

DEBT RECOVERY AND HARDSHIP POLICY

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SUTHERLAND SHIRE

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1. PURPOSE

The policy is to ensure effective controls, policies and procedures are in place with respect to the collection of outstanding debts owed to Council.

The purpose of this policy is to:

- Ensure transparency in Council's operations concerning the collection of overdue rates and charges and all other accounts receivable amounts.
- Ensure Council's resources are managed with integrity and diligence.
- Ensures that customers are treated sensitively with courtesy and respect.

2. APPLICATION

The Debt Recovery and Hardship Policy applies to all of Council's ratepayers and customers who have outstanding debts with Council.

3. PRINCIPLES

3.1 Objectives

Fulfil all statutory requirements of the Local Government Act and Privacy Laws.

Provide a customer focused service.

Ensure a consistent approach to the collection of outstanding debts.

Ensure transparency and probity in Council's debt recovery procedures.

Ensure that customers experiencing genuine financial difficulties are treated sensitively on a case by case basis.

Assist customers in meeting their rate and other accounts receivable commitments by providing mutually agreeable alternative repayment plans.

Ensure that Council minimises additional costs incurred by customers.

3.2 Notification of Amounts Due

3.2.1 Rates and Annual Charges

The Council issues its annual rates notice to all rateable properties in the Council's area in July of each year for the financial year. Supplementary rate levies may also be issued during the year.

Council issues instalment notices to those ratepayers who elect to pay by instalments and such notices are issued at least one month prior to the due date for the instalment.

Printed Reminder Notices will be issued for outstanding rate instalments no more than 14 days after the instalment due date.

Ratepayers are encouraged to receive their rate notices electronically. Details on how to sign up can be found on Council's website.

3.2.2 Invoices

Invoices are issued at the time they are raised (date of invoice). Invoices are emailed where possible. Monthly statements are issued in the first week of the month for any accounts that have a balance outstanding.

Reminder notices will be issued for outstanding invoices no more than 14 days after the due date.

3.3 Payment Due Dates

3.3.1 Rates and Annual Charges

Rates and annual charges may be paid by a single instalment or by quarterly instalments. If the payment is made by quarterly instalments, the instalment are payable on the following dates:

1 st Instalment	31 August
2 nd Instalment	30 November
3 rd Instalment	28 February
4 th Instalment	31 May

If the payment is made by a single instalment, the instalment is payable by 31 August of each year. Where the Council levies rates and annual charges after an instalment was due, the amount payable is apportioned across the remaining instalments in accordance with section 562 (4) of the *Local Government Act 1993* (the Act).

3.3.2 Invoices

Payment terms for account invoices will be 30 days unless stipulated otherwise on the Invoice.

3.4 Payment Methods

Council provides a broad selection of payment options to assist customers in paying their debts. Payment options include but aren't limited to:

- Online payments
- Bpay
- Credit card payments (A merchant fee as set out in Council's Schedule of Fees and Charges is applicable on payments made by credit card where permitted)
- Direct Debit
- Payment in person

3.5 Eligible Pensioners

A number of concessions are available to eligible pensioners. (Refer to *Pensioner Rates Policy*)

Legal proceedings will not be taken against eligible pensioners. Pensioners will still be issued with Reminder Notices and are subject to interest on overdue balances.

3.6 Interest Charges

A rates instalment becomes overdue if it is not paid on or before the due date.

Interest is charged on a daily basis on overdue rates and annual charges in accordance with section 566 of the Act as amended.

The Minister for Local Government determines the maximum interest rate allowed to be charged on an annual basis.

Rates and charges overdue attract the interest rate adopted by Council as set out in Council's Schedule of Fees and Charges.

Interest may also be applied to other outstanding debts that exceed trading terms.

Interest may be written off or reduced if the applicant complies with their mutually agreed payment arrangement with Council.

3.7 Payment Arrangements

Council encourages all ratepayers and debtors to meet their commitments as they fall due.

Where customers are experiencing financial difficulties in meeting their commitments, they are requested to make early contact with Council Officers with a view to making suitable repayment arrangements.

Council Officers will then work with customers experiencing financial difficulties to assist them in exploring options and making mutually acceptable arrangements for the payment of their outstanding balances.

Council will only institute legal debt recovery procedures to recover the overdue debts unless, or until suitable arrangements are made for the payment of the overdue balances.

Where Council is satisfied that a customer is experiencing financial hardship, Council has the discretion to waive, defer or reduce the payment – *see 3.9 Financial Hardship*.

At every stage of the process, ratepayers will be reminded that if they are experiencing financial hardship, they should contact Council Officers who may be able to assist them in their particular situation.

A customer may at any time make arrangements to pay off their outstanding rates and annual charges by regular payments, subject to the following guidelines:

- (a) The amount and frequency of the payments under the arrangement are to be acceptable to Council.
- (b) Arrangements should, where possible, seek to have the outstanding balance cleared by the end of the financial year.

All ratepayers who enter into an arrangement will continue to have interest charged on the outstanding amount in accordance with Section 566 of the Act.

Where a customer has not honoured a previous arrangement, Council has the discretion to accept a new arrangement or continue with further recovery action.

In the event that a customer 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 legal recovery procedures.

3.8 Legal Recovery

Legal recovery proceedings for the collection of overdue balances will be subject to the following criteria: -

- Rates and charges must have at least two instalments outstanding
- Other debts must be overdue for greater than 90 days.

Legal proceedings will commence with the issue of a Letter of Demand and continue with the issue and service of a Statement of Claim (summons).

Council will make best efforts to contact customers prior to issuing a Statement of Claim at the court.

The Council will make best efforts to contact the owner prior to issuing and servicing a Statement of Claim at the Court, in order to minimise any legal costs that the customer may incur.

If the debt remains unpaid after the date stated on the Statement of Claim, then one or more of the following recovery actions may ensue:

- Judgement
- Writ
- Examination Summons
- Rent for Rates (Section 569 of the *Local Government Act 1993*)
- Garnishee
- Wind up proceedings
- Bankruptcy
- Sale of Land (Section 713 of the *Local Government Act 1993*)
- Any other action available through the legal system deemed appropriate in the circumstances.

The Council may engage a mercantile agent or law firm to conduct all or part of any legal proceedings on behalf of the Council.

Any costs incurred by the Council in connection with legal proceedings will be added to the outstanding account.

3.9 Financial Hardship

3.9.1 Assistance Provided

The Council recognises that there may be exceptional circumstances when a customer may at times experience difficulty in paying the monies owed to the Council. A customer may be eligible for assistance in the form of:

- Extension of due date
- Alternative payment arrangements
- Write off or reduce accrued interest
- Waive, reduce or defer whole or part of the debt

3.9.2 Payment Arrangements

Section 564 of the Act provides for the Council to accept payment or rates and charges due and payable by a person in accordance with an agreement made with the person and also to write off or reduce interest accrued on rates and charges. Details of payment arrangements are outlined in section 6 of this policy.

3.9.3 Interest Waiver

Section 567 of the Act provides for the Council to write off accrued interest on rates or charges payable by a person if, in Council's opinion the reasons that the person was unable to pay rates or charges when they became due and payable were beyond the person's control, or that the person is unable to pay accrued interest for reasons beyond their control, or that the payment of the accrued interest would cause the person hardship.

3.9.4 Change in Land Value

Section 601 of the Act provides for ratepayers who incur a rate increase in the first year following a revaluation of land values, to apply to Council for the rate relief, if the increase in the amount of rates payable would cause them substantial hardship.

In such circumstances, the Council has the discretion to waive reduce or defer payment of the whole or any part of the increase in the amount of the rate payable for such period and subject to such conditions that the Council deems appropriate.

3.9.5 Financial Hardship Assessment Criteria

A customer seeking consideration of financial hardship must make written application to the Council with supporting evidence. The application should contain but is not limited to the following information:

- The address and contact details of the customer
- The reason for the financial hardship

In instances where the customer is seeking consideration of waiving all or part of the actual debt, the following additional financial information may be required:

- Details of all income including wages, benefits and any other sources of income
- Details of all expenditure
- Details of all bank accounts and balance of same
- Details of all credit cards and balance of same
- Details of any other investments
- Details of last Tax Assessment Notice

It is also generally requested that any request for financial hardship consideration be supported by a statement from a financial advisor or accountant.

A determination under this policy will be assessed by a delegated officer of the Council.

4. RESPONSIBILITIES

4.1 Responsible Officer

The Chief Financial Officer is the Responsible Officer for this policy and is responsible for:

- Keeping the policy current;
- Training and educating relevant employees with respect to policy and procedures and ensuring documents, tools, templates and user guides are current and readily available;
- Providing advice and ensuring adherence to the policy;
- Identifying and investigating breaches of policy.

5. MONITORING

The policy will be reviewed on a bi-annual basis or as changes are required and/or occur.

6. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the NSW *State Records Act 1998* and *Privacy and Personal Information Protection Act 1998* through its Enterprise Content Management Policy and Privacy Policy.

7. BREACHES OF POLICY

Breaches of this policy will be dealt with in accordance with normal disciplinary procedures and will be advised to the Chief Executive Officer and / or Director Corporate Support via the Chief Financial Officer.

8. RELATED DOCUMENTS

- Hardship Relief Application Form
- Pensioner Rates Policy

9. RELEVANT LEGISLATION, REGULATIONS AND GUIDELINES

- Local Government Act 1993 (NSW).
- State Records Act 1998 (NSW).
- Privacy and Personal Information Protection Act 1998 (NSW).
- Government Information (Public Access) Act 2009 (NSW).
- NSW Office of Local Government – Debt Management and Hardship Guidelines 2018

10. DEFINITION OF TERMS

Term	Meaning
Act	Local Government Act 1993 (NSW)
Eligible Pensioner	As defined in Clause 134 of the <i>Local Government (General) Regulations 2005</i> .
Examination Summons	A legal document issued by a Court in New South Wales, in accordance with the <i>Civil Procedure Act 2005</i> (NSW) and the <i>Uniform Civil Procedure Rules 2005</i> (NSW), requiring a person against whom a judgment or order has been made, to attend Court for the purpose of being examined with respect to their financial position.
Garnishee	Legal document issued by the court ordering third parties who hold funds on behalf of the defendant (eg. an employer) to pay funds to a council. Garnishees can be issued against a defendant's wages or bank.
Hardship	Hardship is any situation where an individual is having difficulty paying legally owed debt. This can result from life changes (for example, because of illness, unemployment or changed financial circumstances) restricting the short-term capacity to pay.
Judgement	In cases where the ratepayer does not respond to a Statement of Claim issued to them, the Court may make a default judgment whereby it will make a decision without having the matter heard in Court.
Notice of Demand	Demand letter from a council or a council's legal recovery representative issued in accordance with the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission guidelines.
Rent for rates	Section 569 of the Local Government Act allows a council to order tenants of properties with overdue rates to pay rent to a council in lieu of unpaid rates, under specific circumstances
Sale of Land	In accordance with s713 of the Local Government Act, a council has the authority to sell land which has any unpaid rates or charges for more than 5 years, or 1 year for vacant land, where the owing debt exceeds the land valuation.
Statement of Claim	A legal document issued by a Court in New South Wales, in accordance with the <i>Civil Procedure Act 2005</i> (NSW) and the <i>Uniform Civil Procedure Rules 2005</i> (NSW), commencing legal proceedings which identifies the relief claimed.
Winding up proceedings	Winding up is a process where a company's outstanding matters are finalized, its assets liquidated and it ceases to exist as a company.
Writ	An order issued by a court giving authority to a court appointed sheriff to request payment of a judgment debt by a specified time after which the sheriff will seize goods to the value of the judgment debt.

End of Document

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