- and*
- (g) *information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971; and*
 - (h) *such other matters as may be prescribed.*
- (3) *A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery.

Strategy 1.4.2: Improve the efficiency and productivity of Shire services.

Strategy 1.4.3: Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

There is no requirement for the community to be consulted in relation to this item.

COMMENT

Leases have been the topic of some discussion over recent months given the level of involvement of staff from across the Shire in their negotiation and day to day management.

While the discussions are continuing, the update to the Audit (Finance and Risk) Committee will remain the responsibility of the Corporate Services Directorate.

The Lease Schedule attached has incorporated new information in relation to the rateability of the properties, and each affected item will be updated in the next report depending upon the outcome of the Council decision in relation to rates concessions that will be applied.

ATTACHMENTS

Lease Schedule (Confidential attachment provided under separate cover)

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Committee notes the Confidential Lease Schedule attached.

COMMITTEE RESOLUTION

Minute: AC298

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the Committee notes the Confidential Lease Schedule attached.

Carried Unanimously 4/0

6.4 RATES DEBT COLLECTION POLICY

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Natalie Octoman, Director Corporate Services
REPORTING OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	FM.11.1

PURPOSE

For the Audit (Finance and Risk) Committee to review and consider recommending to Council that it adopt the proposed Rates and Charges Debt Collection Policy.

BACKGROUND

The Council currently has two Policies relating to debt collection, the first being CP FIN-3207 "Collection of Fees and Charges" and the second being F15 "Sundry Debt Collection Policy". Neither of these Policies addresses the slightly different scenario of debt collection for rates and service charges.

STATUTORY IMPLICATIONS

Local Government Act 1995 - Part 6, Division 4, Section 6.13 – Interest on money owing to local governments.

Local Government Act 1995 - Part 6, Division 6, Subdivision 4, Section 6.45 – Options for payment of rates and service charges

Local Government Act 1995 - Part 6, Division 6, Subdivision 4, Section 6.49 – Agreement as to payment of rates and service charges

Local Government Act 1995 - Part 6, Division 6, Subdivision 4, Section 6.50 – Rates or service charges due and payable

Local Government Act 1995 – Part 6, Division 6, Subdivision 4, Section 6.51 – Accrual of interest on overdue rates or service charges

Local Government Act 1995 – Part 6, Division 6, Subdivision 5, Section 6.56 – Rates or service charges recoverable in court

Local Government Act 1995 – Part 6, Division 6, Subdivision 5, Section 6.60 – Local government may require lessee to pay rent

Local Government Act 1995 – Part 6, Division 6, Subdivision 6, Section 6.64 – Actions to be taken

Local Government (Financial Management) Regulations 1996 – Part 5, Section 58 – Instalments not available if land in arrears (Act s6.45)

Local Government (Financial Management) Regulations 1996 – Part 5, Section 59 – Instalments not available if total less than \$200 (Act s6.45)

Local Government (Financial Management) Regulations 1996 – Part 5, Section 60 – Instalments, manner of electing to pay by (Act s6.45)

POLICY IMPLICATIONS

The Rates and Charges Debt Collection Policy is intended to be a Council Policy and as such would only be amended by resolution of the Council. It is however, within the Audit (Finance and Risk) Committee's Terms of Reference, to recommend policy amendments or new policies to Council for adoption, if they are finance or risk related.

FINANCIAL IMPLICATIONS

There are no direct financial implications associated with this matter, although with a clear policy for rates and charges debt collection, it is hoped that the amount of rates and charges written off will reduce as the ratepayers become aware of the process.

COMMUNITY CONSULTATION

Community consultation is not required in relation to this item.

COMMENT

In the past, while there is a process that is followed for rates and charges debt collection, with the assistance of the Shire's Debt Collection Agency AMPAC, it is not always clear to the ratepayers as to why certain actions are undertaken, particularly when court action commences.

This Policy is not only intended to provide clear guidance to officers in the process of rates and charges debt collection, but also ensures that the process is open and transparent to ratepayers and the community.

This Policy was also highlighted as an action within the Corporate Governance (Finance and Risk) Project Plan for 2014.

ATTACHMENTS

Proposed Rates and Charges Debt Collection Policy

VOTING REQUIREMENT

Simple Majority

OFFICERS RECOMMENDATION

That the Committee recommends to Council that it adopts the attached proposed Council Rates and Charges Debt Collection Policy.

COMMITTEE RESOLUTION

Minute: AC299

Moved: Cr B Robinson

Seconded: Cr J Moulden

That the Committee recommends to Council that it adopts the attached proposed Council Rates and Charges Debt Collection Policy.

Carried Unanimously 4/0



Council Policy Number: CP Rates and Charges Debt Collection Policy

OBJECTIVE:

This policy will establish clear guidelines for the efficient, effective and economical collection of rates debts; and also enable flexibility and choice in the payment of rates and charges established by the Council.

POLICY:

Scope & Limitations

In accordance with the Local Government Act 1995 –

6.49 Agreement as to payment of rates and service charges

A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.

6.50. Rates or service charges due and payable

(1) Subject to —

- (a) subsections (2) and (3); and*
- (b) any concession granted under section 6.47; and*
- (c) the Rates and Charges (Rebates and Deferments) Act 1992, a rate or service charge becomes due and payable on such date as is determined by the local government.*

(2) The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.

(3) Where a person elects to pay a rate or service charge by instalments the second and each subsequent instalment does not become due and payable at intervals of less than 2 months.

6.51. Accrual of interest on overdue rates or service charges

(1) A local government may at the time of imposing a rate or service charge resolve to impose interest (at the rate set in its annual budget) on —*

- (a) a rate or service charge (or any instalment of a rate or service charge); and*
- (b) any costs of proceedings to recover any such charge,*

that remains unpaid after becoming due and payable.

** Absolute majority required.*



Council Policy Number: CP Rates and Charges Debt Collection Policy

6.56 Rates or service charges recoverable in court

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction;*
- (2) *Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.*

6.60 Local government may require lessee to pay rent

- (1) *In this section —*

lease *includes an agreement whether made orally or in writing for the leasing or subleasing of land and includes a licence or arrangement for the use of land;*

lessor and lessee *mean the parties to a lease and their respective successors in title.*

- (2) *If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.*

6.64 Actions to be taken

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —*
 - (a) *from time to time lease the land or*
 - (b) *sell the land or*
 - (c) *cause the land to be transferred to the Crown or*
 - (d) *cause the land to be transferred to itself.*

6.68 Exercise of power to sell land

- (1) *Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b)(in this Subdivision and Schedule 6.3 referred to as the power of sale) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due.*

BACKGROUND:

The collection of rates and charges is an important component of the Shire's management of adequate cash-flows as well as the overall management of the Shire's financial performance and position.



Council Policy Number: CP Rates and Charges Debt Collection Policy

GUIDING STATEMENTS:

The Council will exercise its debt recovery powers in order to reduce the overall debt burden on ratepayers. It will be guided by the principles of:

1. Equity
Ensuring that the debt collection procedures are undertaken in a fair and equitable manner and therefore providing the same treatment for ratepayers with similar circumstances.
2. Administrative Efficiency
Providing the Shire of Wyndham East Kimberley with a more effective method over the collection of outstanding debtors and ensuring that the processes used to recover outstanding debts are clear, simple to administer and cost effective.
3. Transparent
Ensuring the obligations of the Shire's ratepayers and sundry debtors are clear and assisting them to meet their financial obligations where possible.
4. Compliant
Ensuring that the Shire of Wyndham East Kimberley is compliant with the Local Government Act 1995 and all associated regulations.

POLICY:

Upon the Council adopting the annual budget for the following financial year, the Rates Notice will be issued.

1. Options for Payment of Rates and Charges

The options for payment of a rate or service charge may be:-

- a. *In full by the specified due date; or*
- b. *By two (2) instalments by the specified due date (or as adopted by the Council in the Annual Budget); or*
- c. *By four (4) instalments by the specified due date; or*
- d. *By a special payment arrangement with payments made by the agreed due dates.*



Council Policy Number: CP Rates and Charges Debt Collection Policy

1.1. Instalment Options (Either Two (2) or Four (4) Instalments)

Scope & Limitations

In accordance with the Local Government (Financial Management) Regulations 1996 –

58. Instalments not available if land in arrears (Act s. 6.45)

Payment of a rate or service charge on any land may not be made by instalments if, at the date for payment of the first instalment, any part of a rate or service charge imposed on that land in a previous financial year (or interest accrued thereon at the date of issue of the rate notice) remains unpaid.

59. Instalments not available if total less than \$200 (Act s. 6.45)

Payment may not be made by instalments if the total amount shown in the rate notice as being payable to the local government for rates, service charges or minimum payments, other than amounts remaining unpaid from a previous financial year, is less than \$200.

60. Instalments, manner of electing to pay by (Act s. 6.45)

For the purposes of section 6.45 an election to pay by instalments is made (whether a person indicates to the local government that payment will be made by instalments, or not) if, before the close of business on the due date of the first instalment under an option specified in the rate notice, the local government receives payment of the amount set forth in the rate notice as being payable for that instalment.

61. Instalments, additional circumstance when rates may be paid by

Where a local government imposes rates after amending the rate record under section 6.39(2)(b) payment of the total amount of the rates may be made by the method of payment by instalments set forth in the local government's annual budget for the financial year in which the rates are imposed.

66. Instalments, when right to pay ceases

- (1) Subject to subregulation (2), where an election has been made to pay a rate or service charge by instalments, payment may continue to be made by instalments notwithstanding that an instalment (other than the first instalment) remains unpaid after it is due and payable*
- (2) If an instalment remains unpaid after the day on which the next instalment becomes due and payable, the local government may revoke the ratepayer's right to pay by instalments*



Council Policy Number: CP Rates and Charges Debt Collection Policy

- (3) Where the right to pay by instalments is revoked under subregulation (2) –
- (a) the unpaid rate becomes due and payable on the day after the day of the revocation, or such day as the local government decides and
 - (b) the local government must, in writing, immediately notify the ratepayer of the revocation and give details.

Policy

1. The charges for paying by instalments will be those adopted by the Council in the Annual Budget each year.
2. Ratepayers will not be placed on an instalment option after 14 days past the due date of the Annual Rates Notice.
3. If the Four (4) Instalments Option is selected and on the third instalment due date, the second and third instalment remain unpaid the ratepayer will be removed from instalments and a final notice will be issued for the full amount of rates and service charges.

1.2. Special Payment Arrangements

Before authorising any special payment arrangement in accordance with sub-delegation provided by the CEO, the Director Corporate Services will consider the following:

- a) That the terms of the agreement require that all outstanding rates will be recovered by the Shire of Wyndham East Kimberley by 30 June of the financial year in which the agreement is entered into.
- b) That the ratepayer is aware of the costs and charges associated with entering into a payment arrangement, of which the charges will be those adopted by the Council in the Annual Budget each year.
- c) At the discretion of Chief Executive Officer, a payment arrangement term may be extended beyond the 30 June, but not exceed 2 successive financial years.
- d) Where a ratepayer fails to meet their full obligation under the agreement, the agreement will be terminated and legal action shall commence for outstanding rates and service charges.



Council Policy Number: CP Rates and Charges Debt Collection Policy

- e) *If the ratepayer defaults on the special payment arrangement agreement twice in any 12 month period, no further special payment arrangements can be made and rates are required to be paid in full.*

2. Recovery of Rates and Charges in Arrears

Rates and Charges are due and payable within 35 days from the date of issue of the annual rate (or interim rate) notice, as shown on that notice in accordance with section 6.50(2) of the Local Government Act 1995.

These procedures also apply to those ratepayers who decide to pay by one of the instalment options.

- a) *Should any amount of rates or service charges remain outstanding after the due date stated on the Annual Rates Notice penalty interest shall applied at the interest rate adopted by Council in its annual budget in accordance with section 6.13(1) of the Local Government Act 1995.*
- b) *The interest rate set by the Council is not to exceed the maximum rate of interest as prescribed within regulation 19A of the Local Government (Financial Management) Regulations 1996.*
- c) *Interest is calculated on the number of days from the due date of payment until the day the payment is received by the Shire of Wyndham East Kimberley. This includes overdue amounts where the debtor has elected the instalment option.*

2.1. Accounts 35 Days in Arrears After the Initial Rates Notice

- a. *7 days after the due date of the Annual Rates Notice a Final Notice will be issued allowing 14 days for payment unless the debtor has agreed to enter into a special payment arrangement.*
- b. *Final Notices are **not** to be issued to eligible pensioners or seniors under the Rates and Charges (Rebates and Deferrals) Act 1992 as such persons have until 30 June in the year of rating to make payment, without incurring any late payment penalties.*
- c. *14 days past the Annual Rate Notice due date, Instalment Options are no longer available. Rates must be paid in full or a special payment arrangement entered into.*



Council Policy Number: CP Rates and Charges Debt Collection Policy

2.2. Accounts 57 Days or more in Arrears After the Initial Rates Notice

Any costs incurred by the Shire of Wyndham East Kimberley to recover rates and charges in arrears will be on-charged to the ratepayer.

- a) *Any assessments with outstanding rates and charges after 14 days from the date of issue of the Final Notice will be issued with a Notice of Intention to Summons (Demand) by the Shire's debt collection agency allowing 7 days for payment or for the ratepayer to contact the Shire.*
- b) *If no response is received after the 7 days period a General Procedure Claim will be issued.*
- c) *General Procedure Claims will not be issued on claims under \$200.00.*
- d) *It should be noted that when a General Procedure Claim is issued, this will impact upon the ratepayer's credit rating – refer to the Council's Notice of Discontinuance (Rates and Debtors) Policy.*
- e) *Ratepayers are required to either pay the full amount including debt collection costs or enter into an alternative payment arrangement that has been authorised by the Director Corporate Services. A payment arrangement must be requested in writing on the payment arrangement form.*
- f) *If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, a Property Seizure and Sale Order on goods will be issued.*

OR

- g) *If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, and the assessment is a leased or rented property, a notice will be served to the tenant / lessee under section 6.60 of the Local Government Act 1995 requiring the lessee or tenant to pay to the Shire the rent due that they would otherwise pay under the lease/tenancy agreement as it becomes due, until the amount in arrears has been paid. The approval of the Council is required to be obtained before this course of action is undertaken.*



Council Policy Number: CP Rates and Charges Debt Collection Policy

2.3. Options to Recover Rates and Service Charges Where Rates Are In Arrears In Excess of Three (3) Years

- a) *If rates and service charges in respect of any rateable land are outstanding for three (3) or more years, Council may take possession of the land under the provisions of section 6.64 of the Local Government Act 1995, and may:-*
- i. From time to time lease the land; or*
 - ii. Sell the land; or*
 - iii. Cause the transfer of the land to the Crown; or*
 - iv. Cause the transfer of the land to itself.*

The approval of the Council is required to be obtained before any of these courses of action may be undertaken.

2.4. Payments Received or Contact Made After Legal Action Commenced

- a) *If any payments or contact has been made by the ratepayer of whom legal action has been started, the Shire's debt collection agency will be notified that legal action must be placed on hold immediately.*
- b) *When payment has been received in full, the Shire's debt collection agency will be notified to close the account.*
- c) *If the ratepayer defaults a payment or no further contact is received from the ratepayer, legal action will resume and the payment arrangement will be terminated.*

3. Pensioners / Seniors

- 1. Pensioners / Seniors have until the 30 June to pay rates and service charges.*
- 2. The Shire will send a letter on 1 May (or thereabouts) reminding the Pensioner / Senior that payment is require by 30 June for them to be eligible for the Pensioner Rebate.*
- 3. Service charges must be paid in full.*



Council Policy Number: CP Rates and Charges Debt Collection Policy

4. Responsibility of Ratepayers

It is the responsibility of the ratepayer to ensure that rates and charges payments made electronically use the correct reference number. If the incorrect reference number is used, and the Shire is not advised by the ratepayer that this error has occurred, then the ratepayer will be responsible for the payment of any debt collection charges that may have been incurred in the meantime.

Outcomes

This Policy will ensure that there is manageable and efficient control over overdue accounts by closely monitoring aged accounts in an attempt to reduce the likely occurrence of unrecoverable debts and to ensure consistency for all debt collection activities.

The Policy represents the expected standards of the Shire of Wyndham East Kimberley. All required approvals must be sought without deviation.

This Policy takes effect from the date of adoption by the Council and shall remain valid until it is amended or deleted.

GOVERNANCE REFERENCES

Statutory Compliance	Local Government Act 1995 Local Government (Financial Management) Regulations 1996
Industry Compliance	Not Applicable
Organisational Compliance	Shire of Wyndham East Kimberley Delegations Register – Part B
Process Links	<ul style="list-style-type: none"> • Annual Budget Process • Annual Delegations Review • Notice of Discontinuance (Rates and Debtors) Policy

POLICY ADMINISTRATION

Directorate		Officer Title		Contact:	
Corporate Services		Director Corporate Services		Ext: 121	
Date Effective	DD/MM/YYYY	CEO Approved			
Date Adopted	DD/MM/YYYY	Last Reviewed		DD/MM/YYYY	
Risk Rating	Low Medium High	Review Cycle	Annual	Next Due	MM/YYYY
Organisational Compliance	Eg: Delegations Manual				
Process Links	Eg: Administrative Policy, Council Policy				

6.5 REQUEST TO WRITE-OFF OUTSTANDING RATES AND DEBT COLLECTION CHARGES ON ASSESSMENTS A7306 AND A7307

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates & Property
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	FM.11.56
ASSESSMENT NO:	A7306 and A7307

PURPOSE

The Audit (Finance and Risk) Committee is requested to consider the write-off outstanding rates and debt collection costs on assessments A7306 and A7307.

BACKGROUND

Assessments A7306 and A7307 are exploration tenements that were forfeited to the Department of Mines and Petroleum on 18 January 2013.

A large number of mining / exploration / prospecting tenements list a tenement agency postal address for where all correspondence is sent regarding the tenements. This is normally the only information the Shire receives regarding tenements, and it is only when the tenement owner contacts the Shire that officers receive additional contact information.

Rates for these tenements were first raised for the financial year 2010/11, this also included back rates for 2009/10. On 27 July 2010 the ratepayer requested a payment arrangement. The arrangement was accepted by the Shire and a payment arrangement form was signed and returned by the ratepayer. The Shire received two payments, the first on 30 November 2010 and the second on 13 January 2011. In April 2011 the Shire received a call from the ratepayer advising that payments will be late; no payments have been received since. On 21 September 2011 officers received an email from the ratepayer requesting a payment plan over a period of 18 months. It was advised that only a payment plan for the current financial year would be accepted. No reply was received from the ratepayer. There has been no further correspondence from the ratepayer.

The tenement agency was contacted on 30 January 2013 and they advised officers that the agency didn't have this ratepayer on file anymore as they weren't paying their fees, but they were able to provide a contact email address. An email was sent to this address enquiring if it was the correct address for the ratepayer. A reply was received advising that it was and requesting that their contact details be updated. Copies of the current rate and final notices were emailed to the ratepayer. No response was received.

These debts were referred to the Shire's debt collection agency in November 2011. A General Procedure Claim was issued and served on 1 December 2011. No response was received. Judgement was entered at the Kununurra Court on 19 March 2012 and transferred to NSW. The Shire placed a Caveat on all tenements; this caveat meant that the Shire would be notified if the ratepayer was selling the tenements. An application for a Warrant of Execution was requested on 18 June 2012. Attempts were made to serve the warrant with no success. The warrant was reissued to the Director's address on 3 December 2012. Attempts to serve the warrant were made with no success.

The Shire was notified by Landgate as at 18 January 2013 that these tenements have been forfeited and are no longer rateable but the rates and charges were still outstanding so debt collection continued.

On 15 October 2013, the Shire's debt collection agency received a call from the ratepayer requesting a payment arrangement. The debt collection agency emailed the outstanding notices to the ratepayer and received a response stating that a payment arrangement will be put to the Directors for consideration. No further response was received.

As this company has been de-registered the Shire is unable to take legal action against it. The company needs to be reinstated and then liquidated with no guarantee of a return.

Total rates and debt collection charges currently outstanding are:

Tenements	A7306	A7307
Rates	\$ 8,476.51	\$ 5,906.90
UV Waste Management Charge	\$ 379.00	\$ 379.00
Interest	\$ 2,486.46	\$ 1,716.66
Debt Collection / Recovery Fee	\$ 1,773.80	\$ 308.10
Payment Arrangement Fee	\$ 30.00	-
Total	\$ 13,145.77	\$ 8,310.66

STATUTORY IMPLICATIONS

Local Government Act 1995

6.53. Land becoming or ceasing to be rateable land

Where during a financial year -

- (a) land that was not rateable becomes rateable land; or*
- (b) rateable land becomes land that is not liable to rates,*

the owner of that land -

- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or*
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land,*

as the case requires.

6.12. Power to defer, grant discounts, waive or write off debts

- (1) Subject to subsection (2) and any other written law, a local government may -*
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) waive or grant concessions in relation to any amount of money; or*
 - (c) write off any amount of money,*

which is owed to the local government.

** Absolute majority required.*

- (2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*

POLICY IMPLICATIONS

It should be noted that a new Rates Debt Collection Policy is being drafted for consideration by the Committee. The objective of the new Policy is to outline an effective and clear timeframe for each step in the rates debt collection process.

FINANCIAL IMPLICATIONS

There will be a negative financial implication for Council as all outstanding rates and debt collection charges totalling \$21,456.43 will be written off.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1 Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4 Business innovation, efficiency and improved service.

Goal 1.4.1 Ensure legislative compliance and follow best practice principles in planning and service delivery.

Goal 1.4.3 Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not relevant to this matter.

COMMENT

The write off of any outstanding rates, service charges and debt collection charges is not a course of action that the Shire normally wishes to pursue as legal proceedings have generally proven to be successful. In this case however, numerous attempts have been made to recover these outstanding rates and debt collection charges for these tenements which have proven to be unsuccessful. The next course of action could be to reinstate the company and to place the company into liquidation at a cost of \$5,000 to \$7,000 with no guarantee of a return.

The risk of placing a company into liquidation without guaranteed returns to cover the costs, and outstanding rates and charges, is perceived to be high.

Officers are therefore recommending that the outstanding charges be written off.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessments A7306 and A7307, estimated at \$21,456.43 at the time of writing this report.

MOTION

Cr K Wright moves that Items 6.5 – 6.8 be dealt with *en bloc*.

COMMITTEE RESOLUTION

Minute: AC300

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the Officer's recommendations under Items 6.5 – 6.8 inclusive be adopted as an *en bloc* resolution.

Recommendation No. 1

That the Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessments A7306 and A7307, estimated at \$21,456.43 at the time of writing this report.

Recommendation No. 2

That The Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessment A7308, A7309 and A7457, estimated at \$47,931.26 at the time of writing this report.

Recommendation No. 3

That the Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessments A7310 and A7311, estimated at \$44,987.79 at the time of writing this report.

Recommendation No. 4

That The Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessments A7312, A7313, A7314 and A7315, estimated at \$85,417.78 at the time of writing this report.

Carried Unanimously by *En Bloc* Resolution 4/0

6.6 REQUEST TO WRITE-OFF OUTSTANDING RATES AND DEBT COLLECTION CHARGES ON ASSESSMENTS A7308, A7309 AND A7457

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates & Property
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	Fm.11.56
ASSESSMENT NO:	A7308, A7309 and A7457

PURPOSE

The Audit (Finance and Risk) Committee is requested to consider the write-off outstanding rates and debt collection costs on assessments A7308, A7309 and A7457

BACKGROUND

Assessments A7308, A7309 and A7457 are exploration tenements. Assessment A7308 and A7309 were forfeited on 18 January 2013 and A7457 was forfeited on 17 August 2012 to the Department of Mines and Petroleum.

A large number of mining / exploration / prospecting tenements list a tenement agency postal address for where all correspondence is sent regarding the tenements. This is normally the only information the Shire receives regarding tenements, it is only when the tenement owner contacts the Shire that officers receive additional contact information.

Rates for A7308 and A7309 tenements were first raised for the financial year 2010/11 this also included back rates for 2009/10. On 27 July 2010 the ratepayer requested a payment arrangement. The arrangement was accepted by the Shire and a payment arrangement form was signed and returned by the ratepayer. The Shire received two payments, the first on 30 November 2010 and the second on 13 January 2011. The rates for A7457 were raised on the 18 January 2011; no payments have been received for this assessment. In April 2011 the Shire received a call from ratepayer advising that payments will be late; no payments have been received since. On 21 September 2011 officers received an email from the ratepayer requesting a payment plan over a period of 18 months. It was advised that only a payment plan for the current financial year would be accepted. No reply was received from the ratepayer. There has been no further correspondence from the ratepayer.

The tenement agency was contacted on 30 January 2013 and they advised officers that the agency didn't have this ratepayer on file anymore as they weren't paying their fees, but they were able to provide a contact email address. An email was sent to this address enquiring if it was the correct address for the ratepayer. A reply was received advising that it was and requesting that their contact details be updated. Copies of the current rate and final notices were emailed to the ratepayer. No response was received.

These debts were referred to the Shire's debt collection agency in November 2011. A General Procedure Claim was issued and served on 1 December 2011. No response was received. Judgement was entered at the Kununurra Court on 19 March 2012 and transferred to NSW. The Shire placed a caveat on all tenements; this caveat meant that the Shire would be notified if the ratepayer was selling the tenements. An application for a warrant of

execution was requested on 18 June 2012. Attempts were made to serve the warrant with no success.

The Shire was notified by Landgate on 17 August 2012 that the tenement on assessment A7457 was forfeited and as at 18 January 2013 the tenements on assessment A7308 and A7309 had been forfeited and are no longer rateable. As rates and charges were still outstanding, debt collection processes continued.

The warrant was reissued to the Directors address on 3 December 2012. Attempts to serve the warrant were made with no success. A Statutory Demand was issued on 2 October 2013 to the ratepayer which advised the ratepayer that if contact is not made or outstanding debt remains unpaid within 21 days from date of demand the Shire could place the company into liquidation.

On 15 October 2013, the Shire's debt collection agency received a call from the ratepayer requesting a payment arrangement. The debt collection agency emailed the outstanding notices to the ratepayer and received a response stating that a payment arrangement will be put to the Directors for consideration. No further response was received.

Total rates and debt collection charges outstanding are:

Tenements	A7308	A7309	A7457
Rates	\$ 5,238.60	\$19,311.23	\$ 8,243.98
UV Waste Management Charge	\$ 379.00	\$ 345.73	\$ 282.00
Interest	\$ 1,381.84	\$ 5,083.88	\$ 2,548.10
Debt Collection / Recovery Fee	\$ 1,580.29	\$ 1,956.30	\$ 1,580.31
Total	\$ 8,579.73	\$26,697.14	\$12,654.39

STATUTORY IMPLICATIONS

Local Government Act 1995

6.53. Land becoming or ceasing to be rateable land

Where during a financial year —

- (a) land that was not rateable becomes rateable land; or*
- (b) rateable land becomes land that is not liable to rates,*

the owner of that land —

- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or*
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land,*

as the case requires.

6.12. Power to defer, grant discounts, waive or write off debts

- (1) Subject to subsection (2) and any other written law, a local government may —*
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) waive or grant concessions in relation to any amount of money; or*
 - (c) write off any amount of money,*

which is owed to the local government.

** Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*

POLICY IMPLICATIONS

It should be noted that a new Rates Debt Collection Policy is being drafted for consideration by the Committee. The objective of the new Policy is to outline an effective and clear timeframe for each step in the rates debt collection process.

FINANCIAL IMPLICATIONS

There will be a negative financial implication for Council as all outstanding rates and debt collection charges totalling \$47,931.26 will be written off.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

- Goal 1 Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.
- Objective 1.4 Business innovation, efficiency and improved service.
- Goal 1.4.1 Ensure legislative compliance and follow best practice principles in planning and service delivery.
- Goal 1.4.3 Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not relevant to this matter.

COMMENT

The write off of any outstanding rates, service charges and debt collection charges is not a course of action that the Shire normally wishes to pursue as legal proceedings have generally proven to be successful. In this case however numerous attempts have been made to recover these outstanding rates and debt collection charges for these tenements which have proven to be unsuccessful. The next course of action would be to place this company into liquidation at a cost of \$5,000 to \$7,000 with no guarantee of a return.

The risk of placing a company into liquidation without guaranteed returns to cover the costs, and outstanding rates and charges, is perceived to be high.

Officers are therefore recommending that the outstanding charges be written off.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That The Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessment A7308, A7309 and A7457, estimated at \$47,931.26 at the time of writing this report.

Officer's recommendations under Items 6.5 – 6.8 were carried by *en bloc* resolution (Minute: AC300).

6.7 REQUEST TO WRITE-OFF OUTSTANDING RATES AND DEBT COLLECTION CHARGES ON ASSESSMENT A7310 AND A7311

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates & Property
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	FM.11.56
ASSESSMENT NO:	A7310 and A7311

PURPOSE

The Audit (Finance and Risk) Committee is requested to consider the write-off of outstanding rates and debt collection costs on assessments A7310 and A7311.

BACKGROUND

Assessments A7310 and A7311 are exploration tenements that were forfeited to the Department of Mines and Petroleum on 18 January 2013.

A large number of mining / exploration / prospecting tenements list a tenement agency postal address for where all correspondence is sent regarding the tenements. This is normally the only information the Shire receives regarding tenements and it is only when the tenement owner contacts the Shire that officers receive additional contact information.

Rates for these tenements were first raised for the financial year 2010/11, this also included back rates for 2009/10. On 27 July 2010 the ratepayer requested a payment arrangement. The arrangement was accepted by the Shire and a payment arrangement form was signed and returned by the ratepayer. The Shire received two payments, the first on 30 November 2010 and the second on 13 January 2011. In April 2011 the Shire received a call from the ratepayer advising that payments will be late; no payments have been received since. On 21 September 2011 officers received an email from the ratepayer requesting a payment plan over a period of 18 months. It was advised that only a payment plan for the current financial year would be accepted. No reply was received from the ratepayer and there has been no further correspondence received.

The tenement agency was contacted on 30 January 2013 and they advised officers that the agency didn't have this ratepayer on file anymore as they weren't paying their fees, but they were able to provide a contact email address. An email was sent to this address enquiring if it was the correct address for the ratepayer. A reply was received advising that it was and requesting that their contact details be updated. Copies of the current rate and final notices were emailed to the ratepayer. No response was received.

These debts were referred to the Shire's debt collection agency in November 2011. A General Procedure Claim was issued and served on 1 December 2011. No response was received. Judgement was entered at the Kununurra Court on 19 March 2012 and transferred to NSW. The Shire placed a caveat on all tenements; this caveat meant that the Shire would be notified if the ratepayer was selling the tenements. An application for a Warrant of Execution was requested on 18 June 2012. Attempts were made to serve the warrant with no success. The warrant was reissued to the Directors address on 03 December 2012. Attempts to serve the warrant were made with no success.

The Shire was notified by Landgate as at 18 January 2013 that these tenements had been forfeited and are no longer rateable but as rates and charges remained outstanding, debt collection processes continued.

A Statutory Demand was issued on 2 October 2013 to the ratepayer which advised the ratepayer that if contact is not made or outstanding debt remains unpaid within 21 days from date of demand the Shire could place the company into liquidation. On 15 October 2013, the Shire's debt collection agency received a call from the ratepayer requesting a payment arrangement. The debt collection agency emailed the outstanding notices to the ratepayer and received a response stating that a payment arrangement will be put to the Director's for consideration. No further response was received.

Total rates and debt collection charges outstanding are:

Tenements	A7310	A7311
Rates	\$14,316.84	\$16,068.38
UV Waste Management Charge	\$ 379.00	\$ 379.00
Interest	\$ 4,236.65	\$ 4,761.02
Debt Collection / Recovery Fee	\$ 3,156.30	\$ 1,690.60
Total	\$22,088.79	\$22,899.00

STATUTORY IMPLICATIONS

Local Government Act 1995

6.53. Land becoming or ceasing to be rateable land

Where during a financial year —

- (a) land that was not rateable becomes rateable land; or*
- (b) rateable land becomes land that is not liable to rates,*

the owner of that land —

- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or*
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land,*

as the case requires.

6.12. Power to defer, grant discounts, waive or write off debts

- (1) Subject to subsection (2) and any other written law, a local government may —*
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) waive or grant concessions in relation to any amount of money; or*
 - (c) write off any amount of money,*

which is owed to the local government.

** Absolute majority required.*

- (2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*

POLICY IMPLICATIONS

It should be noted that a new Rates Debt Collection Policy is being drafted for consideration by the Committee. The objective of the new Policy is to outline an effective and clear timeframe for each step in the rates debt collection process.

FINANCIAL IMPLICATIONS

There will be a negative financial implication for Council as all outstanding rates and debt collection charges totalling \$44,987.79 will be written off.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

- Goal 1 Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

- Objective 1.4 Business innovation, efficiency and improved service.

- Goal 1.4.1 Ensure legislative compliance and follow best practice principles in planning and service delivery.

- Goal 1.4.3 Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not relevant to this matter.

COMMENT

The write off of any outstanding rates, service charges and debt collection charges is not a course of action that the Shire normally wishes to pursue as legal proceedings have generally proven to be successful. In this case however, numerous attempts have been made to recover these outstanding rates and debt collection charges for these tenements which have proven to be unsuccessful. The next course of action would be to place the company into liquidation at a cost \$5,000 to \$7,000 with no guarantee of a return.

The risk of placing a company into liquidation without guaranteed returns to cover the costs, and outstanding rates and charges, is perceived to be high.

Officers are therefore recommending that the outstanding charges be written off.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessments A7310 and A7311, estimated at \$44,987.79 at the time of writing this report.

Officer's recommendations under Items 6.5 – 6.8 were carried by *en bloc* resolution (Minute: AC300).

6.8 REQUEST TO WRITE-OFF OUTSTANDING RATES AND DEBT COLLECTION CHARGES ON ASSESSMENT A7312, A7313, A7314 AND A7315

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates & Property
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	FM.11.56
ASSESSMENT NO:	A7312, A7313, A7314 and A7315

PURPOSE

The Audit (Finance and Risk) Committee is requested to consider the write-off outstanding rates and debt collection costs on assessments A7312, A7313, A7314 and A7315

BACKGROUND

Assessments A7312, A7313, A7314 and A7315 are all exploration tenements that were forfeited to the Department of Mines and Petroleum on 18 January 2013.

A large number of mining / exploration / prospecting tenements list a tenement agency postal address for where all correspondence is sent regarding the tenements. This is normally the only information the Shire receives regarding tenements and it is only when the tenement owner contacts the Shire that officers receive additional contact information.

Rates for these tenements were first raised for the financial year 2010/11, this also included back rates for 2009/10. On 27 July 2010 the ratepayer requested a payment arrangement. The arrangement was accepted by the Shire and a payment arrangement form was signed and returned by the ratepayer. The Shire received two payments, the first on 30 November 2010 and the second on 13 January 2011. In April 2011 the Shire received a call from ratepayer advising payments will be late; no payments have been received since. On 21 September 2011 officers received an email from the ratepayer requesting a payment plan over a period of 18 months. It was advised that only a payment plan for the current financial year would be accepted. No reply was received from the ratepayer and there has been no further correspondence received.

The tenement agency was contacted on 30 January 2013 and they advised officers that the agency didn't have this ratepayer on file anymore as they weren't paying their fees, but they were able to provide a contact email address. An email was sent to this address enquiring if it was the correct address for the ratepayer. A reply was received advising that it was and requesting that their contact details be updated. Copies of the current rate and final notices were emailed to the ratepayer. No response was received.

These debts were referred to the Shire's debt collection agency in November 2011. A General Procedure Claim was issued and served on 1 December 2011. No response was received. Judgement was entered at the Kununurra Court on 19 March 2012 and transferred to NSW. The Shire placed a Caveat on all tenements; this caveat meant that the Shire would be notified if the ratepayer was selling the tenements. An application for a Warrant of Execution was requested on 18 June 2012. Attempts were made to serve the warrant with no success. The warrant was reissued to the Director's address on 3 December 2012. Attempts to serve the warrant were made with no success.

The Shire was notified by Landgate as at 18 January 2013 that these tenements had been forfeited and are no longer rateable, but as rates and charges were still outstanding, debt collections processes continued.

A Statutory Demand was issued on 2 October 2013 to the ratepayer which advised the ratepayer that if contact is not made or outstanding debt remains unpaid within 21 days from date of demand the Shire could place the company into liquidation. On 15 October 2013, the Shire's debt collection agency received a call from the ratepayer requesting a payment arrangement. The debt collection agency emailed the outstanding notices to the ratepayer and received a response stating that a payment arrangement will be put to the Directors for consideration. No further response was received.

Total rates and debt collection charges outstanding are:

Tenements	A7312	A7313	A7314	A7315
Rates	\$16,886.18	\$20,507.04	\$14,316.84	\$ 8,476.53
UV Waste Management Charge	\$ 379.00	\$ 379.00	\$ 379.00	\$ 379.00
Interest	\$ 5,006.15	\$ 6,091.13	\$ 4,236.65	\$ 2,486.46
Debt Collection / Recovery Fee	\$ 1,405.70	\$ 1,405.70	\$ 2,410.55	\$ 672.85
Total	\$23,677.03	\$28,382.87	\$21,343.04	\$12,014.84

STATUTORY IMPLICATIONS

Local Government Act 1995

6.53. Land becoming or ceasing to be rateable land

Where during a financial year -

- (a) land that was not rateable becomes rateable land; or*
- (b) rateable land becomes land that is not liable to rates,*

the owner of that land -

- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or*
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land,*

as the case requires.

6.12. Power to defer, grant discounts, waive or write off debts

- (1) Subject to subsection (2) and any other written law, a local government may -*
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) waive or grant concessions in relation to any amount of money; or*
 - (c) write off any amount of money,*

which is owed to the local government.

** Absolute majority required.*

- (2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*

POLICY IMPLICATIONS

It should be noted that a new Rates Debt Collection Policy is being drafted for consideration by the Committee. The objective of the new Policy is to outline an effective and clear timeframe for each step in the rates debt collection process

FINANCIAL IMPLICATIONS

There will be a negative financial implication for Council as all outstanding rates and debt collection charges totalling \$85,417.78 will be written off.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1 Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4 Business innovation, efficiency and improved service.

Goal 1.4.1 Ensure legislative compliance and follow best practice principles in planning and service delivery.

Goal 1.4.3 Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not relevant to this matter.

COMMENT

The write off of any outstanding rates, service charges and debt collection charges is not a course of action that the Shire normally wishes to pursue as legal proceedings have generally proven to be successful. In this case however, numerous attempts have been made to recover these outstanding rates and debt collection charges for these tenements which have all proven to be unsuccessful. The next course of action would be to place the company into liquidation at a cost of \$5,000 to \$7,000 with no guarantee of a return.

The risk of placing a company into liquidation without guaranteed returns to cover the costs, and outstanding rates and charges, is perceived to be high.

Officers are therefore recommending that the outstanding charges be written off.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That The Audit (Finance and Risk) Committee recommends to Council to write-off outstanding rates and debt collection charges on assessments A7312, A7313, A7314 and A7315, estimated at \$85,417.78 at the time of writing this report.

Officer's recommendations under Items 6.5 – 6.8 were carried by *en bloc* resolution (Minute: AC300).

6.9 REQUEST FOR WRITE-OFF OF RATES, SERVICE CHARGES, PENALTY INTEREST AND EMERGENCY SERVICES LEVY – ASSESSMENT A7564

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	Shire of Wyndham East Kimberley
AUTHOR:	Shelley Binnie, Finance Officer Rates
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	FM.11.17
ASSESSMENT NO:	A7564

PURPOSE

For the Audit (Finance and Risk) Committee to consider a request to write off rates, service charges and penalty interest on Assessment A7564.

BACKGROUND

Assessment A7564 is a property held by the Shire of Wyndham East Kimberley and leased out for the purposes of a commercial boat facility. The property was leased to the lessee commencing July 2011. Under the terms of the lease agreement the lessee is liable to pay all council rates. Interim rates were raised against the property in March 2012 for the 2011/2012 year and in August 2012 annual rates were raised for the 2012/2013 financial year. No payments were received. The lease was terminated on 12/09/2013 due to non-compliance on the part of the lessee. The company holding the lease was placed in Administration in May 2012 and is currently being liquidated. Advice from the Liquidators on 19 August 2013 confirmed that there will be no distribution to creditors.

STATUTORY IMPLICATIONS

Local Government Act 1995

6.12. Power to defer, grant discounts, waive or write off debts

- (1) *Subject to subsection (2) and any other written law, a local government may -
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or
 - (b) waive or grant concessions in relation to any amount of money; or
 - (c) write off any amount of money,which is owed to the local government.*

** Absolute majority required.*
- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*
- (4) *Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.*

POLICY IMPLICATIONS

It should be noted that a new Rates Debt Collection Policy is being drafted for consideration by the Committee. The objective of the new Policy is to outline an effective and clear timeframe for each step in the rates debt collection process.

FINANCIAL IMPLICATIONS

Should the Council approve the request to write off the total amount of \$2,919.77, made up of the amounts of rates \$2,005.06, Waste Management Charge \$199.00, Penalty Interest \$640.30, Emergency Services Levy \$57.00 and ESL Penalty \$18.41 would be written off.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

- Goal 1 Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

- Objective 1.4 Business innovation, efficiency and improved service.

- Goal 1.4.1 Ensure legislative compliance and follow best practice principles in planning and service delivery.

- Goal 1.4.3 Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not required in relation to this item.

COMMENT

The company which leased assessment A7564 is currently in Liquidation with no likelihood of any distribution to creditors. Options available under Council's Rate Collection Policy to issue a Property Seizure and Sale Order against goods or the land would not be successful due to the liquidation. Sale of land to recoup the rates debt is not an option as the land was leased and is vested to the Shire of Wyndham East Kimberley as a Reserve under a Management Order from the Crown. If the officer's recommendation is accepted, the rates, service charges and penalty interest will be written off and the Department of Fire and Emergency Services will be advised of the ESL write off through the annual end of year reporting process.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to Council to write off rates, service charges and penalty interest of \$2,844.36 for Assessment A7564 and that the Department of Fire and Emergency Services is notified of the ESL write-off of \$75.41 through the annual reporting process.

COMMITTEE RESOLUTION

Minute: AC301

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the Audit (Finance and Risk) Committee recommends to Council to write off rates, service charges and penalty interest of \$2,844.36 for Assessment A7564 and that the Department of Fire and Emergency Services is notified of the ESL write-off of \$75.41 through the annual reporting process.

Carried Unanimously 4/0

6.10 REQUEST FOR WRITE-OFF OF DEBT COLLECTION CHARGES ON ASSESSMENTS A1775, A1949 AND A2575

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	A1775D, A1949D, A2575D
ASSESSMENT NO:	A1775, A1949, A2575

PURPOSE

For the Audit (Finance and Risk) Committee to consider a request to write off debt collection and legal charges on A1775, A1949 and A2575.

BACKGROUND

On 1 April 2014 a final notice was issued to all ratepayers who had outstanding amounts on their assessments. On 9 April 2014 the ratepayer for assessments A1775, A1949 and A2575 contacted the Shire enquiring about the debt collection and legal charges that had been applied to the assessments. The ratepayer was notified that these assessments had been sent to the Shire's debt collection agency due to non-payment as the rates were due on the 17 September 2013, a final notice was issued on 20 September 2013 and a notice of intent was issued by the Shire's debt collection agency on 14 September 2013. The Shire received no response to these notices and on 23 October 2013 advised the debt collection agency to issue a General Procedure Claim.

Payment for only the amount shown on the annual notice was received on 8 November 2013. Interest and debt collection / legal charges remained outstanding. The Shire's debt collection agency was notified immediately to stop all legal action.

On 28 April 2014, a letter was received from the ratepayer requesting that the debt collection and legal charges are written off. In the letter it states that the ratepayer had contacted the Shire before the 2013/14 rates were issued requesting an extension on paying the rates due to health reasons. There is no record of this conversation taking place.

From the date of issue of the annual rates notice on 13 August 2013 to the 9 April 2014, there has been no record of contact made by the ratepayer and prior to this there has been no contact made by the ratepayer in relation to any assessments.

To date, the outstanding amounts are as follows:

Assessment No.	Interest	Legal Charges	Debt Collection Charges	TOTAL
A1949	\$41.09	\$310.90	\$170.00	\$521.99
A1775	\$45.34	\$310.90	\$170.00	\$526.24
A2575	\$49.47	\$310.90	\$170.00	\$530.37
TOTAL				\$1,578.60

STATUTORY IMPLICATIONS

6.12. Power to defer, grant discounts, waive or write off debts

- (1) Subject to subsection (2) and any other written law, a local government may —
- (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or
 - (b) waive or grant concessions in relation to any amount of money; or
 - (c) write off any amount of money,

which is owed to the local government.

* Absolute majority required.

- (2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.

6.56. Rates or service charges recoverable in court

(1) If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction

POLICY IMPLICATIONS

Policy F12 – Rate Collection Policy

1. As soon as possible after the Council Budget Meeting, rates notices will be sent out to ratepayer giving them 35 days from date of issue of the rates notice to either:
 - a. Pay the rates in full
 - b. Elect to go onto an instalment option as per *Local Government Act 1995* – section 6.45.
2. Final notices will be issued seven days after the due date to all ratepayers that have not made a payment with the exception of eligible pensioners. This will give ratepayers another fourteen days from the date of issue of the final notice in which to pay their rates. The option of going onto instalments will cease at the expiry of this fourteen day period.
3. Prior to any recovery action a Notice of Intention to Issue a General Procedures Claim will be sent to the ratepayer giving seven days' notice
4. Recovery action, as allowed under the *Local Government Act 1995* – section 6.56, is to commence after the expiration of the seven (7) day given in clause 3. Methods that will be used to recover debts are as follows;
 - a. General Procedures Claim
 - b. If no response from the claim, the following options are available, as appropriate:
 - i. Serve notice on tenant to pay rent monies to Shire of Wyndham East Kimberley (if it is a rented property), under the provisions of the *Local Government Act 1995* – Section 6.60
 - ii. Issue a Property Seizure and Sale Order on goods
 - iii. Issue a Property Seizure and Sale Order on land (following council approval).
 - c. Properties with three years or more rates outstanding to be sold or forfeited to the Shire of Wyndham East Kimberley under the provisions of the *Local Government Act 1995* – Section 6.68
7. All costs involved in recovery action will be charged against the property.

FINANCIAL IMPLICATIONS

Should the Council approve the request to write off the debt collection and other charges, a total amount of \$1,578.60 would be written off which represents payments already incurred by the Shire (with the exception of interest charges).

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1 Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4 Business innovation, efficiency and improved service.

Goal 1.4.1 Ensure legislative compliance and follow best practice principles in planning and service delivery.

Goal 1.4.3 Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

Community consultation is not required in relation to this item.

COMMENT

The rates and service charges for the 2013/14 year were raised on 13 August 2013 with a due date of 17 September 2013. A final notice was issued on 20 September giving the ratepayer an additional 14 days to pay the rates. On 14 October 2013 a notice of intention was issued allowing an additional 7 days for payment or for the ratepayer to contact the Shire. In total the ratepayer had 69 days to pay the rates and service charges before the Shire commenced legal action.

All efforts are taken to contact the ratepayer before legal action is commenced if contact details are available.

It should be noted that even if there was recorded contact made as indicated in the ratepayer's correspondence, interest would still have accrued and be payable.

While the ratepayer has a history of paying their rates when they become due, or prior to the due date in order to receive the former rates discount, the Shire has still incurred costs. As there was no written advice of the ratepayer requesting to make payment upon their return to Kununurra it is the officer's recommendation that the request be denied.

ATTACHMENTS

Request from Ratepayer

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to Council to refuse the request to write off debt collection and other charges of \$1,578.60 for assessments A1775, A1949 and A2575.

COMMITTEE RESOLUTION

Minute: AC302

Moved: Cr B Robinson

Seconded: Cr D Spackman

That the Audit (Finance and Risk) Committee recommends to Council to refuse the request to write off debt collection and other charges of \$1,578.60 for assessments A1775, A1949 and A2575.

Carried Unanimously 4/0

Re: Rates Assessment notices numbers A2575, A1949, A1775

To Whom it may concern

My name is Hugh Mason and I reside at 13 Barding Loop Kununurra.

Recently I received 3 rates notices for the various properties I own in Kununurra. Rate notice A1949 was for \$521.99 A1775 was for 526.24 and A2575 was for 530.37.

The full cost of all these rates notices is made up purely of interest, legal fees and debt collection fees.

After receiving the notices I called the rates officer to seek an explanation and she informed me the reasoning behind the fees and that in order to get these penalties removed I needed to write a letter to council to see if they will waive the fees.

As I told the lady on the 28 June last year my wife was diagnosed with double breast cancer and booked in for surgery to have a double mastectomy and chemotherapy in July and the following months.

Knowing I was going to be away for a few months I called the Council offices and ask to speak to the rates person. I was transferred and spoke to a lady who told me she wasn't the rates lady but could take a message. I told her the situation of my wife getting sick and that I would be out of town for a few months and would it be ok if I paid my rates when I returned to Kununurra in late October early November. The lady said that she couldn't make that decision. I asked her to pass the message on and left my phone number with her and what it was I requiring and said if there was any trouble please contact me.

I return back to Kununurra in Early November and proceeded to pay my rates in full on the first week I was back. As you can well imagine that was the last I thought about it until recently when I received the 3 overdue notices.

During the months of November to April I received no further correspondence from the Shire nor from the Debt collection agency whom are charging me almost \$1600.00 dollars. So since I paid my rates in full in November this is the first I have heard about penalties , legal notices . I thought everything was fine.

So the point of my letter is to ask the council if they could agree to wave the penalties and fees imposed upon myself for I feel I did everything I could to notify the shire that I would not be in town to pay the rates until November.

Thankyou

Hugh Mason

0400758359

26/4/2014

6.11 SUNDRY DEBTORS – REQUEST FOR WRITE-OFF OF SUNDRY DEBT – DEBTOR 98563

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Felicity Heading, Senior Finance Officer
REPORTING OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	FM.07.2

PURPOSE

For the Audit (Finance and Risk) Committee to consider recommending to the Council to write off the sundry debt of \$16,557.55 of Debtor 98563.

BACKGROUND

The original sundry debt of \$10,800 relating to cemetery fees with payment due in January 2009. The current balance is \$16,557.55 due to penalty interest being applied.

In 2010 The Shire's Debt Collection Agent was instructed to take no further action with regard to this debt. It was considered that the cost of debt collection would exceed any recovery that may occur against this debt. The debtor was known to have other debts across the Kimberley and Northern Territory. The debt was not proposed for write off at that time. A wait and see approach was adopted as the debtor had corresponded with Council previously and stated that they would repay the debt as they were able to, albeit no formal payment arrangements were agreed to. Monthly statements were sent to remind the debtor of the debt.

The Proprietor became bankrupt via Federal Magistrates Court order in June 2010 and a bankruptcy trustee was appointed. Details were forwarded via the Shire's Debt Collection Agent to register the debt with the trustee. Advice was received from Shire Debt Collection Agent in September 2011 that the trustee confirmed there was no dividend payable on liquidation of the debtor.

If income status of debtor changes during the bankruptcy period (3 years), income can be claimed for "compulsory income contributions". Advice from the trustee was that income would need to be approx. \$70-\$80,000 per annum. The Trustee relies on information from the debtor or any other individual to report on the debtor in relation to income changes.

After three years the bankrupt is automatically discharged from bankruptcy, unless the trustee lodges an objection. In October 2013 the trustee confirmed that the bankruptcy had been discharged in July 2013.

STATUTORY IMPLICATIONS

6.12. Power to defer, grant discounts, waive or write off debts

- (1) *Subject to subsection (2) and any other written law, a local government may —*
 - (a) *when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or*
 - (b) *wave or grant concessions in relation to any amount of money; or*

(c) *write off any amount of money, which is owed to the local government.*

** Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*

POLICY IMPLICATIONS

F15 - Sundry Debt Collection Policy

1. That all invoices are raised within 7 days of receiving an authority to raise invoice with all invoices being raised in accordance with the F22 Policy – Collection of Fees and Charges.
2. That a Statement is to be issued within 7 days after the end of month.
3. If full payment for debt is not received after 30 days a reminder notice and a copy of invoice is to be sent.
4. After 45 days interest will start to accrue at the prescribed rate on invoices issued for fees and charges as adopted by Council, exclusive of those charges prescribed under other legislation. A phone call (or other form of contact) is to be made so as to establish when payment will be made.
5. After 60 days a final notice is to be sent with a copy of the invoice attached.
6. After 74 days if no payment received the debtor account is to be referred to the Executive Manager Corporate Services to decide further action (i.e. place account on stop credit or onto a prepayment system for future services).
7. After 80 days an Intention to Summons is to be sent after.
8. By the 87th day if the debt exceeds \$400.00 a copy of all the above mention correspondence is to be issued to the Shire's debt collection agency so that this agency can send a summons to the debtor by the 90th day.
9. All associated costs for debt collection will be on charged to the debtor.

Matters Relating to Sundry Debts for licences

After 60 days the Officer who issued the licence is to communicate with the debtor the intention to withdraw the licence if payment is not made in next 30 days. After 90 days the Chief Executive Officer can withdraw any licence which has not been paid and instruct the issuing officer to cancel the licence.

Other Matter Pertaining to Sundry Debtors

1. That the Chief Executive Officer has the discretion to write off amounts under \$100.00, only after all avenues of debt collection have been exhausted. These write offs are to be reported to Council in the following month.
2. Debtors will be on charged any fees and charges issued to the Shire for the recovery of their outstanding debt.

None of the above is designed to prevent Council from coming to an arrangement with the debtor to make alternative arrangements for payment.

FINANCIAL IMPLICATIONS

If the Audit (Finance and Risk) Committee accepts the officer's recommendation and recommends to council to write off the sundry debt the total amount of \$16,557.55 consisting of the original debt of \$10,800 and \$5,757.55 in penalty interest will be written off.

STRATEGIC IMPLICATIONS

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4: Business innovation, efficiency and improved service.

Strategy 1.4.2: Improve the efficiency and productivity of Shire services.

Strategy 1.4.3: Maintain Council's long term financial viability.

Strategy 1.4.4: Deliver cost effective and efficient corporate services.

COMMUNITY CONSULTATION

Community consultation is not required in relation to this item.

COMMENT

It is recommended that this debt be written off as there is no prospect of recovery.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to the Council to write off the sundry debt of Debtor 98563 to the total amount of \$16,557.55 consisting of the original debt of \$10,800 plus \$5,757.55 in penalty interest.

COMMITTEE RESOLUTION

Minute: AC303

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the Audit (Finance and Risk) Committee recommends to the Council to write off the sundry debt of Debtor 98563 to the total amount of \$16,557.55 consisting of the original debt of \$10,800 plus \$5,757.55 in penalty interest.

Carried Unanimously 4/0

6.12 REQUEST TO REVEST LOTS 401 AND 402 PEARSE STREET, WYNDHAM (ASSESSMENTS A5594 AND A5595) BACK TO CROWN

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates and Property
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	FM.11.1
ASSESSMENT NO:	A5594 and A5595

PURPOSE

That the Audit (Finance and Risk) Committee recommends to Council to revest Lots 401 and 402 Pearse Street, Wyndham (Assessment Numbers A5594 and A5595) to Crown.

BACKGROUND

Assessments A5594 and A5595 are two vacant lots located in Wyndham at the base of Bastion behind the Wyndham Pub.

It is unknown when these lots were first rated as the rates were incorrectly sent to another rate payer and it wasn't until 2007 that the Shire was notified by the ratepayer that they were being incorrectly charged for these lots. In 2007 a search was conducted on these two lots and it the owner of these lots was identified. As the Shire didn't have contact details for the owner of the properties these assessments were sent to the Shire's debt collection agency Austral to locate the owner.

The assessments where sent to the Shire's new debt collection agency in April 2014 and found that the owner passed away in 1974 and that his estate was left to his wife and his son. The son (ratepayer) was located in July 2013.

On 7 August 2013 the ratepayer contacted the Shire advising that he wasn't aware of these properties and had contacted the local real estate agent to place these properties on the market with the idea that the funds he would receive for these properties would pay the outstanding rates, service charges, legal and debt collection costs.

In February 2014 contact was again made by the ratepayer advising that there had been no interest in the properties and asked what their options were.

The real estate agent that has these properties listed was contacted and they advised that the ratepayer would be lucky to receive \$5,000 in total for these lots due to their location.

STATUTORY IMPLICATIONS

Local Government Act 1995

6.12. Power to defer, grant discounts, waive or write off debts

- (1) Subject to subsection (2) and any other written law, a local government may —
 - (a) when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money; or

- (b) waive or grant concessions in relation to any amount of money; or
- (c) write off any amount of money,

which is owed to the local government.

* Absolute majority required.

- (2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.
- (3) The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.

6.55. Recovery of rates and service charges

- (1) Subject to subsection (2) and the Rates and Charges (Rebates and Deferments) Act 1992 rates and service charges on land are recoverable by a local government from
 - (i) the owner at the time of the compilation of the rates record;
 - (ii) a person who whilst the rates or service charges are unpaid becomes the owner of the land.

6.56. Rates or service charges recoverable in court

- (1) If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction

6.64. Actions to be taken

- (1) If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and –
 - (a) from time to time lease the land; or
 - (b) sell the land; or
 - (c) cause the land to be transferred to the Crown; or
 - (d) cause the land to be transferred to itself
- (2) On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.
- (3) Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land and may withdraw caveats so lodged by it.

6.71. Power to transfer land to Crown or to local government

- (1) If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the Transfer of Land Act 1893, and by deed, where the land is

not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —

- (a) the Crown in right of the State; or*
- (b) the local government.*

- (2) When a local government exercises the power referred to in subsection (1)(a) in relation to any land all encumbrances affecting the land are, by virtue of this section of no further force or effect against that land and the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, is to give effect to this section.*

6.74. Power to have land revested in Crown if rates in arrears 3 years

- (1) If land is —
 - (a) rateable land; and*
 - (b) vacant land; and*
 - (c) land in respect of which any rates or service charges have been unpaid for a period of at least 3 years, the local government in whose district the land is situated may apply in the form and manner prescribed to the Minister to have the land revested in the Crown in right of the State.**
- (2) The Minister is to consider the application and the circumstances surrounding the application and may grant or refuse the application*
- (3) If the application is granted the Minister is to execute a transfer or conveyance of the land to the Crown and is to deliver the transfer or conveyance to the Registrar of Titles or the Registrar of Deeds and Transfers, as the case requires, for registration.*
- (4) Upon the delivery of the transfer or conveyance Schedule 6.3 clause 8 has effect in relation to the exercise of the power referred to in subsection (1).*

[Section 6.74 amended by No. 49 of 2004 s. 64(1); No. 47 of 2011 s. 16.]

POLICY IMPLICATIONS

Policy F12 – Rate Collection Policy

- 4. Recovery action, as allowed under the Local Government Act 1995 – section 6.56, is to commence after the expiration of the seven (7) day given in clause 3. Methods that will be used to recover debts are as follows;
 - a) General Procedures Claim
 - b) If no response from the claim, the following options are available, as appropriate:
 - a. Serve notice on tenant to pay rent monies to Shire of Wyndham East Kimberley (if it is a rented property), under the provisions of the Local Government Act 1995 – Section 6.60
 - b. Issue a Property Seizure and Sale Order on goods
 - c. Issue a Property Seizure and Sale Order on land (following council approval).
 - c) Properties with three years or more rates outstanding to be sold or forfeited to the Shire of Wyndham East Kimberley under the provisions of the Local Government Act 1995 – Section 6.68

FINANCIAL IMPLICATIONS

If Council resolve to revest these properties back to the Crown and Ministerial approval is provided, rates and charges to be written off will be in the order of \$41,672.46.

STRATEGIC IMPLICATIONS

Strategic Community Plan

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability.

Objective 1.4: Business innovation, efficiency and improved service.

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery.

Strategy 1.4.3: Maintain Council's long term financial viability.

COMMUNITY CONSULTATION

The Shire has received communication the ratepayer indicating that advice they had received from the selling agent indicates that there is currently no-one interested in purchasing the properties. The ratepayer has also stated that they are not in a position to pay the current, outstanding and ongoing rates, and would like to explore the possibility of the land reverting back to the Council in lieu of the current and outstanding rates.

The ratepayer has been advised by the Shire of the process that is being undertaken, and that consideration will be required by the Audit (Finance and Risk) Committee, the Council and the Minister.

COMMENT

The revesting of any land with outstanding rates, service charges, legal and debt collection charges is not a course of action that the Shire normally pursues as legal proceedings have generally proven to be successful.

However, numerous attempts over the past 7 years have been made to recover the outstanding rates, service charges, legal and debt collection charges which have proven unsuccessful.

The Council does have the option under section 6.64 of the *Local Government Act 1995* to sell the land or transfer the land to Crown or to itself.

Section 6.68(2) of the *Local Government Act 1995* states that:-

- (2) *A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government —*
 - (a) *has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land; or*
 - (b) *having made reasonable efforts to locate the owner of the property is unable to do so.*

The outstanding amounts for both assessments are \$41,672.46 and the cost to sell these properties is estimated to be \$7,000 to \$10,000 per assessment. At a total cost of approximately \$60,000 and an indication of a \$2,500 sale price for each lot, it is not financially beneficial for the Shire to sell the properties as the proceeds would not reimburse the cost of selling.

The option of revesting the property to itself is not recommended as the location of the land and the land itself is of no benefit to the Shire.

The least expensive option to the Shire is to reinvest these lots back to the Crown at a cost of approximately \$1,100.

ATTACHMENTS

Possession of Land for Recovery of Rates and Service Charges – Local Government Operational Guidelines – Number 22 May 2012.

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to Council that pursuant to Sections 6.64(1)(c), 6.71(1)(a) and 6.74(1)(c) of the *Local Government Act 1995*, that the Council commence the process to:

1. Take possession of Lots 401 and 402 Pearse Street, Wyndham (Assessments A5594 and A5595 respectively);
2. Authorise the Shire's debt collectors, AMPAC, to administer the process of taking possession of the land, ensuring compliance with provisions of the *Local Government Act 1995*;
3. Authorise the CEO, or their delegate, to seek Ministerial approval to revest Lots 401 and 402 Pearse Street Wyndham (Assessments A5594 and A5595 respectively), to the Crown; and
4. Subject to the Minister's approval, approve the write off of all outstanding balances on Assessment A5594 and Assessment A5595.

Although the Agenda indicated the voting requirement as an Absolute Majority the actual voting requirement is Simply Majority.

COMMITTEE RESOLUTION

Minute: AC304

Moved: Cr J Moulden

That the Audit (Finance and Risk) Committee recommends to Council that pursuant to Sections 6.64(1)(c), 6.71(1)(a) and 6.74(1)(c) of the *Local Government Act 1995*, that the Council commence the process to:

- 1. Take possession of Lots 401 and 402 Pearse Street, Wyndham (Assessments A5594 and A5595 respectively);**
- 2. Authorise the Shire's debt collectors, AMPAC, to administer the process of taking possession of the land, ensuring compliance with provisions of the Local Government Act 1995;**
- 3. Authorise the CEO, or their delegate, to seek Ministerial approval to revest Lots 401 and 402 Pearse Street Wyndham (Assessments A5594 and A5595 respectively), to the Crown; and**
- 4. Subject to the Minister's approval, approve the write off of all outstanding balances on Assessment A5594 and Assessment A5595.**

Lapsed for want of a Seconder

MOTION

That the Audit (Finance and Risk) Committee recommends to Council that pursuant to Sections 6.64(1)(b) of the *Local Government Act 1995*, that the Council commence the process to:

1. Take possession of Lots 401 and 402 Pearse Street, Wyndham (Assessments A5594 and A5595 respectively);
2. Authorise the Shire's debt collectors, AMPAC, to administer the process of taking possession of the land, ensuring compliance with provisions of the Local Government Act 1995; and
3. Proceeds to sell Lots 401 and 402 Pearse Street, Wyndham which have rates in arrears for 3 or more years and recover from the proceeds of the sale the outstanding balances which total \$41,672.46 at the time of writing this report.

COMMITTEE RESOLUTION

Minute: AC305

Moved: Cr B Robinson

Seconded: Cr D Spackman

That the Audit (Finance and Risk) Committee recommends to Council that pursuant to Sections 6.64(1)(b) of the *Local Government Act 1995*, that the Council commence the process to:

- 1. Take possession of Lots 401 and 402 Pearse Street, Wyndham (Assessments A5594 and A5595 respectively);**
- 2. Authorise the Shire's debt collectors, AMPAC, to administer the process of taking possession of the land, ensuring compliance with provisions of the Local Government Act 1995; and**
- 3. Proceeds to sell Lots 401 and 402 Pearse Street, Wyndham which have rates in arrears for 3 or more years and recover from the proceeds of the sale the outstanding balances which total \$41,672.46 at the time of writing this report.**

Carried 3/1

For: Cr B Robinson, Cr D Spackman, Cr K Wright

Against: Cr J Moulden



Government of **Western Australia**
Department of **Local Government**

Our Ref: 136-01#03 E1219458

TO ALL LOCAL GOVERNMENTS

CIRCULAR N^o 20-2012

NEW LOCAL GOVERNMENT GUIDELINE No. 22, 'POSSESSION OF LAND FOR RECOVERY OF RATES AND SERVICE CHARGES'

The Department, as part of its advice and support role to local governments, produces Guidelines on various matters relating to the implementation of the *Local Government Act 1995* and Regulations.

The Department has completed a new Guideline No.22 titled *Possession of Land for Recovery of Rates and Service Charges*.

This Guideline has been produced in response to considerable interest from local governments in seeking information and guidance on the legislation that governs the process for taking possession of land in order to recover rates and service charges that remain unpaid on land for a period of at least three years.

Guideline No. 22 explains the options that are available to local governments in taking possession of the land, such as its transfer to the Crown or the local government, re-vestment in the Crown or vestment in the local government and the power to sell or lease the land. Guideline No. 22 also includes examples of the forms to be used, a check list for sale of the land and a sample report to council.

Two hard copies of the revised Guideline have been mailed to each local government, and a downloadable version is available from the Department's website www.dlg.wa.gov.au under 'Publications'.

If additional copies of this Guideline are required, please contact Ms Vanya Druskovich via email at vanya.druskovich@dlg.wa.gov.au

A handwritten signature in cursive script, appearing to read 'J Mathews'.

Jennifer Mathews
DIRECTOR GENERAL

30 July 2012

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Government of **Western Australia**
Department of **Local Government**

Possession of Land for Recovery of Rates and Service Charges

Local Government Operational Guidelines – **Number 22** May 2012

Possession of Land for Recovery of Rates and Service Charges

1. Introduction

Local governments will from time to time face the situation where a person or company does not pay their rates or service charges for a number of years.

The intent of this Guideline is to explain the process required to comply with the legislation governing the taking possession of land in order to recover rates and service charges that are unpaid after three years.

Throughout the guideline there are also references made to Landgate's "Land Titles Registration Practice Manual" as many of the actions detailed have associated "Landgate" requirements.

Local governments may take action to lease or sell the land to recover rates and or service charges outstanding or they may cause the land to be transferred to the Crown or to itself.

Such action should only be considered when all other avenues of inquiry and action (such as the following examples) and where possible, consultation and negotiation for the debt recovery with the person or company, have been exhausted.

- Are the property owner's whereabouts known? Has a Claim (General Procedure) been issued and served? If so, has a Property (Seizure and Sale) Order (PSSO) on Land (Minor Case) been issued through the Magistrates Court 14 days or more after the General Procedure was served?
- If the property owner's whereabouts are not currently known, take steps to locate the owner. Does the owner own any other land anywhere else in Western Australia? Have water rates or land tax been paid by the owner? What address for the owner does the Water Corporation and/or the Office of State Revenue have?
- Is the property vacant or improved? Is it a rental property? If so, has an order been given to the tenant, under the provisions of section 6.60 of the *Local Government Act 1995* (the Act), to pay rent?
- If it is an improved property, and the owner does not occupy it, check to see where the power supply provider for the property sends its accounts?
- Has the facility of a direct debit or Centrepay payment service (weekly, fortnightly or monthly) been offered?
- Has a title search been done recently to ascertain if there is any current mortgage or caveat over the property?

This guideline sets out the process, step-by-step, so that if followed correctly the legal requirements should be met.

If the before mentioned and any other steps have not produced any result, a report should be prepared for Council. The report should outline the overdue rates or service charge position, and the attempts at debt recovery and owner location.

The report (refer **Attachment 1.**) may recommend that Council resolves by simple majority to lease or sell the land to recover rates and or service charges outstanding or may recommend that the local government apply to the Minister for Local Government to have the land re-vested in the Crown in right of the State under section 6.74 of the Act or make an application for the land to be transferred to itself, under section 6.75 of the Act.

Note: Section 6.68 of the Act states that a local government is not required to attempt to recover money due to it where;

- (a) it has a reasonable belief that the cost of proceedings will equal or exceed the value of the land; or
- (b) having made reasonable efforts to locate the property owner is unable to do so. Any such decision and the reasons for the decision are to be recorded in the minutes of the meeting at which the decision was made.

There is a legislative process that must be followed to comply with the lease, sell or transfer requirements of the legislation so that any of these actions are legally enforceable.

The Landgate procedures outlined in these Guidelines (highlighted text) are intended as a general guide only and are not a substitute for legal advice. Local governments and other parties should seek their own legal advice in respect of individual transactions.

For further information, the most recent version of Landgate's Land Titles Registration Practice Manual ("Landgate Practice Manual") is available online at www.landgate.wa.gov.au

Please note that references to particular paragraphs of the Landgate Practice Manual in these Guidelines may be subject to change.

2. Legislation

The legislative requirements to take action against land where rates or service charges are unpaid are contained in Part 6, Division 6, sections 6.63 to 6.75 and Schedules 6.2 and 6.3 of the *Local Government Act 1995* (the Act) and Part 5 of the *Local Government (Financial Management) Regulations 1996* (FMR) regulations 72 to 78 and Forms 2 to 7. (Copies of these forms are available as **Attachments 3 to 8**).

The legislation relevant to each step of the process is identified in the checklist at **Attachment 2**.

A question of interpretation has been raised in relation to the meaning of section 6.64(1) of the Act which gives the power to a local government to take possession of land where *any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years...*

Advice received by the Department indicates that irrespective of any payment made towards the unpaid rates which have been outstanding for at least three years the process for taking possession of the land remains valid. It is considered that section 6.64(1) of the Act applies where any part of a sum (for rates and/or service charges) is still unpaid three years after it first became due.

3. Matters to Check

3.1 Preliminary

In determining whether the local government can take possession of the land, it must ensure that;

- the land is rateable. Except as provided for in s.6.26 of the Act, all land within a district is rateable.
- any unpaid service charge is not one that is imposed on the occupier of land who is not the owner of that land (s.6.63).
- the total amount of rates or service charges raised and due on the land by the issue of rate notices remain unpaid for at least the last three years. The three years is calculated from the date they became due (s.6.64).
For example, rates are outstanding for 2008/09, 2009/10 and 2010/11. The 2008/09 rates were levied on 10/08/2008; the rate notice was issued on 24/08/2008 and the nominated due date was 30/09/2011, which is the date to be used.
- the rates or service charges outstanding on the land are not deferred under s.33 of the *Rates and Charges (Rebates and Deferrals) Act 1992*.
- the local government has the relevant certificate of title details.

- the person listed on the local government's rate record is the same as the owner on the certificate of title for the land, or the person listed on the rate record meets the definition of 'owner' (s.1.4).
- flag the property to prevent payments being received electronically from someone who doesn't have an estate or interest in the land.

3.2 Other matters to check

- Whether the owner's goods and chattels remain on the property. Where the owner has long since vacated the property and their whereabouts are unknown, but they have left their goods and chattels behind, it is suggested that local governments have the ability to proceed with action to dispose of the goods and chattels under the *Disposal of Uncollected Goods Act 1970*.
- Whether there is an inhabitant on the property (other than the owner) that has no legal right of occupation (i.e. a squatter). In this case, this will mean that a person is trespassing on land which the local government has the right to possession. It is understood that the local government would be entitled to take steps to have the person removed (and the premises secured). It is suggested that in the context of a particular case, a local government seek its own legal advice.

3.3 Taking possession of the land

- Prior to taking action to lease, sell or transfer land, a local government must "take possession" of the land.
- A notice, in the form of Form 2, advising that the local government has taken possession of the land, has to be given to the owner of the land (s.6.64(2); FMR r.72 and Form 2) Refer **Attachment 3**.
- A notice, in the form of Form 3, advising that the local government has taken possession of the land, has to be affixed to a conspicuous part of the land (s.6.64(2); FMR r.73 and Form 3) Refer **Attachment 4**.
- A local government is to surrender possession of the land if **all** rates and service charges due on the land are paid within 12 years of the taking of possession (s.6.67(1)).
- A local government does not have to give up possession of the land if it receives a portion

only of the rates and service charges due on the land or if it has exercised a power under s.6.64(1)(b)(c) or (d) of the Act and is in the process of selling or transferring the land to the Crown or to itself (s.6.67(1)).

- If all outstanding rates and service charges on the land are paid within 12 years of the taking of possession, and the local government has leased the land under s.6.64(1)(a), possession of the land is to be given up on the expiration of the lease (s.6.67(2)).

Note: In this Guideline, a reference to a Notice being 'served' or 'given', may be served or given in any of the ways provided for by sections 75 and 76 of the *Interpretations Act 1984*. Refer also to the *Local Government Act 1995*, Part 9 Division 3 - Documents.

3.4 Selling the Land

- The local government must have taken possession of the land (See 3.3 above).
- The power of sale of the land is not to be exercised unless the local government has made at least one attempt in the last three years under s.6.56 of the Act to recover the outstanding rates or service charges (s.6.68(1)).

Note: Court action must have been initiated.

- The local government does not have to initiate recovery for money due on the land if it holds the reasonable belief that the cost of the proceedings under s.6.56 will equal or exceed the value of the land. (s.6.68(2)), or having made reasonable efforts to locate the owner of the property, is unable to do so. The local government is to ensure that such decisions are recorded in the relevant Council minutes.
- Before the power of sale is exercised, a notice in the form of Form 4 has to be served on **the owner of the land** personally or served by certified mail to the address appearing in the rate record or a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept by the Registrar of Deeds (s.6.68(3); Sch. 6.3 cl.1.(1)(a); FMR r.74, Form 4) Refer **Attachment 5**.

- The register kept under the *Transfer of Land Act 1893* can be searched at Landgate.
- A search of certificate(s) of title can be conducted to obtain the address details of the registered proprietor of land under the *Transfer of Land Act 1893*.
- It should be noted that if the search of the certificate of title for the relevant land shows that the land is “subject to dealing” there may be unregistered documents which have been lodged but are yet to be processed. Such unregistered documents may affect the information shown on the title search. A facsimile request is required to obtain a copy of any unregistered document. Please note that because unregistered documents are searched manually, copies of the unregistered documents may take up to 48 hours.

Searches can be ordered through the Landgate website and paid for by credit card or through a Landgate account.

Searches can also be obtained in person or ordered by facsimile on 9250 3187.

For old system land, searches of the Register containing memorials under the *Registration of Deeds Act 1856* to obtain the address and details of the registered proprietor can be conducted at Landgate, Midland upon payment of the prescribed fee:

Landgate
1 Midland Square
Morrison Road (cnr Gt Northern Hwy)
Midland, Western Australia, 6056

Office opening hours:
8.00am – 5.00pm Monday to Friday
Document lodgement:
8.00am – 4.30pm Monday to Friday

For further information on searching the Register under the *Registration of Deeds Act 1856* see Paragraph 10.1.7 of the Landgate Practice Manual, including a schedule of the fees charged for each document searched.

A notice in the form of Form 4 has to be served, **on other persons whom records indicate have an estate or interest in the land**, personally or served by certified mail to the address appearing in the rate record or a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept by the Registrar of Deeds.
(Sch. 6.3 cl.1.(1)(b); FMR r.74, Form 4)

- In relation to land under the *Transfer of Land Act 1893*, a full title search may be conducted to obtain the details of estates or interests in the land which are registered on or noted against the certificate of title for the land (see above). A list of estates, interests, encumbrances and notifications appears in the second schedule of the certificate of title. Individual documents can be searched by document number.
- In relation to old system land, searches of memorials under the *Registration of Deeds Act 1856* can be conducted at Landgate, Midland (see above).
- It should be noted that if the search of the certificate of title for the relevant land shows that the land is “subject to dealing” there may be unregistered documents which have been lodged but are yet to be processed. Such unregistered documents may affect the information shown on the title search. A facsimile request is required to obtain a copy of any unregistered document. Please note that because unregistered documents are searched manually, copies of the unregistered documents may take up to 48 hours.

A notice in the form of Form 4 has to be posted on the official notice board of the local government for not less than 35 days.
(Sch. 6.3 cl.1.(1)(c); FMR r.74, Form 4)

The local government notice requiring payment is to:

- be in writing and dated and signed by the CEO;
- specify the land in respect of which the rates or services charges are owed;
- specify the total amount owing;

- include a statement that in default of payment the land will be offered for sale by public auction upon the expiration of 3 months from the date of the notice, at a time appointed by the local government; and
- be in or substantially in the form of Form 4. (Sch. 6.3 cl.1.(2)(a) to (e))

If no sufficient address can be found appearing in the rate record or a register kept under the *Transfer of Land Act 1893* or in a memorial or record kept by the Registrar of Deeds for a person required to be served, the notice, in the form of Form 4, is to be served by the local government giving local public notice, as under s.1.7 of the Act.

The notice may include land belonging to more than one person. (Sch. 6.3; FMR r.74 and Form 4).

- The local government must appoint a time, between 3 and 12 months from the service of the notice(s), at which time the land may be offered for sale by public auction. (Sch. 6.3 cl.1.(4)).
- The local government must advertise the sale by giving Statewide public notice, as required by s.1.7 and 1.8 of the Act, in, or substantially in, the form of Form 5 (Refer **Attachment 6**).

In addition, the notice may be given in other means the local government considers is necessary or desirable, for example on its website. (Sch. 6.3 cl.2.(1)(a)(b); FMR r.75 and Form 5)

The notice may include land owned by more than one owner, a description of the land and any improvements on it to convey to persons likely to be interested in the sale, the condition of the land and improvements.

- The local government is to provide to the Registrar of Titles or the Registrar of Deeds (as the case requires) a memorial (a copy of the Statewide public notice) and this is to be registered for each piece of land referred to in the memorial. (Sch. 6.3 cl.2.(3))

See Paragraph 11.4.18.2 of the Landgate Practice Manual.

- A Memorial of the advertisement of the proposed sale by the local government for non-payment of rates must be lodged with the Registrar of Titles in an approved form.

The Memorial of Advertisement must comprise:

- a true copy of the original advertisement certified as such by the Chief Executive Officer of the relevant Local Government. The advertisement must be substantially in the form of the Notice of Sale Form 5 as set out in Regulation 75 of the *Local Government (Finance Management) Regulations 1996*;
- (b) a copy of the full page of the state-wide newspaper containing the Notice of Sale Form 5; and
- a Landgate B2 or B4 form (available from Landgate's website and via the Landgate Practice Manual) as the back page of the Memorial of Advertisement with all preparation and lodgement details completed on the form.
- No registration fees are payable for lodgement of the Memorial of Advertisement.
- A letter is sent by the Registrar of Titles to the relevant Local Government advising that the Memorial of Advertisement has been registered.
- *Please note: if the advertisement is not substantially in the form of Form 5, contains errors or does not comply with Landgate's requirements, the Memorial of Advertisement may not be accepted for registration by the Registrar of Titles or the Registrar of Deeds. For example, the Registrar of Titles may request re-advertising if the information contained in the Form 5 is incorrect.*

Note: There is also provision for the Governor to rectify omissions and irregularities under section 9.64 of the *Local Government Act 1995*. After the memorial is registered, the Registrar of Titles or the Register of Deeds is prohibited from registering or accepting an instrument affecting the land without the consent of the local government (Sch. 6.3 cl.2.(4)).

- A Memorial of Advertisement remains in force for twelve months from the date of registration and acts as an absolute caveat until it is withdrawn or expires.
- Documents that are not “instruments” for the purposes of the *Transfer of Land Act 1893* may continue to be endorsed on the title to the land by the Registrar of Titles without the consent of the Local Government during the period that the Memorial of Advertisement is in force on the title. This includes such documents as: caveats, applications to amend the name of registered proprietors, surrenders of lease, discharges of mortgage, withdrawals of caveat and notifications.
- Documents lodged in registrable form together with the relevant local government’s consent will be processed in accordance with Landgate’s usual registration procedures.

- This prohibition covering the registration of the memorial does not extend beyond 12 months from the day on which the memorial is delivered to the Registrar of Titles or Deeds. This prohibition does not apply if a person having an estate or interest in the land, within seven days prior to the notified time of actual sale of the land, pays the local government the outstanding rates and or service charges and the costs incurred to that time in proceedings relating to the proposed sale of the land. (Sch. 6.3 cl.2.(4) and cl.7.; s.6.69)

- Acceptance of payment of the outstanding rates and or service charges by the local government, within the seven days prior to the notified sale, or after the seven days has elapsed on such terms and conditions as agreed between the parties, puts a stay on the proposed sale proceedings. (Sch. 6.3 cl.2.(4); s.6.69)

As soon as practicable after the acceptance of such a payment, the local government is to deliver to the Registrar of Titles or Deeds, a certificate, signed and dated by the Chief Executive Officer, certifying that all outstanding rates and service charges, costs and expenses have been paid and upon receipt of this certificate, the Registrar of Titles or Deeds will then endorse a memorandum that the land has ceased to be bound by the memorial. (s.6.69; FMR r.76)

A Certificate stating that all outstanding rates and service charges, costs and expenses have been paid is required to be lodged at Landgate and should comprise:

- (a) an original letter from the Chief Executive Officer of the relevant Local Government stating that the rates, costs and expenses have been satisfied; and
- (b) a Landgate B2 or B4 form (available from Landgate’s website) as the back page of the certificate with all preparation and lodgment details completed on the form.

Following lodgement of a Certificate in the appropriate form signed by the Chief Executive Officer of the Local Government, the Registrar of Titles causes to be entered on the relevant title a memorandum that the land has ceased to be bound by the Memorial of Advertisement.

No fees are payable for withdrawal of the Memorial of Advertisement.

If after the expiry of twelve months the Memorial of Advertisement has not been removed, it is ignored as an encumbrance.

If a contract for sale has not been entered into within 12 months from the date that the land is offered for sale by public auction notice, in the form of Form 5, the proceedings for the power to sell the land cease to have effect.

Proceedings can however be recommenced after this 12 months period, and the same power of sale of land proceeding requirements apply again for any proposed future sale. (Sch. 6.3 cl.7.)

If a contract of sale is entered into within the twelve month period after the date the land is offered for sale pursuant to the power of sale, a Transfer (Landgate Form T5) giving effect to this sale may be accepted for registration by the Registrar of Titles during or after this period unless a dealing has been lodged which prevents registration of the Transfer.

The local government's power of sale includes:

- the power to sell the land (in whole or in part, together or in lots) by public auction, or by private treaty if the land has been offered, though not sold, by public auction;
- the power to impose terms and conditions the local government thinks fit, for instance payment arrangements, and the fixing of a reserve price;
- the power to vary a contract of sale by agreement and to buy in at the auction;
- the power to rescind a contract for sale on default of the other party, without being answerable for loss occasioned by the rescission and resale; and
- the power to make thoroughfares, grant easements of right-of-way or drainage over the land as the circumstances require, and as the local government thinks fit. (Sch. 6.3 cl.3.(a) to (d)).

Note: An option open to local governments is to obtain an 'occasional licence' under the provisions of the *Auction Sales Act 1973* and the *Auction Sales Regulations 1974*. An 'occasional licence' authorises the holder to act as and carry out the business of, an auctioneer in relation to the occasion and circumstances specified in the licence.

The application process for an Occasional Licence is summarised as follows:

1. Complete two (2) copies of the *Occasional Auctioneers Licence Application Form (Form 3)*.
2. Obtain three (3) character references in duplicate.
3. Prepare a cheque or money order (payable to the Department of the Attorney General for the amount as specified in the *Auction Sales Regulations 1974*).
4. Lodge the applications, references and payment at the court nearest the applicant's place of business.
5. If granted the licence will be valid for seven (7) days.

After Sales Matters

- Where a transfer or conveyance of an estate in fee simple is made under s.6.64(1)(a) to (d) of the Act, this matter is not able to be brought to court for prosecution on the grounds;
 - that no case has arisen, or
 - that the proper procedures were not followed, or
 - that the power was otherwise improperly or irregularly exercised (s.6.72).
- Should a person claim that there has been an unauthorised, or improper, or irregular use of the power, there is a remedy open to them in damages against the local government but not against the Crown (s.6.72).

- A sale of land by a local government discharges the land and the owners, present and past, from any liability for rates, service charges or other money due to the local government at the time of sale and secured by a charge over the land, or otherwise recoverable under the Act or another written law (s.6.73(a) to (d)).
- The Local Government is required to apply the proceeds from the sale of the land in the manner set out in Sch. 6.3 cl.5. This lists the priority of payment allocation from the sale proceeds, summarised as follows;

Priority	Payment Allocation
1st	The costs and charges and expenses incurred by the local government in the land sale process.
2nd	<ul style="list-style-type: none"> (i) Unpaid rates and service charges for the land (ii) Costs and other money due or imposed by the Crown or an instrumentality of the Crown (e.g. State agency or department) (iii) Other amounts due to the local government under the Act or other written law. <p>Where insufficient funds remain after the first step has taken place, Sch. 6.3 cl.5.(b)(iii) provides the detail on how any remaining sale proceeds are to be distributed.</p>
3rd	Vendor's costs and expenses relating to the conferring of title upon the purchaser of the land.
4th	The discharge of a charge on the land relating to drainage and sewerage connection and fittings.
5th	The discharge of other mortgages and encumbrances on the land both registered and unregistered.
6th	Within 12 months, payment of any sale proceeds that remain to the person or persons with an entitlement to the land but for the sale (Sch. 6.3 cl.5.).

Where the local government exercises its power of sale under sections 6.64(1)(b) and 6.68 and Schedule 6.3 of the *Local Government Act 1995*, a Transfer (Landgate Form T5) executed by the local government using its common seal is used for transfers of land under the *Transfer of Land Act 1893*.

If the land is old system land which has not been brought under the *Transfer of Land Act 1893* the procedure for a conveyance of land under the *Registration of Deeds Act 1856* will apply. See paragraph 10.1.3 of the Landgate Practice Manual.

The Transfer (Landgate Form T5) must be supported by a statutory declaration made on the back page of the Form T5 by the Chief Executive Officer, attesting to compliance with the provisions of Part 6 Division 6, Subdivision 6 of the *Local Government Act 1995*.

In circumstances where there is a duplicate certificate of title, it is not required to be produced but the Registrar may with the consent of the Commissioner of Titles dispense with the production of the duplicate certificate of title (if any). The Registrar has the power to make orders or require advertisement as if the duplicate title was lost or not produced under the *Transfer of Land Act 1893*.

Where a paper title is in existence, a new title is created and registered in the name of the transferee. In the case of a digital title, a new edition of the duplicate digital title is issued.

Please refer to 3.6, on removal of encumbrances.

The issue of a receipt by the local government for money paid on the sale of the land is sufficient discharge. (Sch. 6.3 cl.6.)

Refer to Sale of Land Checklist **Attachment 2**.

3.5 Leasing the Land

- When rates or service charges are due on rateable land and have not been paid for at least three years, a local government may take possession of the land and from time to time lease the land for a term, not exceeding seven years at one time, with such reservations, exceptions, covenants and conditions as the local government thinks fit. (s.6.65 and Sch. 6.2 cl.1.(1))
- The local government must have taken possession of the land, (See 3.3)
- Where the proposed lease of the land is to exceed 3 years, the local government is to produce the lease to the Registrar of Titles for registration purposes. (Sch. 6.2 cl.1.(2) and s.91 *Transfer of Land Act 1893*)

The following are some of Landgate's requirements for registration of leases which may apply.

- The consent of any mortgagee or annuitant registered in priority to the lease is required.
- A lease must be prepared on a Landgate L1 Form for a lease of freehold land.
- If the duplicate title is not produced for registration of the lease, the Registrar of Titles may with the consent of the Commissioner of Titles dispense with the duplicate title, but may cause orders and advertisements to be made as are provided for by the *Transfer of Land Act 1893* in the case of a duplicate certificate of title which is lost or not produced (Schedule 6.2 cl.1.(2) (b) of the *Local Government Act 1995*).
- Where the lease relates to a portion of a Lot or Location, it must have a Land Description that is defined by a sketch or an "Interest Only" Deposited Plan. A lease of part of a building may have a narrative land description (see paragraph 2.8.4 of the Landgate Practice Manual).

- The term of the lease must be clearly defined, i.e. must have a commencement date (which may be a past date or up to 21 years in the future) and either a finish date or a finite term.

Please note that this is not an exhaustive list of Landgate's requirements.

See paragraph 2.8 of the Landgate Practice Manual for further information on registration of leases.

- Land leased by the local government, exercising its power to do so under s.6.64(1)(a) of the Act, does not cease to be rateable land for the local government or prejudice or effect the recovery of rates or taxes due to the State or Commonwealth and their associated departments, instrumentalities and agencies. (s.6.66(1))(2))
- A lessee is entitled to possession as against persons with an estate or interest in the land, but this does not affect the rights of a local government under the lease, public easements that affect the land, or the rights of the State or Commonwealth and their associated departments, and agencies. (s.6.66(3))
- The Local government is required to apply the rent or other money from the lease of the land in the manner set out in Sch. 6.2 cl.2. This lists the priority of allocation from the lease proceeds, summarised as follows;

Priority	Payment Allocation
1st	The costs and charges and expenses incurred by the local government in the land lease process.
2nd	Unpaid rates and service charges for the land.
3rd	Costs and other money due or imposed by the Crown or an instrumentality of the Crown (State, agency, department).
4th	Payment of any lease proceeds that remain to the person or persons with an entitlement to the land but for the lease. (Sch. 6.2 cl.2.)

3.6 Transfer of the Land to the Crown or to the Local Government

Where the land has been offered for sale for non payment of rates or service charges and a contract of sale has not been entered into at the expiration of 12 months from the date that the land is offered for sale by public auction notice (Form 5), the land may be transferred in fee simple, to the Crown in right of the State or to the local government.

The transfer is subject to the *Transfer of Land Act 1893*, or by deed when it is not covered by the *Transfer of Land Act 1893*. (s.6.71(1); Sch. 6.3)

The local government must have taken possession of the land. (See 3.3)

Upon transfer to the Crown or to the local government, all encumbrances affecting the land are of no further force or effect against the land and the Registrar of Titles or Registrar of Deeds is to remove all encumbrances from the title to the land. (s.6.71(2))

Note: State Land Services (SLS) does assist local governments by accepting transfer of land under s.6.71 of the Act and re-releasing it under the *Land Administration Act (LAA)*, often with covenants or conditions requiring development within specified timeframes. SLS also actively identifies parcels of Crown land in town sites that may be released for development. However, there are no provisions in the LAA for enforcing development on freehold lots.

- A Transfer (Landgate Form T5) executed by the local government using its common seal is used for transfers of land that is under the *Transfer of Land Act 1893* (to either the Crown under section 6.71(1)(a) or to the local government under section 6.71(1)(b)).

- If the land is old system land which has not been brought under the *Transfer of Land Act 1893* the procedure for a conveyance of land under the *Registration of Deeds Act 1856* will apply. See paragraph 10.1.3 of Landgate Practice Manual.
- The Transfer (Landgate Form T5) must be supported by a statutory declaration made on the back page of the Form T5 by the Shire or Town clerk, attesting to compliance with the provisions of Part 6 Division 6, Subdivision 6 of the *Local Government Act 1995*.
- In circumstances where there is a duplicate certificate of title, it is not required to be produced but the Registrar may with the consent of the Commissioner of Titles dispense with the production of the duplicate certificate of title (if any). The Registrar has the power to make orders or require advertisement as if the duplicate title was lost or not produced under the *Transfer of Land Act 1893*.
- Where a paper title is in existence, a new title is created and registered in the name of the transferee. In the case of a digital title, a new edition of the duplicate digital title is issued.
- No stamp duty or registration fees are payable in respect of the Transfer.
- Please see below guidelines on removal of encumbrances.

Where a transfer or conveyance of an estate in fee simple is made under s.6.41(1)(b) to (d), this is not able to be brought to court for prosecution on the grounds that no case has arisen or the proper procedures were not followed or the power was otherwise improperly or irregularly exercised. (s.6.72)

Should a person claim that there has been an unauthorised or improper or irregular use of the power there is a remedy open to them in damages against the local government but not against the Crown. (s.6.72)

- When transferring the land to the Crown it is queried whether there is a requirement (referred to in the dot point below) to pay out Crown encumbrances as is stated below?

When transferring the land to the Crown or the local government, the local government is required to pay the sum secured by or payable under a mortgage, lease, tenancy, encumbrance or charge in favour of the Crown in right of the State or a department, agency, or instrumentality of the Crown in right of the State. (s.6.71(3))

See Landgate's procedures outlined above.

A transfer or conveyance of land to the Crown or a local government discharges the land and the owners, present and past, from any liability for rates, service charges or other money due to the local government that were at the time of transfer and secured by a charge over the land, or otherwise recoverable under the Act or another written law. (s.6.73(a) to (d))

3.7 Revestment of Land in the Crown

- Where rates and service charges are due and payable on **vacant** rateable land and have not been paid for at least the last three years, the local government may revest the land in the Crown in right of the State. (s.6.74(1))
- The local government must have taken possession of the land. (See 3.3)
- The local government is to give notice to the land owners at their last known address and to all interest holders shown on the Certificate of Title, of its intention to revest the land if rates, service charges, costs and expenses are unpaid by the date specified in the notice, (at least 30 days from the service date); and cause a copy of the notice of intent to be published in the Government Gazette. The notice of intent is to contain a statement that the person to whom the notice is issued may lodge an objection to the revestment within 30 days of the date of the notice. (s.6.74; FMR r.77(1)(a) (b) and (2))

- The local government is required to consider all objections received to the intention to revest notice. (s.6.74; FMR r.77(3))
- The next step is for the local government to make an application to the Minister, in the form of Form 6 (refer **Attachment 7**), to have the land revested in the Crown. Form 6 requires the Chief Executive Officer to confirm by completing, signing and dating the form certifying that the land meets the criteria for revestment and that the legislative process requirements to allow for the land to be considered by the Minister for revestment have been complied with. (s.6.75; FMR r.78(1))
- The Minister may grant the application and authorise the revestment to the Crown by completing a Form 7 (refer **Attachment 8**) and submitting it, together with a transfer or conveyance of the land, to the Registrar of Titles or the Registrar of Deeds for registration. (s.6.74; FMR r.78)

- Where rates and taxes have been outstanding for a period of three years, section 6.74 of the *Local Government Act 1995* allows the local government to have the land re-vested in the State of Western Australia. There is no requirement under this section for a local government to have attempted to sell the land.
- If the land is old system land which has not been brought under the *Transfer of Land Act 1893* the procedure for a conveyance of land under the *Registration of Deeds Act 1856* will apply. See paragraph 10.1.3 of the Landgate Practice Manual.
- Revestment is achieved by the lodgement of a Transfer (Landgate Form T9) if the land is under the *Transfer of Land Act 1893* executed by the Minister for Local Government and the Minister for Lands by appropriate delegation.
- The Transfer attracts no registration fees and no stamp duty.

- In circumstances where there is a duplicate certificate of title, it is not required to be produced but the Registrar may with the consent of the Commissioner of Titles dispense with the production of the duplicate certificate of title (if any).
The Registrar has the power to make orders or require advertisement as if the duplicate title was lost or not produced under the *Transfer of Land Act 1893*.
- If the land is under the *Transfer of Land Act 1893* the Registrar of Titles will cancel the certificate of title to the land and remove it from operation of the *Transfer of Land Act 1893*.
- Please see below guidelines (see 3.9) on removal of encumbrances.
- All rights benefiting the land being re-vested continue and are automatically brought forward onto the new Crown title.

3.8 Vestment of Land in the Local Government

- The local government must have taken possession of the land (See 3.3)
- Where 12 years have expired from the date of taking possession of the land under s.6.64 of the Act, and all outstanding rates and service charges have not been paid, the land has not been sold, or transferred to the Crown or to the local government, the fee simple in the land is to be transferred to the local government. (s.6.75(1)(a)(b))

- If the land is old system land which has not been brought under the *Transfer of Land Act 1893* the procedure for a conveyance of land under the *Registration of Deeds Act 1856* will apply. See paragraph 10.1.3 of the Landgate Practice Manual.
- A Transfer (Landgate Form T5) executed by the Local Government using its common seal is used for a transfer of land that is under the *Transfer of Land Act 1893*.

- The Transfer (Landgate Form T5) must be supported by a statutory declaration made on the back page of the Form T5 by the Local Government's Chief Executive Officer, attesting to compliance with the provisions of Part 6 Division 6, Subdivision 6 of the *Local Government Act 1995*.
- In circumstances where there is a duplicate certificate of title, it is not required to be produced but the Registrar may with the consent of the Commissioner of Titles dispense with the production of the duplicate certificate of title (if any).
The Registrar has the power to make orders or require advertisement as if the duplicate title was lost or not produced under the *Transfer of Land Act 1893*.
- Where a paper title is in existence, a new title is created and registered in the name of the transferee. In the case of a digital title, a new edition of the duplicate digital title is issued.
- No stamp duty or registration fees are payable in respect of the Transfer.
- Please see below guidelines on removal of encumbrances.

- The transfer of the land to the local government is free from encumbrances other than being subject to;
 - easements in favour of the public that affect the land,
 - the rights of the Crown in right of the State, or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth, and
 - rates and taxes (other than local government rates and taxes) due on the land. ((s.6.75(1)(c)(d)(e) (2); and Sch. 6.3)

3.9 Removal of Encumbrances under the *Local Government Act 1995*

3.9.1 Transfers to a Local Government or third parties (other than the Crown)

Upon registration of the Transfer (T5) by the Registrar of Titles, encumbrances other than encumbrances which fall into the statutory exceptions set out in sections 6.75(1)(c), (d) or (e) of the *Local Government Act 1995* are automatically removed from the title to the land.

The statutory exceptions are:

1. easements in favour of the public which affect the land;
2. the rights of the Crown in right of the State or Commonwealth or a department or agency or instrumentality in right of the State or Commonwealth; and
3. rates and taxes (other than local government rates and service charges) due on the land.

Depending on their nature, these encumbrances may be shown as encumbrances on page 2 of the Transfer or withdrawn by the relevant department or agency to permit registration of the Transfer and then (if necessary) re-lodged.

With the exception of caveats which fall into the statutory exceptions in section 6.75(1)(c)-(e) of the *Local Government Act 1995*, caveats (including "absolute caveats") are automatically removed upon registration of a Transfer (Landgate Form T5) by a local government exercising its power to sell or transfer the land to a third party or itself for non-payment of rates under the Act.

As a general rule Registrar's Caveats (lodged by the Registrar of Titles at the direction of the Commissioner of Titles under section 188(iii) of the *Transfer of Land Act 1893*) are removed by the act of registration of a transfer by a local government to a third party or itself under the Act (as indicated above). However, where the purpose of a Registrar's Caveat is to protect a right of the State or its agency, department or instrumentality, for example, in the case of an error or wrong description in the land or fraud the Registrar's Caveat is required to be removed by the Registrar of Titles at the direction of the Commissioner of Titles. Please note: there may be other exceptions to this rule.

Where a paper title is in existence, a new title is created and registered in the name of the transferee free from encumbrances except those referred to in section 6.75(1)(c), (d) or (e). In the case of a digital title, a new edition of the duplicate digital title is issued.

3.9.2 Transfers to the Crown

Where land is transferred to or transferred and vested in the State of Western Australia by a local government under sections 6.71(1)(a) or 6.74 of the Act respectively, encumbrances of every kind including all caveats (and Registrar's Caveats) are automatically removed from the title to the land.

Note: If the land is (or is designated to become) part of the Dampier to Bunbury Natural Gas Pipeline (DBNGP) corridor under the *Dampier to Bunbury Natural Gas Pipeline Act 1992*, other statutory provisions do not apply without approval of the DBNGP Land Access Minister.

ATTACHMENT 1

RATES – SALE OF LAND

WARD	ALL
FILE REF:	RV/DR/2
DATE	3 March 2011
REF	JEAH
RESPONSIBLE MANAGER	Manager Financial Services

In Brief:

- Sale of Land – recovery of rates in arrears for a period of three (3) or more years.
- Recommendation is that Council proceeds to sell (4) properties which have rates in arrears of 3 or more years, and recover from the proceeds of sale the outstanding balances which total \$26,095.87.

Tabled Items

Nil

Officer Interest Declaration

Nil

Strategic Implications

Corporate Services: – to achieve maximum community benefit from effective use of resources (staff, finances and information technology).

Legislation Implications

56.64 of the *Local Government Act 1995* states:

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and –*
 - (a) from time to time lease the land;*
 - (b) sell the land;*
 - (c) cause the land to be transferred to the Crown; or*
 - (d) cause the land to be transferred to itself.*
- (2) *On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.*
- (3) *Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.*

Council Policy/Local Law Implications

With reference to F43/92 dated 4 March 1992, Council resolved as part of the procedures to be employed for the collection of outstanding rates to review on an annual basis those properties where despite all efforts made to obtain payment on the overdue charges, rates arrears that had accrued and become in arrears by three or more years.

Those properties would then become the subject of recovery procedures, which with the approval of Council, would involve the implementation of action under the relevant sections of the Local Government Act, to sell the properties in order to recover the overdue rates.

Budget/Financial Implications

The sale of this land will equate to a decrease in the level of outstanding rates of \$26,095.87.

Consultation

Nil

BACKGROUND

Analysis

There are currently 4 properties that have rates outstanding by three or more years for which it has not been possible to enter into acceptable and successful arrangements for the payment of the balance owing. In each instance, a written notification has been directed to the last known postal address of the ratepayers and the property advising that it will be our intention to refer the matter to Council with a recommendation to sell the property in order to recover the outstanding balance.

The following is a list of those properties that have rates currently in arrears by three or more years, together with a brief history of the action taken to date.

Minor Case Claim* MCC (ne General Procedure)

Property Sale & Seizer Order* P550 (ne Warrant of Execution)

Direct Debit Request Form DDR/CPR

Centrepay*

(* refer last page of this attachment for explanation of terms)

1.		2.	
Ward	North	Ward	South
Assessment	22391	Assessment	92449
Type / Zoning	Residential R12.5/R25	Type / Zoning	Residential R15/R25
Period Outstanding	2007/08 – 2010/11	Period Outstanding	2007/08 – 2010/11
Amount Outstanding	\$5,871.47	Amount Outstanding	\$5,623.15
Payment	10 July 2007 \$1,350.43	Payment	6 March 2007 \$936.75
Recovery Action	Jan 08 Intention to MCC letter Feb 08 MCC 232/08 Sept 08 Intention to P550 Nov 09 Intention to MCC letter Jan 10 MCC 90/2010 Feb 10 MCC Served Aug 10 Intention Proceed with P550 Dec 10 Notice of Intention to sell 56.64 included DDR Mar 11 Letter Advising Ratepayers about report to Council to sell property at next Council Meeting 28 March 2011	Recovery Action	Jan 08 Intention to MCC letter Feb 08 MCC 373/08 Sept 08 Intention to P550 Nov 09 Intention to MCC letter Jan 10 MCC 91/2010 Feb 10 MCC Served Aug 10 Intention Proceed with P550 Dec 10 Notice of Intention to sell 56.64 included DDR Mar 11 Letter Advising Ratepayers about report to Council to sell property at next Council Meeting 28 March 2011
Response	The owner has not responded to recent notices or correspondence.	Response	The owners have not responded to recent notices or correspondence.

3.		4.	
Ward	East	Ward	West
Assessment	92980	Assessment	94885
Type / Zoning	Residential R15/R25	Type / Zoning	Residential R15/R25
Period Outstanding	2007/08 – 2010/11	Period Outstanding	2006/07 – 2010/11
Amount Outstanding	\$5,596.63	Amount Outstanding	\$9,004.62
Payment	27 December 2006 \$655.98	Payment	2 October 2008 \$2,000.00
Recovery Action	Jan 08 Intention to MCC letter Feb 08 MCC 374/08 Aug 08 Accepted DDR all payments dishonoured Sept 08 Intention to P550 Nov 09 Intention to MCC letter Jan 10 MCC 90/2010 Feb 10 MCC Served Aug 10 Intention Proceed with P550 Dec 10 Notice of Intention to sell 56.64 included DDR Mar 11 Letter Advising Ratepayers about report to Council to sell property at next Council Meeting 28 March 2011	Recovery Action	Nov 05 Intention to MCC letter May 06 MCC 649/06 Oct 06 Intention to P550 Jan 10 Intention to MCC letter May 10 MCC 1012/2010 Aug 10 Intention Proceed with P550 Dec 10 Notice of Intention to sell 56.64 included DDR Mar 11 Letter Advising Ratepayers about report to Council to sell property at next Council Meeting 28 March 2011
Response	The owner has not responded to recent notices or correspondence.	Response	The owners have not responded to recent notices or correspondence.

A summary of the owners of the properties referred to above is contained in a confidential attachment to this Agenda. (Refer to Attachment "B-2" – Summary of Attachments as circulated with the Agenda.)

DETAILS OF PROPOSAL

It is proposed to sell the land to recover outstanding rates and charges in excess of 3 years, in accordance with Section 6.64(1)(b) of the *Local Government Act 1995*.

COMMENT

Options

Option 1 – Exercise the provisions of Section 6.64 of the *Local Government Act 1995*

- given the high level of the debt, and the amount of time that has been afforded to enable the ratepayers to either clear or reduce the debt, it is appropriate to apply the relevant section of the *Local Government Act 1995* empowering the sale of land provisions in relation to unpaid rates and charges.

Option 2 – Exercise the provisions of Section 6.74 of the *Local Government Act 1995*

- apply to the Minister to have the land re-vested in the Crown in the right of the State.

Option 3 – Exercise the provisions of Section 6.75 of the *Local Government Act 1995*

- make application for the land to be vested in the local government.

Conclusion

It is suggested that Council apply the provisions of Section 6.64 of the *Local Government Act 1995* and sell the land in respect of the unpaid rates and charges, which are in arrears for a period of excess of 3 years.

CS24/3/11 RECOMMENDATION

That Council pursuant to Section 6.64(1)(b) of the *Local Government Act 1995*, proceed to sell the properties listed hereunder which have rates in arrears for 3 or more years, and recover from the proceeds of sale the outstanding balances which total \$26,095.87.

List of Properties by Assessment Number

Assessment 22391

Assessment 92449

Assessment 92980

Assessment 94885

Moved Cr Buck

Motion Carried (7-0)

* Explanation of Terms

Minor Case Claim (MCC) – This is a process for recovering minor debts in the local Magistrate's Court. It is for the recovery of amounts of \$10,000 or less and is aimed at parties to generally come to an agreement without lawyers.

Property Sale and Seizure Order (PSSO) – A Property (Sale & Seizure) Order authorises a Bailiff to seize and sell as much of your real or personal property as necessary to pay the judgement debt.

Direct Debit Request Form Centrepay (DDR/CPR) – Centrepay is a free bill-paying service offered to customers receiving payments from Centrelink. It can be used to pay bills (such as rent, gas, water and electricity) through a series of regular deductions from a recipient's Centrelink payments.

ATTACHMENT 2

SALE OF LAND CHECKLIST

Once council has resolved to sell land:-

<input type="checkbox"/>	Check the overdue rates (and charges) and “age” of the debt – ensure that there is an amount of rates which has been outstanding for a period in excess of at least 3 years.	<i>Section 6.64(1)</i>
<input type="checkbox"/>	Check that legal action has been attempted at least once in the last 3 years to recover the outstanding rates.	<i>Section 6.68(1)</i>
<input type="checkbox"/>	Order an updated title search.	
<input type="checkbox"/>	Issue a Notice Requiring Payment (Form 4) to be served on the owner as per the owner’s address shown on the Certificate of Title. Owner is given 3 months in which to pay and avoid his land being sold.	<i>Section 6.68(3)</i> <i>Schedule 6.3 1.(1)(a); FMR r. 74 Form 4</i>
<input type="checkbox"/>	Serve a copy of the Notice Requiring Payment (Form 4) on anyone with an estate or interest in the property (to the address shown on the title).	<i>Schedule 6.3.1(1)(b)</i>
<input type="checkbox"/>	A copy of the Notice Requiring Payment (Form 4) to be displayed on Council’s official noticeboard for a minimum of 35 days. Ensure that the Form 4 is duly stamped with the date first displayed and the date removed – show signature of authorised person plus witness.	<i>Schedule 6.3.1(1)(c)</i>
<input type="checkbox"/>	Serve a copy of Form 2 on the owner.	<i>Section 6.64(2); FMR r.72</i>
<input type="checkbox"/>	And also attach a copy of Form 3 to a conspicuous part of the land in order to take possession of the land. Obtain an affidavit of service regarding Form 3.	<i>Section 6.64(2); FMR r.73</i>
<input type="checkbox"/>	Council is to appoint a time no less than 3 months and no more than 12 months after service of the Notice of payment (Form 4) for the public auction. A sale has to happen within 12 months of the date the land is offered for sale or proceedings lapse.	<i>Schedule 6.3 cl.7</i>
<input type="checkbox"/>	Issue a Statewide public notice.	<i>Sch. 6.3 cl.2; FMR r.75; Form 5</i>
<input type="checkbox"/>	Register at Landgate, a Memorial of the Statewide public notice.	<i>Sch. 6.3 cl.2 (3)</i>
<input type="checkbox"/>	Organise the auction.	<i>Sch. 6.3 cl.3</i>
<input type="checkbox"/>	Attend the auction.	<i>Sch. 6.3 cl.3</i>
<input type="checkbox"/>	If sold at auction, arrange settlement.	<i>Sch. 6.3 cl.4 & 6.3 cl.5</i>

NB: All legislative references are the *Local Government Act 1995* and associated regulations.

ATTACHMENT 3

FORM 2

[reg. 72]

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Notification of taking possession of land under section 6.64 of the *Local Government Act 1995*

TO: ⁽¹⁾

Notice is hereby given that the sum of \$ ⁽²⁾ having been unpaid to the ⁽³⁾

Shire/Town/City of ⁽⁴⁾ for a period of 3 years for ⁽³⁾ rates/service charges in respect of the

land situated at ⁽⁵⁾

and being ⁽⁶⁾

the local government has taken possession of the land pursuant to section 6.64 of the *Local Government Act 1995*, and in accordance with that section intends to

⁽³⁾ (a) lease the land;

⁽³⁾ (b) sell the land;

⁽³⁾ (c) cause the land to be transferred to the Crown;

⁽³⁾ (d) cause the land to be transferred to the local government.

Signed for and on behalf of the ⁽³⁾ Shire/Town/City of ⁽⁴⁾

this ⁽⁷⁾ day of, 20.....

.....
CEO

(1) insert name of owner of land or }owner of (5)~

(2) insert amount

(3) delete the one that does not apply

(4) insert name of local government

(5) insert address or other details sufficient to identify land

(6) insert title particulars of land

(7) insert date

ATTACHMENT 4

FORM 3

[reg. 73]

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Notice to be affixed on land on taking possession under section 6.64 of the *Local Government Act 1995*

TO: ⁽¹⁾

The ⁽²⁾ Shire/Town/City of ⁽³⁾ has taken possession of this land situated at ⁽⁴⁾

.....
.....

and being ⁽⁵⁾

in accordance with section 6.64 of the *Local Government Act 1995*, and will in accordance with that section

⁽²⁾ (a) lease the land;

⁽²⁾ (b) sell the land;

⁽²⁾ (c) cause the land to be transferred to the Crown;

⁽²⁾ (d) cause the land to be transferred to the local government.

Signed for and on behalf of the ⁽²⁾ Shire/Town/City of ⁽³⁾

this ⁽⁶⁾ day of, 20.....

.....

CEO

(1) insert name of owner of land or }owner of (4)~

(2) delete the one that does not apply

(3) insert name of local government

(4) insert address or other details sufficient to identify land

(5) insert title particulars of land

(6) insert date

ATTACHMENT 5

FORM 4

[reg. 74]

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Notice pursuant to Schedule 6.3 of the *Local Government Act 1995* requiring payment of outstanding rates or service charges

TO: ⁽¹⁾

Notice is hereby given that the sum of \$ ⁽²⁾ has been owing to the ⁽³⁾ Shire/Town/City of ⁽⁴⁾ for a period of 3 years for ⁽³⁾ rates/service charges in respect of the land described below and unless payment is made of the sum of \$ ⁽²⁾ within 3 months from the date of this notice the local government will, pursuant to section 6.64 of the *Local Government Act 1995*, offer the land for sale by public auction at a time and place appointed by the local government.

Signed for and on behalf of the ⁽³⁾ Shire/Town/City of ⁽⁴⁾

this ⁽⁵⁾ day of, 20.....

.....

CEO

Description of Land etc.

Names of owners and all other persons appearing to have an estate or interest in the land	Description of land referred to, including title references
⁽⁶⁾	⁽⁶⁾

(1) insert identity or description of person to whom notice is being served

(2) insert amount

(3) delete the one that does not apply

(4) insert name of local government

(5) insert date

(6) insert details

ATTACHMENT 6

FORM 5

[reg. 75]

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Notice pursuant to Schedule 6.3 of the *Local Government Act 1995* of sale of land for non-payment of outstanding rates or service charges

Notice is hereby given that, under section 6.64 of the *Local Government Act 1995*, as ⁽¹⁾ rates/service charges have been owing for a period of at least 3 years the ⁽¹⁾ Shire/Town/City of ⁽²⁾ is to offer for sale by public auction at ⁽³⁾ on the ⁽⁴⁾ day of, 20..... the land described below.

Signed for and on behalf of the ⁽¹⁾ Shire/Town/City of ⁽²⁾ this ⁽⁴⁾ day of, 20.....

.....
CEO

Description of Land etc.

Description of land and lot or location number	
Plan or Diagram Number	
Title reference	
Area	
Street	
Description of improvements, if any	
Name of Owner	
Name of other persons appearing to have an estate or interest	
Rates/service charges outstanding	
Other charges due on the land	

(1) delete the one that does not apply

(2) insert name of local government

(3) insert details

(4) insert date

ATTACHMENT 7

FORM 6

[reg. 78(1)]

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Application to the Minister for land to be revested in the Crown *Local Government Act 1995*

Application under s.6.74

TO: The Hon. Minister

The ⁽¹⁾ Shire/Town/City of ⁽²⁾ requests that the Minister approve the revestment in the Crown of the land described below pursuant to section 6.74 of the *Local Government Act 1995*, by the reason that the land is;

- (a) rateable land;
- (b) vacant; and
- (c) land in respect of which ⁽¹⁾ rates/service charges have been unpaid for a period of at least 3 years.

I the undersigned certify that, in respect of the stated land;

- (d) 30 days' notice of intent was delivered to the last known address of the owner(s) of the land;
- (e) 30 days' notice of intent was issued to the last known address of all persons who are noted on the certificate of title to the land as having an interest in the land (by way of encumbrance or otherwise);
- (f) a copy of that notice was published on page of the *Government Gazette* of ⁽³⁾; and
- (g) after 30 days

⁽¹⁾ no objections were received

⁽¹⁾ objections were received from ⁽⁴⁾ people and duly considered by the local government.

(Copies of the objections and associated council resolutions are attached).

Signed for and on behalf of the ⁽¹⁾ Shire/Town/City of ⁽²⁾

this ⁽³⁾ day of, 20.....

.....
CEO

(1) delete the one that does not apply

(2) insert name of local government

(3) insert date

(4) insert number of persons

Description of Land etc.

Names of owners and all other persons appearing to have an estate or interest in the land	Description of land referred to, including title references
(1)	(1)

(1) insert details

ATTACHMENT 8

FORM 7

[reg. 78(2)]

Local Government Act 1995

Local Government (Financial Management) Regulations 1996

Notification by Minister of grant of application for revestment of land in the Crown

Local Government Act 1995 — Ministerial approval under s.6.74

I, being the Minister charged for the time being with the administration of the *Local Government Act 1995*, grant the application submitted by the ⁽¹⁾ Shire/Town/City of ⁽²⁾ on the ⁽³⁾ day of 20....., and authorise the land described below to be revested in the Crown.

.....

Minister

Date ⁽³⁾

Description of Land etc.

Names of owners and all other persons appearing to have an estate or interest in the land	Description of land referred to, including title references
(4)	(4)

(1) delete the one that does not apply

(2) insert name of local government

(3) insert date

(4) insert details

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FURTHER INFORMATION

For more information about this and other guidelines, contact the Advice and Support Branch of the Department of Local Government:

Tel: (08) 6552 1500

Fax: (08) 6552 1555

Freecall: 1800 620 511 (Country Only)

Local Government Advisory Hotline

Tel: 1300 762 511

Email: lghotline@dlg.wa.gov.au

Opening Hours: 8.30am – 5.00pm, Monday to Friday

These guidelines are also available on the Department's website at www.dlg.wa.gov.au

ABOUT THE GUIDELINE SERIES

This document and others in the series are intended as a guide to good practice and should not be taken as a compliance requirement. The content is based on Departmental officers' knowledge, understanding, observation of, and appropriate consultation on contemporary good practice in local government. Guidelines may also involve the Department's views on the intent and interpretation of relevant legislation.

All guidelines are subject to review, amendment and re-publishing as required. Therefore, comments on any aspect of the guideline are welcome. Advice of methods of improvement in the area of the guideline topic that can be reported to other local governments will be especially beneficial.

6.13 REQUEST FOR APPROVAL TO SELL 23 KABBARLI STREET, WYNDHAM ON ASSESSMENT NUMBER A195 TO RECOVER OUTSTANDING RATES AND CHARGES

DATE:	13 May 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	N/A
AUTHOR:	Shelley Binnie, Finance Officer Rates & Property
REPORTING OFFICER:	Natalie Octoman Director Corporate Services
FILE NO:	FM.11.55
ASSESSMENT NO:	A195

PURPOSE

The Audit (Risk and Finance) Committee is requested to consider the sale of 23 Kabbarli Street, Wyndham on Assessment Number A195, which has rates in arrears by three or more years in order to recover outstanding rates, services charges and legal / debt collection costs.

BACKGROUND

Rates for 23 Kabbaarli Street, Wyndham have remained unpaid since 2008/09. Every year the Shire has issued the rates notice, final notice and a notice of intent letter (demand letter) from the Shire's debt collection agency to the last known address. All of the notices and letters have been returned to the Shire marked "Left address - unknown" since 2010/11.

The debt was originally referred to the Shire's debt collection agency in 2010 and the agency was unable to locate the owner. A General Procedure Claim (GPC) was issued and served on the ratepayer in Darwin on 18 February 2012. No response was received and Judgement was entered at court in the Northern Territory on 12 July 2012. An application for a Warrant to Seize Goods (Property Sale and Seizure Order on Goods) was lodged at Court on 10 August 2012.

The Bailiff located the ratepayer in December 2012. The Bailiff's report indicated that the ratepayer has no possessions of any value and the vehicle that was in the ratepayer's possession had a blown gearbox and would cost more to collect and sell than what the vehicle is worth. The Bailiff also obtained personal and work contact details for the ratepayer. Attempts were made to contact the ratepayer on the numbers supplied without success as the personal phone number has been disconnected and the ratepayer no longer worked at the company. Further searches by the Shire's debt collection agency have revealed that the ratepayer may also own property in Darwin. A GPC has been issued on 3 February 2014 to the ratepayer at a Darwin property address. A letter was sent to the ratepayer's mortgagee on the 09 April 2013; however no response has been received.

Total outstanding as 12 February 2014

Rates	\$5,143.00
Emergency Service Levy	\$ 308.30
GRV Waste Management Charge	\$ 749.00
Waste Receptacle	\$1,608.00
ESL Penalty	\$ 89.97
Interest	\$2,689.74
Debt Collection / Recovery Fees	\$4,380.98
Total	\$14,968.99

STATUTORY IMPLICATIONS

Local Government Act 1995

6.55 Recovery of rates and service charges

- (1) *Subject to subsection (2) and the Rates and Charges (Rebates and Deferments) Act 1992 rates and service charges on land are recoverable by a local government from*
- (i) *the owner at the time of the compilation of the rates record;*
 - (ii) *a person who whilst the rates or service charges are unpaid becomes the owner of the land.*

6.56 Rates or service charges recoverable in court

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction*

6.64 Actions to be taken

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and –*
- (a) *from time to time lease the land; or*
 - (b) *sell the land; or*
 - (c) *cause the land to be transferred to the Crown; or*
 - (d) *cause the land to be transferred to itself*
- (2) *On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.*
- (3) *Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which*

it may lodge a caveat to preclude dealings in respect of the land and may withdraw caveats so lodged by it.

6.68 Exercise of power to sell land

- (1) *Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b) (in this Subdivision and Schedule 6.3 referred to as the power of sale) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due to it.*
- (2) *A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government —*
 - (a) *has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land; or*
 - (b) *having made reasonable efforts to locate the owner of the property is unable to do so.*
- (3A) *A local government is to ensure that a decision to exercise a power of sale without having, within the period of 3 years prior to the exercise of the power of sale, attempted under section 6.56 to recover the money due to it and the reasons for the decision are recorded in the minutes of the meeting at which the decision was made.*
- (3) *Schedule 6.3 has effect in relation to the exercise of the power of sale.*

6.69 Right to pay rates, service charges and costs, and stay proceedings

- (1) *Up to 7 days prior to the time of the actual sale of any land for non-payment of rates or service charges a person having an estate or interest in the land may pay the rates or service charges and the costs and expenses incurred to that time in proceedings relating to the proposed sale.*
- (2) *At any time after the 7 days referred to in subsection (1) but prior to the time of the actual sale of any land the local government may, upon such terms and conditions as are agreed between the parties, accept payment of the outstanding rates or service charges.*
- (3) *On payment being made under subsection (1) or (2) the proceedings relating to the proposed sale are stayed and the local government is required to make such notifications and take such measures as are prescribed in relation to the payment and the cancellation of the proposed sale.*

POLICY IMPLICATIONS

Policy F12 – Rate Collection Policy

4. Recovery action, as allowed under the Local Government Act 1995 – section 6.56, is to commence after the expiration of the seven (7) day given in clause 3. Methods that will be used to recover debts are as follows;
 - d) General Procedures Claim
 - e) If no response from the claim, the following options are available, as appropriate:

- a. Serve notice on tenant to pay rent monies to Shire of Wyndham East Kimberley (if it is a rented property), under the provisions of the Local Government Act 1995 – Section 6.60
 - b. Issue a Property Seizure and Sale Order on goods
 - c. Issue a Property Seizure and Sale Order on land (following council approval).
- f) Properties with three years or more rates outstanding to be sold or forfeited to the Shire of Wyndham East Kimberley under the provisions of the Local Government Act 1995 – Section 6.68

FINANCIAL IMPLICATIONS

While dependent upon the sale price, it is anticipated that there may be positive financial implications for the Shire as all outstanding rates, service charges and debt collection charges including costs associated with the sale of the property are anticipated to be recovered from the proceeds from the sale of the property.

STRATEGIC IMPLICATIONS

There are no strategic implications applicable with this matter. It is a legislative matter.

COMMUNITY CONSULTATION

Community consultation is not relevant to this matter.

COMMENT

The sale of any property to recover unpaid rates and service charges is no a course of action that the Shire normally pursues as other legal proceedings have generally proven to be successful. However numerous attempts have been made to recover the outstanding rates and service charges for this property and they have proven unsuccessful.

Ample opportunity will exist for the ratepayer to pay outstanding rates and charges in full or they will be offered a suitable payment plan to stop the sale of the land in accordance with section 6.69 of the *Local Government Act 1995*.

The property at 23 Kabbarli Street is in a state of disrepair and has not been occupied for several years.

It is recommended that the Shire's debt collection agency handle all matters in relation to the sale of the property. Costs to sell the property are dependent on if the ratepayer is located. If the ratepayer is located and the warrant to sell land is served, the debt collection costs are estimated to be approximately \$1,500 to \$3,000. If the ratepayer isn't located and the property is sold under section 6.64 of the *Local Government Act 1995* costs are estimated to be approximately \$7,000 to \$10,000. All of these are recoverable under section 6.56 of the *Local Government Act* and will be received when the sale of the property has occurred.

This property has been accruing debt since 2008/09 and will continue to do so until the property is sold.

ATTACHMENTS

There are no attachments associated with this report.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That the Audit (Finance and Risk) Committee recommends to Council that pursuant to Section 6.64(1)(b) of the *Local Government Act 1995*, that the Council:

1. Take possession of 23 Kabbarli Street, Wyndham (Assessment Number A185);
2. Authorise the Shire's debt collectors, AMPAC, to administer the process of taking possession of the land, ensuring compliance with provisions of the *Local Government Act 1995*;
3. Proceeds to sell 23 Kabbarli Street, Wyndham which have rates in arrears for 3 or more years and recover from the proceeds of the sale the outstanding balances which total \$14,968.99 at the time of writing this report.

COMMITTEE RESOLUTION

Minute: AC306

Moved: Cr J Moulden

Seconded: Cr B Robinson

That the Audit (Finance and Risk) Committee recommends to Council that pursuant to Section 6.64(1)(b) of the *Local Government Act 1995*, that the Council:

- 1. Take possession of 23 Kabbarli Street, Wyndham (Assessment Number A185);**
- 2. Authorise the Shire's debt collectors, AMPAC, to administer the process of taking possession of the land, ensuring compliance with provisions of the *Local Government Act 1995*;**
- 3. Proceeds to sell 23 Kabbarli Street, Wyndham which have rates in arrears for 3 or more years and recover from the proceeds of the sale the outstanding balances which total \$14,968.99 at the time of writing this report.**

Carried Unanimously 4/0

7. DATE OF NEXT MEETING

12 August 2014

8. CLOSURE

The Chairperson declares the meeting closed at 3.59pm.