



## **8. FINANCE**

Policy 8.4

DEBT RECOVERY

Version 4

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### 8.4 DEBT RECOVERY

#### Objective of this Policy

The objective of this Debt Recovery Policy is to ensure consistency, fairness, integrity and confidentiality of all proceedings for both Council and the relevant debtor as well as to maximize the collection of outstanding debts and optimize Council's cash flow.

Council's aim is to be sympathetic and helpful to debtors suffering genuine financial hardship.

Council at all times will comply with relevant legislation, including the *Local Government Act 1993 (NSW)* ("the Act").

#### Scope of this Policy

This policy relates to all parties that owe monies to Council (debtors), including but not limited to:

- Ratepayers (including other charges linked to the property); and
- Sundry Debtors

Some aspects of the debt recovery procedure will differ according to the type of debtor so they are treated separately in this policy.

#### Rates and Charges

##### Payment of Rates and Charges

Council will levy rates and charges by service of a rates notice in accordance with section 546 of the Act. Council will endeavour to serve those 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:

- August
- November
- February
- May

If Council serves the rates notice after 1 August then the provisions of section 562(4) of the Act apply.

## **Instalment Reminder Notices**

Under section 562(5) of the Act, Council must send instalment reminder notices to each person who is paying their rates and charges by instalment on or before 31 October, 31 January and 30 April.

## **Final Notice**

A Final Notice (in a form to be approved) is to be sent to any ratepayer who has not, within fourteen 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 that the amount is payable.

The Final Notice will:

- (a) Set out the amount of the instalment;
- (b) Demand payment of the instalment within fourteen days of the date of the notice (though fourteen days will actually be allowed);
- (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.

## **Demand Letter**

A Demand Letter is to be sent to any ratepayer who has not, within fourteen days of the Final Notice:

- (a) Paid the amount of any instalment; or
- (b) Come to an arrangement for payment of the instalment by periodical payments; 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.

As Council has retained the services of an external law practice to assist them with the debt recovery function that law practice is to prepare and send the Demand Letters on their letterhead.

The Demand Letter will:

- (a) Set out the amount of the instalment;
- (b) Demand payment of the instalment within seven days of the date of the notice;

- (c) Urge the ratepayer to contact Council's external law practice if they believe that the instalment has been paid or is not payable; and
- (d) Urge the ratepayer to contact Council's external law practice 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 law practice to commence legal action with the issue and service of a statement of claim against any ratepayer who is not a pensioner, with an instalment (or instalments) unpaid and owing greater than \$500.00 (including any accrued interest); and who has not:

- (a) Come to an arrangement for payment of the instalment by periodical payments; 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.

### **Service of Statements of Claim**

Council's lawyers are to be instructed to serve statements of claim by post where possible. If postal service is unsuccessful for any reason personal service is to be attempted.

### **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 Judgement**

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 Judgement**

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) "Rent for Rates" under section 569 of the Act; or
- (h) Such other method as Council is advised.

### **Duplicate Matters**

As ratepayers who have not paid instalments as required will be referred for action quarterly, in the interest of keeping the costs they have to pay should legal action be required to a minimum, Council adopts the following:

1. If legal action has already commenced to recover the previous instalment then no further legal action 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 legal action has not already 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 legal action.

### **Payment of Debt and not 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 law firm is to send the relevant ratepayer a letter setting out the amount payable for costs and demanding payment of same within seven days (though fourteen days will be allowed).

If the ratepayer does not make payment of those costs within fourteen days of the sending of the letter legal action is to be continued for the recovery of those costs.

### **Arrangements**

Under section 564 of the Act Council is able to come to an arrangement for the payment of amounts owing by way of periodical payment.

Council is to negotiate such arrangements with the aim to be that, where possible, all arrears (including any costs incurred in legal proceedings) are to be paid within the current rating year – together with the current year's rates and charges. Where the calculated arrangement payment would cause the ratepayer to suffer hardship, the arrangement payments should be calculated over the 12 month period from the date of the arrangement, with the arrangement period not to exceed 24 months from the date of the arrangement.

Any arrangement is to be confirmed in writing to the address for service of the ratepayer. The confirmation is to:

1. Set out the amount payable under the arrangement;
2. Confirm that the arrangement only applies to that amount payable;
3. Set out the arrangement itself;
4. If applicable, confirm that it is a condition of the arrangement that all future rates and charges will be paid when due;
5. Urge the ratepayer 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 ratepayer default on the arrangement.

Council is to send the confirmation letter on its letterhead - unless the matter has already been referred to its external law firm for action, in which case the external law firm is to send the confirmation letter.

Council is to record the arrangement in the System and Property file for each relevant property.

### **Defaulted Arrangements**

Should a ratepayer default on a payment arrangement then:

- (a) If the ratepayer has not been referred to the external law firm for action, recovery action will continue from the last stage it reached; and
- (b) If the ratepayer has been referred to the external law firm for action, that external law firm will send a letter demanding payment of the missed instalment within seven days and if it is not complied with, unless the ratepayer has taken some step that delays the process, recovery action will be continued from the last stage it reached.

### **Hardship**

The Act provides a number of circumstances where a discretion is available to Council to release ratepayers from some (or all) of their obligations due to what has come to be termed hardship. The sections include:

- Section 567 – writing off accrued interest
- Section 577 – concessions for pensioners
- Section 582 – waiver or reduction of amounts owing by pensioners

Any application by a ratepayer on the grounds of hardship, which must be written, are to be referred to the Chief Financial and Information Officer (CFIO) following a recommendation from the Financial Services Manager for consideration by Council in accordance with Council's adopted procedures.

## **Sale of Land for Rates**

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

## **Interest**

In accordance with section 566 of the Act, interest will accrue daily on any overdue rates and charges at the maximum allowable rate.\

## **Sundry Debtors**

### **Invoicing & Statements**

Council will issue invoices to sundry debtors weekly.  
Council will provide a monthly statement to sundry debtors.

### **Due Date for Payment**

Invoices sent to sundry debtors are due for payment thirty days from the date of issue of the invoice.

### **Reminder Letter**

A Reminder Letter is to be sent to any sundry debtor who has not made payment of any invoice within fourteen days of the due date for payment. The Reminder Letter, which is to be on Council letterhead, will set out the amount owing and demand payment of same within seven days.

### **Demand Letter**

A Demand Letter is to be sent by Council's legal firm to any sundry debtor who has not made payment of the amount owing within fourteen days of the date of the Reminder Letter. The Demand Letter will demand payment within seven days and advise that Council may take legal action to recover the amount without further notice if it is not paid within that time.

### **Commencement of Legal Action**

Council is to instruct its external law practice to commence legal action with the issue and service of a statement of claim against any sundry debtor with an amount owing greater than \$500.00 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
- (d) Taken some action to dispute that the amount is payable.

### **Service of Statements of Claim**

Council's lawyers are to be instructed to serve statements of claim by post where possible. If postal service is unsuccessful for any reason personal service is to be attempted.

## **Obtaining Judgement**

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 Judgement**

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 at 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.

Council is to send the confirmation letter on its letterhead - unless the matter has already been referred to its external law firm for action, in which case the external law firm is to send the confirmation letter.

### **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.

### **Interest**

If the agreement by which Council provided the services that led to the sundry debt being incurred does not provide for interest to be charged, Council is to claim interest in any legal proceedings taken as allowed under relevant legislation at the applicable rate.

If the agreement by which Council provided the services that led to the sundry debt being incurred provides for interest to be charged, Council is to charge the interest under the agreement to the sundry debtor. However, Council at its discretion may choose to alternatively claim interest in any legal proceedings taken as allowed under relevant legislation at the applicable rate.

## **Inbound Contact**

To avoid confusion, double-handling and adverse legal issues, once a matter has been referred to Council's external law firm for collection all inbound contact from debtors is to be handled by them. Council staff are to advise such debtors to deal directly with Council's external law firm and, if necessary, provide appropriate contact details for same.

## Delegation of Authority

Council hereby expressly authorises its General Manager, CFIO, Financial Services Manager or such person as any of them delegates such authority to take such action as they deem fit to achieve the purposes of this policy with the adherence to same.

<b>Maintained by Department:</b>	Corporate & Community	<b>Approved by:</b>	Council		
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