

FILE NO: PSC2009-02488

TITLE: DEBT RECOVERY AND HARDSHIP

POLICY OWNER: FINANCIAL SERVICES SECTION MANAGER

1. PURPOSE:

1.1 The purpose of this policy is to ensure:

- a) efficient and effective processes for collection of outstanding debts
- b) provision of a decision making framework for assessment of financial hardship applications
- c) statutory requirements are met for recovery of rates, charges, fees and other debts
- d) debts are recorded in Council's accounting system
- e) compliance with the Office of Local Government Debt Management and Hardship Guidelines.

2. CONTEXT/BACKGROUND:

2.1 This document prescribes Council procedures to recover monies that become overdue for rates, charges, fees and other debts and assistance to ratepayers and debtors experiencing financial hardship.

3. SCOPE:

3.1 This policy has been written considering the following principles:

- a) Council has a responsibility to recover monies owing to it in a timely, efficient and effective manner to fund its operations.
- b) all people will be treated fairly and consistently
- c) all matters will be considered confidentially
- d) financial hardship will be recognised and people treated with respect and compassion in considering their circumstances

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

30 day trading account A sundry debtor account wherein Council extends credit to the debtor to be paid in full monthly in arrears.

Aged pensioner	A person verified by Centrelink as receiving an aged pension and holding a pensioner concession card.
Legal action	Debt recovery action taken under the Civil Procedure Act 2005 or Local Government Act 1993.
Letter of demand	Correspondence sent to a ratepayer or debtor formally requesting payment.
Recovery action	Making contact with a ratepayer or debtor to request payment of overdue amounts.

5. POLICY STATEMENT:

5.1 Part 1 – Recovery of rates and charges

5.1.1 Rates and charges notice

- a) a rates and charges notice will be sent in July each year payable in four instalments due on 31 August, 30 November, 28 February and 31 May
- b) an instalment notice will be sent 30 days before instalments two, three and four are due
- c) ratepayers can elect to receive rate, instalment and reminder notices by email

5.1.1.1 Overdue instalment notices

- a) an overdue instalment notice will be sent 14 days after the due date for all unpaid assessments over \$25.00.

5.1.1.2 Overdue instalment notices will include:

- a) debt details
- b) a request to pay within 14 days
- c) an option of repayment arrangement
- d) a notice of referral to Council's debt collection agency if the overdue amount exceeds \$1,200 and remains unpaid
- e) an instruction to disregard notice if complying with a repayment arrangement.

5.1.2 Recovery action – referral to debt collection agency

5.1.2.1 21 days after the issue of the overdue instalment notice, assessments will be referred to Council's debt collection agency where:

- a) the debt balance is \$1,200 or more

- b) there is no repayment arrangement in place
- c) there is no undetermined request for financial assistance
- d) there has been no contact from a support service on behalf of the ratepayer.

5.1.3 Recovery action – debt collection agency procedures

5.1.3.1 Council's debt collection agency will issue a letter of demand in relation to each debt advising that:

- a) Council has referred the debt for collection
- b) payment is required within 28 days of the date of the letter
- c) if unpaid; legal action will be commenced
- d) the minimum amount in legal costs that will be added to the ratepayer's assessment if legal action is commenced.

5.1.3.2 Council will only commence legal action as a last resort. The debt will escalate to the following stages only if it remains unpaid:

- a) 28 days after the date of the letter a statement of liquidated claim will be prepared, filed with the court and issued for service
- b) if unpaid after the statutory period following service, judgment will be obtained.
- c) further action will be commenced to recover the debt including examination notice, examination notice writ of execution and garnishee orders.

5.1.4 Arrangements to pay rates and charges

5.1.4.1 A ratepayer may enter into a weekly, fortnightly or monthly arrangement to pay rates and charges with Council or Council's debt collection agency subject to the following conditions:

- a) the overdue amount must be paid in full within 12 months
- b) normal interest charges apply, unless written off under hardship provisions of this policy at part 4
- c) Council's Finance Officer – Revenue Collection may enter into a longer term repayment arrangement if in that Officer's opinion a ratepayer's financial circumstances warrant this
- d) a ratepayer dissatisfied with a decision of the Finance Officer – Revenue Collection may have that decision reviewed by the Finance Officer - Revenue Team Leader
- e) ratepayers will be advised at the time of making a repayment arrangement that if the arrangement is dishonoured recovery action will recommence without further notice
- f) where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith
- g) where legal action has commenced, arrangements must be in the form of lodgement of terms of settlement with the court or a court instalment order

- h) extensions of time beyond 3 months without any payment will not be acceptable
- i) where a supplementary rates and charges notice is issued in the latter part of the year and where an arrangement is made for payment of the rates within 6 months of the due date, interest will be written off provided payment of one half of the amount due is made within 3 months and the balance is paid within 6 months.

5.2 Part 2 – Recovery of sundry debtor accounts

5.2.1 Sundry debtor invoices and statements

5.2.1.1 Sundry debtor accounts and invoices will be created when information becomes available and emailed or posted weekly. The payment due date will be 30 days after the invoice issue. A statement will be issued within seven days of month's end.

5.2.1.2 Hardship provisions apply to sundry debtor accounts in certain circumstances; refer to paragraphs 5.2.3 and 5.4.11.

5.2.2 Overdue sundry debtors

5.2.2.1 The following process applies to recovery of overdue sundry debtor accounts:

- a) if unpaid by the due date a second and then a third monthly statement will be forwarded as a reminder
- b) warning letter will be sent by Council before an overdue sundry debt is referred to Council's debt collection agency. Section 355(b) committees, sporting clubs and government agencies will not be referred to the debt collection agency.

5.2.3 Overdue sundry debtors – aged pensioners

5.2.3.1 If a sundry debtor account is a charge on the land ie kerb and gutter, or foot paving, and it is payable by an aged pensioner, the aged pensioner may apply to Council to have the account deferred against their estate subject to the hardship provisions of this policy and provided they have already deferred their rates against their estate.

5.2.4 Recovery action – suspension of credit facilities

5.2.4.1 If the account is a recurring account, e.g. waste tipping fees, and any part remains unpaid for more than 60 days, further credit to that debtor account may be withdrawn until the overdue amount is paid. The process of suspending credit facilities will be:

- a) Council will make contact with the debtor to notify of the Council's intention to suspend credit facilities. Notification will include a letter when credit is suspended.

- b) after payment of the overdue amount or commencement of a satisfactory repayment arrangement, credit facilities may be resumed; and
- c) if payment terms are breached again Council may cancel credit facilities.

5.2.5 Recovery action – referral to debt collection agency

5.2.5.1 21 days after issue of the warning letter as described in 5.2.2.1 above, Council will refer overdue accounts to its debt collection agency.

5.2.6 Recovery action – debt collection agency procedures

5.2.6.1 Council's debt collection agency will issue a letter of demand in relation to each debt advising:

- a) Council has referred the debt for collection
- b) payment is required within 28 days of the date of the letter
- c) if unpaid, legal action will be commenced
- d) the minimum amount in legal costs that will be added to the debtor's account if legal action is commenced.

5.2.6.2 Council will only commence legal action as a last resort. The debt will escalate to the following stages only if it remains unpaid:

- a) 28 days after the date of the letter a statement of liquidated claim will be prepared, filed with the court and issued for service
- b) after the statutory period following service, judgment will be obtained.
- c) further action will be commenced to recover the debt including examination notice, writ of execution and garnishee orders.

5.2.7 Arrangements to repay sundry debtor accounts

5.2.7.1 A debtor may enter into a weekly, fortnightly or monthly arrangement to repay accounts with Council or Council's debt collection agency subject to the following conditions:

- a) the overdue amount must be paid in full within 12 months
- b) Council's Finance Officer – Revenue Collection may enter into a longer term repayment arrangement if in that Officer's opinion a debtor's financial circumstances warrant this
- c) a debtor dissatisfied with a decision of the Finance Officer – Revenue Collection may have that decision reviewed by the Finance Officer – Revenue Specialist
- d) debtors will be advised at the time of making a repayment arrangement that if the arrangement is dishonoured recovery action will recommence without further notice

- e) where an arrangement has been dishonoured, a new arrangement cannot be accepted until a payment is received to show good faith
- f) where legal action has commenced, arrangements must be in the form of lodgement of terms of settlement with the court or a court instalment order
- g) extensions of time beyond three months without any payment will not be acceptable.

5.3 Part 3 – Credit control

5.3.1 Terms of payment – 30 day accounts

- 5.3.1.1 All accounts with Council will be strictly 30 days trading terms, without exceptions. Council will open credit accounts in accordance with this policy.

5.3.2 Terms of payment – credit accounts

- 5.3.2.1 No credit account will be opened unless a 30-day trading application form has been completed and returned. Council will conduct a reference check on the applicant, verifying references provided by the applicant, before a credit account is offered.

5.3.3 Terms of payment – one off usage

- 5.3.3.1 No company or individual will be extended credit for one off use of:

- a) room hire
- b) hall hire
- c) community centre bookings
- d) holiday park bookings
- e) council stores
- f) sporting field use
- g) enrolment fees
- h) tipping fees
- i) vehicle repairs
- j) sundry sales including documents, copying and plant.

- 5.3.4 Council will invoice government departments that provide a purchase order. All other one off usages must be paid for in advance or at the time of usage to avoid difficulties in locating debtors and recovering fees. Council's receipts satisfy the requirements of a tax invoice for business debtors.

- 5.3.5 Council will extend credit and allow payment plans for animal impounding fees and sustenance fees at the discretion of the Coordinator Environmental Health and Compliance to avoid hardship.

5.3.6 Terms of payment – deposits and progress payments

5.3.6.1 For private works Council will provide a written quote for the proposed work to cover estimated costs for the work. For work to proceed, Council requires written authorisation from the client and proof of identity. For work valued at more than \$1,000 a 10% deposit will be required before work commences. For work valued at more than \$10,000 Council will require agreed progress payments at various stages.

5.3.7 Judgment debts and credit history

5.3.7.1 Credit reporting agencies access some court records relating to debt recovery. Specifically, they access details of all default judgments and record these on the individual's credit history, in some cases for five years. If a statement of liquidated claim is served and the debtor:

- a) makes no payment in the next 28 days
- b) doesn't pay the amount claimed, including legal costs
- c) doesn't apply for a court instalment order to pay off the amount claimed, including legal costs
- d) doesn't lodge a notice of defence with the court disputing the claim
- e) then the debtor may be liable to incur a default judgment. It is these default judgments, where a debtor has not responded to a statement of claim that may be included in an individual's credit history.

5.3.8 If the debt has been paid in full, Council will upon request, write a letter to the debtor confirming that the debt has been repaid in full which may then be presented as proof of payment. Credit reporting agencies will not remove from an individual's credit history the existence of a default judgment because it assists users of their reports with credit risk assessment.

5.3.9 Debtors may sometimes ask for Council to consent to the filing of a notice of discontinuance or to have judgment set aside to have the default judgment removed from their credit history. The process requires a notice of motion to have judgment set aside and then a notice of discontinuance. Council will not have judgment set aside or issue a notice of discontinuance in these circumstances. A notice of discontinuance is a remedy for correcting a claim that was issued in error, before judgment is entered by the court. A debtor has no right to have a default judgment erased upon payment of the debt. The debtor had the opportunity to avoid default judgment when they were issued with the statement of claim and judgment warning letter. A default judgment is a valid court judgment.

5.3.9.1 Council does not report debts to any credit reporting agencies, and is under no obligation to assist debtors to delete factually correct court judgment history.

5.3.10 Notwithstanding clause 5.3.9, if a debtor satisfies the Finance Officer – Revenue Collection that there were extenuating circumstances that resulted in default judgment, then Council may agree to setting aside judgment on one occasion only subject to:

- a) the judgment debt having been paid in full, and
- b) current rates being up to date, and
- c) the judgment debtor to arrange the necessary documentation for Council to sign at the judgment debtor's own cost, or
- d) the judgment debtor meeting the cost of Council's debt collection agency in preparing any necessary documentation

5.4 Part 4 – Hardship provisions:

5.4.1 Defer payment of rates and charges – aged pensioners

5.4.1.1 Aged pensioners who satisfy the eligibility criteria may make application to defer the payment of rates and charges and property related sundry debtor accounts against their estate. If granted, payment of the rates, charges, interest and property related sundry debts will be deferred until any of the following occurs:

- a) death of the ratepayer
- b) sale of the property
- c) the ratepayer ceases to occupy the property as their principal place of living and rents the property out.

5.4.2 The criteria used to determine eligibility for deferral will be:

- a) the ratepayer must be an aged pensioner as defined by Centrelink in receipt of a pensioner rate concession in relation to the property
- b) the property must be the ratepayer's principal place of living
- c) the property must be used for residential or farming purposes only
- d) the property can have no more than a single dwelling house or residential unit erected upon it
- e) the total amount of rates and charges (net of pensioner concession) payable must be more than 8% of the age pension of an individual (if the ratepayer is an individual) or 8% of the age pension of a couple (if the ratepayer is a couple) at the date of the initial application.

5.4.3 An initial application form must be completed and lodged with Council and determined by the Finance Revenue Coordinator. A ratepayer dissatisfied with a decision of the Finance Revenue Coordinator may have that decision reviewed by the Hardship Panel

established under this policy. The Hardship Panel may approve an application for deferral if it believes the circumstances of the ratepayer warrant this even if the eligibility criteria have not been met. A letter of determination will be issued to the ratepayer. If an application is refused, the ratepayer will be provided with reasons for the refusal.

- 5.4.4 After approval, a letter will be posted out annually to the ratepayer with a copy to sign and return to continue the deferral. The purpose of the annual letter will be to confirm that the ratepayer continues to own and occupy the property, is still alive, and is aware of and agrees to the deferral. Deferral will continue once granted without the need to satisfy the 8% criteria again, provided that the ratepayer continues to own and occupy the property. Where the ratepayer ceases to occupy the rateable property and the property becomes rented a repayment timeframe for the deferred rates and charges will be negotiated by the Finance Officer – Revenue Collection. A person dissatisfied with a decision of the Finance Officer – Revenue Collection may have that decision reviewed by the Finance Officer – Revenue Specialist.
- 5.4.5 Interest charges accrue in respect of deferred rates and charges at the rate determined under the Local Government Act. No deferred rates, charges or interest will be written off under this policy.
- 5.4.6 Writing off of accrued interest
- 5.4.6.1 The Finance Officers – Revenue Collection and Finance Officer – Revenue Specialist have delegated authority to write off small amounts of interest that have accrued on rates and charges where the person was unable to pay the rates and charges when they became due and payable for reasons beyond their control. The Finance Revenue Coordinator has delegated authority to write off an unspecified amount of interest.
- 5.4.7 Ratepayers seeking to have interest written off under hardship provisions must submit the prescribed application form to be considered by the Finance Revenue Coordinator. Accrued interest on rates and charges may be written off where payment of the accrued interest would cause the person hardship. A person dissatisfied with a decision of the Finance Revenue Coordinator may have that decision reviewed by the Hardship Panel. The Hardship Panel may request the ratepayer to come to an interview if it is necessary to understand the issues causing hardship.
- 5.4.8 Hardship resulting from a general revaluation of the Port Stephens Local Government Area
- 5.4.8.1 In accordance with section 601 of the Local Government Act a ratepayer who suffers substantial hardship as the consequence of the making and levying of a rate on the

most recent valuation, may apply to Council for relief. Assistance will only be available in the first year new valuations are used to calculate rates.

5.4.8.2 The criteria used to determine eligibility:

- a) rates payable must be more than 3% of the gross household income.
- b) the applicant must be an owner and occupier of the property to which the rates relate and the dwelling must be the applicant's sole or principal place of living.
- c) the ordinary rate increase must be more in percentage terms than the amount determined by Council at each revaluation. The ordinary rate increase is calculated as the ordinary rates payable for the new rating year (being the first year in which new valuations are used) minus the ordinary rates payable in the previous rating year increased by the allowed rate pegging increase for the year (e.g. rates 2020 – 2021 \$1,200 minus rates 2019 – 2020 \$1,000 plus 2.6% rate pegging increase (\$1,026) = \$174).

5.4.9 Applications must be submitted on the prescribed application form. Assistance will be calculated as follows:

- a) one half of the ordinary rate increase up to a maximum of \$200 (e.g. \$174 increase x 0.5 = \$87).
- b) no assistance will be given for domestic waste management charges, Hunter Catchment Contribution or other charges.
- c) the maximum amount of assistance in aggregate for all ratepayers will be \$20,000.

5.4.10 Applications will be considered in the order in which they are received by Council. No further applications will be considered once the aggregate amount of assistance has been granted. Applications will be considered by the Finance Officer – Revenue Specialist. A ratepayer dissatisfied with a decision of the Finance Officer – Revenue Specialist may have that decision reviewed by the Hardship Panel established under this policy. If an application is refused, the applicant will be provided with reasons for the refusal.

5.4.11 Rates Assistance Program

5.4.11.1 Council partners with local welfare and/or financial counselling services to act as a referral point for ratepayers experiencing financial hardship. Participating services are empowered to assess ratepayer's individual financial circumstances and recommend to Council that rates and charges up to \$250.00 be written off due to financial hardship. Each participating service is given an annual limit of \$5,000 that they can recommend for financial assistance. Assistance is limited to non-pensioners to assist individuals or families who are experiencing financial hardship

and difficulty paying rates, but are not eligible for a pensioner rate concession. Participating services are to contact Council to recommend assistance. Council will check to ensure the ratepayer is not in receipt of a pensioner rate concession and provide confirmation to the participating service. A credit will then be processed to the ratepayer's rate assessment. A record of all assistance is kept and assistance is limited to \$250 per ratepayer per annum. Assistance is provided in the order that recommendations are received by Council.

- 5.4.11.2 The rates assistance program is included in Council's revenue policy annually and publicly exhibited as a proposed donation for a class of individuals under section 356 of the Local Government Act 1993 and the aggregated cost included in the annual report.

5.4.12 Fees and charges

- 5.4.12.1 The Coordinator Environmental Health and Compliance may consider hardship matters relating to animal impounding and sustenance fees. Assistance may be provided in the form of allowing additional time to pay or waiving the fees in cases of hardship. A customer dissatisfied with a decision of the Coordinator Environmental Health and Compliance may have that decision reviewed by the Hardship Panel established under this policy. Applicants under this section will be made aware that fees and charges in relation to animal impounding increase on a daily basis and will accrue during the review period. Council will not consider hardship applications in relation to animal registration fees or the costs of microchipping or veterinarian fees and charges.
- 5.4.12.2 The Waste Management Coordinator may allow payment plans or reduce charges for additional waste services to avoid hardship of ratepayers or residents with medical conditions that directly and significantly contribute to the generation of waste. A customer dissatisfied with a decision of the Waste Management Coordinator may have that decision reviewed by the Hardship Panel established under this policy.
- 5.4.12.3 Where a ratepayer or debtor has incurred cheque or direct debit dishonour fees the Finance Officer – Revenue Collection may write off the fee on one occasion per customer per financial year where the officer is satisfied that the non-payment was due to circumstances beyond the customers' control.

5.4.13 Hardship panel

5.4.13.1 A panel comprising the Finance Revenue Coordinator, Finance Officer - Revenue Specialist and the Financial Services Section Manager will determine applications for assistance referred to it and review decisions as necessary.

5.4.13.2 Referral of matters to hardship panel

5.4.13.3 The General Manager or Mayor may refer any Council matter involving financial hardship of a ratepayer or resident to the Hardship Panel for consideration and advice.

5.4.14 Privacy

5.4.14.1 In accordance with the Privacy Code of Practice and Council's Privacy Management Plan, personal information collected as a consequence of this policy will only be used for the purpose of assessing eligibility under the policy and will not be used for any other purpose or disclosed to any other person unless Council is required by law to do so or authorised to do so by the person to whom that personal information relates.

5.5 Part 5 – Sale of land for unpaid rates or charges:

5.5.1 Where rates or charges for a property are overdue for more than five years the land is liable to be sold under Section 713 of the Local Government Act 1993. The process in compliance with the requirements of ss713-726 of the Local Government Act 1993 will generally be as follows:

- a) each September outstanding rate assessments will be reviewed to identify all land liable to be sold
- b) land titles will be searched and all persons with an interest in the land will be notified of Council's intention
- c) a report will be prepared for Council to consider offering the land for sale by public auction
- d) a date will be set for the public auction
- e) a real estate agent will be appointed to conduct the sale
- f) notice of the auction will be published in accordance with s715 of the Act and given to all persons with an interest in the land
- g) contracts for sale will be prepared
- h) the real estate agent will market the land
- i) reserve prices will be established
- j) all land will be offered for sale by public auction unless all overdue amounts are paid in full prior to auction

- k) on auction day a deposit of 10% in cash or bank cheque will be payable by the successful bidder
- l) if the land is not sold at auction the land may be sold by private treaty, subject to the restrictions contained in s716 of the Act
- m) all costs associated with the sale must be met from sale proceeds
- n) sale proceeds will be applied as required by the Act
- o) the land will be conveyed free of debts to the extent provided by the Act
- p) Council will hold any surplus proceeds for persons having estates or interests in the land immediately before the sale according to their respective estates and interests
- q) Council will pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it.

5.6 Part 6 – Pensioner rate concessions:

5.6.1 The following prescribes how Council will grant concessions to pensioners:

5.6.1.1 Eligibility for pensioner concessions - In all situations where an eligible pensioner has assumed full and sole responsibility for the paying of rates, notwithstanding the nature of the ownership of the property, Council agrees to grant the full pensioner concession under Section 577 of the Act. The presentation of a Pensioner Concession Card, and completion of any prescribed form will be accepted by Council as a sufficient test to meet the hardship requirements of the Act under these circumstances.

5.6.1.2 Backdating of pensioner concessions - Where an eligible pensioner applies for a concession Council will backdate that concession for up to 2 years prior to the current year (i.e. a maximum total of 3 years including the current year) provided that:

- a) the pensioner was at all times eligible for the concession
- b) the pensioner provides a statutory declaration that the rateable property was their sole or principal place of living for all of the period that the concession is claimed for.

5.7 Part 7 – Social implications:

5.7.1 Council has a charter under the Local Government Act 1993 to raise funds for local purposes by imposing rates, charges and fees fairly. A policy that prescribes Council's process of collecting debts facilitates consistency and promotes fairness.

5.7.2 The hardship provisions of this policy empower Council to provide practical financial assistance to financially vulnerable ratepayers and debtors, which is consistent with Council's charter of social justice and equity.

6. POLICY RESPONSIBILITIES:

6.1 The Finance Revenue Coordinator is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

6.2 The Finance Officer - Revenue Specialist and Finance Officer – Revenue Collection are responsible for complying with the policy.

7. RELATED DOCUMENTS

7.1 Local Government Act 1993 – specifically sections 564, 567, 577, 601, 712 and 713-726.

7.2 Code of Conduct

CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au			
EDRMS container No	PSC2009-02488	EDRMS record No	20/393241
Audience	Council staff and Community		
Process owner	Financial Services Section Manager		
Author	Financial Services Section Manager		
Review timeframe	2 years	Next review date	10 November 2022
Adoption date	28/08/2007		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
8.0	14/07/2020	Financial Services Section Manager	<p>Change the reference to Council's overdue debtor letter as a warning letter rather than a letter of demand. Correct the spelling of 'judgment'.</p> <p>Removed reference to the Council assistance program, which was proposed as part of the special rate variation application. Update the s.601 financial assistance worked examples. Introduce the process of an examination notice.</p> <p>Introduce the discretion to set aside judgment and write off payment dishonour fees in extenuating circumstances.</p> <p>Remove references to revoked policies in related documents.</p> <p>Updated staff job titles where required.</p> <p>5.4.12.2 - Added 'The Waste Management Coordinator may allow payment plans or reduce charges for additional waste services to avoid hardship of ratepayers or residents with medical conditions that directly and significantly contribute to the generation of waste. A customer dissatisfied with a decision of the Waste Management Coordinator may have that decision reviewed by the Hardship Panel established under this policy.'</p>	Deferred

9.0	10/11/2020	Financial Services Section Manager	Added clause 5.4.11 and updated numbering accordingly.	238
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