



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 – Part 12, Division 3, Subdivision 2

- **Place of Auction:** Redland Performing Arts Centre (RPAC) Auditorium,
2/16 Middle Street, Cleveland 4163
- **Auction Date:** Tuesday 26 November 2024
- **Auction Time:** 9.30 am – online registration if not able to attend in person
Registration opens at 8:30 am on the day with limited registration
availability.

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) Agreement means this document incorporating the Terms and Conditions of Sale and Contract of Sale;
- (b) Auction Date means the date of the Auction as identified in these terms and conditions;
- (c) Balance Purchase Price means the Purchase Price less the Deposit;
- (d) Buyer means the highest bidder at the auction for the Property as identified in the Sale Sheet;
- (e) Claim means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;
- (f) Contaminated Land means the definition as set out in the *Environmental Protection Act 1994*;
- (g) Council means Redland City Council, its employees, agents, contractors, officers and elected officials;
- (h) Court means any federal or State court or tribunal having any jurisdiction in relation to the Property;
- (i) Crown Instrumentalities are federal, state or local governmental agencies, departments, corporations or wholly owned subsidiaries of any of them;
- (j) Deposit means 10% of the Purchase Price paid by the Buyer to secure the sale of the Property;
- (k) Improvements means fixed structures on the land and includes all items fixed to them;
- (l) Place of Auction means the location of the auction as identified in these terms and conditions;
- (m) Liability means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);
- (n) Property means the lot as identified in the Sale Sheet and any Improvements on the lot;
- (o) Purchase Price the total sale price of the Property;
- (p) Regulations mean the *Local Government Regulation 2012*;
- (q) Terms and Conditions of Sale means these conditions and any other documents attached or referenced herein;
- (r) Transfer Documents are the forms prescribed by the Department of Natural Resources Mines & Energy, Land Registry necessary to convey ownership in the Property to the Buyer and where the

- context requires, also includes any declaration prescribed under the Duties Act 2001 that must be signed to enable assessment of transfer duty arising from purchase of the Property by the Buyer;
- (s) Transfer Costs means all costs arising from the conveyance of the Property into the ownership of the Buyer, including without limitation, transfer duty and Department of Natural Resources Mines & Energy, Land Registry lodgement fees; and
 - (t) Treasurer means the Minister in the Government of Australia responsible for the Foreign Acquisition and Takeovers Act.

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 For Vacant Land - The Buyer must pay to Council the Balance Purchase Price 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 day following the Auction at Redland City Council's Cleveland Customer Service Building: 91-93 Bloomfield Street, Cleveland 4163.
- 2.3 For a Dwelling - The Buyer must pay to Council the Balance Purchase Price by way of cash, bank cheque or bank draft (in favour of Redland City Council) no later than 4.00pm on the seventh day following the Auction at Redland City Council's Cleveland Customer Service Building: 91-93 Bloomfield Street, Cleveland 4163.
- 2.4 The Buyer is in default under the Terms and Conditions of Sale if:
 - (a) the Buyer does not pay the Deposit or the Balance Purchase Price 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.
- 2.5 Subject to any requirements contained in the Regulations, 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, the Council may, at any time prior to the time that Transfer Documents are lodged for registration in the Department of Natural Resources Mines & Energy 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, and neither party will thereafter have any Claim against the other.

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 the legal capacity to agree to this Agreement;

- (b) 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
 - (c) it has made its own enquiries about the Property before agreeing to this Agreement; and
 - (d) 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
 - (vi) Access; 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 The Buyer acknowledges there may be land tax owing in respect of the Property on the Auction Date and while any such amount shall be paid by Council from the proceeds of sale, the Buyer is responsible for any land tax that accrues after the Auction Date.
- 5.6 Council gives no warranty 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 at 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 will not halt the auction for persons intending to bid on multiple properties. Bidders are advised to ensure another person is authorised to bid on their behalf if they have to leave the auction at any time.
- 6.4 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.
- 6.5 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.
- 6.6 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.
- 6.7 A reserve price has been set in accordance with the Regulations 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.
- 6.8 If the reserve price is not reached at the auction under section 143 of the Regulations an authorised officer of Council may enter into negotiations with any Bidder who registered for and attended the auction, to sell the Property by agreement, however the price for the Property under the agreement must not be less than the reserve price for the Property.
- 6.9 Immediately on the fall of the hammer or successful negotiations, the Bidder of the highest bid accepted must sign the Contract 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 the Contract of Sale 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.
- 6.10 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,

Contract of Sale and on the Transfer Documents immediately after the auctioneer accepts the final bid and declares the Property sold.

- 6.11 All bids are made on an unconditional basis. The Bidder acknowledges having read the Contract of Sale and (if the property is a lot within a community titles scheme) disclosure statement before bidding.

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 On receipt of full payment of the sale price, all funds received being cleared in the Council's bank account and subject to the provisions of the Contract of Sale and the Auction Terms and Conditions, Council will provide the Transfer Documents to the buyer.

- 8.2 It remains the buyer's responsibility to lodge all Transfer Documents for registration in the Department of Natural Resources Mines & Energy Land Registry.

- 8.3 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 & Energy Land Registry (if any) arising from lodgement of the Transfer Documents.

- 8.4 The Buyer must pay all Transfer Costs (including any requisition costs) and Transfer Duty but the parties shall otherwise pay their own costs associated with the sale of the Property.

- 8.5 Completion is to be effected on the date stated, at Council's Administration Building, Corner of Bloomfield Street and Middle Street Cleveland unless otherwise negotiated with the Council.

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 at the Buyer's expense, sue the Buyer for specific performance, sue the Buyer for damages for breach or sue the Buyer for specific performance and damages for breach and may recover from the Buyer as a liquidated debt so much of the deposit as the buyer has failed to pay. If the Council terminates this Agreement it may declare forfeited any deposit paid, sue the Buyer for damages for breach, resell the Property at the Buyer's 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 The Property will be at the Buyer's risk in every respect from 5pm on the first Business Day following the date the Contract of Sale is signed.
- 10.2 Unless expressly provided otherwise, time is of the essence of the Agreement in every respect.
- 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.
- 10.5 The Buyer Indemnifies Council on a full and continuing indemnity basis from and against any Liability or Claim made against Council arising directly or indirectly in relation to: -
- (a) the Transfer Costs; and
 - (b) any breach of the Terms and Conditions of Sale by the Buyer.
- 10.5 By participating in this auction, the Buyer acknowledges and agrees to be bound by these Terms and Conditions.

Louise Rusan
Acting Chief Executive Officer