

ITEM 5 POLICY REVIEW: DEBT RECOVERY AND HARDSHIP ASSISTANCE COUNCIL POLICY

This report provides a proposal to add and make changes to provisions in Council's Debt Recovery and Hardship Assistance Council Policy to provide further guidance in relation to debt recovery functions and collections of debt. As part of the Policy review, consideration has been given to how Council can better meet the expectations of our customers in consideration of the Debt Management and Hardship Guidelines released by the Office of Local Government in September 2018.

## RECOMMENDATIONS

- 1 The revised Debt Recovery and Hardship Assistance Council Policy be adopted.

## REPORT AUTHORISATIONS

Report of: Brian Jenkins, Chief Financial Officer

Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

## ATTACHMENTS

- 1 Revised Council Policy - Debt Recovery and Hardship Assistance

## BACKGROUND

Council's Debt Recovery and Hardship Assistance Council Policy was first adopted by Council on 22 June 2015 and has been reviewed on two previous occasions (25 July 2016 and 3 April 2017) to improve our debt management services. During both of these reviews there have been consideration of better practice and how we can reasonably meet our customer expectations whilst still achieving appropriate levels of recovery measured against the Office of Local Government's annual performance benchmark of 5% for overdue rates and charges.

One of the improvements to the Policy introduced in 2016 was a deferral scheme for eligible pensioners. The scheme allows pensioners to enter into a formal agreement to defer their rate debt against the property until either their passing, pensioner eligibility is lost, or the property is sold. The deferral allows the pensioner to make affordable payments convenient to them without the concern of falling into legal recovery process. There are currently 189 pensioner ratepayers who have signed agreements for the scheme and many others still behind in payment.

One of the issues with deferral both for pensioners, and often potential beneficiaries, is the payment of interest on outstanding debt. The interest payment is currently charged at the same level applied to non-paying owners, which, by intent, is a penalty rate based on the NSW Court interest rate (currently 7.5%). It is considered that this scheme should apply an interest rate to cover the cost of proving deferral rather than a penalty to entice payment. Council's cost of holding the debt can be reasonably set using an external measure published by IPART called the nominal Local Government Discount Rate (currently 3.7%) that reflects Council's cost of capital. Accordingly, the revised Policy incorporates this change.

Since the Policy review in April 2017, Council has been approached on numerous occasions during times when a ratepayer has deceased and the grieving family member has requested Council to place the account on hold until probate or letters of administration have been processed for payment to be made. The changes proposed in the revised Policy include a 12 month interest free period to allow for these legal matters to be finalised to assist with easing the burden during that period.

Under the current Policy, Council enters Judgment to secure the debt after a Statement of Claim has been lodged and the debt remains unpaid after 36 days. The Court allows access to this information to credit reporting agencies, which impacts on a person's credit rating and may affect their ability to obtain credit from financial institutions for a period up to five years. Council's current process and Policy requires notification to the credit reporting agencies when a debt is paid in full. This does not remove the credit listing and may still impact financing in many instances. The only way people can have their credit listing removed is through consent orders being lodged at Court through Council. There were two lines of

thought considered as to the approach Council should introduce into its Policy to allow removal of the credit listing:

- 1 That Council has an obligation to financial institutions to leaving the judgment on the credit file for five years and that if Council were to lodge consent orders at the Court to remove judgment, this would not show the full credit history of the applicant. Under this consideration, the Policy would allow ratepayers to seek removal through the Debt Recovery and Hardship Assistance Committee. The Committee would consider extenuating circumstances and prior recovery history when deciding to grant the consent orders for removal, or
- 2 That Council, through the application of its recovery process, has received payment and the debt with Council has been satisfied. Council's Policy objectives have been satisfied and it is not Council's intent to further impact our ratepayers. Under this consideration, the Policy would allow for Council to set aside the judgment debt.

The recommended approach presented in the revised Policy is the latter, where Council would set aside judgment once payment has been made in full.

There are also some minor changes to the Policy to allow consistency with current actions and bring in line some of our processes with community expectations.

## PROPOSAL

The following outlines the proposed amendments to the Debt Recovery and Hardship Assistance Council Policy:

- Include 'email' to the channels of communication with the ratepayer(s) and debtor(s).
- Include Pre-Statement of Claim telephone calls and Pre-Judgment notification letter within the legal recovery process.
- Add the criteria of Principal Place of Living within Hardship Assistance, allowing the Debt Recovery and Hardship Assistance Committee to make a more informed decision on each individual case.
- Include debtors to the granting of a moratorium up to 90 days for payment to assist when a natural disaster or significant event has occurred.
- Removal of the clause for payment arrangements: *"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"* as this does not reflect current procedure and it is considered that issuing and sending of the agreement to the ratepayer(s) signifies its validity.
- Upon notification of a ratepayer(s) death, Council will grant a 12 month interest free period to allow for probate or Letters of Administration to be processed. After the 12 month period ends or the property is transferred, whichever comes first, interest accrues at the prescribed rate.
- Offer a reduced interest rate equivalent of IPART's nominal Local Government Discounted Rate to eligible ratepayers who have entered into a Pensioner Agreement to Defer Rates, Charges and Interest.
- Amend wording to include: *"Council will communicate with the deferred ratepayer before the debt is 20 years old and prior to commencing legal recovery to secure the debt"*.
- Where legal recovery is unsuccessful, provide Council the option to utilise collection techniques outside the standard legal recovery where warranted and assessed on a case by case basis.
- Setting aside the judgment debt when payment is made in full.

## CONSULTATION AND COMMUNICATION

- Legal Services
- Property Division

- Debt Recovery and Hardship Assistance Committee
- A Councillor Briefing has been held to discuss the proposed changes to the Policy

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal 4 '*We are a connected and engaged community*'

It specifically delivers on core business activities as detailed in the Financial Services Service Plan 2019-2020.

## FINANCIAL IMPLICATIONS

Based on information available at present, it is considered that the impact of the discounted interest rate for the deferral scheme would be in the order of \$48,000 per annum. It is considered that this adjustment could be managed within the rates management budget offset against rates income. There is potential, over time, that the number may increase with additional pensioners opting into these arrangements, although this does not impact future budgets as this potential growth in interest income is not factored in to the Long Term Modelling. While the Policy change may encourage greater levels of deferral, the discounted rate is intended to provide an income to Council that matches our opportunity cost of funds including the time value of money.

## CONCLUSION

The Debt Recovery and Hardship Assistance Council Policy has been revised and is presented to Council for adoption.



## DEBT RECOVERY AND HARDSHIP ASSISTANCE COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

### PURPOSE

Council relies on Rates and Charges and fees to fund services and facilities for our community. This Policy sets out the approach that Council will take to recover unpaid monies and ensure the reasonable collection of debts.

### POLICY INTENT

- Policy objectives should relate to management intent.
- The Policy should be consistent with other policies adopted by Council.
- Should include statements that represent policy positions.

The main objectives of this Policy are:

- 1 Recover monies owing in a timely and effective manner to finance Council's operations and ensure effective cash flow management.
- 2 Provide for a process that is ethical, transparent, compliant with legal obligations, open and accountable.
- 3 To improve control over debts owed to Council, including overdue rates, fees, charges and interest and to establish a debt recovery approach for the efficient collection of receivables and management of outstanding debts, including alternative payment arrangements and deferrals.
- 4 To establish guidelines for recognising and assessing hardship applications by applying the principles of fairness, integrity, appropriate confidentiality and compliance to the relevant statutory requirements.
- 5 The key guidelines that will be utilised are:
  - a Council aims to collect all monies owed.
  - b Council will individually assess cases of financial hardship based on evidence.
  - c Council will not reduce rates or annual charges but will consider alternative available approaches.
  - d Council will consider arrangements for periodical payment outside the statutory due dates in cases of hardship, extenuating circumstances or other payment schemes implemented by Council.

### WOLLONGONG 2028 OBJECTIVES

Our council is accountable, financially sustainable and has the trust of the community.

### POLICY

#### 1 Recovery of Overdue Rates and Annual Charges

- Rates and Charges include all amounts charged in accordance with Section 546 of the Local Government Act, 1993 ("the LG Act").
- Rate notices must be issued prior to 31 July each year.

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- Instalment notices must be issued to ratepayers paying by instalment one month prior to the instalment due dates, being 31 August, 30 November, 28 February and 31 May.
- Council rates and annual charges are due to be paid in full before 31 August, or by quarterly instalments due 31 August, 30 November, 28 February and 31 May each year, or on specific dates determined through an agreement approved by delegated Council officers.
- Interest will be charged daily in accordance with Council's Revenue Policy after the due date.
- Where payment is overdue and an appropriate payment arrangement has not been agreed, the following recovery actions will be followed:
  - Reminder Notice.
  - Letter of Demand from Council's Solicitor.
  - Where available and appropriate, additional channels of communication can be used to remind ratepayers of outstanding debts. This may include options such as SMS reminders, telephone calls and email communication
- If those processes are not successful in securing payment, legal recovery action will commence. Legal recovery process may include the following:
  - Pre Statement of Claim phone call
  - Statement of Claim
  - Field Calls/Skip Tracing
  - Pre-Judgment notification letter
  - Judgment
  - Garnishee
  - Examination Notices/Summons
  - Writ of property
  - Bankruptcy
  - Sale of Land
  - Late stage/intervention process
- Where legal recovery is unsuccessful, Council may use collection techniques outside of standard legal recovery where warranted on a case by case basis.
- Council retains the discretion to apply the provision of the LG Act relating to sale of land for unpaid rates, charges and interest as stated in Sections 713-726. Section 713 provides that Council, where rates and charges have been unpaid for more than five years, may sell the land to recover those outstanding amounts (excluding vacant land which can be sold with only one year's rates and charges).
  - Council will only sell a rate payers principal place of living after consideration and resolution of Council, and only as a last resort.
  - Whilst the LG Act states Council can buy such land at public auction, any staff directly involved in the sale of land process will not be permitted to bid on behalf of Council at auction. This requirement will be reinforced via separate agreement with relevant staff.
  - Council will endeavour to achieve a fair market price through public auction after appropriate advertising.
  - The reserve price will be set at no less than 80% of the independent valuation attained through the sale of land process.
  - If the land fails to sell at Public auction, under the LG Act the General Manager or delegated officer is empowered to negotiate to sell the land by private treaty but the amount accepted

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for sale should be not lower than the highest (non-owner) bid at auction, or at best value where a bid is not offered through the auction.

- Property will not be sold to Council or employees by private treaty outside of auction.
- In the case of corporate ratepayers, Council may commence legal recovery proceedings in the Federal Court of Australia.
- Where an account has incurred legal action and all debts subject to that claim have been paid in full, Council will set aside judgment.
- Legal Costs and expenses incurred in debt recovery actions will be charged against the property (including costs of tracing a person in accordance with section 605 of the LG Act).

### 2 Recovery of Outstanding Sundry Debts (other than Rates and Charges)

- Council will issue Invoices as required or Invoice Statements monthly.
- Where payment is overdue and an appropriate payment arrangement has not been agreed, the following recovery actions will be followed:
  - Monthly Statements.
  - Letter of Demand from Council's Solicitor.
  - Where available and appropriate, additional channels of communication can be used to inform ratepayers of outstanding debts. This may include options such as SMS reminders, telephone calls and email communication
  - Where available suspension of credit and/or services.
- If those processes are not successful, legal recovery action will commence. Legal recovery process may include the following:
  - Tribunal orders for property leases (eg, Tourist Parks)
  - Statement of Claim
  - Field Calls/Skip Tracing
  - Judgment
  - Garnishee
  - Examination Notices/Summons
  - Writ on property
- Legal Costs and expenses incurred in debt recovery actions will be charged against the Sundry Debtor.
- A Late Payment Fee may be charged where a reminder letter is issued where set in Council's Fees and Charges.

### 3 Hardship Assistance

- Council recognises that ratepayers and debtors may experience financial hardship in some circumstances in paying rates, annual charges and fees. A ratepayer may be eligible for consideration for hardship assistance in the payment of overdue rates, annual charges, interest and fees where:
  - The person is unable to pay due rates, charges, fees or accrued interest when due and payable for reasons beyond the persons control; or
  - Payment when due would cause the person hardship.
- The LG Act permits Council to exercise the following assistance to ratepayers and debtors:
  - Periodical payment arrangements for overdue rates and charges under Section 564.



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- Writing off or reducing interest accrued on rates and/or charges under Sections 564 and 567.
- Waiving, reducing or deferring the payment of the increase in the amount of rate payable because of hardship resulting from a general revaluation of land in the local government area under Section 601.
- Waiving or reducing rates, charges and interest of eligible pensioners under Section 575 and 582.
- Applications under Section 601 of the LG Act because of hardship resulting from a general revaluation of land must be made during the first year a new land value is used for rating purposes. Where an application is made in the first year, an application can also be made in subsequent years of the valuation base date. While Council has the discretion to waive, reduce or defer, Council will only offer a revised payment schedule and interest free periods up to three years to ease the financial stress on the ratepayer.
- While Council has the discretion to waive or reduce rates, charges and interest of eligible pensioners, Council will only offer a revised payment schedule and defer any legal action to ease the financial stress on the pensioner ratepayer.
- To be eligible for consideration of hardship, a ratepayer must complete the Application for Hardship Form and return it promptly to Council with reasonable proof of financial hardship including details of assets, income, liabilities, expenses and such other information required for the Debt Recovery and Hardship Assistance Committee to make an informed decision.
- Each individual case will be considered on its merits. The criteria for assessment will include, but not be limited to, the following:
  - The amount of any rate increase when compared to the average rate increase for the rate category.
  - The amount of rates levied compared to the average rate of the rate category.
  - Income from all sources.
  - Assets owned.
  - Living expenses.
  - Reason for financial hardship.
  - Length of occupancy.
  - Principal place of living.
- The assistance provided will be determined under the legal requirements of the LG Act. A Debt Recovery and Hardship Assistance Committee will review the application and recommend to the General Manager any offer of assistance having regard to the circumstances of the applicant.
- The General Manager can approve or not approve the Committee's recommendation.
- The ratepayer will be informed of a decision in writing and if not satisfied with the outcome can request Council to reconsider its decision within 30 days.
- After Council reconsiders the application and makes a decision, the ratepayer has no further right to appeal.
- Council can make a determination to grant a moratorium up to 90 days where a group/area of ratepayers and sundry debtors affected by a natural disaster or significant event. Applications for approval for this moratorium must be in writing.

### 4 Periodical Payment Arrangements

- Council may enter into a Payment Arrangement with any ratepayer in accordance with Section 564 of the LG Act.

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- 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.
- Council can accept over the telephone payment arrangements for weekly, fortnightly or monthly payments (whether overdue or not).
- Once legal proceedings have commenced against a debtor, only delegated Council officers can determine any payment agreement which must be formalised in writing, subject to the debtor entering into a direct debit arrangement with Council and the debtor agreeing to pay Council's up-to-date legal costs relating to the proceedings. If a debtor objects to the direct debit arrangement, the debtor 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 debtor whether it is accepted or rejected.
- Delegated person(s) may approve in writing a periodical payment arrangement for those that are within a 12 month timeframe, any periodical payment arrangements greater than 12 months need to be approved by the Debt Recovery and Hardship Assistance Committee.
- Council may collect the following information during the arrangement process, with this information capable of being used for any debt recovery process:
  - Contact Numbers (Mobile, Work, Home)
  - Employment details
  - Email address

### 5 Default of Payment Arrangement

- Where a debtor 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 debtor seven days to pay or re-negotiate the payment arrangement.
- Where the debtor fails to comply with the terms of the default letter, Council will commence or reinstate legal proceedings to recover the debt.
- Council will not enter into any further payment arrangements where a ratepayer is in default of a payment arrangement twice within a 12 month period.
- A debtor aggrieved by the above clause may appeal in writing to the Debt Recovery and Hardship Assistance Committee. The Committee must consider the appeal within 30 days of it being received by Council and notify the debtor of its decision.

### 6 Writing Off Outstanding Debt, Accrued Interest and Costs

- The General Manager is authorised to write off amounts due to Council up to \$3,000 with amounts above \$3,000 subject to reporting to Council.
- Council applies interest rates to the maximum allowable under Section 566 of the LG Act. However, Council may write off the accrued interest and costs on rates and charges payable by a person(s) under Section 567 of the LG Act and the Local Government (General) Regulation 2005 where
  - The person(s) was unable to pay when the amount became due for reasons beyond the person(s) control; or
  - The person(s) is unable to pay accrued interest for reasons beyond the person(s) control; or
  - Payment of accrued interest would cause the person(s) hardship.
- Upon notification of a ratepayer(s) death, Council will grant a 12 month interest free period to allow for probate or Letters of Administration to be processed. After the 12 month period ends or the property is transferred, whichever comes first, interest accrues at the prescribed rate.



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- Council will apply a reduced interest rate equivalent to the IPART discounted interest rate, to those eligible ratepayers who have entered into a formal Pensioner Agreement to Defer Rates, Charges and Interest.

### 7 Recovery Proceedings against Eligible Pensioners

- Council recognises the large number of pensioner ratepayers in the community and recognises the difficulties some eligible pensioner ratepayers have meeting their rates payments.
- Council has the discretion to accrue rates, charges and applicable interest against a pensioner's property. Written agreement is required from the pensioner ratepayer. Where the eligible pensioner is willing to enter into agreement, Council will:
  - Provide a copy of the Pensioner Agreement Application to Defer Rates, Charges and Interest. The ratepayer must complete the application form in order to prevent legal actions and it is in the best interest of the ratepayer to make small payments where possible.
  - Provide annual rates, instalment and reminder notices showing all outstanding rates, charges and interest.
  - Not commence recovery processes until there is a change in ownership of the property, all eligible ratepayers leave the property (except where the pensioner/s is in a care facility on a temporary basis being less than 12 months), or one or more become ineligible for a pensioner concession. Should any of these events occur, rates, charges and interest will become due and payable.
  - Where a pensioner does not enter into such agreement, Council will advise the pensioner of their right to negotiate a periodical payment arrangement. Where there is no periodical payment arrangement or agreement of deferral recovery action, Council may commence legal action.
  - Due to the constraints set out in accordance in Section 712 of LG Act, Council will communicate with the ratepayer before a debt is 20 years old prior to commencing legal recovery proceedings to secure the debt on the property beyond that point. The costs associated with the legal process will be recovered against the property.

### 8 Debt Recovery/Hardship Committee

- The Committee will consist of a minimum of four Council officers and be represented from the following divisions:
  - Finance
  - General Counsel
  - Community Cultural and Economic Development and/or Library and Community Services
- The Committee will:
  - determine the dollar amount in which Council will commence legal proceedings for recovery of debt
  - consider applications for waiving of interest and costs
  - consider hardship applications and make recommendations to the General Manager
  - consider applications from those ratepayers who have defaulted on two payment arrangements within a 12 month period
  - be consulted on changes to debt recovery processes and procedures

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### POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council Policy.
- 2 A resolution of Council is required to adopt any variations to this Policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

### ROLES AND RESPONSIBILITIES

Name	Responsibilities
Team Leader – Billing & Recovery	<ul style="list-style-type: none"> <li>Billing – rates, instalments, reminders</li> <li>Provision for doubtful debts / write offs</li> <li>Billing &amp; Recovery information management</li> <li>Interest processing and management</li> </ul>
Revenue Officer/ Revenue Clerk	<ul style="list-style-type: none"> <li>Sundry debtor maintenance</li> <li>Return mail management</li> <li>Payment arrangement</li> <li>Status management</li> <li>Phone recovery</li> <li>Legal recovery</li> <li>Receipt allocation and monitoring</li> <li>Adjustments / credit notes</li> <li>Reconciliations</li> <li>Credit facility management</li> </ul>
Debt Recovery and Hardship Committee	<ul style="list-style-type: none"> <li>Assess applications to committee</li> <li>Provide recommendation to the General Manager</li> <li>Determine legal threshold</li> </ul>
Chief Financial Officer	<ul style="list-style-type: none"> <li>Approve recommendations of the Debt Recovery and Hardship Committee prior to General Manager sign off</li> </ul>
General Manager	<ul style="list-style-type: none"> <li>Approve recommendations of the Debt Recovery and Hardship Committee</li> <li>Approve write offs of up to \$3,000.00</li> </ul>
Councillors	<ul style="list-style-type: none"> <li>Approve write offs over \$3,000.00</li> </ul>

### RELATED PROCEDURES

#### Reference Materials

- Local Government Act 1993
- Council Rating and Revenue Manual (2007) Office of Local Government
- Debt Management and Hardship Guidelines (2018) Office of Local Government
- Management Policy – Sundry Debt Management
- Management Policy – Rates Processing
- Revenue Policy, Fees and Charges
- Management Policy - Customer Feedback Handling
- Council Policy – Customer Service

## DEBT RECOVERY AND HARDSHIP ASSISTANCE

## COUNCIL POLICY

APPROVAL AND REVIEW		
Responsible Division	Finance	
Date/s adopted	<i>Executive Management Committee</i> [updated by policy owner]	<i>Council</i> [DD Mmmm YYYY]
Date/s of previous adoptions	22 June 2015 3 April 2017	
Date of next review	[Two years from last adoption]	