

# DEBT RECOVERY POLICY

<b>QUALITY CONTROL</b>			
<b>TRIM REFERENCES</b>	12/14 – D16/44049		
<b>RESPONSIBLE POSITION</b>	Manager Finance		
<b>APPROVED BY</b>	Council		
<b>REVIEW DATE</b>	1 April 2026	<b>REVISION NUMBER</b>	2
<b>EFFECTIVE DATE</b>	<b>ACTION</b>	<b>MINUTE NUMBER</b>	
30 November 2016	Public Exhibition	45377	
22 February 2017	Adoption	45460	
25 March 2020	Adopted temporary amendment	46209	
27 April 2022	Public Exhibition	46820	
29 June 2022	Adoption	46880	

## 1. INTRODUCTION

The purpose of this policy is to ensure effective control over debts owed to Council by maximising the collection of outstanding rates and sundry income. Fulfilling the statutory requirements of the *Local Government Act 1993* and associated Local Government Regulations with respect to the recovery of rates, charges and other debts. Also, to ensure consistency, fairness, integrity and confidentiality of all proceedings for both Council and the debtor including those facing hardship and to provide contemporary and flexible payment options for ratepayers and reduce the use of expensive court processes to recover debts.

## 2. POLICY OBJECTIVE

In managing Council's most significant cash inflow, it is essential that an effective and equitable debt management policy exists to recover all rates and charges revenue.

This policy outlines the principles and guidelines for managing the recovery of outstanding rates and charges, incorporating the following major elements:

- Aim to collect all rates and charges by the end of each rating year.
- Apply a fair and reasonable approach to recovering overdue rates and charges.

- Achieve and maintain an outstanding rates and charges ratio at or below the industry standard.
- Apply the provisions of the Act relating to the sale of land as and when required.

### **3. POLICY SCOPE**

Authority for implementation of the Debt Recovery Policy is delegated by Council to the General Manager in accordance with the *Local Government Act 1993*.

The General Manager may delegate the debt recovery function to an authorised council officer. Other finance staff will assist in the day-to-day administration of the debt recovery process which is in accordance with relevant legislation and guidelines.

### **4. POLICY STATEMENT**

#### **4.1. ETHICS AND CONFLICTS OF INTEREST**

Officers shall refrain from personal activities that would conflict with proper execution and management of Council's Debt Recovery Policy. Council's Code of Conduct provides guidance for recognising and disclosing any conflicts of interest.

#### **4.2. PRIVACY OBLIGATIONS**

Personal information means information or opinion, whether it is true or not, about an individual that can reasonably allow the individual to be identified.

A debtor's personal information will be treated with respect and Council will comply with *the Privacy and Personal Information Protection Act 1998* when collecting and disclosing information throughout the debt recovery process.

#### **4.3. RECOVERY OF DEBTS**

##### **4.3.1. RATES AND CHARGES**

Council will levy rates charged by service of a rates notice in accordance with Section 546 the Local Government Act. Council will levy rates notices in the month of July of every year.

If the rates notice is served in July, under section 562(3) of the Act, ratepayers have the option of making payment of the amounts owing in those rates notices by one lump sum (which is to be paid by 31 August) or by four quarterly instalments due on the last day of the following months:

- 31 August
- 30 November
- 28 February
- 31 May

#### **Instalment Reminder Notices**

Under Section 562(5) of the Local Government Act, Council must send instalment reminder notices to each ratepayer by instalment on or before 31 October, 31 January and 30 April.

#### **Final Reminder**

A Final Reminder Notice is to be sent to any ratepayer who has not, within twenty-one (21) days of the due date:

- a) Paid the amount of any instalment; or
- b) Come to an arrangement for payment of the instalment by instalments; or
- c) Made written application for waiver, credit or reduction of the instalment; or
- d) Taken some action to dispute the amount is payable.

**The Final Reminder Notice will:**

- a) Be on Council Letterhead
- b) Set out the amount of the instalment.
- c) Request payment of the instalment within twenty-one (21) days of the date of the notice
- d) Urge the ratepayer to contact Council if they believe that the instalment has been paid or is not payable; and
- e) Urge the ratepayer to make contact to come to a suitable arrangement if they are unable to make payment of the instalment amount within the time allowed.

**Demand Letter**

A Demand Letter (in an approved form) is to be sent to any ratepayer who has not within twenty-one (21) days of the Final Notice:

- a) Paid the amount of any instalment; or
- b) Come to an arrangement for payment of the instalment by instalments; or
- c) Made written application for waiver, credit or reduction of the instalment; or
- d) Taken some action to dispute that the amount is payable.

**The Demand Letter will:**

- a) Set out the amount of the instalment;
- b) Demand payment of the instalment within twenty-one (21) days of the date of the notice
- c) Urge the ratepayer to contact Council if they believe that the instalment has been paid or is not payable; and
- d) Urge the ratepayer to contact Council to come to a suitable arrangement if they are unable to make payment of the instalment amount within the time allowed.

**Commencement of Legal Action**

Council is to instruct the external debt recovery agency to commence legal action with the issue and service of a Statement of Claim against any ratepayer with an instalment (or instalments) unpaid and owing greater than \$1000 (including any accrued interest); and who has not:

- a) Come to an arrangement for payment of the instalment by instalments; or
- b) Made written application for waiver, credit or reduction of the instalment; or
- c) Taken some action to dispute that the amount is payable.

### **Costs of Legal Action**

Council is to ensure that the costs of any legal action taken are legally recoverable as a charge on the property pursuant to Section 550 of the Act and to upload those costs to the property as required.

### **Obtaining Judgment**

Council is to instruct their external law firm to make application for judgment if, within the time allowed by the relevant legislation (currently twenty-eight days after service of the statement of claim), the ratepayer has not:

- (a) Paid the debt and costs claimed; or
- (b) Filed a defence; or
- (c) Filed an acknowledgement of claim; or
- (d) Come to an arrangement to pay by instalments; or
- (e) Taken any other action that means Council is unable to apply for judgment.

### **Enforcing Judgment**

Council is to instruct their external law firm to enforce any judgment obtained by one or more of the following methods as advised by their external debt recovery agent:

- (a) Writ against property;
- (b) Examination; (c) Garnishee of bank accounts;
- (d) Garnishee of wages or other debts;
- (e) Bankruptcy;
- (f) Winding up of companies;
- (g) "Rent for Rates" under Section 569 of the Act; or
- (h) Such other method as Council is advised.

### **Duplicate Matters**

With ratepayers who have not paid instalments, referral for recovery will be done quarterly, in order to keep costs to a minimum should legal action be required. Council will adhere to the following practice:

1. If debt recovery has already commenced to recover the previous instalments then no further debt recovery is to be taken on later instalments until such time as the amount claimed in those legal proceedings (including costs) have been paid.

2. If debt recovery has not commenced to recover the previous instalment then the amount of any later instalment is to be added to the earlier instalment for the taking of that debt recovery.

### **Payment of Debt and Costs**

If, after the commencement of legal proceedings, a ratepayer makes payment of the instalment claimed but not the costs of those proceedings, Council's external debt recovery is to send the relevant ratepayer a letter setting out the amount payable for costs and demanding payment of same within twenty one (21) days.

If the ratepayer does not make payment of those costs within twenty one (21) days of the sending of the letter legal action is to be continued for the recovery of those costs.

## **4.4. AGREEMENTS FOR PERIODICAL PAYMENT**

Council acknowledges that in certain cases, some ratepayers may genuinely be experiencing a period of financial hardship and as a result may have difficulty in meeting the cost of each rates and charges instalment when they fall due. In such cases, Council encourages ratepayers to enter into an agreement for periodical payment of rates and charges applicable to their property in accordance with Council's Hardship Policy.

Similarly, Council is considerate to accepting a mutually agreeable arrangement for the payment of overdue rates and charges. The agreement may be entered into at any time during the recovery process, except when Council has resolved to sell a property under the Sale of Land provisions outlined in the *Local Government Act*.

It is the ratepayer's responsibility to ensure that payments made under approved payment arrangements are made on time. A reminder will not be issued for an unpaid instalment, and debt recovery action will continue.

The following guidelines should be used when considering an appropriate agreement:

- The agreement should be accepted on the basis that the outstanding amounts be finalised as soon as possible;
- Agreements can be made on a weekly, fortnightly or monthly basis;
- Any agreement made should be made such that all amounts are paid in full by 30th June of that financial year;
- An agreement made should not extend beyond two years;
- Council acknowledges that some ratepayers may be experiencing hardship and as such, extenuating circumstances can be taken into consideration if any of the above three conditions cannot be met. In this instance, debtors may be required to complete an application under hardship provisions detailing personal financial information.
- Should the debtor not meet the conditions of the agreement without prior contact with Council, the agreement will be cancelled and debt recovery action will commence.

## **4.5. INTEREST**

Interest accrues on a daily basis, in accordance with Section 566 of the *Local Government Act 1993*, on rates and charges that remain unpaid after they become due and payable. The rate to be charged is the maximum allowed as announced by the Division of Local Government and advertised in Council's Operational Plan.

Ratepayers who are unable to pay accrued interest on rates and charges for reasons beyond their control or because payment of the accrued interest would cause them hardship, may apply to have the accrued interest written off under Section 567 of the *Local Government Act 1993*.

#### **4.6. WRITING OFF ACCRUED INTEREST**

Applications for writing off accrued interest under the hardship provisions of the *Local Government Act 1993* shall be determined on the merits of each individual case, on the basis of whether or not the hardship criteria have been satisfied by the applicant and a proper opinion can be formed. The above is not applicable to the writing off of interest amounts raised in error.

#### **4.7. WRITING OFF RATES**

Rates or charges (including accrued interest) or other debts will be written off only by resolution of Council or under delegated authority. Any interest which has to be written off due to hardship will be written off by the end of the financial year after confirming if the ratepayer has adhered to the agreed arrangement. Where an arrangement is broken due to missed payments or dishonoured payments, the interest will not be written off.

#### **4.8. SALE OF LAND FOR UNPAID RATES AND CHARGES**

Council is to avail itself of the procedure for sale of land for unpaid rates and charges provided for by Part 2 Division 5 of the Act where appropriate

#### **4.9. PENSIONERS**

Due consideration is to be given to pensioners, taking into account income and other circumstances. Legal action against pensioners will be a last resort, again depending on the circumstances.

#### **4.9 SUNDRY DEBTORS**

Recovery action will commence when invoices issued are not paid by the due date unless arrangements have been entered into (in writing) to make periodical payments.

##### **Due Date for Payment**

Invoices for sundry debtors are due for payment thirty (30) days from the date of issue of the invoice.

##### **Reminder**

As with rates, a reminder is to be sent to sundry debtors where no payment has been made, within twenty-one (21) days of the due date for payment. Reminders will be made via letter, email or phone call as appropriate.

##### **Demand Letter**

A Demand Letter is to be sent by Council's debt recovery agency to any sundry debtor that has not made payment of the amount owing within twenty-one of the date of the Reminder Letter. The Demand Letter will demand payment within Twenty-one (21) days and advise that Council may take legal action to recover the amount without further notice if it is not paid within that time.

##### **Debt Recovery**

Council is to instruct its external debt recovery to commence legal action with the issue and service of a Statement of Claim against any sundry debtor with an amount owing greater than \$1000 and who has not:

- a) Come to an arrangement for payment of the debt; or
- b) Made written application for waiver, credit or reduction of the debt; or
- c) Taken some action to dispute that the amount is payable.

### **Obtaining Judgment**

Council is to instruct their external debt recovery agency to make application for judgment if, within the time allowed by the relevant legislation (currently twenty-eight (28) days after service of the statement of claim), the ratepayer has not:

- a) Paid the debt and costs claimed; or
- b) Filed a defence; or
- c) Filed an acknowledgement of claim; or
- d) Come to an arrangement to pay by instalments; or
- e) Taken any other action that means Council is unable to apply for judgment.

### **Enforcing Judgment**

Council is to instruct their external law firm to enforce any judgment obtained by one or more of the following methods as advised by their external law firm:

- a) Writ against property.
- b) Examination.
- c) Garnishee of bank accounts.
- d) Garnishee of wages or other debts.
- e) Bankruptcy.
- f) Winding up of companies.
- g) Such other method as Council is advised.

### **Arrangements**

Council is able to come to an arrangement with any sundry debtor for payment of the amount owing (including any costs and interest).

Any request for an instalment arrangement from a sundry debtor must be in writing and Council will not consider any request until it has been submitted in writing.

Whether or not Council agrees to any arrangement proposal is entirely in the discretion of Council and the following should be taken into account:

- a) The debt size;
- b) The debt age;
- c) The time it will take to pay;

- d) The conduct of the debtor, including any previous arrangements and their outcome;
- e) The amount of costs incurred;
- f) The financial circumstances of the debtor, to the extent that Council is aware of them; and
- g) Any other matter Council considers relevant.

If Council accepts a proposal from a sundry debtor for payment of a debt by instalments, that acceptance is to be confirmed in writing. The confirmation is to:

1. Refer to the written offer to pay by instalments received;
2. Set out the amount payable under the arrangement;
3. Confirm that the arrangement only applies to that amount payable;
4. Set out the arrangement itself;
5. Urge the debtor to contact Council prior to the due date for payment should they be unable to comply with the arrangement; and
6. Advise that Council reserves the right to continue action without notice should the debtor default on the arrangement

### **Defaulted Arrangements**

Should a sundry debtor default on a payment arrangement then recovery action is to continue from the last stage it reached prior to the arrangement being entered into

## **5. IMPLEMENTATION**

### **5.1. Roles and Responsibilities**

The following Council officers are responsible for the implementation and the adherence to this policy:

- General Manager
- Chief Financial Officer
- Manager Finance
- Management/ Financial Accountant
- Assistant Accountant
- Rates Officer
- Finance Support Officer

### **5.2. Communication**

This Policy will be communicated to the community and staff in accordance with Council's Policy, Procedure and Process Framework and Council's Business Paper process. Following adoption by Council the Policy will be made available on Council's website.

### **5.3. Associated Documents**

The following documentation is to be read in conjunction with this policy.

- Hardship Policy

## **6. REVIEW**

Review of this policy will incorporate relevant legislation, documentation released from relevant state agencies and best practice guidelines.

The standard review period will be every two (2) years from the effective date. The responsible Council officer will be notified of the review requirements three (3) months prior to the expiry of this policy.

The Chief Financial Officer is responsible for the review of this policy.

## **7. LEGISLATIVE AND LEGAL FRAMEWORK**

This policy is to be read in conjunction with the following:

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- *Office of Local Government Debt Management and Hardship Guidelines, November 2018*
- *Local Government Code of Accounting Practice and Financial reporting*
- *Australian Accounting Standards*
- *Division of Local Government Circulars*
- *Trade Practices Act 1974*
- *Australian Securities and Investments Commission Act 2001*
- *ACCC and ASIC Debt Collection Guideline for collectors and creditors*
- *Privacy and Personal Information Protection Act 1998*

Council employees shall refrain from personal activities that would conflict with proper execution and management of Council's Debt Recovery Policy. Council's Code of Conduct provides guidance for recognising and disclosing any conflicts of interest.