

27 June 2019

Dr Matthew Butlin
Presiding Commissioner
SA Productivity Commission
Local Government Inquiry

Dear Dr Butlin

SA Productivity Commission – Local Government Inquiry HomeStart Submission

Thank you for the opportunity to make a submission into the costs and efficiencies of local government (councils). The area of cost and efficiency which HomeStart would like to make comment is in respect of the payment of council rates associated with mortgagee in possession properties.

Council rates in South Australia are statutory charges requiring home owners to make payment and are a condition of a mortgage contract. Where property owners fail to meet their financial obligations under the terms of that contract and mortgagee action is subsequently required, any outstanding council rates take precedence (or priority) over the lender's outstanding mortgage debt. This can often lead to a significant increase in any loss to the mortgagee associated with the sale of the property.

The Local Government Act 1999 (SA) creates a payment priority for Councils over all other debtors including mortgagors when a property is sold or realised as part of a Mortgagee in Possession (MIP) action.

The legislation effectively ensures a council will always recoup its outstanding debts and has historically created a "lazy" approach to arrears management and debt collection. In recent years we have seen an increase in activity from councils and a slightly increased appetite to enforce legal action, take possession of properties and then subsequently sell to recoup outstanding rate payments. It is noted that a council cannot initiate legal action until rates are three (3) years in arrears.

However, and notwithstanding this, councils are not under the same obligations as mortgagees to seek fair market value for properties at sale and are not held to the same standards in respect of ratepayers, as mortgagees.

Mortgagees must comply with the Real Property Act 1886, the Land and Business (Sale and Conveyancing) Act 1994 and the Law of Property Act 1936. Further to this the basic position at common law is that the mortgagee must act in 'good faith' when exercising its power of sale.

A mortgagee in possession must:

1. Obtain a reasonable market value, which is generally achieved through engaging an agent and marketing the property properly with reference to a valuation;
2. Only realise enough security property as necessary to discharge the mortgagor's obligation;
3. Not 'willfully and recklessly deal with the property in such a manner that the interests of the mortgagor are sacrificed'.

Mortgagees are therefore obliged to ensure they act in the best interests of the mortgagor in terms of maximising the realisable or sale value of a property. Councils are not similarly obliged, often simply focussing on ensuring the sale proceeds from the property cover their outstanding rates and charges.

In circumstances where a council goes to realise a property for non-payment of rates via an enforced sales process, mortgagees are not consulted about the setting of a proposed reserve price when the property is subject to a mortgage. As a result of this significant difference in accountability to the ratepayer/mortgagor, HomeStart is often forced to take control of the property by commencing its own legal action or alternatively paying the outstanding rates and capitalising that payment to the existing loan balance to ensure our own interests are protected.

The cost to HomeStart of unpaid council rates is;

Total paid 1999 – 2019

Council Rates	\$1,626,775
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The total number of loans involved was 1,581.

In the last 5 years 2014 – 2019 the number of loans and value of unpaid rates has escalated in a disproportionate way to the long-term average as follows;

Total paid 2014 – 2019

Council Rates	\$1,241,549
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The total number of loans involved was 707.

As can be seen from the data, the past 5 years activity accounts for 76% of total losses and 45% of loans. During the period 1999 – 2009, house price capital growth provided a buffer against losses from unpaid council rates, however in periods of low or no capital growth this is not the case and losses are accentuated.

HomeStart proactively manages its arrears and hardship customers to endeavour to assist customers to remain in home ownership. A key factor in determining our ability to assist and assess the prospects of those customers is the ability to establish whether their council rates are up to date. At times obtaining this information has proven quite challenging.

HomeStart has been trying to work proactively with both councils to improve outcomes with, at times, limited success. In that regard we have;

1. Endeavoured to actively engage with councils for current rate information and determine whether our borrower is in arrears with the council.
2. Implemented measures to ensure customers are educated about the full expense implications of owning a property, including council, water and utility rates, insurance, maintenance and so on.
3. Up until 2017 HomeStart paid statutory charges on receipt of invoices or notification from council and capitalized these charges to the customer's loan. This practice has been modified such that for non-MIP accounts we now try to make arrangements with customers with the involvement of a council, wherever possible. This is to ensure the customer understands all their obligations and is committed to rectifying all arrears. This approach also tries to ensure that councils are taking an active role with us as a mortgagee and not simply relying on HomeStart to "pay up" regardless of customer behaviour or commitment.
4. Where we have the requisite information, we now require customers put in place arrangements with councils to ensure all arrears are managed to endeavour to avoid further potential legal escalation.
5. For properties in our possession that have statutory charges owing, we now pay these from the proceeds of the sale of the property at settlement rather than prior to sale.

Notwithstanding these actions some councils continue to be non-compliant or uncooperative with requests for information. We believe this issue needs addressing to ensure all levels of government are actively committed to recovery of their debts and that lenders/mortgagees do not unduly incur losses that are the responsibility of others. This is particularly so in HomeStart's case as a government owned entity covering the losses of another government entity.

As an example, in a recent MIP action, a property HomeStart recently sold in Berri had outstanding council rates of \$20,054 and owing at the time of sale. Given the level of rates which would be applied on a residential property in Berri with a Valuer General's (VG) valuation of \$124,000, it is evident that the property owner had never paid rates since the property was purchased in 2009 i.e. 10 years of non-payment. This additional \$20,054 of statutory charges significantly increased HomeStart's total write-off on the property. It further supports the view that some councils simply sit and wait for the property to be sold in the knowledge they have priority over all other charges, rather than proactively manage a rate payers arrears situation.

HomeStart believes that;

1. Councils should be directed to provide ratepayer information to HomeStart (and other financial institutions) when requested, to assist in managing the customers repayment options to both the financial institution and the council for the mutual benefit of both;
2. Councils should meet the common law standards in respect of any property sale similar to mortgagees.
3. Councils should be required to liaise and share relevant information with a mortgagee when determining the reserve price of any intended property sale where it is known the property is also subject to a mortgage. This should include a valuer's report and a real estate agent's report to establish a fair (market) reserve price.
4. Council rates should be capped at a maximum of 3 years outstanding rates where MIP sales are involved in the absence of greater collaboration with financial institutions or common law standards prevail.

The suggestions above support a greater focus within councils on arrears management which goes to the heart of efficiency and cost. They would create a more collaborative approach between all interested parties which would be to the benefit of the council, HomeStart or a financial institution but most importantly the ratepayer/mortgagor.

In closing, thank you for the opportunity to make this submission. HomeStart remains willing to participate in any further discussions of the above matter.

Your faithfully



J W Oliver
Chief Executive