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**Policy:**

**Debt Recovery**

**2020**

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## INFORMATION ABOUT THIS DOCUMENT

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### ***Document History***

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1	February 2020	Submitted to the Audit, Risk and Improvement Committee for review

### ***Further Document Information and Relationships***

<b>Related Legislation*</b>	NSW Local Government Act 1993 Local Government (General) Regulation 2005
<b>Related Policies</b>	Policy: Hardship 2020
<b>Related Procedures/ Protocols, Statements, documents</b>	Office of Local Government Debt Management and Hardship Guidelines 2018

*Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.*

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## **1. OBJECTIVES**

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 people with respect and sensitivity in considering their circumstances.

## **2. SCOPE**

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

## **3. DEFINITIONS**

- Legal costs – Amounts incurred by Council in recovering overdue debts (e.g. Court fees and professional costs) which can be legally recovered from the ratepayer
- Default Judgement – In cases where the ratepayer does not respond to a summons issued to them, the Court may make a default judgement whereby it will make a decision without having the matter heard in Court
- Letter of demand – Demand letter from Council's debt recovery agency issued in accordance with the Australian Competition and Consumer Commission and the Australian Securities and Investment Commission guidelines
- Ratepayer – the person liable for payment of the rates and charges due and payable on the property for which debt recovery is being undertaken

## **4. DEBT RECOVERY POLICY STATEMENT**

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

### **4.1 Recovery of Rates and Charges**

#### **4.1.1 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, per Section 562 of the *NSW Local Government Act 1993* (the Act). A rate instalment notice is issued 30 days before each instalment is due. Similarly, water and trade waste charge notices are issued twice yearly in approximately November and May.

#### **4.1.2 Reminder Notice**

If the whole or part of an instalment/notice, exceeding \$100, is not paid within 14 days of the instalment/notice due date, a reminder notice will be issued by Council. Reminder notices will be issued to all ratepayers with outstanding balances exceeding \$100 and will request payment within 14 days of the mailing date on the reminder notice. The notice will also advise that ratepayers may enter into a payment arrangement with Council to pay the overdue amount.

#### **4.1.3 Final Reminder**

If an overdue amount has not been paid in full, and no contact has been made with Council to enter into a payment arrangement to pay the overdue amount, a final reminder notice will be issued by Council. This notice will be issued to all ratepayers who have not made payment of the outstanding amount noted on their reminder notice and who have not made contact with Council to make arrangements to pay the outstanding amount. Final reminder notices will request payment within 14 days of the mailing date on the notice and will again advise ratepayers that they may enter into a payment arrangement with Council to pay the overdue amount. The final notice will also advise that failure to either make payment or make an arrangement to pay will result in referral to Council's debt recovery agency with no further notice, and that additional charges may be incurred and added to the outstanding amount due to the referral. Before referring any ratepayer to Council's Debt Collection Agency, Council must have made at least one attempt to contact the ratepayer by telephone or email.

#### **4.1.4 Recovery Action – Referral to Debt Collection Agency**

Following the expiration of the period specified on the final reminder notice Council will refer all assessments/notices where the amount overdue is greater than \$1,000 and more than one instalment in the current rating year, and where no arrangement has been made to pay the overdue amount, to its debt collection agency. For the remaining assessments which have amounts overdue but for which the balance is less than \$1,000 Council staff will continue to contact ratepayers at reasonable intervals to attempt recovery.

#### **4.1.5 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 letter of demand 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 14 days of the date of the letter, otherwise legal action will commence. The letter 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 14 days as requested in the letter, the debt collection agency is then to issue a statement of claim following approval from Council to proceed with legal action. A further attempt to contact the ratepayer by telephone or email must have been made before a statement of claim is made.
- c) Following the statutory period after service of the statement of claim and with Council's approval, the debt collection agency is to issue a pre-judgement letter. The letter advises the ratepayer that Council intends to proceed to Default Judgement against them unless payment is received within 14 days of the date of the letter. The letter is to specify the minimum amount in 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 5 years even if the amount is subsequently paid/finalised and that this listing may affect any future applications for credit.
- d) Following the expiration of the 14 days as requested in the pre-judgement letter the debt collection agency is then to 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 actions 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 the property is tenanted
  - Bankruptcy proceedings (subject to resolution of Council)
  - Sale of land for unpaid rates (subject to resolution of Council and for unpaid rates only).

#### **4.2 Arrangement to Repay Rates, Charges and Water Consumption Charges**

Council recognises that some ratepayers may experience difficulties in meeting their rate and charge commitments. Council will seek to assist ratepayers to make arrangements that are consistent with the ratepayers' 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):

- Arrangements can be made to pay on a weekly, fortnightly or monthly basis
- Any arrangement must be made so that all amounts owing are made within one calendar year
- Extenuating circumstances can be taken into consideration if either of the above two conditions cannot be met but must be referred to the Revenue Officer for approval.

All ratepayers who enter into an arrangement will continue to have interest charged on the outstanding amount in accordance with section 566 of the Act, subject to Council's Hardship Policy.

Where a ratepayer has not honoured a previous arrangement, the Revenue Officer has the discretion as to whether to accept a new 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.

Once a writ of execution on goods and chattels has been issued on an outstanding amount, any payment arrangement must be made by an Instalment Order through the Local Court.

Extensions of time beyond three months without any payment will not be accepted unless they formed part of the original agreement.

## **5. RECOVERY OF SUNDRY DEBTOR ACCOUNTS**

### **5.1 Sundry Debtor Invoices and Statements**

Invoices are raised as debtor information comes to hand e.g. construction of kerbing and guttering, private works, OSSM inspections etc. The due date for payment of all invoices is 30 days after the invoice date. Within 7 days of the close of a month a sundry debtor account statement will be issued.

## **5.2 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 may refer the account to its debt collection agency. Accounts which have amounts overdue but for which the balance is less than \$500 Council staff will continue to contact account holders at reasonable intervals to attempt recovery.

## **5.3 Recovery Action – Suspension of Credit Facilities**

If the sundry debtor account remains outstanding for a period beyond 90 days then further credit to that debtor will be withdrawn until the account is paid in full or an agreement has been reached to pay it off over a period of time.

## **5.4 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 letter 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 14 days of the date of the letter, otherwise legal action may commence. The letter is to specify the minimum amount in legal costs that may be added to the account if legal action is commenced.
- b) Following the expiration of the 14 days as requested in the letter, the debt collection agency is then to issue a statement of claim, following approval from Council to proceed with legal action. A further attempt to contact the ratepayer by telephone or email must have been made before a statement of claim is made.
- c) Following the statutory period after service of the statement of claim and with Council's approval the debt collection agency issue a pre-judgement letter. The letter advises the account holder that Council intends to proceed to Default Judgement against them unless payment is received within 14 days of the date of the letter. The letter is to specify the minimum amount in legal costs that will be added to the account if judgement is entered against the ratepayer and information explaining to the account holder that a default judgement will be listed on their credit file for a period of 5 years even if the amount is subsequently paid/finalised and that this listing may affect any future applications for credit.
- d) Following the expiration of the 14 days as requested in the letter the debt collection agency is then to obtain judgement against the account holder following approval from Council to proceed with legal action.
- e) Once judgement is obtained against the account holder, the debt collection agency with Council's approval is to take the necessary actions to recover the debt including but not limited to:
  - A garnishee of income
  - Writ of execution on goods and chattels
  - Examination summons
  - Bankruptcy proceedings (subject to resolution of Council).

### **5.5 Arrangements to Repay Sundry Debtor Accounts**

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

- Arrangements can be made to pay on a weekly, fortnightly or monthly basis
- Any arrangement made 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 Revenue Office for approval.

Where a debtor has not honoured a previous arrangement the revenue 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 debtor 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 account holder.

Once a writ of execution on goods and chattels has been issued on an outstanding amount any payment arrangement must be made by an Instalment Order through the Local Court.

Extensions of time beyond three months without any payment will not be accepted unless they formed part of the original agreement.

## **6. 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 with the final decision as to whether the costs will be written off to be made by the Chief Financial Officer.

## **7. 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 requests proof that the debt owed to Council has been paid, a letter will be issued by Council confirming payment has been made. Such letter will only be issued if all overdue debts have been paid.

Further, if a ratepayer requests a Notice of Discontinuance to finalise the 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.