

REF: CM72/11

DEBT RECOVERY POLICY

Report of Manager Finance (PL) 12/05/11

FI-914.05.002

PRECIS

Council undertakes recovery actions for overdue rates and charges in accordance with Council's Debt Recovery Policy and adopted recovery processes.

A review and rewrite of Council's Debt Recovery Policy has been completed in conjunction with members of Council's Legal team and is presented in this report for adoption by Council.

RECOMMENDATION

Council adopt the updated Debt Recovery Policy for the management of overdue rates and charges.

BACKGROUND

Council's rates revenue makes up approximately 68% of its total operating income. It is important that the recovery of rates is consistent and effective to ensure Council maintains sufficient funds to support the delivery of its services and capital projects. Council monitors the performance of recovery actions undertaken to manage the collection of overdue rates and charges and has set a target to maintain rate arrears below 5% at 30 June each year.

Council's results measured against this KPI over the last five years are as follows:

As at 20/06/2006	As at 20/06/2007	As at 20/06/2008	As at 20/06/2009	As at 20/06/2010
5.59%	6.39%	6.57%	6.75%	5.91%

It is considered that changes made to the debt recovery process in 2009 have had some impact on halting the upward trend in rates arrears as reflected in the 2009/10 result. These efforts have not had sufficient impact to return Council's results to targeted level.

While these procedural changes have been implemented in recent times, Council's Debt Recovery Policy has not changed since its inception in 1983. A review and rewrite of Council's Debt Recovery Policy has been completed in conjunction with members of Council's Legal team. The objective of the new Policy is to:

- Provide a comprehensive and standardised practice to recover unpaid rates and charges.
- Assist ratepayers suffering genuine financial hardship to apply to Council for assistance.
- Ensure Council recovers rates and charges, including costs, interest and expenses in a cost effective and timely manner.

The revised Policy provides:

- that a Debt Recovery Committee be established to assist in making determinations under the Policy. The Committee will make determinations regarding recovery actions and provide guidance to the Debt Recovery officers in the administration of debt recovery processes.
- that Council commences its legal recovery process where overdue rates and charges reach a prescribed debt recovery amount fixed by the Debt Recovery Committee.

ITEM 13

- guidelines for payment arrangements of overdue rates and charges and sets time lines for completion of payment arrangements. This includes special provisions for ratepayers suffering financial hardship.
- guidelines for how payment arrangements will be made for ratepayers who come under legal action and those who default on payment arrangements.
- that interest charges to be recovered on all overdue rates and charges, unless exemption is agreed to by the Rate Hardship Committee.
- that where Council incurs legal costs filing legal documents at the local court the legal costs are recoverable from the ratepayer in most cases.
- that the lodgement of legal documents be authorised and signed off by Council’s in house solicitor.
- that professional costs for all debt recovery proceedings be charged.

In addition to court fees, Council’s in house legal professional costs will be charged to the ratepayer at the prescribed rates. By way of example, Table 1 below shows the current prescribed charges where there are two owners of a property (which is the most common situation) and a debt greater than \$1000.

Table 1

Legal Action	\$ Court Fee	\$ Professional Costs	\$ TOTAL
Prepare and file a statement of claim at the local court	153.00	233.60	386.60
Enter up judgement	0.00	105.20	105.20
Issue a writ	67.00	235.00	302.00
TOTAL	220.00	573.80	793.80

Note: Professional costs are calculated according to debt ranges; therefore as the debt range increases, so do the costs.

A survey of surrounding Councils, (Shellharbour, Shoalhaven, Kiama, Wingecarribee and Sutherland) confirmed professional costs incurred in their legal process are charged to the ratepayer.

Request to set aside a default Judgement

Council’s existing Policy makes no provision for judgement debts to be set aside. Where Council has entered up a default judgment against a ratepayer, the court on sells that information to credit reference organisations. As a result of this, a ratepayer’s ability to obtain credit can be affected for a period of five years.

The proposed Policy sets out guidelines on how Council can assist ratepayers undertake the removal of their judgement debt.

Policy Implementation

The implementation of the proposed Debt Recovery Policy is anticipated to have significant influence on the behaviour pattern of some ratepayers not paying their rates on time.

Implementation of the proposed Debt Recovery Policy will be carefully managed to ensure:

- All debt recovery processes and procedures align with the Policy and are in writing.
- The Policy is applied fairly and consistently by Council staff.
- Ratepayers who fall under the Policy are informed in writing by Council about the costs and consequences of not paying their rates on time prior to legal recovery actions commencing.

PROPOSAL

Council adopt the proposed updated Debt Recovery Policy for the management of overdue rates and charges.

CONSULTATION AND COMMUNICATION

Policy development included input from:

General Counsel	Rates Management Manager
Legal Counsel	Senior Debt Recovery Officer
Manager Finance	Debt Recovery Officer

Various debt recovery policies sourced from other Councils.

Endorsement by Executive Management Committee

RISK ASSESSMENT

The risk to Council of not collecting rates and charges is minimised by the ability of Council to recover these debts as a secured charge over the land - that is, the land can be sold to recover the debt.

FINANCIAL IMPLICATIONS

The costs and recoveries are consistent with Council's Draft Management Plan currently on exhibition for 2011/12.

CONCLUSION

The existing Debt Recovery Policy was adopted in 1983. The proposed Debt Recovery Policy provides Council with a flexible framework to manage the collection of overdue rates and charges in an efficient and timely manner, as well as recognise cases of genuine financial hardship that exists amongst our ratepayers.

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ATTACHMENTS

1. Proposed Debt Recovery Policy



DEBT RECOVERY POLICY

COUNCIL POLICY

BACKGROUND

Council relies on Rates and Charges to fund its services and facilities for our community. This policy provides the procedure for Council to recover unpaid Rates and Charges.

OBJECTIVE

The objective of this policy is to:

Provide a comprehensive and standardised practice for Council to recover unpaid Rates and Charges;

Assist ratepayers suffering genuine financial hardship to apply to council for assistance;

Ensure Council recovers Rates and Charges, including costs, interest and expenses in a cost-effective and timely manner; and

Fulfil the requirements of the Local Government Act 1993 and other relevant legislation.

POLICY STATEMENT

Council recognises that it is in the community interest to maximise the collection of Rates and Charges and to recover interest, costs and expenses where these are necessarily incurred by Council. However, Council recognises that the collection of Rates and Charges needs to be balanced with the identification and consideration of individual cases of genuine hardship.

STATEMENT OF PROCEDURES

Rates and Charges

1. Rates and Charges include all amounts charged by way of Rates Notice in accordance with Section 546 of the Local Government Act 1993 ("Act").

Rates Notice

2. Rates Notices must be issued prior to 31 July each year in accordance with Section 546 of the Act.
3. Instalment Notices must be issued one month prior to the instalment due dates (31 August, 30 November, 28 February and 31 May each year) in accordance with Section 562 of the Act.

Recovery of Overdue Rates

Recovery proceedings will commence immediately after the due date of the rate instalment has passed and where the instalment remains partly or fully unpaid –

4. A Reminder Notice/letter will be issued by Council to each ratepayer who has an outstanding instalment balance and who has not entered into a Payment Arrangement with Council
5. Where Rates and Charges remain unpaid equivalent to or greater than an amount fixed from time to time by the Debt Recovery Committee and no Payment Arrangement is agreed within 14 days of the Reminder Notice/Letter, Council will issue a Final Reminder Notice/Letter. The Final Reminder Notice/Letter will allow the ratepayer 14 days to pay or to enter a Payment Arrangement.
6. Where such Rates and Charges remain unpaid and no Payment Arrangement is agreed within 14 days of the Final Reminder Notice/Letter, Council will commence debt recovery proceedings.

Debt Recovery Proceedings

7. As outlined in clause 6 Council will -
 - 7.1. In the case of an individual ratepayer, prepare issue and serve a Statement of Claim to recover all unpaid Rates and Charges, as well as interest and costs.
 - 7.2. In the case of a corporate ratepayer, for all unpaid Rates and Charges, above the amount fixed from time to time by the Debt Recovery Committee refer the matter to its Legal Section to commence recovery proceedings in the Federal Court of Australia.
 - 7.3. Only delegated officers of council have the authority to provide direction/instructions to its legal section once legal proceedings have commenced.
8. Where judgement is entered in Council's favour, Council will seek to recover the judgement debt through appropriate recovery actions. Legal costs and expenses incurred in Debt Recovery Proceedings will be charged against the property (including the expenses of tracing a person in accordance with Section 605 of the Act).

9. Where overdue rates and charges remain unpaid for a period of more than five years for occupied land and more than one year in the case of vacant (provided the overdue rates and charges being more than the value of the land) council may sell the land in accordance with section 713 of the Act provided -
 - 9.1. Reasonable attempts have been made to locate the owner of the land where their current address is unknown to Council or
 - 9.2. Debt recovery actions have been undertaken by council and the overdue rates and charges remain unpaid.
10. The debt recovery committee will make determinations in respect of land held under sale for overdue rates and prepare reports for Council as required.
11. Council will not commence Debt Recovery Proceedings for any amounts that have been outstanding for periods greater than 20 years (Section 712(1) of the Act).

Payment Arrangements

12. Council may enter into a Payment Arrangement with any ratepayer in accordance with Section 564 of the Act.
13. Council may grant requests for extensions of time to pay an overdue rate instalment in full provided the extension will not be greater than 30 days after the due date of the rate instalment. Only one extension can be granted to a ratepayer during an annual rating period.
14. Council may agree to Payment Arrangements including weekly, fortnightly or monthly payments provided that -
 - 14.1. Reasons for the payment arrangements are provided to Council in writing;
 - 14.2. Council determines the reasons are acceptable; and
 - 14.3. The ratepayer agrees that the outstanding debt must be extinguished in full within 1 to 6 months including rate instalments that may become due in that time frame. Where a ratepayer is able to demonstrate genuine financial hardship, Council may consider longer term Payment Arrangements. To apply the ratepayer must complete a "Hardship Rate Relief" application.
15. Notwithstanding clause 14 Council can, at its discretion, accept over the phone payment arrangements from ratepayers. However, to formalise the arrangement, Council must send to the ratepayer Council's payment agreement form setting out the terms and conditions of the agreement made over the phone. The ratepayer must sign the agreement and return it to council within 14 days of the posting date of the agreement; otherwise the agreement is taken to be not valid.
16. Once legal proceedings have commenced against a ratepayer only delegated officers of council can negotiate payment arrangements with that ratepayer. Any agreement made must be formalised in writing in a manner similar to clause 14.
17. Following the commencement of legal proceedings Council may agree to payment arrangements, subject to the ratepayer entering into a direct debit arrangement with Council and the ratepayer agreeing to pay Council's up to date legal costs relating to the proceedings. If a ratepayer objects to the direct debit arrangement, the ratepayer must provide reasons for their objection in writing and propose an alternative payment method. Council will consider the alternative payment method and will advise the ratepayer whether it is accepted or rejected.

Default of Payment Arrangement

18. Where a ratepayer is in default of a payment arrangement (that is, the debtor fails to meet the payments within the timetable agreed), a Default Letter will be sent to the ratepayer. The default letter will allow the ratepayer 7 days to pay or re enter into a Payment Arrangement.
19. Where the debtor fails to comply with the terms of the Default Letter, Council will commence or reinstate legal proceedings to recover the debt.
20. Council will not enter into any further payment arrangements where a ratepayer is in default of a payment arrangement more than twice within a twelve month period.
21. A ratepayer aggrieved by clause 20 may appeal using Council's prescribed format. The Debt Recovery Committee must consider the appeal within 14 days of it being received by Council and notify the ratepayer of its decision.

Interest and Costs

22. Interest charges accrue on all overdue Rates and Charges on a daily basis in accordance with section 266 of the Act. Interest charges must be recovered on all amounts unless an exemption is agreed to by Council after considering an application for Hardship Rate Relief from the ratepayer.
23. For all Debt Recovery Proceedings, Council will seek to recover its costs in accordance with Section 329 of the Legal Profession Act 2004 and at the rates prescribed by section 329 of the Legal Profession Regulations 2005.

Request to set aside a Default Judgement.

24. Council will apply to have default judgement entered against a ratepayer who fails to file a defence to a statement of claim within the required time.
25. To request that default judgement be set aside a ratepayer must follow the Local Court procedure. A Ratepayer can be referred to the Consumer Credit Legal Centre fact sheet outlining the process.(see <http://www.cclcnsw.org.au/fact-sheets/the-local-court/making-an-application-to-set-aside-judgment/>).
26. Council may discontinue legal proceedings where the judgement debt has been paid in full and the judgement debt has been set aside by the local court.
27. Council may notify any credit reporting agency that a judgement debt has been paid in full if requested to do so by a ratepayer.

Special Provisions – Eligible Pensioners

Eligible pensioners as defined in the Local Government Act, 1993 dictionary will not be included in the legal recovery actions under this Policy. Interest charges will apply to accrued rates and charges in accordance with section 266 of the Act unless exemption has been agreed to by Council after considering an application for Rate Hardship from the Eligible Pensioner.

Debt Recovery Committee

The purpose of the Debt Recovery Committee is to-

- From time to time fix the amount of overdue rates and charges, that when reached, Council will instigate the commencement of legal proceedings against the ratepayer.
- Consider appeals from ratepayers who have defaulted on payment arrangements as outlined in clause 18 of this policy.

- From time to time review debt recovery processes and procedures and ensure agreed changes are implemented.
- Make determinations in respect of land held under sale of land for overdue rates and prepare reports for Council.

The Committee will consist of three Council officers. A representative from each of the following divisions of Council will be selected to be a member of the committee -

- Finance Division
- Governance and Information
- Community Cultural and Library

Where circumstances prevent a member of the Committee attending a meeting, the member must nominate a substitute from his/her division to attend on their behalf.

If requested to do so the General Manager may review and change any decision of the Committee. The General Manager's decision is final.

Related Council Policy

- Rate Hardship

SUMMARY SHEET

RESPONSIBLE DIVISION	Finance Division
DATE ADOPTED ON BEHALF OF COUNCIL	
DATE OF PREVIOUS ADOPTION(S)	
DATE FOR REVIEW	
PREPARED BY	Rates Management Manager
AUTHORISED BY	Manager Finance