

Debt Recovery- Rates, Water & Sewerage and Sundry Debtor Accounts including Provisions for Hardship & Pensioner Rate Rebates Policy

Leadership

Our Council has the trust of the community and well informed decisions are made to ensure long term sustainability of our shire

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1. Objectives

The objectives of this Policy are:

- To provide clear expectations of how Council will collect rates and charges within its statutory framework.
- To ensure the timely collection of rates, charges and other debts owing to Council to ensure overdue rates, charges and other debts does not become unmanageable for ratepayers.
- To ensure that the recovery process is undertaken in a consistent and fair manner ensuring that confidentiality is always maintained.

2. Policy

Billing information

Notices for Rates & Annual Charges

Local Government legislation requires that the annual Rates and Charges notices are issued prior to 31 July each year. These notices can either be paid in a lump sum (by the 31 August of that year) or by four instalments due on 31 August, 30 November, 28 February and 31 May of that financial year. Where the due date of a payment falls on the weekend, payment becomes due on the next business day.

Instalment notices are then required to be issued at least one month prior to the instalment due date, in accordance with Section 562 of the Local Government Act 1993.

Rate notice amounts will be considered as being in arrears when they are not paid by the due date.

Notices for Water & Sewer Charges

Water & Sewerage charges are billed three (3) times per year and invoiced amounts will be deemed due thirty (30) days after the date of issue.

Water & Sewerage notice amounts will be considered as being in arrears when they are not paid by the due date.

Invoices for Sundry Debtor Amounts

Invoices will be issued as required and invoiced amounts will be deemed due thirty (30) days after the date of issue.

Sundry Debtor invoice amounts will be considered as being in arrears when they are not paid by the due date.

Recovery Process Rates and Water & Sewerage Accounts

Stage 1 - Reminder Notice

Following the due date of a Rates and Water & Sewerage Notice, a reminder notice will be issued to all ratepayers with overdue amounts greater than \$20.00 where the account is currently not subject to recovery proceedings. The Reminder Notice will advise:

- The amount of any overdue rates and charges and the due date;
- A statement that interest charges apply to overdue amounts in accordance with the provision of the Local Government Act 1993 (included as a part of the overdue amount);
- A statement that the ratepayer should contact Council prior to the due date of the reminder notice to enter into a suitable payment arrangement if they are not in the position to pay the overdue rates and charges.

At this stage, no formal legal action has been commenced and no legal costs have been incurred.

Stage 2 - Urgent Reminder Letter

Where a Reminder Notice has either not been paid or an acceptable payment arrangement entered into, an Urgent Reminder Letter will be issued to all ratepayers who satisfy the arrears criteria detailed below.

A Rate Account will be considered as being in arrears when two (2) or more instalments are overdue, and the sum of those instalments is greater than the minimum Professional Costs rounded to the nearest \$100.00 (see note below).

A Water & Sewer Account will be considered as being in arrears when the overdue amount is greater than the minimum Professional Costs rounded to the nearest \$100.00 (see note below).

NOTE: The amount considered as being arrears for the 2022/2023 year is \$600.00 being equivalent to the minimum Professional Costs of \$591.00 rounded to the nearest \$100.00. This aligns to the scale of legal costs and charges that are set by the relevant legislation and updated periodically:

- Court Fees – Schedule 1, Civil Procedure Regulation 2017;
- Service Fees – Schedule 2, Civil Procedure Regulation 2017
- Professional Costs – Schedule 1, Legal Profession Uniform Law Application Regulation 2015

A payment or payment arrangement is expected to be entered into within 14 days of the letter. If a payment or payment arrangement has not been entered into, a Legal Letter of Demand may be issued in accordance with this policy.

Stage 3 - Legal Letter of Demand

Where an Urgent Reminder Letter has either not been paid or a payment arrangement entered into, the account will be referred to Council's appointed legal representative who will issue a Legal Letter of Demand.

This letter will allow the ratepayer(s) fourteen (14) days to respond either by way of payment or by making a payment arrangement. The intent of the legal letter of demand is to advise the ratepayer(s) that if the amount is not paid or a payment arrangement entered into, legal proceedings will commence at which time legal costs will accumulate against the ratepayers account.

At this stage, no legal costs have been incurred by the ratepayer by receiving a legal letter of demand.

Recovery proceedings (detailed later in this Policy) will be commenced on those accounts that have either not been paid or a payment arrangement entered into.

Debt Recovery Process - Sundry Debtors

Stage 1 - Sundry Debtor Statement

A statement will be issued within five (5) days from end of month to all debtors with amounts owing greater than \$10.00 and who are currently not subject to recovery proceedings.

At this stage, no formal legal action has been commenced and no legal costs have been incurred.

Stage 2 - Final Notice

Where a Sundry Debtor Statement has either not been paid or an acceptable payment arrangement entered into within ten (10) days of the statement being issued, a Final Notice will be issued to a debtor. If a payment has not been received or a reasonable payment arrangement been entered into, a Legal Letter of Demand or Legal Reminder Letter may be issued.

Stage 3 - Legal Letter of Demand and Legal Reminder Letters

Where a Final Notice has either not been paid or a payment arrangement entered into, the account will be referred to Council's appointed legal representative who will issue one of two (2) letters dependant on the overdue amount.

Legal Letter of Demand

Those accounts with overdue amounts greater than the minimum Professional Costs rounded to the nearest \$100.00 (see note below) will be issued with a Legal Letter of Demand.

This letter will allow the debtor fourteen (14) days to respond either by way of payment or by making a payment arrangement. The letter will also advise the debtor that if the amount is not paid or a payment arrangement entered, legal proceedings will commence at which time legal costs will begin to accumulate on the overdue amount.

Legal Reminder Letter

Remaining accounts will be issued with a Reminder Letter which allows the debtor fourteen (14) days to respond either by way of payment or by making a payment arrangement. This letter will not make any statement with regards to legal proceedings.

The Recovery files for any unpaid Legal Reminder Letters will be closed and the amounts will either be considered for write off at year end or allowed to accumulate until such time as recovery proceedings can be commenced.

At this stage, no legal costs have been incurred by the debtor by receiving a legal Letter of Demand.

Recovery Proceedings – Rates, Water & Sewerage and Sundry Debtor Accounts

Where a Legal Letter of Demand has not been paid or a payment arrangement entered into by the due date, Council's appointed legal representative will be instructed to commence legal recovery proceedings.

A summary of the recovery proceedings is below.

Statement of Claim

A document issued by the Local Court and served on the ratepayer/debtor(s) as a formal notification that Council is seeking payment of the overdue amount.

The legal costs and professional fees incurred by Council by issuing the Claim will be charged to the Rates, Water & Sewerage, Debtor account (whichever is applicable). As every effort is made to personally service the Statement of Claim, any reasonable expenses of tracing the person(s) will also be added to the relevant account.

The ratepayer/debtor can pay the amount of the debt filed with the Court, enter into a payment arrangement or lodge a defence with the court.

Default Judgement

Following the expiration of the date nominated on the Statement of Claim, Council will seek to obtain a default judgement ruling against the ratepayer/debtor(s) where payment of the full amount of the statement of claim has not been paid or a payment arrangement entered and/or adhered to.

As a judgement debt is registered with credit agencies and this may impact on a ratepayer/debtor(s) capacity to obtain finance or credit in the future, prior to obtaining a default judgement debt, Council will instruct its appointed legal representative to issue a letter allowing the ratepayer/debtor fourteen (14) days to respond. If no response is received within the time frames, an instruction to Council's appointed legal representatives to file for default judgment will be issued and associated costs incurred and charged against the ratepayer/debtor(s) account.

Other Legal Proceedings

After obtaining a default judgement, the most appropriate action will be taken to recover the debt. This may include one or more of the following courses of action:

- Writ of Execution
- Rent for Rates (If the property is being leased or rented, Council may serve the occupier with a rental order to pay the overdue rates (Section 569 of the Local Government Act 1993).
- Examination Notice
- Examination Order
- Garnishee Order (against the ratepayer salary or bank account)
- Bankruptcy proceedings
- Winding up proceedings

Council's Coordinator Revenue or a delegated officer will authorise the above recovery proceedings in conjunction with advice from Council's legal representative.

The legal costs and professional fees incurred by Council in taking the above actions (except for the Examination Notice) will be charged to the relevant account.

Legal Costs

As legal proceedings are only commenced as an absolute last resort, legal costs will only be waived where it can be clearly identified that the recovery proceedings were commenced in error or because of a Council error.

For example, where a change of address or notice of transfer advice was either not processed or was incorrectly processed by a Council officer.

Sale of Land for Unpaid Rates

If the rates or charges on a rateable property are overdue for more than three (3) years or one (1) year in the case of vacant land, a resolution of Council may be made to commence proceedings to sell the property for unpaid rates. The process outlined below has been referenced by Chapter 17, Part 2, Division 5 of the Local Government Act 1993 and Section 133 of the Local Government Regulations 2005.

Once a resolution of Council has been obtained to proceed with the sale of land for unpaid rates, a certificate (formatted in accordance with Section 713 of the Local Government Act 1993) must be signed by the General Manager or Public Officer. Council will then proceed with advertising of the sale of land for unpaid rates as required by Section 715 of the Local Government Act and Section 133 of the Local Government Regulations 2005.

Sale proceedings will cease when all rates and charges payable (including overdue rates and charges) are paid to Council or an arrangement satisfactory to Council for payment of all such rates and charges is entered by the ratepayer.

Any sale of land for unpaid rates must be by way of public auction. Land that fails to sell at public auction may be sold by private treaty. Land may be sold to Council, a councillor, a relative of a councillor, a member of staff of Council or any relative of a member of staff of Council in the case of sale by public auction but may not be sold in the case of sale by private treaty.

If the funds received by way of sale are less than the total value of the rates, the balance of rates will be written off. If the funds received by way of sale are greater than the rates, the funds will be held in trust and distributed to the parties entitled to funds as deemed by Council.

Payment Arrangements

A ratepayer/debtor(s) who is experiencing financial difficulties may enter into an alternate payment arrangement to pay their overdue amount.

Any arrangement should allow for an account to be brought up to date (including any other amounts that become due during the payment term) within twenty-four (24) months of the agreement being made with ongoing reviews as required.

As interest will still accrue on any overdue rates or water & sewerage amount, the ratepayer will be encouraged (as it is in their best interests) to bring their account(s) up to date as soon as possible.

Pensioners

Statutory Pensioner Rebates

An owner of a property may apply for a pensioner concession rate rebate on their rate account.

An applicant(s) who satisfies the criteria set out by section 575 of the Local Government Act 1993 will have a rebate amount applied to their rate account:

- For the year in which the application is made only, and
- Where the maximum amount of the rebate is determined by the aforementioned section.

Retrospective Rebates

Applications will only be approved for the year in which the application is received unless there are extenuating circumstances that prevented the application from being lodged in a timelier manner.

Life Tenants & other Applicants

Under section 577 of the Local Government Act 1993, Council will approve an application for a pensioner concession rate rebate to an applicant who is either:

- the life tenant under the will of the late owner, or
- where the applicant can produce a legally binding agreement showing that they are responsible for the payment of rates for the property for which the application is being made.

Applicants will still be otherwise assessed under the requirements set out by section 575 with respect to the calculation of the rebate amount and residency requirements.

Applications for pensioner concession rate rebates under section 577 of the Local Government Act 1993 should be subject to some level of periodical review.

Hardship

An application under Hardship can be made at any time by an owner to assist with the payment of either a Rates or Water & Sewerage Account. Hardship will be considered on a case by case basis depending on an individual's circumstance.

Assistance will only be offered via interest relief (i.e. the waiving of interest charges).

To be eligible for this assistance on either or both accounts, the below criteria must be met:

- The total household expenditure of the applicant should be at least 75% of the total household income; and
- The applicant will be required to enter into an arrangement where total annual payments equals at least 1.5 times the current annual rates for the property;
- At least twelve (12) month's payments must be made before any interest relief is made.

Application for assistance must be made using the prescribed form and Council reserves the right to:

- Request documentation to substantiate any information provided in the application, and
- Refuse any such application for failing to provide the requested documentation.
- Review existing arrangements at the end of each rating year or as required.

Accounts will be reviewed in July of each year at which time interest charges will be waived according to the below table:

Current Annual Rates	Total Interest Waived (*see note below)
1.5 times	50%
2 times	100% (maximum)

**as a percentage of total interest charges raised during the corresponding year of payments*

Applicants who do not satisfy the eligibility criteria detailed above are eligible to make an application for an alternate arrangement but are not eligible for interest relief.

3. Scope

This Policy applies to all Councillors and Council's Officers and manages the recovery of all debt owed to Council.

4. Responsibilities

Responsibilities for the implementation of this Policy are shared as follows.

4.1 Councillors

Councillors shall be aware of the process described by this Policy.

4.2 Executive

The Executive shall be aware of the process described by this Policy.

4.3 Chief Financial Officer

The Chief Financial Officer shall:

- provide guidance to Councillors, Executive and other Council staff as to the content and implementation of this Policy;
- ensure the timely review of this Policy; and
- conduct investigations into alleged non-compliance with this Policy.

4.4 Managers

Managers shall provide guidance to Council staff within their respective branches as to the content and implementation of this Policy, seeking guidance from the policy owner as required.

4.5 Council staff

Council staff shall be aware of the process outlined by this Policy and of the need to seek assistance and guidance from Council's Revenue Team.

5. Performance Measures

The effectiveness of this Policy will be measured by recovery being in line with the required Local Government benchmark.

6. Related Material

6.1 Related Legislation

The following legislative material is related to this Policy:

- The Local Government Act 1993
- Local Government Act (General) Regulations 2005
- Government Information (Public Access) Act 2009
- Local Courts Act, 1970
- Local Courts (Civil Claims) Rules 1988
- Legal Profession Act, 2004
- Legal Profession Regulations, 2005

6.2 Related Policies, Procedures and General Manager Practice Notes

Council's Revenue Policy included in the Annual Operational Plan is related to this Policy.

7. Non-compliance with this Policy

Non-compliance with this Policy should be reported to the Chief Financial Officer who will investigate and determine the appropriate course of action.

8. Document Control

8.1 Version Control

Version	Adoption Date	Notes
1.0	8 February 2012	Initial adoption of document
2.0	17 May 2023	The Hardship Policy is consolidated into the updated policy, debt recovery for Water and Sewer payers and rate payers are now consistent, charges for legal recovery action is captured, removal of pensioner provision, different classification of sundry debtors, timing and application of rebates now covered.

8.2 Superseded Documents

Document Title	Adoption Date	Notes
Hardship Policy – Rates, Water and Sewerage Charges	8 November 2011	This policy has been consolidated into the Debt Recovery policy to align the management of payment of rates and charges.

9. Attachments

There are no attachments to this Policy.

Approved by:

WINGECARRIBEE SHIRE COUNCIL

17 May 2023