

| Document Name | Document Version Number | Review Date |
|----------------------|-------------------------|---------------|
| Debt Recovery Policy | 1.0.2 | February 2016 |
| Date Adopted | Minute Number | Status |
| 11 February 2015 | 3987 | Revised |

Purpose

The objective of this policy is to ensure monies owed to Council are recovered in a timely, efficient and effective manner in order to finance Council's operations and ensure effective cash flow management. Whilst carrying out this responsibility Council will:

- Treat all people fairly and consistently under this policy;
- Treat all matters under this policy confidentially; and
- Treat all people with respect and sensitivity in considering their circumstances.

Scope

This policy applies to any person or organisation owing rates, fees, charges, interest and other debts to Council.

Definitions

Ratepayer: The person liable for payment of the rates and charges due and payable on the property for which the hardship is claimed

Policy Content

This policy provides a framework for the effective and efficient collection of outstanding debts and fulfils statutory requirements in relation to the recovery of rates, charges, fees and other debts.

1. RECOVERY OF RATES AND CHARGES

1.1 Rates and Charges Notice

Rates and charges notices are issued in July each year and are payable in four instalments on 31 August, 30 November, 28 February and 31 May each financial year. A rate instalment notice is issued 30 days before each instalment is due.

1.2 Reminder Notice

If the whole or part of an instalment is not paid within fourteen (14) days of the instalment due date, then a reminder notice will be issued. Reminder notices will be issued to all ratepayers and will request payment within no less than fourteen (14) days of the mailing date on the reminder notice. The reminder notice will advise that the recovery of the rates and charges may be referred to Council's debt collection agency if the overdue amount is not paid in full within the period specified on the reminder notice. The notice will also advise that arrangements may be made with Council to pay the overdue amount.

1.3 Recovery Action – Referral to Debt Collection Agency

Following the expiration of the period specified on the reminder notice Council will refer all assessments to its debt collection agency, provided the amount overdue is greater than \$200 and no arrangement has been made to pay the overdue amount.

1.4 Recovery Action – Debt Collection Agency Procedures

- a) The debt collection agency will as soon as practicable after receipt of a referral from Council issue a notice to the ratepayer in relation to each overdue amount advising that Council has referred the debt to the agency for collection and that payment is required within seven (7) days of the date of the notice, otherwise legal action will commence. The notice is to specify the minimum amount in legal costs that may be added to the ratepayer's rate assessment if legal action is commenced.
- b) Following the expiration of the seven (7) days as requested in the notice the debt collection agency is to issue a statement of liquidated claim following approval from Council to proceed with legal action.
- c) Following the statutory period after service of the statement of liquidated claim and with Council's approval the debt collection agency are to issue a pre-judgement notice. The notice advises the ratepayer that Council intends to proceed to Default Judgement against them unless payment is received within seven (7) days of the date of the notice. The notice is to specify the minimum amount of legal costs that may be added to the ratepayer's rate assessment if judgement is entered against the ratepayer and information explaining to the ratepayer that a default judgement will be listed on their credit file for a period of five (5) years even if the amount is subsequently paid/finalised and that this listing may affect the success or failure of future applications for credit.
- d) Following the expiration of the seven (7) days as requested in the notice the debt collection agency is to then obtain judgement against the ratepayer following approval from Council to proceed with the legal action.
- e) Once judgement is obtained against the ratepayer, the debt collection agency with Council's approval is to take the necessary proceedings to recover the debt including but not limited to:
 - A garnishee of income
 - Writ of execution on goods and chattels
 - Examination summons
 - Service of a rent order where property is tenanted
 - Bankruptcy proceedings (subject to resolution of Council)
 - Sale of land for unpaid rates (subject to resolution of Council)

1.5 Arrangements to Repay Rates and Charges

Council recognises that some ratepayers may experience financial difficulties in meeting their rate commitments. Council will seek to assist ratepayers to make arrangements that are consistent with the ratepayer's capacity to make regular payments.

A ratepayer may at any time make arrangements to pay off their outstanding rates and annual charges by regular payments, subject to the following guidelines (refer also to Council's Hardship Policy)

- Payments must be made on a weekly, fortnightly or monthly basis
- Arranged payments must be of an amount so that all amounts owing are paid in full by 30 June of that financial year
- Extenuating circumstances can be taken into consideration if either of the above two conditions cannot be met, but must be referred to the Accounting Officer or Chief Financial Officer for approval

All ratepayers who enters into an arrangement will continue to have interest charged on the outstanding amount in accordance with Section 566 of the Local Government Act 1993 (the Act), subject to Council's Hardship Policy.

Where a ratepayer has not honoured a previous arrangement the Accounting Officer has the discretion as to whether to accept a new payment arrangement or continue with further recovery action. Any new arrangement cannot be accepted until a payment is received to show good faith.

In the event that a ratepayer fails to make a payment in full under an arrangement and does not notify Council of any financial difficulties, the total amount outstanding becomes payable and is subject to Council's normal recovery procedures without further notice to the ratepayer.

In accordance with Section 568 of the Act, payments will be applied towards the payment of rates and charges in the order in which they become due.

2. RECOVERY OF SUNDRY DEBTOR ACCOUNTS

2.1 Sundry Debtor Invoices and Statements

Invoices are raised as debtor information comes to hand, for example construction of kerb and guttering, footpaths, waste, private works etc. Within seven (7) of the close of a month a statement will be issued. The due date for payment is thirty (30) days after the invoice date.

2.2 Overdue Sundry Debts

If an account is not paid by the due date a second and then a third monthly statement will be forwarded as a reminder. Once an account has amounts that are 90 days in arrears, Council will refer the account to its debt collection agency.

2.3 Recovery Action – Suspension of Credit Facilities

If the account is an ongoing account such as waste tipping fees, further credit to that debtor will be withdrawn until the account is paid at the discretion of the Accounting Officer or Chief Financial Officer.

2.4 Recovery Action – Debt Collection Agency Procedures

- a) The debt collection agency will as soon as practicable after receipt of a referral from Council issue a notice to the account holder in relation to each overdue account advising that Council has referred the debt to the agency for collection and that payment is required within seven (7) days of the date of the notice, otherwise legal action will commence. The notice is to specify the minimum amount in legal costs that may be added to the account holder's account if legal action is commenced.
- b) Following the expiration of the seven (7) days as requested in the notice the debt collection agency is to issue a statement of liquidated claim following approval from Council to proceed with legal action.
- c) Following the statutory period after service of the statement of liquidated claim and with Council's approval the debt collection agency are to issue a pre-judgement notice. The notice advises the ratepayer that Council intends to proceed to Default Judgement against them unless payment is received within seven (7) days of the date of the notice. The notice is to specify the minimum amount of legal costs that may be added to the account if judgement is entered against the account holder and information explaining to the account holder that a default judgement will be listed on their credit file for a period of five (5) years even if the amount is subsequently paid/finalised and that this listing may affect the success or failure of future applications for credit.

- d) Following the expiration of the seven (7) days as requested in the notice the debt collection agency is to then obtain judgement against the account holder following approval from Council to proceed with the legal action.
- e) Once judgement is obtained against the account holder, the debt collection agency with Council's approval is to take the necessary proceedings to recover the debt including but not limited to:
 - a. A garnishee of income
 - b. Writ of execution on goods and chattels
 - c. Examination summons
 - d. Service of a rent order where property is tenanted
 - e. Bankruptcy proceedings (subject to resolution of Council)

2.5 Arrangements to Repay Sundry Debtor Accounts

An account holder may at any time make arrangements to pay off their outstanding account by regular payments, subject to the following guidelines (refer also to Council's Hardship Policy)

- Payments must be made on a weekly, fortnightly or monthly basis
- Arranged payments must be of an amount so that all amounts owing are paid in full by 30 June of that financial year
- Extenuating circumstances can be taken into consideration if either of the above two conditions cannot be met, but must be referred to the Accounting Officer or Chief Financial Officer for approval

Where an account holder has not honoured a previous arrangement the Accounting Officer has the discretion as to whether to accept a new payment arrangement or continue with further recovery action. Any new arrangement cannot be accepted until a payment is received to show good faith.

In the event that an account holder fails to make a payment in full under an arrangement and does not notify Council of any financial difficulties, the total amount outstanding becomes payable and is subject to Council's normal recovery procedures without further notice to the ratepayer.

3. SALE OF LAND FOR UNPAID RATES AND CHARGES

Where any rate or charge is overdue and has remained unpaid for more than five (5) years from the date it became payable, Council may proceed to sell the land in accordance with Division 5 of Part 2 Chapter 17 of the Local Government Act 1993.

Where any rate or charge is overdue for a period greater than 12 months in respect of vacant land and the amount overdue exceeds the Valuer General's current valuation of the property, Council may proceed to sell the land in accordance with Division 5 of Part 2 Chapter 17 of the Local Government Act 1993

4. KERB AND GUTTER & FOOTPATH CONSTRUCTION CONTRIBUTIONS

Council has adopted the Administration of Contributory Footpath and Kerb & Gutter Schemes Policy a procedural guide for the creation and implementation of all contributory projects for the construction of footpaths and kerb and gutter under the Roads Act 1993 and as a guide for the equitable distribution of costs between Council and owners of abutting properties.

In addition to the provisions relating to the recovery of outstanding sundry debt as detailed in Point 2 above, the following payment options will apply specifically for Landowners affected by contributions to Kerb and Gutter and Footpath construction:

- The debt may be repaid over three (3) years in weekly, fortnightly, monthly or quarterly instalments with the first repayment falling due three months after the completion of the works.
- If the Landowner fails to make any two consecutive payments then legal action may be instigated in accordance with the procedures for Rates and Charges.
- Landowners suffering genuine hardship will be considered under Council's Financial Hardship Policy.

5. LEGAL COSTS

All debt recovery costs and fees associated with any course of action are to be borne by the owner of the debt and will subsequently remain a charge on the property until paid.

Any ratepayer or sundry debtor that wishes to appeal against the legal costs that have been added to their assessment or account must state their appeal and the reasons for the appeal in writing to Council.

All requests for a review of legal costs will be assessed and the facts of the case collated by the Accounting Officer with the final decision as to whether the costs will be written off to be made by the General Manager, subject to the amount in question being less than \$1,000. In cases where the amount being appealed is greater than \$1,000 the matter will be referred to Council for consideration.

6. THIRD PARTY REPORTING

Council will not supply private credit agencies with information regarding legal action it has taken in the recovery of overdue rates. However, Council recognises that judgement details are supplied to credit agencies by NSW courts.

If a ratepayer or account holder requests proof that a debt owed to Council has been paid, a notice will be issued by Council or Council's debt collection agency confirming payment has been made. Such notice will only be issued if all overdue debts have been paid in full.

Further, if a ratepayer or account holder requests a Notice of Discontinuance to finalise a judgement at the Court, Council will require all overdue debts to be paid in full. If this requirement is met, Council's debt collection agency will carry out the process for a Notice of Discontinuance. If the overdue debts are not paid in full and the ratepayer requires a Notice of Discontinuance urgently, they can apply for the Notice of Discontinuance themselves through the Court. Council will not commence the process if rates and charges are still outstanding.

Links to Policy

[Hardship Policy](#)

[Pensioner Concession Policy](#)

[Administration of Contributory Footpath and Kerb & Gutter Schemes Policy](#)

Links to Procedure

Nil

Links to Forms

Nil

References

Nil

Responsibility

Director Corporate & Community Services

Document Author

Director Corporate & Community Services

Relevant Legislation

Local Government Act 1993

Local Government (General) Regulation 2005

Associated Records

Nil