



## DEBT RECOVERY

### Summary:

The purpose of this policy is to provide clear direction to Council Staff and advising Ratepayers/Debtors of the process in recovering outstanding debts owed to Council.

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|---------------------------------|---|--------|
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| <b>Department</b>               | Office of Chief Corporate   |        |
| <b>Policy Custodian</b>         | Manager Finance & Technology  |        |
| <b>Superseded Documents</b>     | 23 May 2003   | 231/03 |
|                                 | 18 November 2004  | 584/04 |
|                                 | 23 April 2008   | 190/08 |
|                                 | 19 December 2012  | 525/12 |
|                                 | 27 March 2013   | 69/13  |
|                                 | 27 April 2016   | 92/16  |
|                                 | 23 August 2017  | 168/17 |
| <b>Related Legislation</b>      | Local Government Act 1993<br>Local Government (General) Regulation 2005 |        |
| <b>Delegations of Authority</b> | Manager, Finance & Technology   |        |

### 1. Overview

The intention of this policy is to:

- a) Ensure effective control over debts owed to Council;
- b) Outline the principles and guidelines that apply to the recovery and management of overdue Rates, Water Consumption Charges and Sundry Debtor accounts;

- c) To be sympathetic to those ratepayers and debtors suffering genuine and proven financial hardship;
- d) To fulfil the statutory requirements of both the Local Government Act, 1993 and Civil Procedure Act, 2005 with respect to the recovery of rates and charges;
- e) To ensure the integrity and confidentiality of all proceedings for both the Council and the debtor.

## **2. Policy Principles**

Nil.

## **3. Policy Objectives**

To recover monies owing in a timely and effective manner to finance Council's operations and ensure effective cash flow management. Provide a process that is ethical, transparent, compassionate, open, accountable and compliant with legal obligations.

## **4. Policy Statement**

Nil.

## **5. Scope**

### **1. Rates and Quarterly Instalment Notices**

1.1 Rate notices are issued in July of each year and are payable in four instalments. The due dates for each instalment are 31 August, 30 November, 28 February and 31 May. A rate notice is to be issued 30 days before 31 August and a quarterly instalment notice is to be issued 30 days before 30 November, 28 February and 31 May. Any person electing to pay rates in full without incurring any interest must pay the rates in full by 31 August of each year.

1.2 On occasions, Council has to levy a rate notice after the main issue date, in which case a ratepayer is entitled to alternative arrangements for payment of the rate account.

If the supplementary issue is for the current year's rate levy only, then Council will ask for quarterly payments based on the remaining due dates provided for under the Act. For example, if the rate issue was made during October, the next instalment date is 30 November and Council would ask for the first two quarters payable by 30 November with the quarterly instalments due 28 February and 31 May respectively.

If the supplementary rate issue involves more than the current year's levy, then the ratepayer is asked to make payments on a quarterly basis as per above or on a monthly basis. Providing all payments of amounts due are made by 30 June of that financial year, no interest is payable. (Refer Section 564 of the Local Government Act 1993)

## **2. The Rates Reminder/Early Intervention Notice**

2.1 A Rates Reminder/Early Intervention Notice shall be issued where applicable within 14 days after the due date of an instalment to those ratepayers who have not made previous satisfactory payment arrangements. This Reminder Notice gives the ratepayer a summary of the outstanding debt and the option of paying this debt off via a suitable payment arrangement. The Reminder Notices will be issued for amounts over \$20.00 outstanding and will request payment within 14 days from the posting date of the notice and advise of a potential visit from Council's preferred Early Intervention Agent after the reminder due date has passed.

## **3. Payment Arrangements**

3.1 Arrangements may be entered into with all ratepayers. It is Council's intention to have a maximum period of 12 months for which debts may be paid under suitable arrangement including current levies during the period of the arrangement. Under exceptional circumstances this may be extended to two (2) years upon application of Rates Hardship (refer to Policy 1.070). Variation to payment terms may be approved by Chief Executive Officer/General Manger.

Interest will continue to accrue on any arrears during the period of arrangement. Any requests for the waiving or writing off of interest charges under Section 564 or Section 567 of the Local Government Act 1993, will not be recommended.

All requests for extensions or payment arrangements are to be made in writing or by completing Council's Application for Payment Arrangement form. Payments can be made either weekly, fortnightly, monthly or by other suitable arrangements.

Any default in arrangements that occur for a period greater than one (1) month without prior notification will result in Council contacting the debtor by telephone, a visit from Council's preferred Early Intervention Agent or in writing to ascertain the debtor's intentions regarding the debt.

Recovery action by Council will be deferred whilst ever the agreed payment arrangement is adhered to, providing that where a debtor wishes to repay a debt over a period greater than 12 months, a 'Default Judgement' may be obtained to secure the debt. This legal fee will be charged against the debtor.

## **4. Proceedings with Legal Action – Civil Claims Law**

4.1 If Council receives no response from the debtor after the due date of the Reminder/Early Intervention Notice or defaults on a payment arrangement Council may initiate recovery action.

Recovery action may include Early Intervention with personal visits, letters, telephone calls, Reminder Notices or Notices of Demand, Summonses, Writs, Garnishee Orders, Section 569 Notices, Warrant of Apprehension, Notices to wind up a company and sale of land for overdue rates under Section 713 of the Act. At a cost payable by the Ratepayer.

4.2 Legal action will be initiated with either an Early Intervention personal visit or a "Letter of Demand" being sent to the debtor by Council's Debt Collection Agency. The personal visit will engage and assist the ratepayer to negotiate a suitable payment arrangement alternatively a letter of demand will be issued giving the debtor 14 days to make either payment or an acceptable arrangement before further action is taken.

4.3 If payment or an arrangement for payment has not been received by the due date stated on the "Letter of Demand" then Council may issue and serve a Summons (known as a "Statement of Liquidated Claim") where the debt is greater than \$1,000. The issue and serving of this Summons will be conducted by an external Debt Collection Agency employed by Council. The debtor may, within 28 days of the service of the Summons lodge a defence to the claim made by Council. The debtor may also choose (within the 28 days) to either make an acceptable arrangement with Council or apply to the Court to pay the debt by regular instalments.

4.4 If the debtor does not respond to the Summons within the set period, Council (through the external Debt Collection Agency) can apply for 'Default Judgement'. To achieve this, a completed Affidavit of Debt form must be lodged with the Court. Once this form has been lodged the debtor is deemed by the Court to owe the debt to Council. The debtor then cannot defend this legal action.

4.5 Council (through the Debt Collection Agency) can now proceed with a 'Writ of Execution' against the debtor. To do this a completed Application to Issue Execution form must be lodged with the Court. This will then enable the Sheriff to go to the debtor's property and seize goods to the estimated value of the debt and place them for sale at public auction. Council will receive payment of the debt either:

When the goods are sold; or  
If the debtor settles payment at the Court beforehand.

4.6 The debtor at this time may apply for an 'Instalment Order' by declaring their assets and liabilities; income and expenditure to the Court and request payment be made to Council via a weekly or monthly amount. If Council is not satisfied with this arrangement it may lodge an objection to the 'Instalment Order' and apply (Section 107 Civil Procedure Act, 2005) for the seizure of goods to be recommended by the Sheriff.

4.7 Council (through the Debt Collection Agency) when proceeding with a 'Writ of Execution' has the option of recovering the debt via a garnishee against the debtor's salary or the debtor's bank account.

4.8 Any legal expenses including professional costs incurred by Council from the recovery of outstanding rates and charges will be charged against the debtor subject to any limitation in respect of the amount that can be recovered which is imposed by any statutory instrument.

### **Other Comments Concerning the Civil Claims Law**

Debts may need to be recovered through the District Court if the amount claimed exceeds the jurisdiction of the Local Court.

When serving a Summons by mail it must be sent to the debtor's principal place of residence. A Summons must not be served using a Post Office Box as the mailing address.

When serving a Summons on a Company by the post it must be sent to the Company's registered address.

The Summons must detail any interest charges to be included in the debt separately.

When the Court makes a Judgement for the debt to be paid this order stands valid for a 12 year period.

When proceeding with legal action against a debtor that resides interstate the procedure remains the same up to the point of Judgement. To continue with the recovery a Certificate of Judgement must be obtained from the Local Court and sent to the interstate Local Court in the district of the debtor.

## **5. Proceeding with Legal Action (Local Government Act)**

5.1 Pursuant to Section 712 (1) of the Local Government Act, proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.

5.2 Section 712 (2) All rates and charges payable by the same person, whether in respect of the same or of different land, may be recovered in a single action.

5.3 Section 605 of the Local Government Act 1993, allows Council to add to the amount of a rate or charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the rate or charge.

5.4 The Local Government Act 1993 allows further options for Council to recover outstanding debts.

5.5 Section 569 allows Council the option to garnishee rent if the rateable property is let by the debtor to a tenant. A Notice must be served on the tenant under this Section before the garnishee can be attempted.

5.6 Section 713 allows Council to sell the debtor's property for unpaid rates where rates have been overdue for a minimum of 5 years or in the case of vacant land, Council has the option of selling the property after 12 months if the amount of rates owing exceeds the land value.

## **6. The Sale of Property for Unpaid Rates and Charges**

The following is the procedure to be adopted for the Sale of Land for Unpaid Rates and Charges pursuant to Section 713 to 726 (inclusive) of the Local Government Act 1993.

6.1 Examine list of rate balances to ascertain if any properties have rates, which are overdue more than 5 years.

6.2 Section 714 does not enable the sale of:

Any estate or interest of the Crown in land; or

Any interest in land owned by the Crown that may not be transferred.

6.3 The Aboriginal Land Rights Act also does not permit Council to sell property owned by Aboriginal Land Councils for outstanding rates and charges.

6.4 Council will advertise for expressions of interest to conduct a public auction for the sale of property for unpaid rates.

6.5 Council must take reasonable steps to ascertain the identity of any person who has an interest in the land. Council must then take reasonable steps to notify each such person of the Council's intention to sell the land (Section 715).

6.6 To identify the persons having an interest in the land a certificate under Section 700 (title Search) of the Local Government Act should be obtained. This certificate provides that in addition to any other method of proof available, a certificate furnished by the Registrar General is evidence that the person described as the proprietor or owner of the land was the owner of the land at the time specified in the certificate.

6.7 Send a letter to the owner(s) described in the certificate advising them that the property has reached the stage where it can be sold for unpaid rates (Section 713). This letter will request payment and/or payment arrangement to be made to Council within 14 days from the date of posting (Send letter(s) by Registered Mail).

6.8 If the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the Council, the notice stating Council's intention to sell the property for unpaid rates may be by advertisement in a newspaper circulating in the district in which the property is situated.

6.9 If Council receives no response from this letter or advertisement after the allotted time Council will proceed to sell the property.

6.10 The Rates Department will at this time prepare a certificate in accordance with Section 713(3) (to be signed by the General Manager) certifying the following:

- What rates and charges are payable on the land.
- When each rate was levied.
- When each rate became due.
- What rates and charges are overdue.
- What rates and charges are not overdue.

6.11 The Rates Department will then submit the certificates and a report to Council recommending that the properties be sold in accordance with the Act and recommending a date and place for sale. The date for sale must be not more than 6 months and not less than 3 months from a publication advertising the proposal to sell (Section 715).

6.12 This publication will contain the following information:

- Council proposes to sell the land for unpaid rates and charges at public auction.
- The name of the auctioneer and the proposed place, date and time of the auction.
- If all rates and charges payable (including overdue rates and charges) are not paid to Council by the rateable person before the time fixed for the sale, the Council will proceed with the sale.

6.13 This publication pursuant to Section 715 of the Local Government Act must be placed in the Gazette and at least one newspaper.

6.14 If before the time fixed for the sale all rates and charges payable (including overdue rates and charges) are paid to the Council, the Council must not proceed with the sale (Section 715).

6.15 Approximately one month prior to the sale, submit a report to Council setting out details of properties to be sold and recommending any reserve prices to be placed on the properties (based on qualified independent valuation). Another title search on the properties should be obtained to once again confirm ownership records.

6.16 At this time also arrange for Council's solicitor to draw up contracts of sale and for them to attend the auction. Council must submit Section 149 Certificates to the solicitor before the contracts can be drawn up.

6.17 The land must be offered for sale by public auction. If the land fails to sell at public auction it may then be sold by private treaty.

6.18 Any purchase money received by Council on the sale must be applied:

- Firstly, towards payment of Council's expenses incurred in connection with the sale; and
- Secondly, towards the payment of any rate or charge on the land due to Council and any debt due to the Crown (Section 718).

6.19 If purchase money is less than the amount owing, the amount available is to be divided between the rates, charges and debts in proportion to the amounts owing on each and the balance owing is to be written off (Section 719).

6.20 If the purchase money exceeds the amount owing, the balance is to be held by Council in trust for the persons having interests in the land prior to the sale according to their respective interests. If Council knows the identity of those persons it may pay the money to them. If Council does not know the identity of

those persons it must continue to hold the money in trust and the provisions of the Unclaimed Money Act 1982 will apply (Section 720) in which Council must forward unclaimed monies to the Office of State Revenue after six (6) years.

6.21 After the sale has been finalised submit a report to Council showing details of the sale and the disposal of the proceeds including sale expenses and amounts outstanding.

## **7. Debt Recovery Procedures for Water Consumption Charges**

### **7.1 The Water Consumption Reminder Notice**

#### **1<sup>st</sup> Water Consumption Account Reminder Notice**

A Reminder Notice shall be issued where applicable within fourteen (14) days after the due date of the account to all ratepayers that they may have overlooked their account. This reminder notice gives the ratepayer a summary of the outstanding debt and the option of paying this debt off via a suitable payment arrangement.

#### **2<sup>nd</sup> Water Consumption Account Reminder Notice**

If the account still remains unpaid after seven (7) days a further notice will be issued for amounts outstanding over \$50.00 to those ratepayers who have not made previous satisfactory payment arrangements. This notice states that unless the account is settled within a further fourteen (14) days a Water Limiter may be installed on a specified date. The notice will further request that if the property is tenanted, that the tenant or the letting agent notify Council of this fact so that a water limiter is not installed while it is occupied by a tenant.

### **7.2 Water Payment Arrangements**

Arrangements may be entered into with all ratepayers. It is Council's intention to have a maximum period of six (6) months for which debts may be paid under suitable arrangements.

All requests for extension or payment arrangements are to be made in writing or by completing Council's Application for Payment Arrangement form. Arrangements under \$400.00 must be made in two (2) equal instalments and over \$400.00 in four (4) equal instalments. Payments can be made either weekly, fortnightly, monthly or by other suitable arrangements.

Any default in arrangements that occur for a period greater than one (1) month without prior notification will result in Council contacting the debtor by telephone or in writing to ascertain the debtor's intentions regarding the debt. If the debtor continues to fail to meet their negotiated payment plan, Council will fit a restrictor without notice.

## **8. Proceeding with Recovery Action (Notice of Water Restriction)**

8.1 At the expiry of fourteen (14) days following the issue of the 2<sup>nd</sup> Water Consumption Reminder Notice where amounts remain unpaid or an arrangement for payment is not entered into or where a previous payment arrangement is not maintained, a water restriction notice will be issued to the owner advising that the normal supply of water will be restricted fourteen (14) days from the date of this notice.



The water restriction notice will be served by hand delivery to the property and, where the address for the service of notices recorded by Council is other than the property, a copy of the notice will also be issued to the address recorded as the address for the service of notices. The Council Officer delivering the notice will also make enquiry when attending the property as to whether the occupant is the owner of the property and will not serve the notice if they become aware from this enquiry that the property is tenanted.

The water restriction notice will, in addition, state;

- The amount outstanding,
- The total amount to be paid to avoid water restriction,
- That the supply will not be restored unless the outstanding amount together with the reconnection fee is paid in full,
- Arrangements for payment will not be entered into after the water supply becomes restricted,
- That a fee for the reconnection of the normal water supply will apply and specify such fee,
- The restriction when made will allow restricted water use so as to maintain personal hygiene.

After fourteen (14) days from service of the restriction notice and if the outstanding account remains unpaid, the water will be restricted until all charges and fees are paid in full.

If after 14 days of the restriction being enforced the debt remains unpaid legal action will commence, following the same procedures used to recover rates debt (points 4.2 to 4.8 in this policy).

## **9. Debt Recovery Procedures for Sundry Debtors**

Council will raise sundry debtor invoices as requested.

All debtor accounts are strictly 30 days from the date of invoice.

Payment arrangements can be made for the payment of sundry debtor accounts if requested. These debts will be paid under a suitable arrangement for a maximum period of 6 months.

Monthly statements are to be forwarded to debtors. Outstanding amounts of more than 30 days are to be regarded as overdue.

Where amounts are outstanding for more than 90 days and a reminder notice has been sent, credit will cease, and debt recovery action will commence on the account.

If the debt remains outstanding after 90 days, Council will send a reminder notice giving a summary of the debt and 14 days to pay.

If Council does not receive payment within 14 days after the issue of the reminder notice and the account is more than \$1,000.00 the debtor will be referred to Council’s lawyers to issue a ‘Letter of Demand’. This Letter of Demand gives the debtor a summary of the outstanding debt and a further 14 days to pay the account before legal proceedings will be initiated against them.

If Council does not receive payment within the 14 day period as stated on the ‘Letter of Demand’ legal proceedings may be commenced. The procedures for legal action against Sundry Debtors will follow points 4.3 to 4.8 under the debt recovery procedures for rates.

This policy will not apply to amounts due from Government Departments and such amounts shall be recovered by prompt action with the Government Department direct.

This policy also does not apply to accounts raised for Kerb and Guttering and Cemetery Fees. The repayment of outstanding accounts in this regard are to be dealt with on a case by case basis.

**10. Accountability, Roles & Responsibility**

**Elected Council**

Council is responsible for approving Council Policies.

**General Manager, Executive and Management Teams**

The Chief Executive Officer has the power to sub-delegate certain functions to other staff members. In this case, The CEO delegates responsibility for approving the debt recovery process to collect outstanding rates and charges to the Manager, Finance & Technology and Revenue Officers.

**Management Oversight Group**

Not Applicable.

**Individual Managers**

Not Applicable.

**11. Definitions**

Not Applicable.

**12. Related Documents, Standards & Guidelines**

Not Applicable.

**13. Version Control & Change History**

| Version | Date     | Modified by | Details                                      |
|---------|----------|-------------|--|
| V1.0    | 23/5/03  | Council     | Adoption of Original Policy (Res No. 231/03) |
| V2.0    | 18/11/04 | Council     | Review/Amended (Res No. 584/04)              |
| V3.0    | 23/4/08  | Council     | Review/Amended (Res No. 190/08)              |
| V4.0    | 19/12/12 | Council     | Review/Amended (Res No. 525/12)              |

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|------|----------|---------|---------------------------------|
| V5.0 | 27/3/13  | Council | Review/Amended (Res No. 69/13)  |
| V6.0 | 27/4/16  | Council | Review/Amended (Res No. 92/16)  |
| V7.0 | 23/08/17 | Council | Review/Amended (Res No. 168/17) |
| V8.0 | 28/10/20 | Council | Review/Amended (Res No. 231/20) |
| V9.0 | 21/12/22 | Council | Re adoption (Res No. 248/22)    |