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Rates Debt Recovery Policy

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1.0	28 May 2019	Finance	Adopted by Council
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Rates Debt Recovery Policy		
Owner: Finance	Accountability: Rates and Revenue Management	Endorsed by Council on 28 May 2019
CM Reference: RTS/07/7/6 - D21/135386	Last review date: 06 May 2021	Next review date: May 2023

1. Scope

This policy has been developed as guidance to management, staff and the community to ensure consistency in the way that rates related debt is collected while also ensuring rates debt is collected in a transparent and equitable manner in accordance with relevant legislation. This policy outlines the parameters that will be applied when recovering debt to minimise financial risks to Council whilst maintaining transparent engagement with Council's ratepayers.

For the purpose of this policy, a rates debtor is any debtor that has been levied as a Rate or Annual Charge under the Local Government Act.

2. Purpose

The purpose of the policy is to provide guidance to management, staff and the community so as to ensure that rates debt is collected in a consistent, transparent and equitable manner in accordance with relevant legislation. This policy shall be applied when Council recovers rates debt based on each parcel of rateable land.

The objective of this policy is to ensure that Council treats its ratepayers in a respectful manner whilst collecting overdue rates and charges. This will be done by ensuring the application of this policy is done so in a transparent and equitable manner, giving ratepayers every opportunity to pay their rates and charges prior to debt recovery proceedings commencing. The policy takes into account the parameters Council officers will apply whilst collecting overdue rates debt.

3. Policy Statement

A rates debtor exists when a rate or charge is levied and a subsequent debt is incurred by Council in accordance with Council's revenue policy. Council will commence debt recover proceedings for overdue rates and charges against the owner of the property (according to Council's Rates Book) and, in the case of land leased from the Crown, (excluding provisions under the *Housing Act 1912* or *Aboriginal Housing Act 1998*), the owner is the lessee of the respective rateable parcel of land. (Section 560 and 561 of the Local Government Act 1993).

Debt recovery proceedings will not commence against current eligible pensioners who are in receipt of a current pensioner rebate for the applicable property unless the debt is greater than 5 years.

However, pensioners in receipt of a pensioner rebate will receive a reminder notice but will not be sent a letter of demand for the applicable property.

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Annual Instalment Due Dates

The annual Rates and Charges notices are issued prior to 31 July each year and can be paid in an annual lump sum (by the 31 August of that year) or four instalments due on 31 August, 30 November, 28 February and 31 May of that financial year. Instalment reminder notices will be issued at least one month prior to the instalment due date, in accordance with Section 562 of the Local Government Act 1993.

Reminder Notice

Reminder Notices are issued within ten (10) business days after an instalment falls due (subject to operational thresholds). The Reminder Notice will advise:

- The amount of any overdue rates and charges and the due date;
- That interest charges are applying to the overdue amount (included as a part of the overdue amount);
- That they should contact the Rates Department prior to the date on the notice to make a payment arrangement if they are not in the position to pay all of the overdue rates and charges; and
- Subject to the criteria set in this policy, debt recovery proceedings may be taken if a reasonable payment arrangement has not been entered into.

At this stage, no formal legal action has commenced and no legal costs have been incurred by the ratepayer by receiving a reminder notice.

Legal Letter of Demand

Where the amount shown as due on the reminder notice has not been paid or an acceptable payment arrangement has not been entered into by the due date on the reminder notice, a legal letter of demand will be issued by Council's nominated appointed legal representatives. The following criteria will be used in determining if a ratepayer will receive a legal letter of demand:

- The amount of the overdue debt is greater than \$1,000.00
- The amount of the overdue debt is equal to two (2) or more instalments
- None of the property owners are eligible pensioners who are in receipt of a current pensioner rebate.

A letter of demand will give the ratepayer seven (7) days to respond and enter into a reasonable payment arrangement. The intent of the legal letter of demand is to advise the ratepayer(s) that if the amount is not paid in full or a reasonable payment arrangement is not entered into, legal proceedings in the form of a Statement of Claim will commence and 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.

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Statement of Claim

Following the expiration of the nominated date on the legal letter of demand, a Statement of Claim will be issued by Council via its nominated appointed legal representatives if payment of the overdue amount has not been made or a reasonable payment arrangement has not been entered into or adhered to.

Council will formally instruct the appointed legal representatives to have a Statement of Claim filed with the relevant court in respect of the overdue rates and charges including any legal charges incurred and added to the ratepayer(s) account. The registered Statement of Claim will then be served on the ratepayer for formal notification for payment of the debt. These legal costs are payable at the timing of filing with the court.

The legal costs and professional fees incurred by Council from the recovery of the overdue rate levy will be charged to the rate account upon notification of the costs. Any reasonable expenses of tracing the person or persons will also be added to the rates account.

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

Liability of Occupier for Overdue 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).

Default Judgement Debt

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

Prior to registering a default judgement debt with the courts, Council will instruct its appointed legal representatives to issue a letter before filing for judgement debt advising the ratepayer(s) and giving them seven (7) 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(s) account.

Upon registering a default judgement, the judgement debt will be registered with credit agencies that may have an impact on the ratepayer(s) capacity to obtain financing in the future.

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Other Legal Proceedings

After obtaining the default judgement Council may take action as recommended by Council's legal representative to recover the debt including, but not limited to:

- Writ of Execution
- Rent for Rate (if the property is being rented or leased if not already sought)
- Examination Summons
- A garnishee against the ratepayer(s) salary or bank account
- Caveat

All recovery proceedings will be undertaken in conjunction with advice from Council's legal representative and will be authorised by an officer of Council with the appropriate delegation.

Sale of Land for Unpaid Rates

If the rates or charges on a rateable property are overdue for more than five (5) years or one (1) year in the case of vacant land, a resolution of Council must 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 into 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.

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Payment Arrangements

Where ratepayers are experiencing financial difficulties in meeting the payment of rates and charges, they are requested to contact Council with a view to making a suitable payment arrangement.

Council has authority to accept payment arrangements of rates and charges due and payable in accordance with an agreement made with the ratepayer (Section 564 of the Local Government Act 1993). It is Council's intention to have outstanding balances paid within three (3) months of an arrangement being made. However, Council is sympathetic to ratepayers with special circumstances and payment of outstanding amounts with the intention to be settled within twelve months from the date the arrangement is made (including current and future instalments that fall due within that period).

All payment arrangements will be reviewed on an ongoing basis. Where a payment arrangement has expired and an overdue balance still exists, debt recovery proceedings, will recommence at the stage where it was ceased. The onus is on the ratepayer to ensure that their rates are paid in a timely manner in accordance with due dates.

Pensioners

Recovery of amounts owed by pensioners

Council encourages eligible pensioners to meet their rate commitments as they fall due. Where an eligible pensioner is in financial difficulty, Council officers shall take into account the limited income of eligible pensioners and may enter into an agreement with them for the payment of rates by arrangement. As a general principle, Council does not take legal action against pensioners unless the debt is greater than five (5) years overdue.

Statutory Pensioner Rebates

Council officers validate pensioner rebates annually in line with the annual rating instalment. The maximum amount of rebate is determined by section 575 of the Local Government Act 1993. Pensioners that apply for a pensioner rebate will have their rebate applied in accordance with their entitlement and backdated to a maximum of two years (if eligible).

Any application for an eligible pensioner rebate of rates for a period greater than the current rates year plus the previous rating year will only be considered in conjunction with an approval for hardship relief.

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Voluntary Pensioner Rebate

Council provides a Voluntary Pensioner rebate of \$80 per annum (applied against general rates) which is only available to ratepayers who are “eligible pensioners”. The rebate is only available to ratepayers who were eligible pensioners who had to be on a full pension and lived in the area for 10 years prior to 31 December 1992. This rebate is grandfathered to existing recipients only.

Hardship Provision

Hardship

An application for hardship can be made and considered by the appropriate officer of Council. Council officers will assess the application with the intention to enter into a reasonable payment arrangement with the ratepayer(s). A review will be conducted within 6 months to review the financial situation of the ratepayer(s) to ensure the debt is being managed transparently. Council will not reduce the rates and charges for those who apply for hardship under these provisions within this policy.

In the exercise of Section 577 of the Local Government Act 1993, the income/assets level for hardship applications to be considered is that which applies to the granting of the Centrelink Age Pension at the time. In accordance with Section 577(1) & 577(2), Council will consider every application on its merits. Every application for a rebate under Section 577 must be approved under delegation and be re-assessed every 12 months.

4. References and Legislation

The Local Government Act, 1993 (NSW)
 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.

5. Review Process and Endorsement

This Policy should be reviewed by Council every 2-3 years or if there is a change in legislation.

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