

**9. RATES POSTPONED - APPLICATION FOR REGISTRATION OF MORTGAGE -  
H H & R M H TOCKER, 4 FLEETE STREET**

RR 9905

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The purpose of this report is to submit an application seeking to obtain Council authority to allow the registration of a mortgage on land currently subject to a Statutory Land Charge securing rates postponed pursuant to Section 178 of the Rating Powers Act 1988.

**BACKGROUND**

Approval to grant postponement of the payment of rates on the grounds of financial hardship under the provisions of Section 178 was granted to Mr and Mrs Tocker by a specially constituted sub-committee of the Council in February 1993. As at 30 June 1999, a little under \$8,000 will be postponed. These rates are secured by way of a Statutory Land Charge registered against the Certificate of Title to the property. They would normally become payable on the death of Mr and Mrs Tocker or at such time as they cease to occupy the property.

Mr and Mrs Tocker occupy their property pursuant to a renewable lease under the provisions of the Land Act 1948 from Landcorp Investments Limited. Landcorp has offered to them the ability to freehold their land. The offer is on very favourable terms and Mr and Mrs Tocker wish to take advantage of it.

The property was, at the time of granting of the postponement, subject to a mortgage to the National Bank of \$33,000. As the mortgage is an interest only mortgage, the amount currently owing under the National Bank mortgage is still \$33,000. At present interest payments of \$125.00 per fortnight are payable.

The 1 September 1998 rating valuation is:

CV \$112,000, LV \$74,000 and VI \$38,000.

**CURRENT POSITION**

Landcorp Investments Limited has offered the Tockers the opportunity to purchase the freehold of their property for an amount of \$45,816 which would require the registration of a first mortgage in favour of Landcorp securing the above amount. The existing first mortgage to the National Bank would be re-registered as a second mortgage with the re-registration of the Council's Statutory Land Charge ranking after the above mortgages. Interest payments to Landcorp are to be at the rate of \$1,240 each six months or \$2,480 per annum. The interest rate, which is not subject to variation, is set at 3.95% per annum.

At present Mr and Mrs Tocker pay Landcorp an annual rental of \$738.00. The rental is subject to review each seven years and the next review date is 1 July 1999. It is understood that the annual rental has been assessed to increase on 1 July to \$2,480.

The loan instalments under the Landcorp freeholding offer have been set at the same level as the projected increase in land rental. In effect Mr and Mrs Tocker have been offered the facility to freehold their land on terms whereby:

- the cost of freeholding is substantially less than the current rating valuation of the land (land value 1 September 1998 is \$74,000); and
- the full amount of the purchase price is left owing on mortgage at a favourable and a fixed interest rate; and
- payments under the proposed mortgage will not exceed the level Mr and Mrs Tocker would otherwise be paying for land rental.

Section 162 of the Rating Powers Act provides that except with the consent of the local authority, no dealing with the land by the occupier shall be registered while any charge under this section is registered against the land. Effectively this precludes the Tockers from carrying out the freeholding of the property unless the Council was to give its approval to the necessary registration of first mortgage in favour of Landcorp Investments Limited, the creation of a second mortgage in favour of National Bank, with the Council's Statutory Land Charge rating as effectively the third mortgage on the property.

The Tockers' solicitor in the letter of application to the Council points out that:

- the Council's security position will not be prejudiced in that its charge will now lie against the freehold estate; and
- the transaction is not a case of Mr and Mrs Tocker finding surplus money to increase their equity position, in that the proposed freeholding would be effected at no additional cost to them as against a continuation of the status quo.

The Council has on other occasions granted its consent to the release and registration of new mortgages, transmissions to surviving spouses and other dealings which have had no impact on its ability to recover postponed rates, it is under no obligation to do so.

While the proposed changes would mean that the postponed rates would rank third at time of settlement, this is not expected to compromise the Council recovery. The equity in the property and the age of the applicants should ensure that there is sufficient to cover both current and future postponed rates.

**Recommendation:** That the Council grant its consent to the freeholding of the property which would require the release of the Council's Statutory Land Charge and re-registration of the Charge ranking after a first mortgage to Landcorp securing \$45,816 and second mortgage to the National Bank securing \$33,000.

**Chairman's**

**Recommendation:** That the above recommendation be adopted.