Procedure  Debt recovery  
6.06.3

<table>
<thead>
<tr>
<th>Directorate</th>
<th>Business and Governance</th>
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<tbody>
<tr>
<td>Responsible Officer</td>
<td>Finance Manager</td>
</tr>
</tbody>
</table>

Table of Contents

Debt recovery  1
Introduction  2
Definitions  2
Types of Debt Recovery Action  2
Rates and Annual Charges  3
Water Consumption Charges  3
Interest on Overdue Rates and Annual Charges and Water Consumption Accounts  3
Administration of Sundry Debtors  3
Debt Recovery Procedures  3
  Second letter to Ratepayer/Customer  4
  Final letter to Ratepayers  4
Further legal proceedings  4
Sale of Land  5
Scheme of Arrangement Guidelines for Periodical Payments – Section 564  5
  Costs and Interest  5
  Use of External Debt Recovery Agency  5
  Customer Service Contact  5
Dispute Resolution  6
Third Party Reporting  6
Related Policies & Procedures  6
6.06.3 Debt recovery
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Introduction
Council has a responsibility to recover monies owing to it in a timely, efficient and effective manner to finance its operations and ensure effective cash flow management.

Council aims to ensure effective control over debts owed to Council, including overdue rates, fees, charges, and interest, and to establish debt recovery procedures for the efficient collection of receivables and management of outstanding debts, including deferment and alternative payment arrangements.

The objective of this procedure is to provide guidelines on recovery and management of overdue Rates and Charges.

Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Bulk Actions/Process</td>
<td>Recovery action taken on multiple accounts.</td>
</tr>
<tr>
<td>Summons</td>
<td>The Summons, identified as a “Statement of Claim”, is a legal document which outlines to the debtor:</td>
</tr>
<tr>
<td></td>
<td>• that a claim has been made to the Court for the recovery of monies;</td>
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<tr>
<td></td>
<td>• who has initiated the claim;</td>
</tr>
<tr>
<td></td>
<td>• who the claim is against;</td>
</tr>
<tr>
<td></td>
<td>• the monetary value of the claim; and</td>
</tr>
<tr>
<td></td>
<td>• time period available to relinquish the debt.</td>
</tr>
<tr>
<td>Judgment</td>
<td>In cases where the debtor does not respond to a Summons issued to them, the Court may make a default judgment whereby it will award a decision without having the matter heard.</td>
</tr>
<tr>
<td>Writ</td>
<td>Document served by a Court Sheriff on a debtor. This document allows a court to seize goods owned by a debtor and be sold. The proceeds are then distributed to the Council as part or full payment of the debt.</td>
</tr>
<tr>
<td>Costs</td>
<td>Amounts incurred by Council in recovering overdue debts (e.g. Court, Professional Costs), which can be legally recovered from the debtor.</td>
</tr>
<tr>
<td>Sale of Land:</td>
<td>In accordance with section 713 of the Local Government Act 1993, Council has the authority to sell land which has any unpaid rates or charges for more than 5 years.</td>
</tr>
<tr>
<td>Rent for Rates</td>
<td>Section 569 of the Local Government Act 1993 allows Councils to order tenants of properties with overdue Rates to pay rent to Councils in lieu of unpaid Rates, under specific circumstances.</td>
</tr>
<tr>
<td>Ratepayer</td>
<td>includes the Crown in respect of rateable land owned by the Crown and means:</td>
</tr>
<tr>
<td></td>
<td>1. An owner in any case where the Local Government Act 1993, provides that a rate is to be paid to the council by the owner, and</td>
</tr>
<tr>
<td></td>
<td>2. A holder of a lease in any case where the Local Government Act 1993, provides that a rate is to be paid to the council by the holder of the lease.</td>
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</tbody>
</table>

A tenant of a property is not a ratepayer unless defined otherwise by legislation.

Types of Debt Recovery Action
Council undertakes separate debt recovery action for the following types of debt:

- Rates and Annual Charges
- Water Consumption
- Sundry Debts

Debt recovery action may be undertaken simultaneously and will not be combined.
Rates and Annual Charges

Rates Notices are issued prior to 31st July each year in accordance with Section 562 of the Local Government Act 1993. Instalment notices will be issued one month prior to the instalment due date in accordance with Section 562 (5) of the Local Government Act, 1993.

Instalments are due on the following dates each year:

- 31 August
- 30 November
- 28 February
- 31 May

Water Consumption Charges

Water consumption notices are issued on completion of the quarterly water meter readings. The account levies consumption charges for water usage on all metered properties, sewer discharge and liquid trade waste discharge on non-residential properties identified by Council’s Water Cycle Department, in accordance with Best Practice Guidelines from the NSW Office of Water. Accounts are issued on completion of the readings and are due 30 days after the date of issue.

Interest on Overdue Rates and Annual Charges and Water Consumption Accounts

Interest is calculated daily on overdue rates and charges at the maximum rate announced by the Minister for Local Government each year in accordance with Section 566 (3) of the Local Government Act, 1993.

Interest is not charged on legal costs.

Section 564 and 567 of the Act allows Council to provide assistance to ratepayers by writing off accrued interest charges. All applications for assistance must be made to Council in accordance with Council’s Financial Hardship Procedure.

Administration of Sundry Debtors

Council will raise sundry debtor invoices as required. All debtor accounts are strictly 30 days from the date of invoice. Payment arrangements may be made for the payment of sundry debtor accounts if requested. These debts will be paid under a suitable arrangement in accordance with Council’s Financial Hardship Procedure.

Monthly statements are to be forwarded to debtors. Outstanding amounts of more than 30 days are to be regarded as overdue. Where amounts are outstanding for more than 60 days, credit will cease.

Interest maybe charged once the debt becomes overdue. Interest will be charged in accordance with Council’s Fees and Charges.

Debt Recovery Procedures

First Letter to Ratepayer/Customer: Reminder Notice

1. Reminder notices will be issued within 14 days after the due date of the debt to all ratepayers/customers with accumulated overdue balances exceeding the minimum balance set by Council.

2. Such notice will be issued when:
   a. No payments has been made; or
   b. Insufficient payment to cover the debt has been made; or
   c. Where there is no current valid payment arrangement.
3. Reminder notices will indicate that:
   a. The debt is now in arrears; and
   b. That penalty interest is being charged at the rate set by Council; and
   c. The applicable timeframe to comply with the conditions of the reminder notice.

Second letter to Ratepayer/Customer

**Notice of Intention to Commence Legal Action (Letter of Demand)**

1. A Letter of Demand will be issued within 7 days after the due date of the reminder notice to all ratepayers/customers with accumulated overdue balances exceeding the minimum balance set by Council.
2. Such notice will be issued when:
   a. No payments has been made; or
   b. Insufficient payment to cover the debt has been made; or
   c. Where there is no current valid payment arrangement.
3. Letter of Demand will indicate that:
   a. The debt is now in arrears; and
   b. That penalty interest is being charged at the rate set by Council; and
   c. The applicable timeframe to comply with the conditions of the Letter of Demand; and
   d. That failure to make an arrangement or pay the outstanding amount in full will result in the matter proceeding to legal action by Council’s debt collection agency; and
   e. All further debt recovery costs associated with any course of action (e.g. summons, judgment or writ) will be added to the outstanding amount and are payable by the ratepayer/customer, and in relation to rates/water, will remain a charge on the property until paid.

Final letter to Ratepayers

**Commencement of Legal Action**

All reasonable efforts are to be made to ensure ratepayers have an opportunity to relinquish their debt, prior to initiating formal proceedings. However, if the debt remains unpaid after the Letter of Demand expires, or an appropriate scheme of arrangement, which satisfies the “Arrangement Guidelines” is not made, then a “Statement of Claim” (i.e. Summons) will be issued by the Court.

Any legal expenses incurred by Council from the recovery of outstanding rates and charges can be charged against the ratepayer under the *Local Courts Act 1970*. Once a Statement of Claim has been issued by the Court, legal expenses are added to the existing debt and are due and payable.

After the Summons is served, the defendant will have 28 days to pay the debt in full, make a satisfactory payment arrangement or file a defence with the Court.

**Further legal proceedings**

If the debt remains unpaid after the issue and service of the “Statement of Claim”, or an appropriate arrangement, which satisfies the “Arrangement Guidelines” is not made, a Pre-Judgment letter will be sent to the defendant. The defendant will have a further 7 days to file a defence or make a satisfactory payment arrangement.

The next step is for the Court will enter a Judgment. Judgment is entered either by Default or through a Defended Hearing. If the Court awards Judgment to Council, a Post Judgment letter will be sent to the ratepayer/customer.

Following the Post Judgment letter, the ratepayer/customer will have 14 days to make an acceptable arrangement to pay the account. If there is no response to the Post Judgment letter then Council will consider further Enforcement Proceedings. One or more of the following processes will apply:
1. Writ of levy of property (seize goods);
2. Examination notice to examine financial records and subsequent processes;
3. Garnishee;
4. Involuntary bankruptcy if judgment amount exceeds $5000;
5. Company Wind-up action.

Further information in relation to the above enforcement proceedings can be obtained from the NSW Court.

**Sale of Land**

Where any rate or charge is overdue and has remained unpaid for more than five (5) years from the date on which it became payable, Council may proceed to sell the land in accordance with Division 5, Part 2, Chapter 17 of the *Local Government Act, 1993*.

Where any rate or charge is overdue in respect of vacant land and the amount exceeds the Valuer General’s current valuation of the property, Council may proceed to sell the land in accordance with Division 5, Part 2, Chapter 17 of the *Local Government Act, 1993*.

**Stopping and/or Suspending Action/Arrangements – Section 564**

Actions/arrangements may be stopped and/or suspended when:

1. the debt is paid in full; or
2. the Court advises suspension; or
3. a mutually agreeable arrangement is made between Council/Agent and relevant Ratepayer.

**Scheme of Arrangement Guidelines for Periodical Payments – Section 564**

In certain cases, some Ratepayers may genuinely be experiencing a period of financial hardship and as a result may have difficulty in meeting the cost of each rates instalment as and when it falls due. In such cases, Council will consider an arrangement for periodical payment of Rates and Charges. An arrangement may be entered into at any time during the recovery process, except when Council has resolved to sell a property under the Sale of Land provisions outlined in the Act. Refer to Council’s Financial Hardship Procedure for further information.

**Costs and Interest**

Unless the imposition of costs and/or interest is deemed to be in error, the waiving of costs and/or interest will not be considered by Council. Refer to Council’s Financial Hardship Procedure for further information.

**Use of External Debt Recovery Agency**

The process of recovering overdue debts requires a certain level of expertise, which may, in most cases, be best managed by a professional Debt Recovery Agency. Where utilised, any Debt Recovery Agency instructed to assist Council with its debt recovery process will need to comply with the parameters outlined above, to ensure that Council’s objectives are being applied consistently.

An external recovery agency may be engaged by Council to administer all or some of the debt recovery process as required.

**Customer Service Contact**

Given the nature of the Debt Recovery process, instances arise from time to time where certain ratepayers may become verbally and/or physically abusive. Threats and abuse, either verbal or physical, against Council staff are to be referred to the relevant Director or General Manager, at which stage the appropriate action will be decided. Refer to Council’s Customer Service Commitment and Standards of Service Procedure for further information.
Dispute Resolution

In cases where ratepayers/customers object to the decision made, they may request a review of the decision by: The Finance Manager; then to the General Manager.

Third Party Reporting

Council will not supply private credit agencies with information regarding legal action it has taken in the recovery of overdue Rates. However, Council recognises that Judgment details are supplied to credit agencies by NSW Courts.

If a ratepayer requests proof that the debt owed to Council has been paid, and following the payment of the resolved fee, a letter will be issued by Council confirming payment has been made. Such letter will only be issued if all overdue debts have been paid.

Further, if a ratepayer requests a Notice of Discontinuance to finalise the Judgment at the Courts, Council will require all overdue debts to be paid in full. If the criteria are met, Council’s Debt Recovery Agency will carry out the process for a Notice of Discontinuance.

If the overdue debts are not paid in full and the Ratepayer requires a Notice of Discontinuance urgently, they can apply for the Notice of Discontinuance themselves through the Courts. Council will not commence the process if Rates and Charges are still outstanding in relation to relevant legal proceedings to which the credit reporting is associated with.

Related Policies & Procedures

- Financial Hardship assistance