

CONFIDENTIAL



REPORT FOR:	Council		
MEETING DATE:	24 September 2018		
REPORT FROM:	Director Corporate & Community Services		
REPORT TITLE:	Discretionary Rebate Application 2018/2019 – Assessment 9004		
FILE NAME:	F18/236	RECORD NO:	AR18/37626

COMMUNITY VISION & STRATEGIC PLAN OBJECTIVE/S

6 We Achieve

- 6.3 We aim to provide good governance practices and compliance with all legislative requirements in delivery of services
- 6.5 We use and manage our financial resources in the best interests of our community and to ensure financial sustainability and organisational efficiency, now and into the future.

PURPOSE

In accordance with the *Local Government Act 1999* to provide a report for Council consideration, a further discretionary rebate for the 2018/2019 rating year received after the initial report considered by Council on 9 July 2018.

RECOMMENDATION

That **Council** does not provide a discretionary rebate to limit the increase of the general rate on assessment 9004 to 6% for the 2018/2019 financial year pursuant to Section 166 of the Local Government Act 1999.

BACKGROUND

- 1.1 Within this report reference to "the Act" means The Local Government Act 1999.
- 1.2 The Act provides circumstances under which rates can be rebated.
- 1.3 **Discretionary Rebates** are detailed in Section 166 of the Act 1999 which provides that –
"A Council may grant a rebate of rates or service charges in any of the following cases:
 - (a) where the rebate is desirable for the purpose of securing the proper development of the area (or a part of the area);
 - (b) where the rebate is desirable for the purpose of assisting or supporting a business in its area;
 - (c) where the rebate will conduce to the preservation of buildings or places of historic significance;

- (d) *where the land is being used for educational purposes;*
- (e) *where the land is being used for agricultural, horticultural or floricultural exhibitions;*
- (f) *where the land is being used for a hospital or health centre;*
- (g) *where the land is being used to provide facilities or services for children or young persons;*
- (h) *where the land is being used to provide accommodation for the aged or disabled;*
- (i) *where the land is being used for a residential aged care facility that is approved for Commonwealth funding under the Aged Care Act 1997 (Cwlth) or a day therapy centre;*
- (j) *where the land is being used by an organisation which, in the opinion of the council, provides a benefit or service to the local community*
- (k) *where the rebate relates to common property or land vested in a community corporation under the Community Titles Act 1996 over which the public has a free and unrestricted right of access and enjoyment;*
- (l) *where the rebate is considered by the council to be appropriate to provide relief against what would otherwise amount to a substantial change in rates payable by a ratepayer due to—*
 - (i) *a redistribution of the rates burden within the community arising from a change to the basis or structure of the council's rates; or*
 - (ii) *a change to the basis on which land is valued for the purpose of rating, rapid changes in valuations, or anomalies in valuations;*
- (m) *where the rebate is considered by the council to be appropriate to provide relief in order to avoid what would otherwise constitute*
 - (i) *a liability to pay a rate or charge that is inconsistent with the liabilities that were anticipated by the council in its annual business plan; or*
 - (ii) *a liability that is unfair or unreasonable;*
- (n) *where the rebate is to give effect to a review of a decision of the council under Chapter 13 part 2;*
- (o) *where the rebate is contemplated under another provision of this Act.*

Council's rating policy (1.1.10) states:

For the 2018/2019 financial year, Council considered it appropriate to grant pursuant to Section 166(1)(l)(ii) of the Local Government Act a rebate of the general rate in order to provide relief against what would otherwise amount to a substantial change in rates payable by a ratepayer.

Consequently, rebates will be granted (subject to conditions) to limit the increase of the 2018/2019 general rate over the amount of the general rate payable in the 2017/2018 financial year as follows:

- (a) *on residential land use – increase will be limited to 6% over the general rate payable in the 2017/2018 financial year*
- (b) *on all other land uses – increase will be limited to 15% over the general rate payable in the 2017/2018 financial year.*

The conditions referred to above are as follows:

- (i) *any such increase is not due in full or in part to the use of the land being different for rating purposes on the date the Council declared its general rates for 2017/2018 financial year than on the date Council declared its general rates for the 2018/2019 financial year; or*
- (ii) *the ownership of the rateable land has not changed in the preceding 18 months; or*
- (iii) *subdivision of the land has not occurred since 1st July 2017: or*
- (iv) *a notional value has not been assigned to the land by the Valuer-General; or*
- (v) *a new valuation assessment has not been provided by the Valuer-General for the purpose of incorporating contiguous land.*

DISCUSSION

Assessment 9004 had a change of ownership during the past 18 months and, as per Council's Rating Policy 1.1.10, was excluded from capping applied to other properties under Section 166(1)(l)(ii) of the Act.

The ratepayer lodged a complaint to Council regarding the removal of the capping following receipt of the 2018/2019 Rates Notice. The ratepayer feels that they are being discriminated against by what they believe to be an inconsistent Council policy that the ratepayer was not aware of at the time of buying the property. The ratepayer alleges that the conveyancers and Real Estate Agents in town had not been sufficiently advised of the policy and therefore have not been passing this information on to potential buyers and as such the ratepayer was unable to make an informed decision.

As per Section 7 of the Land and Business (Sales and Conveyancing) Act 1994, a 'Certificate of Liabilities' was issued prior to sale of the property (attachment 1). This 'Certificate of Liabilities' detailed the 2017/2018 Rates and Charges. The Certificate also included additional information as per below:

Capping Rebate

The capping rebate applied to the general rate in 2017/2018 will not apply to this assessment in the 2018/2019 financial year as Council have resolved that where a change of ownership has occurred in the current financial year the capping rebate does not apply in the following year.

Whilst Council has applied rate capping to limit the increase in rates for a number of properties over the years, it also must be acknowledged that applying capping to some ratepayers inevitably means other ratepayers must pay more.

Council is working towards a reduction in the level of rebates applied (including capping) and exclusions from rate capping assist in this process by reducing the number of assessments receiving capping through natural attrition.

Exclusions from rate capping have consistently been in Council's rating policy for many years. These exclusions were highlighted during the budget workshop held on 8 May 2018 as well as during the presentation at the community forum held on 14 June 2018.

Council's draft Rating Policy is included in the Public Consultation process each year for the Annual Business Plan & Budget. This information is made available in hard copy at the Civic Centre as well as published on Council's website. A link to the information is also posted on Social Media.

Following receipt of the complaint, Council made contact with local Real Estate Agents to remind them of the exclusions from rate capping and requested they ensure prospective purchasers understood the implications.

The CEO met with the local Real Estate agent to discuss this matter, including the content of the Section 7 search document provided in this instance. Consideration may be given to Council making contact with the Real Estate Institute of Australia highlighting the potential need to review the format of Section 7 search documents.

If Council applies capping to assessment 9004, which is not recommended, it may give consideration to the merits and implications of also applying the same methodology to other assessments affected in the 2018/19 year.

In the alternative, as the ratepayer states that she was not aware of the capping rebate exclusions as she alleges that she did not receive the full Section 7 documentation from the Real Estate Agent, Council may consider that Sec 166(m)(ii) is applicable: *"where a rebate is considered by the council to be appropriate to provide relief in order to avoid what would otherwise constitute a liability that is unfair or unreasonable."*

It is recommended not to provide a discretionary rebate in this instance as Council has been fully compliant with its legal obligations in relation to the sale of the property. The alleged actions of the other parties are not under the control of Council.

CONFIDENTIAL PROVISIONS

Pursuant to Section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except staff be excluded from attendance at the meeting to discuss this report (AR18/33171).

The Council is satisfied that, pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead) being the personal information of a ratepayer's request for a discretionary rebate.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of personal information pertaining to the ratepayer will be discussed.

That having considered this agenda item in confidence under Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council, pursuant to Section 91(7)(b) of the Act orders that all documents relating to report AR18/33171 be retained in confidence until the matter is resolved by Council.

RISK MANAGEMENT

1: Financial/Budget/Asset Management

Rate capping rebates total \$436,116.55 for the 2018/2019 rating year.

2: Legal/Policy

Section 166 of the *Local Government Act 1999* provides for discretionary rebates.

Legal advice was sought in relation to dealing with this matter during caretaker period. This legal advice is subject to legal privilege and as such remains confidential.

"In my view, the proposal to consider and deal with the application for a discretionary rebate of general rates, is not a 'designated decision' under the LG (Elections) Act and hence is not statutorily prohibited from consideration by the Council during the caretaker period. The issue then, is whether it is a 'significant decision' for the purposes of the Council's Caretaker Policy and, if it is, whether there is 'reason' to deal with the issue during the caretaker period – or if the matter should be deferred for consideration after the elections. In my opinion, the determination of the rebate application is not a significant decision in the context of the Council's decision-making functions and responsibilities and can be dealt with by the Council during the caretaker period. If, contrary to my view, this is considered to be a significant decision and that there are no good reasons for the Council to deal with it during the caretaker period, Ms Harris should be advised of this fact, the reasoning for it and that if her application were to be granted, it would, in any event, apply retrospectively from 1 July 2018 and hence in respect of the whole financial year's rates.

By contrast, if the proposal was to review and reconsider the Council's rating policy during the caretaker period (which, of course, it is not), my advice would be that it be left for the Council after the elections.

Whilst the application is predicated upon the unfairness of the policy position that a change of ownership results in a lack of eligibility for a new land-owner to the rates cap by operation of a discretionary rebate, it is my advice that, the Ombudsman would require that the Council not take 'refuge' in the Policy position but, instead, examine the application on its merits. If those merits 'make a case' it is then necessary for the Council to consider the application for a discretionary rebate outside of the Policy framework (for example, under section 166(1)(m)(ii) of the LG Act). If there is an absence of merit, my counsel is to record its reasons for both not dealing under the Policy and for otherwise not acceding to the application on merit."

3: Environment/Planning

Not applicable.

4: Community

4.1 General
Not applicable.

4.2 Aboriginal Community Consultation
Not applicable.

Anne O'Reilly
27/08/2018

4 Mackay Street (PO Box 1704)
Port Augusta, South Australia, 5700

Telephone (08) 8641 9100
Facsimile (08) 8641 0357

admin@portaugusta.sa.gov.au
www.portaugusta.sa.gov.au



CERTIFICATE OF LIABILITIES

(Pursuant to Section 187 of the Local Government Act 1999)

To:

[Redacted]

Certificate No : 6022

Receipt No : 497663286

Reference No:

Land:

Lot: 4 DP: 43094 CT: 5283/688

[Redacted]

Owner: [Redacted]

Council Assessment No: 9004

Valuation No: 6612074454

Additional Information:

1. Refer Attached Information Sheet

2017/2018 Rates and Charges:

General Rates	\$ [Redacted]
Natural Resource Management Levy	\$39.60
Kerbside Waste Collection and Recycling Service Charge	\$220.00
Capping	\$ [Redacted]
TOTAL 2017/2018 RATES	\$ [Redacted]
Payments received	\$ [Redacted]
TOTAL OUTSTANDING AT DATE OF THIS REPLY	\$ [Redacted]

NOTE: Rates are payable in four instalments payable in the months of September, December, March and June of the financial year for which rates are declared.

NEXT QUARTERLY INSTALMENT DUE 8 June 2018

If an instalment of rates is not paid on or before the date on which it falls due -

- (a) the instalment will be regarded as being in arrears; and
- (b) a fine of 2% of the amount of the instalment is payable; and
- (c) on the expiration of each month from that date, interest at the prescribed percentage (currently 0.5625%) of the amount in arrears (including the amount of any previous unpaid fine but excluding interest from any previous month) accrues.

PRESCRIBED PARTICULARS ONLY ARE PROVIDED

Certified: 

Date: 19 March 2018

Sally Thomas – Rates Officer

Information Sheet for new owners

Kerbside Waste Collection/Recycling Bins

Three mobile kerbside garbage collection bins (1 X 120 litre waste – red Lid), (2 X 240 litre recyclables – 1 yellow lid and 1 green lid) have been allocated by Council to this property and are to remain with the property upon transfer.

If the property is to be unoccupied between changes of ownership, assistance of the vendor in minimising the chance of theft or vandalism by placing the bins either inside or at the rear of the property would be appreciated.

Capping Rebate

The capping rebate applied to the general rate in 2017/2018 will not apply to this assessment in the 2018/2019 financial year as Council have resolved that where a change of ownership has occurred in the current financial year the capping rebate does not apply in the following year.

DISCRETIONARY RATE REBATE

APPLICATION FORM

2018 / 2019



1. Details of Applicant

Name JODIE HARRIS

Address 26 HARCUS PLACE

Telephone 0456 892 305

Email AARONANDJODIE@BIGPOND.COM

If the Applicant is a Company or Incorporated Body or other, please provide details of a contact person for the Applicant.

Name

Address

Telephone

Email

2. Details of Land (refer to your Rates Notice)

Assessment Number 9004

Property Address 26 HARCUS PLACE, PORT AUGUSTA SA 5700

Owner of Land (if not you)

If this application is for a portion of the land, you must contact the Office of the Valuer General to have the rebated area separately assessed before any rebate will be applied.

3. **Categories of Rebate**

Please tick the category of rebate under which you are seeking a rebate :

Note that you can only be eligible for either a Mandatory Rate or Discretionary Rebate, not both.

DISCRETIONARY REBATE

The Council may, in its discretion, grant a rate rebate or service charges in any of the following cases. Please indicate which of the following is applicable to your application:

- the rebate is desirable for the purpose of securing the proper development of the area (or a part of the area);
- the rebate is desirable for the purpose of assisting or supporting a business in its area;
- the rebate will be conducive to the preservation of buildings or places of historic significance;
- the land is being used for educational purposes;
- the land is being used for agricultural, horticultural or floricultural exhibitions;
- the land is being used for a hospital or health centre;
- the land is being used to provide facilities or services for children or young persons;
- the land is being used to provide accommodation for the aged or disabled;
- the land is being used for a residential aged care facility that is approved for Commonwealth funding under the Aged Care Act 1987 (Commonwealth) or a day therapy centre;
- the land is being used by an organisation which provides a benefit or service to the local community;
- the rebate relates to common property or land vested in a community corporation under the Community Titles Act 1996 over which the public has a free and unrestricted right of access and enjoyment;
- the rebate is appropriate to provide relief against what would otherwise amount to a substantial change in rates payable by a rate payer due to a change in the basis of valuation used for the purposes of rating, rapid changes in valuations, or anomalies in valuations.**

4. **Amount of Rebate**

Please specify the amount of rebate that you are applying for \$1915

Please specify why you (or your organisation) need financial assistance through a rebate and why the amount of rebate you have applied for is appropriate.

My next door neighbour who has the same site value and land size as me is currently paying only \$3588, I am being discriminated against by an inconsistent Council Policy that I was not aware of at the time of buying my property, as the conveyancers and Real Estate agents in town had not been sufficiently advised of the Policy and therefore have not been passing this on to potential buyers. I was unable to make an informed decision. I have attached a copy of my letter to Mr John Banks dated 20th August 2018 to further explain my situation.

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5. Supporting Information Required

The Council requires you to attach the following additional information to this Application:

1. evidence that the land is being used for the purpose for which the rebate is being sought;
2. information as to whether, and if so to what extent, you (or your organisation) will be providing a service within the Council area;
3. the extent of financial assistance (if any) being provided by Commonwealth or State agencies;
4. whether you are in receipt of a community grant;
5. a copy of your audited financial statement of the previous years' activities;
6. whether you are the holder of a liquor license;
7. number of members (if a community group);
8. any other information that you believe is relevant in support of this Application.

6. Application Forms

Where possible, application forms and all additional information should be submitted to the Council on or before 1st April for the following financial year.

A failure to submit application forms or to provide the additional information required by the Council to assess the application may result in the Council refusing to consider the application.

7 Statement of Acknowledgement

- 7.1 It is an offence for a person or body to make a false or misleading statement or representation in an application or to provide false or misleading information or evidence in support of an application made (or purporting to be made) under the Act. The maximum penalty for this offence is \$5,000.00.
- 7.2 If a person or body has the benefit of a rate rebate and the grounds on which the rebate has been granted cease to exist, the person or body must immediately inform the Council of that fact and (whether or not the Council is so informed) the entitlement to a rebate ceases. If a person or body fails to notify the Council that person or body is guilty of an offence and liable to a maximum penalty of \$5,000.00.
- 7.3 The Council may, for proper cause, determine that an entitlement to a rebate of rates under the Act no longer applies.

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- 7.4 Where an entitlement to a rebate of rates ceases or no longer applies during the course of a financial year, the Council is entitled to recover rates, or rates at the increased level (as the case may be), proportionate to the remaining part of the financial year.

I declare that the information I have provided within this application form is true and correct

DATED the 24TH day of AUGUST 2018

Signed JODIE MARIE HARRIS

Full Name JODIE MARIE HARRIS

Position Held _____

The Application form and all supporting information to be submitted:

In Person: Civic Centre, 4 Mackay Street, Port Augusta SA 5700

By Mail: Director Corporate & Community Services
Port Augusta City Council
PO Box 1704
PORT AUGUSTA SA 5700

By Email: admin@portaugusta.sa.gov.au

26 Marcus Place
Port Augusta SA 5700

20 August 2018

Mr John Banks
Port Augusta City Council
4 Mackay St
Port Augusta SA 5700

Dear Mr Banks

I am writing to you seeking an explanation of the inconsistencies in the council rate notices for 2018/19 and the unfair council capping policy that is burdening some ratepayers with significant increases.

We were shocked to receive our rates notice on Thursday 9th August, I immediately rang the Council to find out how they had increased by 43% from the previous year and was told that I needed to speak to Sally Thomas. I attended the council building on Thursday afternoon and spoke to Sally who informed me that the site value had not changed at all, however, I was no longer entitled to receive capping that the previous owners had received on my property due to the Council's capping policy.

Sally said that I should have been informed about this change by either the Conveyancer or Real Estate agent when I was looking at the property. This did not happen. I rang Rosa Manno at Johnston Withers when I left council and asked her if she was aware of this council policy, she said that she was not aware and had she known she would have told me. I also rang the real estate agent Greg Kipling the next day he said he didn't know about it either, but coincidentally he had received an email from council earlier that morning, sent to all real estate agents in Pt Augusta, reminding them of the capping rebate policy for new homeowners. This was information that Greg said he had never received from council before.

When buying this property we had been told what the current rates were and I was concerned about the rates for Marcus Place being \$2000 more than I was already paying. I would have reconsidered purchasing the property if I knew that my rates were going to increase so much more on transfer and what I could potentially be paying in subsequent years, however I was not given any indication of what the rates might be, so I was unable to make an informed decision. I have been a ratepayer in Port Augusta for 12 years but my rates in Davenport St have never had a capping amount so I wasn't aware of this being applied to other properties.

I have spoken with the Local Government Association Ombudsman, who suggested that I write this letter in the first instance as *The Local Government Association Act 1999* S.166 (1) (m) allows individual councils to grant discretionary rebates 'where the rebate is considered by the council to be appropriate to provide relief in order to avoid what would otherwise constitute—

(i) a liability to pay a rate or charge that is inconsistent with the liabilities that were anticipated by the council in its annual business plan; or

(ii) a liability that is unfair or unreasonable;

I believe it is reasonable to consider that a 43% increase is unfair and unreasonable compared to the average of 3.2% and the capping of 6% for other residential assessments.'

The Local Government Association Act 1999 S. 153 (2) states 'a council must, in fixing its rates for the purposes of this section, consider issues of consistency and comparability across council areas in the imposition of rates on various sectors of the business and wider community'. Other residents in Marcus

Place have the same site value as me and their rates are \$3588, I get the same services, such as waste collection and access to other council services as everybody else, so I don't understand why my council rates can be almost \$2000 more than my next door neighbour. This is not consistent or comparable.

The local government Association website says that on average South Australian households pay \$25 per week for their rates, however mine are set at \$105.83 per week, more than four times the average.

The Port Augusta Council's Annual Business Plan & Budget 2018/19 states [pg 14] their intention "to increase operating revenue without materially increasing rates" however by removing the rate capping for some and not others it has had a significant impact on some ratepayers.

We feel we have been penalised for investing in Port Augusta and purchasing a house that meets the needs of our growing family. It has turned the purchase of a dream house into a reality of sleepless nights wondering why and how we can be discriminated against in this way. We believed that Council rates were set for a property not an individual ratepayer.

We would like to discuss this matter with you at a mutually convenient time so that you can explain this inequality, because saying it is a council policy is not a satisfactory reason to discriminate in this way.

Yours Sincerely

Jodie and Aaron Harris
