


# The Toowoomba Regional Council Auction Notices Report



An investigation of action taken by Toowoomba Regional Council to name a homeowner on an auction notice when selling their property for overdue rates

December 2016

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ISBN 978-0-9874073-7-5 (online format)

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Queensland Ombudsman  
Level 18, 53 Albert Street  
Brisbane Qld 4000  
GPO Box 3314  
Brisbane Qld 4001  
Phone: (07) 3005 7000  
Fax: (07) 3005 7067  
Email: [ombudsman@ombudsman.qld.gov.au](mailto:ombudsman@ombudsman.qld.gov.au)  
Web: [www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)

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# Chapter 1: Background

This report is about whether it was necessary and/or reasonable for Toowoomba Regional Council (council) to name a homeowner on an auction notice it erected outside of their property (the property) when selling it for overdue rates.

## 1.1 Circumstances

Due to a range of difficult life circumstances, a homeowner (the homeowner) was in arrears in respect of the payment of their rates.

Council decided to take action under the Local Government Regulation 2012 (LGR) to sell the property for overdue rates.

Having previously been advised of council's intention to sell the property for overdue rates and charges, the homeowner awoke one morning to find an auction notice erected outside of the property which contained their full name.

## 1.2 Information on auction notice

Below is a redacted copy of the auction notice erected outside of the property.



# TOOWOOMBA REGIONAL COUNCIL

*Local Government Regulation 2012 (Section 142)*

## NOTICE OF SALE OF LAND FOR OVERDUE RATES OR CHARGES

Date:

Toowoomba Regional Council hereby gives notice that, unless all overdue rates or charges and expenses of sale owing in relation to this land (which land is more particularly described in the schedule below) are sooner paid, the said land will be sold by public auction on  at  in the  at the , .

**Schedule – Full description of this Land**

<b>Assessment Number:</b>	<input type="text" value="NUMBER"/>
<b>Ratepayer Name:</b>	<input type="text" value="FULL NAME"/>
<b>Property Address:</b>	<input type="text" value="STREET ADDRESS"/>
<b>Property Description:</b>	Lot <input type="checkbox"/> Registered Plan <input type="text"/>
	County of <input type="text"/> Parish of <input type="text"/>
<b>Land Area:</b>	<input type="text" value="AREA IN SQUARE METRES"/>

Brian Pidgeon  
Chief Executive Officer  
Toowoomba Regional Council

### 1.3 Complaint to the Ombudsman

The homeowner complained to the Office of the Queensland Ombudsman (this Office) about council's actions in stating the reason for the notice of sale along with their name.

The homeowner described it as 'very humiliating', 'very offensive', a breach of their privacy and a 'direct attack on my situation'. They considered it nobody's business what the homeowner's name was.

### 1.4 Investigation and issues

This Office decided to investigate council's decision to include the homeowner's name in its auction notice.

The investigation includes consideration of the following issues:

- whether council was required to include the homeowner's name on the auction notice
- whether it was a breach of privacy for council to include the homeowner's name
- whether it was reasonable for council to include the homeowner's name.

Submissions received from council in response to my proposed report have been taken into account in the preparation of this report.

Appendix A contains information regarding this Office's jurisdiction and procedural fairness requirements.

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## Chapter 2: Evidence

This chapter outlines:

- council's position in response to the complaint
- the practices of other councils
- the position of the Department of Infrastructure, Local Government and Planning (the department).

### 2.1 Council's position

Following is council's response to the issues raised in the complaint.

- While the LGR does not include an express requirement to include a landowner's name, under s.142(4)(b) of the LGR, the notice must include 'a full description of the land'. While the legislation does not define the term 'a full description of the land' and there does not appear to be any judicial authorities dealing with the meaning of the phrase, it would reasonably include the name of the owner of the property.<sup>1</sup>
- Council disagrees with the proposition put forward by this Office that the LGR distinguishes between ownership of land and description of land, having regard to s.154(2) and s.140(4)(d) of the LGR, and that this lends itself to an interpretation whereby ownership details are not part of 'a full description of the land' as referred to in s.142(4)(b). Council argues that the term 'a description of the land' in s.154(2)(b) of the LGR is not the same as the term 'a full description of the land' in s.142(4)(b) and the context is different, so one should not be used to interpret the meaning of the other.<sup>2</sup>
- Having regard to the definitions of 'land' and 'interest' in the *Acts Interpretation Act 1954*, the meaning of land is not exhaustive and incorporates any interest over land. The term 'land' is therefore a legal concept akin to the term 'property' and is defined by reference to the interest over that land. The notion of 'land' contemplated by s.142(4)(b) of the LGR is therefore not 'land' as geography, but rather as property. Ownership is fundamental to this, in that there is no property without an owner. The ownership of a property is an element in the legal description of a property and therefore omitting ownership would render the description less than a 'full description'.<sup>3</sup>
- If the legislature intended to exclude the owner's name, it would have made it clear that the name of the owner was not required to be included to satisfy the requirements set out in the LGR.<sup>4</sup>
- The legislative purpose and intention of the notice goes beyond notifying potential purchasers to notifying those with registered and unregistered interests in the property.<sup>5</sup>

There is a real risk that, in certain circumstances, a landowner might not identify that they own the property if the auction notice does not include their name. An example is that, for properties jointly owned, a co-owner may not be aware that rates have not been paid but if they see an auction notice which includes specific reference to their name, this would bring the matter to their attention.<sup>6</sup>

As those with unregistered interests are not known when the notice is given, the legislative intent would be thwarted if it did not provide details of the ownership of the property. There are many examples of unregistered property interests, such as various types of agreements

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<sup>1</sup> Emails from council to this Office dated 20 November 2015 and 3 December 2015.

<sup>2</sup> Letter from council to this Office dated 8 June 2016, p.2 and pp.5-6.

<sup>3</sup> Letter from council to this Office dated 8 June 2016, p.1 and pp.3-5.

<sup>4</sup> Email from council to this Office dated 3 December 2015.

<sup>5</sup> Letter from council to this Office dated 8 June 2016, p.2, pp.8-11 and p.13.

<sup>6</sup> Email from council to this Office dated 3 December 2015.

in respect of rights over land, various licences in respect of land, and trust arrangements. People without registered interests are the people that council is not able to identify so as to contact and therefore it is incumbent on council to provide in the notice all they would need to identify that the sale of the property is of relevance to them.<sup>7</sup>

A specific example provided is that an executor of an estate may not be aware of a particular property owned by the deceased person but may notice an auction notice which identifies the name of the relevant deceased person as the responsible landowner.<sup>8</sup>

- Precedents, including those from New South Wales, demonstrate that ‘a full description of the land’ reasonably and naturally includes the names of the owners of the land.<sup>9</sup>
- The name of the owner of land is part of the land record, as referred to in s.154 of the LGR, and is therefore public information. Disclosing this information is not a breach of privacy.<sup>10</sup>
- Council understands that disclosing landowners’ names on auction notices may cause significant distress to some owners, for example, where they live at the property in a tight knit community. It would, however, not cause distress to many other owners, for example, corporations or interstate investors. Council does not consider it to be unreasonable to include the owner’s name on the notice and argues that the detriment to the owner is far outweighed by the utility in providing this information on the notice.<sup>11</sup>
- Council noted that its approach is consistent with the process used by some other local governments. Council stated that its approach is consistent with the *Local Government Act 2009* (LG Act), the LGR and legal advice from an eminent local government law firm.<sup>12</sup>
- If the Ombudsman remains of the view that council should cease including landowners’ names in its auction notices, the only appropriate means of effecting such a change is to amend the LGR as, to do otherwise would create an unnecessary risk to council of a legal challenge as to the sufficiency of the notice.<sup>13</sup>

Council recommended to this Office that the preliminary views of this Office and council’s response to those preliminary views be referred to the department to seek its views.<sup>14</sup>

## 2.2 Practices of other councils

In considering this issue, this Office looked at the approach used by other councils across Queensland. A systematic audit of all councils was not undertaken, but rather a review of auction notices publicly available at the time of the review.

The review showed that there are inconsistent approaches by councils across Queensland in that some councils list the name of the landowner on their auction notices and some do not.

## 2.3 Department’s position

As suggested by council, I wrote to the department.<sup>15</sup> My letter outlined the background and relevant issues and enclosed a copy of council’s most recent response to the issues for investigation. I also drew the department’s attention to the inconsistent approaches used across Queensland councils. I sought the department’s views in relation to the matter.

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<sup>7</sup> Letter from council to this Office dated 8 June 2016, p.2, pp.8-11 and p.13.

<sup>8</sup> Email from council to this Office dated 3 December 2015.

<sup>9</sup> Letter from council to this Office dated 8 June 2016, p.2, pp.6-8 and pp. 11-13.

<sup>10</sup> Email from council to this Office dated 7 October 2015.

<sup>11</sup> Letter from council to this Office dated 8 June 2016, p.2 and p.14.

<sup>12</sup> Letter from council to this Office dated 15 December 2015.

<sup>13</sup> Letter from council to this Office dated 8 June 2016, p.3 and p.13.

<sup>14</sup> Letter from council to this Office dated 8 June 2016, p.13.

<sup>15</sup> Letter from this Office to the Director-General of the department dated 26 July 2016.



In its response,<sup>16</sup> the department advised:

- it agrees there is no express legislative requirement for councils to include landowners' names in auction notices
- it is of the view the statutory scheme does not require the publication of names in auction notices
- it does not consider it reasonable or necessary for landowners' names to be published by council.

The department also advised that, having regard to the inconsistent approach taken by councils in this area, it will issue a Local Government Bulletin to councils advising them that they may wish to consider writing into their procedures for the sale of land that it is not appropriate to name the landowner on an auction notice.

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<sup>16</sup> Letter from the Director-General of the department to this Office dated 17 August 2016.

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## Chapter 3: Analysis

In this chapter, I will consider the following issues:

- whether council was required to include the homeowner's name on the auction notice
  - was there an express legislative requirement?
  - should the relevant section of the LGR be interpreted as requiring council to include the homeowner's name having regard to the intended purpose of the auction notice?
- whether it was a breach of privacy for council to include the homeowner's name
- whether it was reasonable for council to include the homeowner's name.

I will also consider the department's role in relation to this matter.

### 3.1 Whether council was required to include the homeowner's name on the auction notice

There are two aspects to the question as to whether council was required to include the homeowner's name on the auction notice, which will be considered separately as follows.

#### 3.1.1 Express legislative requirement

Section 142(5)(d) of the LGR requires a council to display an auction notice in a conspicuous place on the land before selling it for overdue rates or charges. Council was therefore required to place the auction notice on the homeowner's property. The issue is whether council was required to include the homeowner's name on the auction notice.

During the course of this investigation, it was agreed between council and this Office that there is no express legislative requirement to include owners' names on an auction notice.

It is therefore a matter of statutory interpretation as to whether inclusion is required.

#### 3.1.2 Interpretation of relevant section of LGR

Section 142(4)(b) requires the auction notice to include 'a full description of the land'. Council contends that this phrase should be interpreted as including owners' names.

During the course of the investigation, views have been expressed about the way in which the phrase 'a full description of the land' in s.142(4)(b) should be interpreted. These views have involved reference to ss.140(4)(d) and 154(2) and have previously been set out in this report. As such, I do not consider it necessary to repeat them here. I accept that there are arguments both ways regarding the use of terms relating to ownership and the description of property in the LGR. I consider, however, that other factors hold greater weight in terms of statutory interpretation in this instance.

I consider that the ordinary meaning of a description of land does not include the ownership of land. Council argues that the notion of 'land' contemplated by s.142(4)(b) of the LGR is not 'land' as geography, but rather as property, in which ownership is fundamental, in that there is no property without an owner. It also argued that ownership of a property is an element in the legal description of a property and therefore omitting ownership would render the description less than a 'full description'. While council has expressed this view, it has not put forth a compelling argument upon which to base its view.

Council considers that if the legislature intended to exclude the owner's name, it would have made it clear that the name of the owner was not required to be included to satisfy the requirements set out in the LGR. I do not agree that this is the case. It is my view that, if intended, the LGR requirements relating to the auction notice would have expressly included a requirement to include the owner's name.

### Purpose of auction notices

Council has argued that, in interpreting the term 'a full description of the land', the purpose of the auction notice should be taken into account and that the legislative intent was to ensure interested parties obtain notice of the proposed auction. It contends that, without the owner's name on the auction notice, there is a real risk that parties with an interest in the land may not become aware that a property in which they have an interest is proposed to be auctioned.

I maintain my view that the primary purpose of an auction notice is to notify potential purchasers and it is of little or no relevance to potential purchasers who the owner of the land is.<sup>17</sup> I do accept, however, that a secondary purpose of the auction notice may be to notify those with an interest in the land. It does not necessarily follow, however, that including ownership details of the property is required to achieve this purpose. Council's argument hinges on the presumption that those with an interest in land would know and remember the name of the owner of the land but would not know and remember the street address of the land in which they have an interest. I do not accept this argument.

The discussion is not relevant in respect of the owner of the land, the holder of any registered interest in the land or any encumbrancee, lessee or trustee of the land who has given the local government notice of their interest in land, as council is obliged, under s.142(5)(a), to provide a copy of the auction notice to those parties. The receipt of the auction notice would alert them that the auction is of relevance to them.

While council's submission seems to suggest councils have an obligation generally to those with an unregistered interest in land, I do not consider that council's submission sufficiently establishes that council's obligations extend beyond those specifically listed in the LGR.

Even if council's obligations were wider than those set out in the LGR, those with an unregistered interest would know of the need for vigilance in terms of protecting their interest as they would be aware that, as their interest is not registered, the world at large does not know of their interest to advise them of any circumstance which may affect it. I consider that it is reasonable to expect that people with an unregistered interest in land that they wished to protect would be aware of the street address of property in which they have an interest and would therefore, without the need for inclusion of the owner's name, have sufficient notice to afford them the opportunity to take whatever action necessary to protect their interests.

A specific example provided by council is that an executor of an estate may not be aware of a particular property owned by the deceased person but may notice an auction notice which identifies the name of the relevant deceased person as the responsible landowner. One of the duties of an executor is to 'collect and get in the real and personal estate of the deceased'.<sup>18</sup> It is therefore incumbent upon an executor to identify, at an early stage of the administration of the estate, what real property is owned by the deceased. While in most cases an executor would be aware of what real property is owned by the deceased, if they are not aware, they would need to conduct a search with the Queensland Titles Registry to identify all real property in Queensland owned by the deceased. An executor would then turn their mind to what debts may be owed in respect of any property identified. In any event, for an executor to be protected from liability in distributing the estate, they would need to undertake newspaper advertising requiring any person with a claim upon the estate to forward details to the executor.<sup>19</sup> If the deceased owed rates or charges, council would, if it saw the advertisement, contact the executor accordingly. Therefore, other processes exist in respect of the administration of estates to alert an executor to any debts owing.

I note that council's submission provides excerpts of New South Wales legislation and examples of its interpretation and application. While the process for the sale of land in other states may be of academic interest, the New South Wales legislation is materially different to the Queensland

<sup>17</sup> In the event that it is of interest, the purchaser could conduct a current title search through the Queensland Titles Registry.

<sup>18</sup> Section 52(1)(a) of the *Succession Act 1981*.

<sup>19</sup> Section 67 of the *Trusts Act 1973*.

legislation and I therefore consider it of limited value in reaching a view concerning the situation at hand.

In summary:

- there is no express legislative requirement for council to include the homeowner's name on the auction notice
- I do not accept that the term 'a full description of the land' in s.142(4)(b) of the LGR should properly be interpreted to include the name of the homeowner.

I therefore do not consider that there was any requirement in the statutory scheme for council to include the homeowner's name on the auction notice.

I note that the department shares my view.

### 3.2 Whether it was a breach of privacy for council to include the homeowner's name

Council and this Office agree that including landowners' names on an auction notice is not a breach of privacy.

The name of the owner of land is listed in the land record as referred to in s.154 of the LGR. The name of the owner of a particular piece of land is therefore a matter of public record. For this reason, releasing the information is not a breach of privacy.

### 3.3 Whether it was reasonable for council to include the homeowner's name

While council's inclusion of the homeowner's name on the auction notice did not constitute a breach of privacy, it does not necessarily follow that this means council's actions are reasonable. That is a matter for separate consideration.

In arguing as to the reasonableness of its actions, council relies on its interpretation as to the purpose of the relevant section of the legislation, being to ensure extensive public notice of a proposed auction is given. As discussed above, I do not accept that the name of the owner is required to be included on the auction notice in order to achieve this purpose.

Council acknowledges that including an owner's name on the auction notice may cause significant distress to some owners, but would not cause distress to others. It argues, however, that the detriment to the owner is far outweighed by the utility in providing this information in the notice and by the legal risks of challenge to the sufficiency of the notice.

I have considered the various scenarios put forth by council in relation to who may be disadvantaged by an owner's name not appearing on an auction notice and in what circumstances. Noting the protections set out in the LGR for those with an interest in land, I consider that a circumstance where a person with an interest in land, who is minded to protect that interest, is worse off because the name of the owner does not appear on the auction notice would be extremely rare, if not, non-existent. In contrast, having regard to the number of sales of properties across Queensland each year for overdue rates and charges, the occurrence of homeowners being distressed at the appearance of their name on an auction notice displayed at their property is very real, as demonstrated by this complaint.

Given my view, expressed above, that the regulatory scheme does not require the landowner's name to be included on the auction notice, I do not accept that any challenge to the sufficiency of the notice would likely be successful.

I accept council's observation that not all property owners would be distressed at having their name on the auction notice and note that it would be relevant whether the property is their home.

Complaints to this Office demonstrate that many properties sold by councils for overdue rates are the owner's home.

Many people would consider the inability to pay their bills, as and when they become due, to be a matter of shame and embarrassment. Distress is therefore a reasonably foreseeable response to the publication within a person's community of the fact they cannot pay their bills. I also consider that it would be very common for a homeowner whose property is being sold for overdue rates and charges to have suffered a range of very difficult personal circumstances which culminated in them being in that situation. Many would be at a low point in their lives and more vulnerable than they would ordinarily be. The complainant in this case expressed their distress in terms of humiliation and the feeling of being attacked. Having regard to these factors, the level of distress possible from the publication of the owner's name should be given appropriate weight.

In weighing the chances of a person with an interest in land being disadvantaged by the absence of the owner's name on the auction notice against the likelihood of it causing distress to a homeowner and the level of the distress caused, I disagree with council's assessment that the detriment to the owner is far outweighed by the utility in providing this information. I consider the real potential for significant distress to far outweigh any perceived detriment to a person with an interest in the land not considered to be an interested party under the LGR. For this reason, I consider council's actions in including the homeowner's name on the auction notice to be unreasonable.

I note that the department also does not consider it is reasonable to publish landowners' names.

While council has advised that its approach is consistent with advice from an eminent local government law firm, whether an action of council is reasonable or not is ultimately a matter of administrative judgement for council itself, with review oversight by this Office.

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**Council's response to the proposed report**

Council advised that the report accurately reflects council's views and that it has no further points to add to its position as previously submitted.

Council advised that if I ultimately hold the view that council should cease including landowners' names in its auction notices, council believes that the most appropriate means of effecting such a change is for an amendment to the LGR or the issue of a Local Government Bulletin as this would ensure consistent application of this position by all local authorities within Queensland.

Council believes that it has acted reasonably in this matter and it will comply with any bulletin or direction from the Department of Infrastructure, Local Government and Planning in this respect.

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**Ombudsman's comment on the response**

In response to my proposed report and during the course of the investigation, council submitted that if I am of the view that council should cease including landowners' names in its auction notices, the only appropriate means of effecting such a change is to amend the LGR as, to do otherwise would create an unnecessary risk to council. As I do not accept that council is required by the LGR to include a landowner's name on the auction notice, I do not agree that an amendment to the LGR is required.

I do not consider that council's response establishes that a change to the opinions and recommendations set out in this report is warranted.

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Having regard to the above, I form the following opinion and make the following recommendation:

**Opinion 1**

The publication by council of the names of landowners on an auction notice is not a requirement under s.142 of the Local Government Regulation 2012, is unnecessary to support the sale of land process, and has the potential to cause significant distress to a landowner and is therefore unreasonable administrative action under s.49(2)(b) of the *Ombudsman Act 2001*.

**Recommendation 1**

Council cease including landowners' names in its auction notices.

There are a number of other steps in the sale of land process which have the potential to result in the publication of a landowner's name. One such step is the requirement in s.140(2) of the LGR for a resolution of council to sell land, where the landowner's name could appear in the resolution, or material referenced.

My comments as to the reasonableness of publishing a landowner's name in connection with the sale of land for overdue rates and charges apply not only to where it may appear on an auction notice, but also where it may appear in any other publication. For this reason, I consider that council should review the information made publicly available under the sale of land process and, where relevant, ensure no unnecessary publishing of the landowner's name.

I make the following recommendation:

**Recommendation 2**

Council review the information that is publicly available relating to land to be sold for overdue rates and charges and make changes to its procedures to ensure no unnecessary publishing of a landowner's name occurs.

### 3.4 Department's role

Having regard to the inconsistent approach taken by councils in relation to this issue, I am of the view that the department should provide appropriate guidance to all Queensland councils about this issue. How the department chooses to do this is a matter for the Director-General.

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**Department's response to the proposed report**

The department noted that the local government legislation is silent as to whether a landowner's name should be included on auction notices when selling land to recover overdue rates and charges. Accordingly, the department is of the view that publication of landowners' names in auction notices is not necessary to ensure compliance with legislative requirements.

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I form the following opinion and make the following recommendation to the department:

**Opinion 2**

Given the inconsistent approach taken by councils in relation to the publication of landowners' names on auction notices, it would be appropriate for the department to provide advice to all Queensland councils regarding the issue.

**Recommendation 3**

The Director-General provide advice to all Queensland councils to the effect that it is not necessary under the legislative scheme for landowners' names to be published by councils in auction notices.

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## Chapter 4: Conclusion

The purpose of commencing this investigation was to consider whether it was necessary and/or reasonable for council to name the homeowner on the auction notice it erected outside of their property. The homeowner was extremely distressed by council's actions.

I consider this to be an important issue that has the potential to affect many landowners across the community. Land being auctioned for overdue rates and charges is not an uncommon event in Queensland. At any given time, auction notices are not difficult to find and many auction notices list multiple properties, some more than 20 at a time. This Office also regularly receives complaints from Queenslanders whose properties are being auctioned by councils. As noted in Chapter 2 of this report, some councils list the name of the landowner on their auction notices and some do not. Therefore, the council the subject of this report is not alone in its practices.

In investigating this matter, I considered three main issues.

1. Whether council was required to include the homeowner's name on the auction notice

I found that there was no express legislative requirement to include the homeowner's name on the auction notice and that the term 'a full description of the land' in s.142(4)(b) of the LGR should not properly be interpreted as including the name of the homeowner.

I therefore did not consider that there was any requirement in the statutory scheme for council to include the homeowner's name on the auction notice.

2. Whether it was a breach of privacy for council to include the homeowner's name

I found that, as the name of the owner of a particular piece of land is a matter of public record, releasing the information is not a breach of privacy.

3. Whether it was reasonable for council to include the homeowner's name

I found that council's decision to include the name of the homeowner on the auction notice was unreasonable. I considered that the real potential for significant distress to a homeowner in this situation far outweighed any perceived detriment to a person with an interest in the land.

That an action is not prohibited by law does not necessarily make it reasonable. In this case, while council's actions in including the homeowner's name were not a breach of privacy, those actions resulted in a level of distress that was unnecessary and this made them unreasonable.

Council can take action to remove landowners' names from auction notices and avoid unnecessary publication of names in its sale of land processes. Such steps would help reduce the level of distress faced by people in these circumstances.



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## Appendix A: Jurisdiction and procedural fairness

### Ombudsman jurisdiction

The Ombudsman is an officer of the Queensland Parliament empowered to deal with complaints about the administrative actions of Queensland government departments, public authorities and local governments. As council is an 'agency' for the purposes of the *Ombudsman Act 2001* (the Ombudsman Act), it follows that I may investigate its administrative actions.

Under the Ombudsman Act, I have authority to:

- investigate the administrative actions of agencies on complaint or on my own initiative (without a specific complaint)
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.

The Ombudsman Act outlines the matters about which the Ombudsman may form an opinion before making a recommendation to the principal officer of an agency. These include whether the administrative actions investigated are contrary to law, unreasonable, unjust or otherwise wrong.

Although the Ombudsman is not bound by the rules of evidence, the question of the sufficiency of information to support an opinion of the Ombudsman requires some assessment of weight and reliability. The standard of proof applicable in civil proceedings is proof on the balance of probabilities. This essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true. Although the civil standard of proof does not strictly apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance.

### 'Unreasonableness' in the context of an Ombudsman investigation

It is important to note that, in expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', I am applying the meaning of the word in the context of the Ombudsman Act. In this context, 'unreasonable' bears its popular or dictionary meaning, not the far narrower 'Wednesbury' test of unreasonableness, which involves a consideration of whether an agency's actions or decisions were so unreasonable that no reasonable person could have taken them or made them.

### Procedural fairness

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making. The rules of procedural fairness have been developed to ensure that decision-making is both fair and reasonable.

The Ombudsman must also comply with these rules when conducting an investigation. Further, the Ombudsman Act provides that, if at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be given an opportunity to comment on the subject matter of the investigation before the final report is made.

A proposed report was provided to council to satisfy this requirement. Council was invited to make a submission in response to my proposed report. I have taken into account council's submission in reaching a final view in relation to this matter.

Section 55(2) of the Ombudsman Act provides that I must not make adverse comment about a person in a report unless I give that person an opportunity to make submissions about the proposed adverse comment. The person's defence must be fairly stated in the report if the Ombudsman still proposes to make the comment.

I do not consider that any comments made in this report could be considered as being adverse to any particular individual.

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## Appendix B: Legislation

Chapter 4 of the *Local Government Act 2009* (LG Act) establishes authority for councils to impose levies on land within its area and charge for services that it provides. The LG Act provides for regulations to be made about rates and charges, including rate recovery processes in which land, both vacant and occupied, may be sold.

The Local Government Regulation 2012 (LGR) deals with overdue rates and charges in Part 12 of Chapter 4. The sale of land process is outlined in Division 3 of Part 12 of Chapter 4. Of particular relevance are sections 140 to 142 of the LGR which state:

### 140 Notice of intention to sell land for overdue rates or charges

- (1) This section applies if—
  - (a) there are overdue rates or charges on land; and
  - (b) the liability to pay the overdue rates or charges is not the subject of court proceedings; and
  - (c) some or all of the overdue rates or charges have been overdue for at least—
    - (i) generally—3 years; or
    - (ii) if the rates or charges were levied on vacant land or land used only for commercial purposes, and the local government has obtained judgment for the overdue rates or charges—1 year; or
    - (iii) if the rates or charges were levied on a mining claim—3 months.
- (2) The local government may, by resolution, decide to sell the land.
- (3) If the local government does so, the local government must, as soon as practicable, give all interested parties a notice of intention to sell the land.
- (4) A **notice of intention to sell** is a document, signed by the chief executive officer, stating—
  - (a) that the local government has, by resolution, decided under this section to sell land for overdue rates or charges; and
  - (b) the day on which the resolution was made; and
  - (c) the terms of the resolution; and
  - (d) a description of the location and size of the land, as shown in the local government's land record; and
  - (e) details of the overdue rates or charges for the land, as at the date of the notice, including details of the period for which the rates or charges have been unpaid; and
  - (f) details of the interest that is owing on the overdue rates or charges, as at the date of the notice, including—
    - (i) details of the rate at which interest is payable on the rates or charges; and
    - (ii) a description of the way the interest is calculated; and
  - (g) the total amount of overdue rates or charges and the interest, as at the date of the notice; and
  - (h) a copy, or a general outline, of sections 141 to 144.

### 141 When procedures for selling land must be started

- (1) This section applies if—
  - (a) a local government decides to sell land under this subdivision for overdue rates and charges and gives the registered owner of the land a notice of intention to sell the land; and
  - (b) the overdue rates or charges are not paid in full within—
    - (i) generally—3 months after the local government gives the notice of intention to sell the land; or
    - (ii) if the rates or charges were levied on a mining claim—1 month after the local government gives the notice of intention to sell the land.
- (2) The local government must start the procedures under section 142 for selling the land within 6 months after the local government gives the notice of intention to sell the land.
- (3) However, the local government must end the procedures if the local government is paid—
  - (a) the amount of the overdue rates or charges; and
  - (b) all expenses that the local government incurs in attempting to sell the land.

### 142 Procedures for selling land

- (1) This section sets out the procedures that a local government must follow when selling land for overdue rates or charges.

- (2) The local government must first offer the land for sale by auction.
- (3) The local government must prepare an auction notice.
- (4) An **auction notice** is a document stating—
  - (a) the time and place of the auction; and
  - (b) a full description of the land.
- (5) At least 14 days, but not more than 35 days, before the day of the auction, the local government must—
  - (a) give a copy of the auction notice to everyone who was given a notice of intention to sell the land; and
  - (b) advertise the auction notice in a newspaper that is circulating generally in the local government area; and
  - (c) display the auction notice in a conspicuous place in the local government's public office, until the day of the auction; and
  - (d) display the auction notice in a conspicuous place on the land unless it is not reasonably practicable to do so because the land is in a remote location or difficult to access.
- (6) However, if—
  - (a) the land is a building unit; and
  - (b) it is not practicable to display the auction notice in a conspicuous place on the land; the notice may be displayed in a conspicuous part of the common property for the building units.

Part 13 of Chapter 4 of the LGR sets out the requirements for the land record. Councils use the land record to identify who is responsible for paying rates and charges. Sections 154 and 155 state:

#### **154 Land record to be kept**

- (1) A local government must keep a land record.
- (2) A **land record** contains the following information for each parcel of rateable land in its area—
  - (a) the name and postal address of the owner of the land;
  - (b) a description of the land, including its location and size;
  - (c) its value and the day of effect of the relevant valuation under the Land Valuation Act;
  - (d) information about rates or charges for the land, including about the following—
    - (i) the type and amounts of rates or charges levied on the land;
    - (ii) if differential general rates are levied—the rating category of the land;
    - (iii) the date of each levy and the due date for payment;
    - (iv) the period for which the rates or charges are levied;
    - (v) the financial year to which the rates or charges apply;
    - (vi) concessions granted or discounts given for payment of rates or charges;
    - (vii) payment of rates or charges by instalments;
    - (viii) any overdue rates or charges, accrued interest on overdue rates or charges and the interest rate applying to overdue rates or charges;
    - (ix) the date when rates or charges are paid;
  - (e) any other information that the local government considers appropriate.

#### **155 Public may inspect land record**

- (1) The public may, on payment of the reasonable fee decided by a local government, inspect the land record kept by the local government.
- (2) However, the following persons may inspect particulars of land in the land record free of charge—
  - (a) an owner, lessee or occupier of—
    - (i) the land; or
    - (ii) adjoining land;
  - (b) the agent of an owner, lessee or occupier of—
    - (i) the land; or
    - (ii) adjoining land.
- (3) The agent must produce, to the local government, written evidence of the agent's appointment.
- (4) The local government may—
  - (a) provide a person with access to an electronic or paper copy of the land record or part of the land record; or
  - (b) give a person an electronic or paper copy of the land record or part of the land record, including, for example, by sending it by post, email or facsimile.

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- (5) The local government must not include a person's name and address for service in the land record when it is open to inspection if—
- (a) the local government has been given a notice about the person under the Land Valuation Act, section 204; and
  - (b) the relevant suppression direction under that Act is still in effect.

The Dictionary for the LGR is contained in Schedule 8. It defines the term 'interested parties' for the purposes of providing notices of intention to sell the land in s.140(3) of the LGR and states:

***interested parties***, for chapter 4, part 12, division 3, are—

- (a) the owner of the land; and
- (b) the holder of any registered interest in the land; and
- (c) any encumbrancee, lessee or trustee of the land who has given the local government notice of their interest in the land.