



## **8. FINANCE**

Policy 8.4

### **DEBT MANAGEMENT AND HARDSHIP POLICY**

**Version 6**

## 1. PURPOSE

The purpose of this Policy is to:

1. Ensure consistency, fairness, integrity and confidentiality in the management and recovery of debt for both the ratepayer / debtor and the Council.
2. Assist Council to fulfil the statutory requirements of the *Local Government Act 1993* (the LG Act) with respect to the recovery of rates and annual charges, and any other debts.
3. Maximise collections of outstanding debts and to optimise Council's cash flow.
4. Establish the framework and circumstances in which relief may be provided in cases of genuine financial hardship. While Council will not reduce or waive rates, Council will be empathetic and helpful in the consideration of alternative approaches.

## 2. APPLICATION

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

This Policy applies to Council staff with delegated responsibility for carrying out associated administration, and any debt recovery agents who may act on behalf of Council.

## 3. PRINCIPLES

### 3.1 Application of Principles

No one principle should be applied to the detriment of another. Principles must be collectively considered and applied to the extent that is reasonable and practicable in the circumstances.

### 3.2 Billing

#### 3.2.1 Rates and Water Charges

- Rates and Water charges include all amounts charged in accordance with Section 546 of LG Act.
- Annual Rate and Charges notices and quarterly Instalment notices will be issued in accordance with Section 562 of the LG Act.
- Ratepayers are encouraged to receive Rate and Water Charges notices electronically.

### **3.2.2 Accounts Receivable (Invoices)**

- Invoices are issued at the time they are raised (date of invoice) and will be addressed to the address provided to Council by the customer.
- Monthly statements are issued for any accounts that have a balance outstanding (and also for any accounts in credit) at the end of each month and reminder notices may be issued for outstanding invoices.
- Debtors are encouraged to receive invoices / statements electronically.

## **3.3 Collections**

### **3.3.1 Payment Due Dates**

- Instalment due dates for the payment of Rates and Water Charges are prescribed via Section 562 the LG Act.
- Payment can be made by a single (in-full) annual amount or by quarterly instalments.
- Payment terms for Invoices will be 30 days unless stipulated otherwise on the Invoice.
- A payment Reminder Notice will be issued to ratepayers who do not pay a quarterly Instalment by the Instalment due date.
- A monthly 'statement' of account will be provided for Invoice debtors with a payable or credit balance (statements not necessarily issued for accounts with a zero balance).

### **3.3.2 Payment Methods**

- Council accepts all forms of legal tender for the payment of Rates and water notices. Council provides a range of options to pay electronically and continue to provide the option for ratepayers to pay cash and/or cheque at any Australia Post outlets.
- All Council facilities, venues and offices are equipped to process payments by debit or credit card.
- Direct Debit is available to ratepayers for both annual payment in full and the quarterly instalment schedule.
- BPAYs scheduling functionality is available for customers to pay by their preferred amount and frequency.

### **3.3.3 Allocation of Payments**

- Rates and Water Charges payments are allocated by apportioning debts in the order in which they became due as per Section 568 of the LG Act.

### **3.3.4 Flexible Payment Arrangements**

- Council will encourage and consider periodical payment arrangements outside of the established due dates for both Rates and Water Charges (section 564 of the LG Act) and Invoice related debts.
- Periodical payment arrangements can be negotiated in writing or over the phone. The agreed payment arrangement will be noted in Council's records and customers will be required to sign and return an arrangement agreement form accepting the terms of the payment arrangement. If the form is not signed and returned to Council, overdue accounts will be referred for Debt Recovery action.
- Where a customer is having difficulty in meeting their payment obligations with Council the onus is on the customer to make early contact with Council to establish a suitable alternative payment arrangement.
- Where contact is made, Council's officers will work with the customer in exploring options towards establishing a mutually acceptable arrangement for the payment of their outstanding balance.
- Where a customer has not honoured a previous payment arrangement/s, Council will exercise discretion in choosing whether to accept a further (new) payment arrangement or to reject the offer of arrangement and commence legal recovery proceedings.
- Council will consider both the arrears and current rates (total amount) in negotiating a payment arrangement, payment amount and repayment frequency, with a weekly, fortnightly, or monthly payment frequency.
- The repayment period for a flexible payment arrangement is limited to the current financial year, or up to 12 months. Only in exceptional circumstances will an arrangement period of up to 24 months be considered within the scope of a flexible payment arrangement.
- Interest will continue to be charged on accounts while subject to a payment arrangement.

### **3.3.5 Interest Charges**

- Interest will be charged per annum calculated daily on overdue balances in accordance with Section 566 of the Local Government Act 1993.

### **3.4 Legal Proceedings**

- Legal proceedings will not be taken against Eligible Pensioners. Eligible Pensioners will be served all routine Rates and Charges and Instalment Reminder notices and overdue balances relating to Eligible Pensioners will remain subject to interest charges. Pensioners in arrears will be encouraged to enter into a satisfactory payment arrangement.
- Where a ratepayer or invoice debtor fails to pay a debt in full or fails to make a payment in accordance with an accepted payment arrangement (fails to keep the arrangement) and does not proactively notify Council of their situation, the total amount outstanding on the account will become subject to legal recovery proceedings.
- Council may engage a Debt Recovery Agent or law firm to conduct all or part of any legal proceedings on behalf of the Council.
- Costs incurred by the Council in connection with legal recovery proceedings will be added to the account where recoverable.
- Legal recovery proceedings for the collection of overdue balances will be initiated subject to the following criteria:
  - i) Rates and Charges must have at least two instalments outstanding, and the costs associated with the initiation of legal recovery being less than 50% of the overdue amount.
  - ii) Other debts must be overdue for greater than 90 days, and the amount overdue is economical for Council to pursue.

Typical recovery events that Council will initiate to recover debts owed are shown in the table below. The recovery timeline includes a mix of non-legal (proactive) and legal steps. Council may deviate from this typical approach in response to the merits of the individual case.

Step	Rates and Charges	Invoices
<b>Non legal proactive action</b>	Payment Reminder Notice (following Instalment due date and prior to the initiation of legal recovery proceedings), can include phone calls or other forms of direct contact.	Monthly Statement of Account – each month 30, 60, 90 days aging. Late payment fees added to accounts where relevant. Can include phone calls or other forms of direct contact.
<b>Legal 1</b>	Letter of Demand (LOD) (inc. Letter of Demand to Property Address where mailing address is not the property)	Letter of Demand (LOD)
<b>Non legal proactive action</b>	Pre-Statement of Claim contact with ratepayer where current contact details are readily available and appropriate for use within the limits of the <i>Privacy and Personal Information Protection Act 1998</i> . Contact may include SMS reminder messages, telephone calls and email communication.	Pre-Statement of Claim contact with the debtor where current contact details are readily available and appropriate for use within the limits of the <i>Privacy and Personal Information Protection Act 1998</i> . Contact may include SMS reminder messages, telephone calls and email communication.
<b>Legal 2</b>	Statement of Claim (summons)	Statement of Claim (Summons)
<b>Non legal proactive action</b>	Pre-Judgement notification letter, can include phone calls or other forms of direct contact.	Pre-Judgement notification letter, can include phone calls or other forms of direct contact.
<b>Legal 3</b>	Judgement	Judgement
<b>Legal 4</b>	The most appropriate enforcement action will be applied to each case at Stage 4 of legal recovery proceedings, e.g.: <ul style="list-style-type: none"> <li>• Examination Summons</li> <li>• Garnishee</li> <li>• Writ</li> <li>• Wind Up Proceedings</li> <li>• Bankruptcy</li> <li>• Rent for Rates (Section 569 of the <i>Local Government Act 1993</i>)</li> <li>• Sale of Land (Section 713 of the <i>Local Government Act 1993</i>)</li> <li>• Any other action available through the legal system deemed appropriate to the circumstances.</li> </ul>	The most appropriate enforcement action will be applied to each case at Stage 4 of legal recovery proceedings, e.g.: <ul style="list-style-type: none"> <li>• Tribunal orders for property rents (if applicable).</li> <li>• Examination Summons</li> <li>• Garnishee</li> <li>• Writ</li> <li>• Wind Up Proceedings</li> <li>• Bankruptcy</li> </ul> <p>Any other action available through the legal system deemed appropriate to the circumstances.</p>

## 3.5 Financial Hardship

- Council recognises cases of genuine financial hardship require respect and empathy.
- Customers in financial distress will be referred to budgetary and community support services as appropriate. For example, Money Smart, Legal Aid, community legal centre's and/or local charities.

### 3.5.1 Financial Hardship Applications

- A ratepayer seeking consideration of financial hardship may apply to the Council requesting relief, where:
  - i) The property for which the hardship application applies is the principal place of residency of the applicant/s;
  - ii) Council will not accept hardship applications for investment properties or vacant blocks of land; arrangements to pay must be entered; and
  - iii) The applicant must be the owner or part owner of the property and be liable for the payment of rates on the property; and
  - iv) The application includes supporting evidence from a suitably qualified financial counsellor\* including a recommendation to Council that relief be provided.

***\*The financial counsellor, and/or their agency, must meet the requirements for an Australian Credit Licence exemption under the National Consumer Credit Protection Act 2009.***

- Where financial hardship relates to debts other than Rates and water charges, the invoice debtor will be referred to a small business financial counsellor and/or the small business helpline. Any subsequent application for hardship relief will be considered on a case-by-case basis. Council may ask the applicant to provide various documents in evidence of their financial situation.
- Applications that satisfy the criteria set out in this Policy will be approved.
- Legal proceedings will pause while the application is assessed and stop if approved.
- Hardship Application approvals will expire 12 months after the date of the granted approval and are not transferable to any other property.
- Ratepayers experiencing ongoing financial hardship can reapply to receive an additional 12 months of relief.

### 3.5.2 Hardship Relief Measures

The mechanisms available to Council for relieving financial hardship, and the approach that Council takes in relation to the available mechanisms, is shown in the table below.

LG Act	Application	Provision / mechanism	Council approach
<b>564 and 567</b>	Rates and Charges	Interest may be waived on the completion of a successful payment arrangement. Interest may be waived if the person was unable to pay on time for reasons beyond their control or if the payment of accrued interest would cause hardship.	Council offers alternative payment arrangements where mutually agreed. In doing so, Council will apply one or more of the following relief measures: An extension of payment due date/s, a stall of legal action, and/or a write off or reduction of some or all accrued interest.

## 4. DELEGATION OF AUTHORITY

### 4.1 Responsible Officer

Council hereby expressly authorizes the General Manager, CFIO, Financial Services Manager, Revenue 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.

## 5. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the NSW *State Records Act 1998* and *Privacy and Personal Information Protection Act 1998* through its Access to Information Policy and Privacy Management Plan.

Your personal information may be given to Council's Debt Recovery Agents to be used in conjunction with debt collection, if necessary.



## 6. RELEVANT LEGISLATION AND REGULATIONS

- *Local Government Act 1993 (NSW)*
- *Local Court Act 2007*
- *Bankruptcy Act 1966;*
- *Corprations Act 2001;*
- *Conveyancing Act 1919.*
- *Real Property Act 1900.*
- *Local Government Regulations 2021 (NSW)*
- *State Records Act 1998 (NSW)*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Privacy and Personal Information Protection Regulation 2019 (NSW)*
- *Uniform Civil Procedures Rules 2005 (NSW)*
- *Office of Local Government, Revenue Raising Manual 2007 (NSW)*
- *Government Information (Public Access) Act 2009 (NSW)*
- *National Consumer Credit Protection Act 2009 (Cth)*
- *Office of Local Government Debt Management and Hardship Guidelines 2018 (NSW)*
- *Australian Competition and Consumer Commission (ACCC) Debt Collection Guideline 2021*
- *Other relevant legislation*

## 7. DEFINITION OF TERMS

Term	Meaning
<b>LG Act</b>	<i>Local Government Act 1993 (NSW)</i>
<b>Debtor</b>	An individual or non-individual liable to pay monies to Council, usually a customer liable to pay an invoice but may also refer to a ratepayer liable to pay a Rates and Charges notice.
<b>Eligible Pensioner</b>	As defined in section 134 of the <i>Local Government (General) Regulations 2021</i> .
<b>Examination Summons</b>	A legal document issued by a Court in New South Wales, in accordance with the <i>Civil Procedure Act 2005 (NSW)</i> and the <i>Uniform Civil Procedure Rules 2005 (NSW)</i> , requiring a person against whom a judgment or order has been made, to attend Court for the purpose of being examined with respect to their financial
<b>Garnishee</b>	Legal document issued by the court ordering third parties who hold funds on behalf of the defendant (eg. an employer) to pay funds to the council. Garnishees can be issued against a defendant's wages or bank.
<b>Hardship</b>	Hardship is any situation where an individual is having difficulty paying legally owed debt. This can result from life changes (for example, because of illness, unemployment or changed financial circumstances) restricting the short-term capacity to pay.

Term	Meaning
<b>Judgement (or default judgement)</b>	In cases where the ratepayer does not respond to a Statement of Claim issued to them, the Court may make a default judgment whereby it will decide without having the matter heard in Court.
<b>Notice of Demand / Notice of Intent</b>	Demand letter from a council and/or a council's legal recovery representative issued in accordance with the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC) guidelines. A formal letter clearly setting out the basis for the debt, the amount of the debt and a
<b>Rent for rates</b>	Section 569 of the <i>Local Government Act 1993</i> allows a council to order tenants of properties with overdue rates to pay rent to a council in lieu of unpaid rates, under specific circumstances
<b>Payment arrangement</b>	A negotiated agreement to pay regular amount of money as a course of action.
<b>Sale of Land</b>	In accordance with section 713 of the <i>Local Government Act 1993</i> , a council has the authority to sell land which has any unpaid rates or charges for more than 5 years, or 1 year for vacant land, where the owing debt exceeds the land valuation.
<b>Statement of Claim</b>	A legal document issued by a Court in New South Wales, in accordance with the <i>Civil Procedure Act 2005 (NSW)</i> and the <i>Uniform Civil Procedure Rules 2005 (NSW)</i> , commencing legal proceedings which identifies the relief claimed.
<b>Winding up proceedings</b>	Winding up is a process where a company's outstanding matters are finalised, its assets liquidated, and it ceases to exist as a company.
<b>Writ</b>	An order issued by a Court giving authority to a Court appointed sheriff to request payment of a judgment debt by a specified time after which the sheriff will seize goods to the value of the judgment debt.

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