



SALE OF PROPERTY FOR OVERDUE RATES
TERMS AND CONDITIONS OF SALE BY PUBLIC AUCTION OF REAL PROPERTY
BETWEEN REDLAND CITY COUNCIL AND THE BUYER UNDER
Local Government Regulation 2012 Section 141 - 142

- **Place of Auction:** Capalaba Place, Noeleen St, Capalaba
- **Auction Date:** 9 March 2017

The Redland City Council ('Council') and the Buyer agree that the Property sold by Public Auction for Overdue Rates is on the following Terms and Conditions of Sale:

NOTE:

Prospective buyers are advised to exercise due diligence. It is the buyer's responsibility to carry out any searches and or inspections, at their expense, to ensure it meets with their requirements prior to the auction.

1. INTERPRETATION

- 1.1 Unless context requires otherwise the following definitions apply
- (a) Auction Date means the date of the Auction as identified in these terms and conditions;
 - (b) Balance Purchase Price means the Purchase Price less the Deposit;
 - (c) Buyer means the highest bidder at the auction for the Property as identified in the Sale Sheet;
 - (d) Contaminated Land means the definition as set out in the *Environmental Protection Act 1994*;
 - (e) Council means Redland City Council, its employees, agents, contractors, officers and elected officials;
 - (f) Deposit means 10% of the Purchase Price paid by the Buyer to secure the sale of the Property;
 - (g) Improvements means fixed structures on the land and includes all items fixed to them;
 - (h) Place of Auction means the location of the auction as identified in these terms and conditions;
 - (i) Property means the lot as identified in the Sale Sheet and any Improvements on the lot;
 - (j) Purchase Price the total sale price of the Property; and
 - (k) Terms and Conditions of Sale means these conditions and any other documents attached or referenced herein.

2. PAYMENT TERMS AND APPLICATION OF SALE PROCEEDS

- 2.1 Immediately on the fall of the hammer the Buyer must sign, as Buyer, the Contract of Sale, and pay the Deposit of 10% of the Purchase Price to Council.
- 2.2 The Buyer must pay to Council the Balance Purchase Price plus the Transfer Costs (described in clause 8.4) by way of cash, EFTPOS (debit card), bank cheque or bank draft (in favour of Redland City Council) no later than 4.00pm on the Auction Date at the Place of Auction.
- 2.3 The Buyer is in default under the Terms and Conditions of Sale if:
- (a) the Buyer does not pay the Deposit, the Balance Purchase Price or the Transfer Costs, in accordance with this clause 2;
 - (b) payment of the Deposit is by way of a post-dated cheque; or
 - (c) any cheque delivered to the Council by the Buyer under this Agreement is dishonoured on presentation.
- 2.4 The Purchase Price will be applied in priority of all other claims in satisfaction of the expenses of the sale, the rates owing to Council and any other debts owed to Council.

3. PROPERTY MAY BE WITHDRAWN

- 3.1 The Property may be withdrawn from sale at any time and after signing this Agreement, the Council may, at any time prior to the time documents necessary to transfer ownership of the Property are lodged for registration in the Department of Natural Resources & Mines Land Registry, unilaterally terminate this Agreement for convenience without assigning a reason.
- 3.2 If the Agreement is terminated by the Council for convenience, all monies paid to the Council by the Buyer, arising from the purchase of the Property must be refunded to the Buyer.

4. ENCUMBRANCES

- 4.1 Except as otherwise provided by this Agreement, the Property is sold free of and discharged from all mortgages and other encumbrances except those in favour of Crown Instrumentalities, easements or covenants affecting the Property.

5. BUYER ACKNOWLEDGEMENTS

- 5.1 The Buyer acknowledges that:

- (a) it has entered into this Agreement after satisfactory inspection and investigation of the Property and carrying out any property searches the Buyer considers appropriate and buys the Property "as is"; and
- (b) it has made its own enquiries about the Property before signing this Agreement; and
- (c) it has not relied on any representations, statements or warranties (express or implied) made by Council or any person/s acting or purporting to act on behalf of Council.

- 5.2 Council does not give or imply any warranty or representation as to:

- (a) The Property's (including improvements on the Property):
 - (i) State and condition; or
 - (ii) Suitability for any use; or
 - (iii) Compliance with any statute or regulation or with the requirements of any statutory, semi-statutory, governmental, semi-governmental or other authority or body (including the existence of any building approvals in relation to the construction of any works carried out on the Property); or
 - (iv) Present use complying with the requirements of any town planning legislation or any local authority by-laws; or
 - (v) Potential future use or profitability; or
- (b) The existence or non-existence of any defects (latent or patent) affecting the Property.

- 5.3 The Buyer must make its own assessment and investigations in respect of the property to determine if any part is Contaminated Land and draw its own conclusions from that assessment and that investigation. The Buyer warrants to the Council that it will comply with the *Environmental Protection Act 1994* following the date of this Agreement.

- 5.4 The Buyer indemnifies Council against any liability arising because the Property is contaminated, is required to be or is recorded or on the Contaminated Land Register or the Environmental Management Register.

- 5.5 Land Tax owing on the Property is the responsibility of the Buyer.

- 5.6 Council makes no guarantee that the Buyer will obtain vacant possession of the Property at the time of sale. The Buyer is responsible for taking all necessary steps to obtain vacant possession of the Property following the sale. Council is not responsible for adjusting any rent paid in advance by any tenant in favour of the Buyer.

- 5.7 Council does not take responsibility for the accuracy of Auction Notices/Signs that have been placed on the Property. The Buyer must their own expense ascertain the true description of the Property and to identify the Property purchased.

- 5.8 The Council gives no warranty and makes no representation that the improvements (if any)

purporting to be on the Property are wholly on the Property or that the building or improvements on adjoining land do not encroach on the Property. The Property is sold subject to any encroachments which may exist. Any error in the boundaries or area of the Property or any encroachment (whether immaterial or of a substantial nature or otherwise) will not annul the sale.

5.9 The Buyer is purchasing the Property subject to all existing or non-existent water supply, sewerage or drainage, gas, electricity, telephone and other installations and services (collectively 'the Services').

5.10 The Buyer is not entitled to:

- (a) take any objection or make any requisition;
- (b) claim any compensation, damages or the like;
- (b) seek to withhold any part or claim any reduction in the Purchase Price; or
- (c) refuse to complete or delay completion of this Agreement,

If any of the defects or other matters provided in this clause 5 are relevant to the Property being sold.

6. **AUCTION AND SALE PROCEDURES**

The Buyer acknowledges the following procedures apply and have been adopted with respect to the sale of the Property:

6.1 Any person intending to bid (a **Bidder**) **must** register his or her interest before making a bid, and in making a bid the Bidder must clearly display the bidder number assigned to them by the auctioneer. Bids will only be accepted from registered Bidders.

6.2 A Bidder will be considered to be acting on his or her own behalf unless at the time of registration the bidder has provided a copy of a written authority to bid for, or on behalf of, another person.

6.3 The Auctioneer may at his or her discretion refuse to accept any bid from any person, and no bid if accepted may be retracted without the consent of the Auctioneer. No Bidder may advance a less sum as a bid than the Auctioneer is willing to accept.

6.4 A bid will be deemed to be accepted unless the Auctioneer immediately declares his or her non acceptance or dissent after it has been made.

6.5 If any dispute or difference arises about the highest bidder the Auctioneer may reopen the bidding and resubmit the property commencing with the highest amount previously bid for the Property or the Auctioneer may decide on the highest Bidder in such other manner as the Auctioneer in his or her absolute discretion thinks fit and the Auctioneer's decision will be final.

6.6 A reserve price has been set in accordance with the *Local Government Regulation 2012* Chapter 4, Part 12, Section 143, which reads:

1. The local government must set a reserve price for the auction that is at least;—
 - (a) the market value of the land; or
 - (b) the higher of the following—
 - (i) the amount of all overdue rates or charges on the land;
 - (ii) the value of the land.

6.7 If the reserve price is not reached at the auction under section 143 of *Local Government Regulation 2012* an authorised officer of Council may enter into negotiations with the highest Bidder at the auction to sell the Property by agreement. A sale of Property by agreement must be at a price greater than the highest bid for the Property at the auction. If the reserve price has not been realised or negotiations are not successful the Property will be taken to have been sold at the auction to Council at the reserve price

6.8 Immediately on the fall of the hammer or successful negotiations, the Bidder of the highest bid accepted must sign these Terms and Conditions of Sale, pay the required Deposit and pay the

Purchase Price and will thereupon be deemed to be the Buyer. If the Buyer fails to sign this Agreement pay the Deposit or the Balance Purchase price the Property may be resubmitted at his or her risk and expense or submitted afresh to public auction as if the property had never before been submitted.

- 6.9 The Buyer and Council acknowledge that the Terms and Conditions of Sale form part of the Agreement of this sale. The Buyer acknowledges that Council will be entitled to complete the details pertaining to the Buyer, the Deposit and the Purchase Price by inserting those details in these Terms and Conditions and on the transfer documentation immediately after the auctioneer accepts the final bid and declares the Property sold.

7. COUNCIL EMPLOYEES

- 7.1 This clause applies in the event that a bidder is an employee, officer or elected official of Council (**Council Employee**).
- 7.2 The bidder warrants to Council that they have not used information acquired during the course of their duties as a Council Employee to gain an advantage, whether directly or indirectly, over other bidders at the Auction.
- 7.3 If the auctioneer reasonably suspects that the bidder is not able to comply with the warranty provided in clause 7.2 the auctioneer may, in their sole discretion, refuse to accept a bid from the bidder.

8. TRANSFER DOCUMENTS AND COSTS OF TRANSFER

- 8.1 The transfer documents shall be prepared by the Council and submitted to the Buyer for signing on the Auction Date. The Buyer must sign the transfer documents at the time the Buyer delivers payment of the Balance Purchase Price to the Council.
- 8.2 Council and the Buyer agree to do all necessary acts and to sign all documents and papers for the purpose of transferring the property to the Buyer. Without limiting the scope of this obligation, the parties must answer any requisitions that issue from the Department of Natural Resources & Mines Land Registry (if any) arising from lodgement of the transfer documents.
- 8.3 On receipt of full payment of the sale price and subject to the provisions of this Agreement and the *Local Government Regulation 2012 Chapter 4, Part 12, Section 145*, Council will lodge the transfer documents for registration in the Department of Natural Resources & Mines Land Registry (after duty has been assessed and the appropriate notation affixed to the transfer documents).
- 8.4 The Buyer must pay all costs associated with the transfer (collectively called the “transfer costs”), including duty and Department of Natural Resources & Mines Land Registry lodgement fees and indemnifies the Council against any liability in respect of those costs.

9. BUYER'S DEFAULT

To avoid dispute if the Buyer fails to comply with any obligation in this Agreement the Council may affirm or terminate this Agreement (at the Buyer's cost). If the Council affirms this Agreement it may sue the Buyer for specific performance at the Buyer's expense. If the Council terminates this Agreement it may resell the Property at the Buyers expense. If the Buyer fails to pay the Balance Purchase price and the Council affirms this Agreement the Buyer must pay default interest at the rate published by the QLD Law Society from time to time. The interest and any expenses incurred by the Council connected with this Agreement including any failed attempt to resale and the resale may be recovered from the Buyer as a liquidated debt, whereby any judgment for money payable under this Agreement will bear interest from the date of judgment to the date of payment.

10. **GENERAL**

- 10.1 On signing the Terms and Conditions of Sale, the Property will be at the Buyer's risk in every respect.
- 10.2 Time is considered to be the essence of the Agreement except as to the time for settlement which will take place before 4pm on the Auction Date.
- 10.3 The Buyer warrants that the Treasurer has consented under the Foreign Acquisition and Takeovers Act to the Buyer's purchase of the Property or that the Treasurers consent is not required to the Buyer's purchase of the Property and no legal impediment exists which would prevent the Buyer being the owner of the Property.
- 10.4 Any valid order or notice, whether issued prior to or on the Auction Date under any statute or by the Council or by the Courts which relates to the doing of work or expenditure of money on or in relation to the Property or any path or road adjoining the Property (whether addressed or directed to the Council or the Purchaser) will be complied with by the Buyer who will indemnify the Council in respect thereof.

Bill Lyon
Chief Executive Officer