

# Debt Recovery Policy 2025

## 2025

### INFORMATION ABOUT THIS DOCUMENT

<b>Date Adopted by Council</b>		<b>Resolution No.</b>	
<b>Document Owner</b>	Chief Financial Officer		
<b>Document Development Officer</b>	Revenue Officer		
<b>Review Timeframe</b>	4 Years		
<b>Last Review Date:</b>	February 2025	<b>Next Scheduled Review Date</b>	February 2029

### Document History

Doc No.	Date Amended	Details/Comments eg Resolution No.
1	24 March 2020	Adopted by Council
1.1	January 2025	Reviewed
1.2	February 2025	Prepared for Ordinary Meeting 25 February 2025
2	March 2025	Adopted following Public Exhibition and no submissions received

### Further Document Information and Relationships

<b>Related Legislation*</b>	NSW Local Government Act 1993 NSW Local Government (General) Regulation 2021
<b>Related Policies</b>	Hardship Policy
<b>Related Procedures/ Protocols, Statements, documents</b>	Office of Local Government Debt Management and Hardship Guidelines 2018

## **1. OBJECTIVES**

When undertaking debt recovery in order to reduce outstanding debts, Council will be guided by the principles of:

- Equity – to ensure consistency, fairness, integrity and confidentiality of all proceedings for both Council and the customer.
- Engagement - Council is committed to engaging with customers with arrears to obtain payment to satisfy their debt and prevent avoidable escalation of the debt recovery processes and the use of legal action.
- Transparency – ensuring obligations of Council’s customers are clear in assisting them to meet their financial obligations where possible.
- Financial Hardship – Council will assess cases of financial hardship on an individual basis and will be courteous and respectful.
- Compliance – to fulfil the statutory requirements of the Local Government Act 1993 with respect to the recovery of Rates and Charges and any other debts and compliance with the Office of Local Government Debt Management and Hardship guidelines.
- Financial Sustainability – to maximise collections of outstanding debts, optimise Council’s cash flow and overall financial performance ensuring Council’s Rates Outstanding Ratio remains at or below the industry standard.

## **2. SCOPE**

This Policy applies to any person or organisation owing rates, charges, fees or other debts to Council.

## **3. DEFINITIONS**

- Legal costs – Amounts incurred by Council in recovering overdue debts (e.g. Court fees and professional costs) which can be legally recovered from the ratepayer.
- Default Judgement – In cases where the ratepayer does not comply with a Statement of Claim issued to them, the Council may make an application to the Court for a default judgement whereby it will make a decision without having the matter heard in Court.
- Letter of demand – Demand letter from Council’s debt recovery agency issued in accordance with the Australian Competition and Consumer Commission and the Australian Securities and Investment Commission guidelines.
- Ratepayer – the person liable for payment of the rates and charges due and payable on the property for which debt recovery is being undertaken.

## **4. DEBT RECOVERY POLICY STATEMENT**

This policy provides a framework for the efficient and effective collection of outstanding debts and fulfils statutory requirements in relation to the recovery of rates, charges, fees and other debts.

## **4.1 Recovery of Rates and Charges**

### **4.1.1 Rates and Charges Notice**

Per Section 562 of the *NSW Local Government Act 1993* (the 'Act'), rates and charges notices are issued in July each year and are payable in four instalments on:

- 31 August,
- 30 November,
- 28 February and
- 31 May each financial year.

A rate instalment notice is issued 30 days before each instalment is due.

Similarly, water and waste charge notices are issued twice yearly in approximately November and May.

Rates, Fees and Charges not paid by the due date are considered outstanding. The General Manager or their delegated representative is responsible for the collection of outstanding rates, fees and charges.

### **4.1.2 Interest on Overdue Rates and Charges**

Council will charge interest on outstanding Rates and Charges that remain unpaid after they become due and payable in accordance of Section 566 of the Act. Interest accrues on a daily basis.

The rate of interest is set by Council but must not exceed the rate specified for the time being by the Minister for Local Government. Accrued interest is taken to be a rate or charge which is due and payable.

### **4.1.3 Reminder Notice**

If any rates or charges exceeding \$100, are in arrears within 14 days of the instalment / notice due date, a reminder notice will be issued by Council regarding the amount of arrears.

Reminder notices will be issued to all ratepayers with outstanding balances exceeding \$100 and will request payment within 14 days of the mailing date on the reminder notice.

The notice will also advise that ratepayers may enter a payment arrangement with Council to pay the overdue amount. However, the terms of any payment arrangement are at the sole discretion of Council.

The notice will advise that failure to either make payment or enter a payment arrangement may result in referral to Council's debt recovery agency with no further notice, and that additional charges may be incurred and added to the outstanding amount due to the referral.

### **4.1.4 Recovery Action – Referral to Debt Collection Agency**

Following the expiration of the period specified on the reminder notice Council will refer all assessments / notices where the amount overdue is greater than \$1,000 and where no suitable arrangement has been made to pay the overdue amount, to its debt collection agency. For the remaining assessments which have amounts overdue but for which the balance is less than \$1,000 Council staff will continue to contact ratepayers at reasonable intervals to attempt recovery.

#### **4.1.5 Recovery Action – Debt Collection Agency Procedures**

- a) The debt collection agency will as soon as practicable after receipt of a referral from Council issue a letter of demand to the ratepayer in relation to each overdue amount advising that Council has referred the debt to the agency for collection and that payment is required within 14 days of the date of the letter, otherwise legal action will commence. The letter is to specify the minimum amount in legal costs that may be added to the ratepayer's rate assessment if legal action is commenced.
- b) Following the expiration of the 14 days as requested in the letter, the debt collection agency is then to issue a statement of claim following approval from Council to proceed with legal action. An attempt to contact the ratepayer by telephone or email must have been made before a statement of claim is issued.
- c) Fourteen (14) Days after service of the statement of claim, the, debt collection agency issues a Judgment Warning Letter advising that Council may enter Default Judgment unless the Statement of claim is complied with. The letter is to specify the minimum amount in legal costs that may be added to the ratepayer's rate assessment if judgement is entered against the ratepayer and information explaining to the ratepayer that a default judgement may be listed on their credit file for a period of 5 years even if the amount is subsequently paid/finalised and that this listing may affect any future applications for credit.
- d) Following the statutory period after service of the Statement of Claim, the debt collection agency is then to obtain judgement against the ratepayer following approval from Council.
- e) Once judgement is obtained against the ratepayer, the debt collection agency, with Council's approval, is to take the necessary actions to recover the debt including but not limited to:
  - A garnishee of income or funds from the ratepayer's bank account.
  - Writ of execution on goods and chattels.
  - Examination summons.
  - Service of a rent order where the property is tenanted.
  - Bankruptcy proceedings (subject to resolution of Council).
  - Sale of land for unpaid rates (subject to resolution of Council and for unpaid rates only).

#### **4.2 Payment Arrangements to pay outstanding Rates, Charges and Water Consumption Charges**

Council accepts that there are ratepayers who cannot meet mandatory instalment amounts, water consumption charges or sundry debtor accounts by the due dates.

Council therefore will accept an alternative payment schedule by way of a short extension or a payment arrangement under section 564 of the Act. Payment arrangements can be weekly, fortnightly or monthly payments provided that Council determines that the reasons for the arrangement is acceptable.

Payment arrangements should, where possible, seek to have the outstanding amount, and future rate instalments and water consumption paid in full by 30 June of the current financial year.

Where payment arrangements will not pay the Rates, Fees and Charges in full by 30 June, the arrangement should, where possible, pay the outstanding amount, and future instalments and water consumption within twelve (12) months of the date that the payment arrangement is agreed to.

Ratepayers who are not able to enter into an arrangement that would clear the outstanding Rates, Fees and Charges within (12) twelve months should be referred to Council's Hardship Policy and be encouraged to seek financial support.

Arrangement offers for amounts that are insufficient to pay the outstanding amount will only be accepted for a maximum period of three months to allow the ratepayer to seek financial support and make further contact with Council.

Payment arrangements that are for a period of greater than three (3) months will be documented in writing as a Payment Arrangement and confirmation sent to the ratepayer. This formalises the agreement and will commit the payment to the agreed payment schedule.

In accordance with Section 568 of the Act, payments will be applied towards the payment of Rates and Charges in the order in which they became due. All ratepayers who enter into a Payment Arrangement will continue to have interest charged on the outstanding amount in accordance with Section 566 of the Act.

Ratepayers who default on two (2) or more occasions on the Payment Arrangement entered, will have the Payment Arrangement cancelled and recovery action may continue.

## **5. RECOVERY OF SUNDRY DEBTOR ACCOUNTS**

### **5.1 Sundry Debtor Invoices and Statements**

Invoices are raised as debtor information comes to hand e.g. construction of kerbing and guttering, private works, OSSM inspections etc. The due date for payment of all invoices is 30 days after the invoice date. Within 7 days of the close of a month a sundry debtor account statement will be issued.

### **5.2 Overdue Sundry Debts**

If an account is not paid by the due date and once an account has amounts that are 60 days in arrears, Council may refer the account to its debt collection agency. Accounts which have amounts overdue but for which the balance is less than \$300 Council staff will continue to contact account holders at reasonable intervals to attempt recovery.

### **5.3 Recovery Action – Suspension of Credit Facilities**

If the sundry debtor account remains outstanding for a period beyond 60 days then further credit to that debtor will be withdrawn until the account is paid in full, or an agreement has been reached to pay it off over a period of time.

#### **5.4 Recovery Action – Debt Collection Agency Procedures**

- a) The debt collection agency will as soon as practicable after receipt of a referral from Council issue a letter of demand to the ratepayer in relation to each overdue amount advising that Council has referred the debt to the agency for collection and that payment is required within 14 days of the date of the letter, otherwise legal action will commence. The letter is to specify the minimum amount in legal costs that may be added to the ratepayer's rate assessment if legal action is commenced.
- b) Following the expiration of the 14 days as requested in the letter, the debt collection agency is then to issue a statement of claim following approval from Council to proceed with legal action. An attempt to contact the ratepayer by telephone or email must have been made before a statement of claim is issued.
- c) 14 Days after service of the statement of claim, the, debt collection agency issues a Judgment Warning Letter advising that Council may enter Default Judgment unless the Statement of claim is complied with. The letter is to specify the minimum amount in legal costs that may be added to the ratepayer's rate assessment if judgement is entered against the ratepayer and information explaining to the ratepayer that a default judgement may be listed on their credit file for a period of 5 years even if the amount is subsequently paid/finalised and that this listing may affect any future applications for credit.
- d) Following the statutory period after service of the Statement of Claim, the debt collection agency is then to obtain judgement against the ratepayer following approval from Council.
- e) Once judgement is obtained against the ratepayer, the debt collection agency, with Council's approval, is to take the necessary actions to recover the debt including but not limited to:
  - A garnishee of income or funds from the ratepayer's bank account
  - Writ of execution on goods and chattels
  - Examination summons
  - Service of a rent order where the property is tenanted
  - Bankruptcy proceedings (subject to resolution of Council)
  - Sale of land for unpaid rates (subject to resolution of Council and for unpaid rates only).

#### **5.5 Payment Arrangements to pay Sundry Debtor Accounts**

A debtor may at any time make arrangements to pay off their outstanding account by regular payment, subject to the following guidelines (refer also to Council's Hardship Policy):

- Payment arrangements can be made to pay on a weekly, fortnightly or monthly basis;
- Any payment arrangement made so that all amounts owing are paid in full by 30 June of that financial year;

- Extenuating circumstances can be taken into consideration if either of the above two conditions cannot be met but must be referred to the Manager Finance for approval.

Where a debtor has not honoured a previous arrangement the Revenue Officer has the discretion as to whether to accept a new payment arrangement or continue with further recovery action. Any new arrangement cannot be accepted until a payment is received to show good faith.

If a debtor fails to make a payment in full under an arrangement and does not notify Council of any financial difficulties, the total amount outstanding becomes payable and is subject to Council's normal recovery procedures without further notice to the account holder.

## **6. LEGAL COSTS**

All debt recovery costs and fees associated with any course of action are to be borne by the owner of the debt in accordance with the Council's Fees & Charges Schedule and the relevant legislation.

Any costs awarded to the Council by a court in legal proceedings to recover a rate or charge will be a charge on the relevant land in accordance with section 550 of the Act.

Any ratepayer or sundry debtor that wishes to appeal against the legal costs that have been added to their assessment or account must state their appeal and the reasons for the appeal in writing to Council.

All requests for a review of legal costs will be assessed and the facts of the case collated with the final decision as to whether the costs will be written off to be made by the General Manager.

## **7. 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 judgement details are supplied to credit agencies by NSW Courts.

If a ratepayer requests proof that the debt owed to Council has been paid, 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.

If a ratepayer requests a Notice of Discontinuance to discontinue legal proceedings that have not progressed to a judgment, Council may require all overdue debts to be paid in full. If this requirement is met, Council's debt collection agency will carry out the process for filing a Notice of Discontinuance. Where other overdue debts cannot be paid, Council may use its discretion to set aside the Default Judgment. .

If a ratepayer requests a Default Judgment to be set aside, Council may require all overdue debts to be paid in full. If this requirement is met, Council's debt collection agency will arrange for the filing in court of consent orders to set aside the Default Judgment. Where other overdue debts cannot be paid, Council may use its discretion to set aside the Default Judgment.

## **8. WRITE OFF – UNECONOMICAL TO RECOVER**

If a debt cannot be recovered, or Council chooses not to take further action, outstanding debts may be written off. This can occur before, during or after any legal action has commenced and may include:

- a) Rates and charges in certain circumstance – section 131 of the *Local Government (General) Regulation 2021*

- b) Accrued interest – section 567 the Act.
- c) Pensioner's rates and charges – section 582 and section 583 the Act.
- d) Sundry fees and charges – section 610E the Act.

Bad debts may be written off by the General Manager within delegated authority.