

IN THE MATTER OF:

OP GRAND

From: "OATRIDGE Ruth" <ROATRIDGE@goldcoast.qld.gov.au>
To: <Kristie.munoz@cmc.qld.gov.au>
Date: Friday, 11 November 2005 1:28:44 pm
Subject: FW: MEMORANDUM

EXHIBIT No. 234
[Signature] CLERK

Hi Kristie

Cr Sarroff has asked me to forward the attached memo from the Director of Council's Organisational Services Department, and asks if you will please give a copy to Mr Needham.

With thanks

Ruth Oatridge
PA to Cr E Sarroff
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-----Original Message-----

From: FINLAYSON Graeme
Sent: Thursday, 10 November 2005 9:35
To: DL GCCC Councillors; DL CG CouncillorsSecsAll
Cc: DICKSON Dale; BENNETT Kay
Subject: MEMORANDUM

<<Rates Discount - Update 3 December 2004 Memo.doc>>

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Memorandum



TO : Mayor & All Councillors
COPY : D Dickson - Chief Executive Officer
FROM: G Finlayson - Director Organisational Services
SUBJECT : Rate Discount - Special Circumstances & Carnriver Pty Ltd Finance Item
DATE : 10 November 2005
FILE NO : PN67883/36

Ladies and Gents

I refer to my memo to Cr Molhoek of 3 December 2004 (copied to all Councillors) regarding granting discounts for late payment due to special circumstances as per section 1021 of the Local Government Act 2003. Recently, officers in OS have received requests to provide fresh copies of the memo to some Councillors.

The purpose of this memo is to provide some supplementary information regarding the above memo and background to the Finance agenda item.

Background:

As outlined in the agenda item to Finance Committee, the Mayor's Office had received a request from the ratepayer to consider allowing the discount despite late payment of the account due to extenuating circumstances. After receiving this request from the ratepayer, the Mayor's Office requested that a report be presented to Council.

While there have been a number of instances where discount for late payment has been granted due to special circumstances, Council officers were unable to identify any situations in the past where the circumstances identified by the ratepayer in this case warranted the discount being awarded pursuant to section 1021 of the Local Government Act.

Section 1021 of the Local Government Act 1993 states:

"If a local government is satisfied that a person liable to pay a rate has been prevented, by circumstances beyond the person's control, from paying the rate in time to benefit from a discount , the local government may still allow the discount."

The CONCLUSION section of the agenda item stated:

"It is Council's practice to decline requests made by ratepayers for discount allowance in situations such as those of this case i.e. wrong mailing address because of incorrect information supplied on transfer documentation or the taking into consideration of previous payment history of the applicant. If Council was to "open up" the ability for allowance of discount based on these circumstances, the precedent such a decision would set for other ratepayers in the City to apply to Council for discount on the grounds of error (e.g. forgot to pay, misread the due date etc) would negatively impact on Council's revenue budget and negate the incentive for the ratepayer to pay their rates on time.

The other important issue to consider in this matter is Council's legislative power. Section 1021 of the Local Government Act permits Council to allow discount if it "is satisfied that a person liable to pay the rate has been prevented, by circumstances beyond the person's control, from paying the rate in time to benefit from the discount."

Rate Discount - Special Circumstances & Carnriver Pty Ltd

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In this instance Council correctly discharged its responsibility by issuing the rates notice to the correct address as advised at the time. The failure on behalf of the applicant in not recognising the rate notice as belonging to them is not considered to be a circumstance beyond the person's control. The other factor is that the rate notice contains other identifying information such as the address of the property and the description of the property or properties being rated."

At Finance Committee, the Committee adopted a different interpretation from the officers and determined that special circumstances applied to warrant the granting of this discount. The Finance Committee altered the officers' recommendation and this decision was confirmed by Council.

Current Administrative Procedures in relation to assessing requests under Section 1021 - 'Special Circumstances'

Although my memo of 3 December 2004 indicates there have been a number of instances where discount has been granted due to 'special circumstances', past practice and procedure had indicated that Council would decline the request where the ratepayer had supplied the wrong information about their mailing address (in this case, due to incorrect or out-of-date information being included on the Carnriver transfer documentation).

Previous payment history is not considered relevant to assessing whether a person liable to pay rates has been prevented, by circumstances beyond that person's control, from paying the rates in time to benefit from the discount.

Recent examples of discount allowed/extended due to 'special circumstances' include:

- Cheque dishonoured in error by the ratepayer's financial institution, and Council receives written confirmation of this from the relevant financial institution;
- Incorrect loading of postal address into Council's property system by either Council staff or Department of Natural Resources;
- Personal incident that required police involvement;
- Evidence of failure by Australia Post to deliver rate notice where a re-direction notice was in place;
- Multi-period notices have been issued by Council;
- Receiving error or system error at Council's end (e.g. Council payment agent applies payment for account for 2 properties across one for the same ratepayer).

Address for Correspondence - Carnriver Pty Ltd

Rate notices are issued to the owner of the land.

Section 1008.(1)(b) of the Local Government Act states:

"A local government may levy a rate only by a rate notice given to.... the person recorded in the local government's land record as the owner of the land on which the rate is levied."

Council obtains land ownership records from the Department of Natural Resources (DNR). The rate notice in question for the Carnriver case was issued to the address recorded with DNR. The address for service of notices after possession recorded with DNR, and as shown on the Form 24 property transfer documentation dated 03.10.03, advised 'Level 18/50 Cavill Avenue, Surfers Paradise'.

Council acts on the address for service of notices as advised by the property owner or their agent and does not change that address unless specifically advised to do so by the property owner or their agent.

It should also be noted that officers received correspondence on behalf of the applicant ratepayer to the Mayor's office indicating there may have been some administrative error at the receiving end. An extract from this letter was contained in the Summary of Activity in the confidential attachment that was attached to the particular Finance agenda item as follows:

"22.09.04 Letter received advising why Sunland Group did not make payment by the due date.

Rate Discount - Special Circumstances & Carnriver Pty Ltd3*Discount Request Reason:*

"The rates notice was addressed to Carnriver Pty Ltd, Level 18/50 Cavill Avenue, Surfers Paradise. We believe the rates notice was delivered to our office but we did not recognise the name Carnriver"

In relation to the queries raised by the applicant ratepayer and subsequently at Council regarding suggesting all other rate notices or formal Council correspondence had been sent to the applicant's PO Box, as opposed to the Level 18, 50 Cavill address, OS Officers are unable to determine whether all Council-initiated correspondence for the applicant goes to the PO Box referred to.

The address the rates notice issued to was the address advised by the property owner or their agent. The address for service of notices after possession recorded with DNR and as shown on the Form 24 property transfer documentation dated 03.10.03 advised 'Level 18/50 Cavill Avenue, Surfers Paradise'. Council acts on the address for service of notices as advised by the property owner or their agent and does not change that address unless specifically advised to do so.

The notice of intention to instigate legal proceedings that prompted Sunland(Carnriver) to first write to Council in March 2004 was also addressed to Level 18/50 Cavill Avenue, Surfers Paradise. Carnriver indicated to us by letter on 18 June 2004 that they had changed floors from level 18 to Level 14 in February 2003. That being the case, it is unclear to OS why the Form 24 issued some 7 months later indicates the Level 18 address as being the applicable address for service of notices.

It should be noted that while OS has not conducted a complete examination of what notices have issued to Carnriver Pty Ltd and to what address, OS is aware of at least one rate notice (for a property transfer fee) that issued to Carnriver at Level 18/50 Cavill Avenue, Surfers Paradise. The notice issued on 10 November 2003 and payment was received by Council on 17 December 2003.

Relevance of prior payment history

As mentioned earlier, payment history is not considered relevant to an assessment under section 1021. The approach adopted by Council officers was consistent with the approach adopted in relation to other ratepayers. Other ratepayers have been declined discount consideration based solely on their payment history in the past.

While OS has not conducted a detailed payment history check on Sunland/Carnriver and seeks in no way to cast any aspersions on the good credit or standing of this ratepayer or any member of the Sunland Group, OS is aware of at least one instance where Carnriver has made a payment after the due date. The rate notice for the property transfer fee mentioned above was due for payment on 11 December 2003; but was received on 17 December 2003.

However, as mentioned earlier, our current approach is that payment history is not considered relevant to an assessment under section 1021. The approach adopted by Council officers in this case was consistent with the approach adopted by officers in relation to other ratepayers.

I trust this information assists in understanding the background to previous advice supplied to Councillors, however, please do not hesitate to contact me if you require any further assistance.

Regards

Graeme Finlayson
DIRECTOR ORGANISATIONAL SERVICES
Ext 6310