

9.3 Policy Review - Debt Recovery

REPORT BY THE REVENUE AND PROPERTY MANAGER
TO 11 DECEMBER 2019 ORDINARY MEETING
GOV400067, A0340005

RECOMMENDATION

That Council:

1. **receive the report by the Revenue and Property Manager on the Policy Review - Debt Recovery;**
2. **place the revised Debt Management and Recovery Policy on public exhibition for 28 days; and**
3. **adopt the revised Debt Management and Recovery Policy if no submissions are received.**

Executive summary

The existing Debt Recovery Policy has been reviewed and proposed amendments, including the re-naming of the policy to Debt Management and Recovery Policy (the Policy), are suggested as part of Council's ongoing policy review program.

Disclosure of Interest

Nil

Detailed report

The proposed changes to the Policy are consistent with the intent of the existing Policy and are primarily minor amendments to give clarity to, and reflect the scope of Council's current business operations and current business practices.

All proposed changes are shown as "track changes" on the copy of the Policy attached to this report.

Community Plan implications

Theme	Good Governance
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Goal	An effective and efficient organisation
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Strategy	Prudently manage risks association with all Council activities
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Strategic implications

Council Strategies

Not Applicable

Council Policies

By adopting the recommendation, Council is endorsing the Debt Management and Recovery Policy changes to be placed out on public exhibition for comment. Should any submissions be received a further report will be presented back to Council for consideration. If no submissions are received at the end of the exhibition period, the revised policy will be adopted and apply from that date.

Legislation

Local Government Act 1993

Local Government (General) Regulation 2005

Privacy and Personal Information Protection Act 1998

Privacy and Personal Information Protection Regulation 2019

Financial implications

Not Applicable

Associated Risks

Not Applicable

DIANE SAWYERS
REVENUE AND PROPERTY MANAGER

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

14 November 2019

Attachments: 1. Current Debt Recovery Policy with track changes.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY

Debt Management and Recovery

*A prosperous
and progressive
community*

ADOPTED		VERSION NO	3.0
COUNCIL MEETING MIN	[xx/xx]	REVIEW DATE	NOVEMBER 2019
DATE:	NOVEMBER 2019	FILE NUMBER	A0340005

Objective

The objective of this [policy Policy](#) is to provide a framework for the efficient and effective collection of outstanding debts; and [to](#) fulfil statutory requirements in relation to the recovery of rates, charges, fees and other debts.

Council has a responsibility to ensure monies owed to it are recovered in a timely, effective and efficient manner to finance its operations and ensure effective cash flow management. Whilst carrying out this responsibility, Council will:

- Treat all people fairly and consistently under this [P](#)policy; and
- Treat all matters under this [P](#)policy confidentially; and
- Treat people with respect and sensitivity in considering their circumstances.

Relevant legislation

- Local Government Act 1993 NSW
- [Local Government \(General\) Regulation 2005 NSW](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [Privacy & Personal Information Protection Regulation 2019](#)

Related policies and plans

- Hardship Provision – Rates and Charges
- Pensioner Concessions
- Credit Policy
- [Privacy Management Plan](#)
- [Debt Management and Hardship Guidelines - Office of Local Government 17 November 2018](#)

Rates and charges

Due dates

Chapter 15 Part 7 of the Local Government Act 1993 sets out the requirements for payment of rates and charges.

Annual rates and charges may be paid in a single instalment or by quarterly instalments. If a payment is made in a single instalment, the instalment is payable by 31 August. If payment is made

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by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February and 31 May.

Council is to issue a quarterly reminder notice for the payment of an the November, February and May instalment at least 30 days before the due date of the each of the instalments.

Overdue Amounts

Overdue accounts, ~~where the ratepayer/s has not made a suitable arrangement for the payment of the debt or has defaulted on an initial arrangement,~~ are to be forwarded to Council's nominated Debt Management and Recovery Provider (DMRP) for ~~the debt management and/or debt~~ recovery processes in the following circumstances:

- (i) Rate accounts that show arrears as at 1 July of any year be forwarded to the DMRP in July;
- (ii) Rate accounts that show the first rate instalment as unpaid be forwarded to the DMRP in September;
- (iii) Rate accounts that show the second rate instalment as unpaid be forwarded to the DMRP in December;
- (iv) Rate accounts that show the third rate instalment as unpaid be forwarded to the DMRP in March;
- (v) Rate accounts that show the fourth rate instalment as unpaid be forwarded to the DMRP in June;

with the exception of those outstanding debts generated by the Farmland Category during exceptional circumstances such as drought or flood; ~~tThe General Manager is to determine the special circumstances. In this situation, tThe Farmland Category~~ ratepayer is to contact Council in the first instance, with a view to putting in place a suitable arrangement for payment and submit an application for Hardship Assistance under the Hardship Provision Policy with a view to putting into place a suitable arrangement for payment. ~~The General Manager is to determine the special circumstances.~~

Suitable Arrangements

A ratepayer may make a suitable arrangement for the payment of their rates and charges, including those accounts already with the DRPDMRP.

A suitable arrangement for payment will clear the total outstanding debt;

- a) before the subsequent rate instalment is due; and where this cannot be achieved;
- b) by the end of the current financial year provided that all subsequent rate instalments that may become due in that time frame are paid or are incorporated into the total repayment amount; and where this cannot be achieved;
- c) in up to 1 (one) year, provided that subsequent rate instalments that may become due in that time frame are paid or are incorporated into the total repayment amount.

Such arrangements may be approved by the DRPDMRP and/or Revenue Staff. In the majority of cases, a ratepayer will be required to negotiate a suitable arrangement directly with the DRPDMRP. The DRPDMRP will record and monitor arrangements for compliance.

The General Manager is to approve arrangements for payment where the proposed payment arrangement will not clear the debt as at c), above, including proposed arrangements for Farmland ~~category~~ Category debts during periods declared exceptional circumstances.

In accordance with Section 568 Local Government Act 1993, money paid in respect of rates or charges levied on land is to be applied towards payment of those rates or charges in the order in which they became due.

Debt ~~Collection~~ Management

Debt Management ~~processes~~ procedures will be commenced immediately following the due date. Upon the referral of a debt to the DMRP, an initial reminder advice will be issued.

~~All debt recovery costs and fees associated with any course of action are to be borne by the owner of the debt and will subsequently remain a charge on the property until paid. The debt recovery costs and fees are to be charged in accordance with Council's Annual Fees and Charges.~~

~~The following procedure is to be employed by Council's DRP:~~

~~Supplementary Contact Procedures:~~

~~To supplement the procedures employed before~~ At Debt Management stage and at Steps 1 to 6 at the Debt Recovery stage, below, Council's ~~DRP~~ DMRP may be

instructed by the Manager Revenue & Property to ~~use~~ employ other multiple various communication channels to remind, contact and negotiate payment arrangements with ratepayers ~~and customers~~. Options include, but are not limited to, written correspondence delivered by post, telephone calls, email, SMS, Facebook, field calls and on-line chat.

Debt Recovery

Where the referral of the debt for Debt Management has not resulted in payment in full or a suitable payment arrangement negotiated in accordance with this Policy, the debt will be progressed and Debt Recovery procedures will apply.

STEP 1 - FIRST LETTER OF DEMAND SENT TO RATEPAYER BY DMRP

Recovery proceedings shall not be commenced until after the expiration of 14 days after the debt becomes due. A first letter of demand is to be forwarded to the debtor notifying that unless the account is paid, in full, within 14 days of the date of the letter or a suitable arrangement made, legal action will commence for the outstanding amount.

STEP 2 - SECOND LETTER OF DEMAND (~~PRE-LEGAL~~) SENT TO THE RATEPAYER BY DMRP

Where the debt value is ~~less than \$500~~ over less than \$1,000, a second demand letter (~~Pre-legal~~) will be sent to the debtor where a response or payment has not been received as a result of the first letter of demand.

OR

STEP 2 – NOTICE TO THE OCCUPIER IS ISSUED

Where a response to Step 1 is not received, a notice under Section 569 of the Local Government Act 1993 may be issued, if applicable.

STEP 3 - STATEMENT OF LIQUIDATED CLAIM ISSUED

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Where a response to Step 1 is not received and the debt is over [\\$5001,000](#), a Statement of Liquidated Claim is to be issued through the Local Court at Mudgee by the [DRPDMRP](#).

STEP 4 - JUDGEMENT

Where a response to the Statement of Liquidated Claim is not received, default judgment is to be entered by the [DRPDMRP](#).

STEP 5 - [WARRANT WRIT](#) issued

On the entry of judgment and the failing of the debtor to enter into a payment arrangement, a [warrant writ](#) is to be issued by the Court against the debtor to recover personal property.

OR

STEP 5 - [WAGES AND/OR BANK GARNISHEE](#) ISSUED

Where ~~subsequent details are known and~~ an arrangement [has not been entered into or is has not maintained and necessary particulars are known](#), a [wage and/or bank](#) garnishee is to be ~~attached to the debtors wage in recovery of the debt~~[put in place](#). A summons process is initiated with the court.

OR

STEP 5 - ORAL EXAMINATION SUMMONS ISSUED

Oral examination summons action is taken when there is insufficient knowledge to effectively use a garnishee or [warrant writ](#). This summons requires the debtor to attend court and be questioned as to the debtor's current financial situation and ability to meet Council's claim. [Failure by a debtor to comply with an oral examination summons may result in the issue of a Warrant to enforce compliance.](#)

Council's Revenue staff will determine whether a notice to the occupier, [warrant writ](#), garnishee or oral examination summons will be issued or commenced, based on the individual circumstances of the debtor.

OR

STEP 5 - BANKRUPTCY AND WINDING UP PROCEEDINGS

Bankruptcy and winding-up proceedings, authorised only by the General Manager, will commence if the debt is in excess of \$5,000 and previous action has secured judgement.

STEP 6 – SALE OF LAND FOR UNPAID RATES AND CHARGES

Where steps 1 to 5 have been unsuccessful, the General Manager is to commence a sale of land for unpaid rates and charges, in accordance with Chapter 17, Part 2 Division 5, Section 713 of the Local Government Act 1993.

[FIELD CALLS](#)

[The DMRP may be instructed by the Manager Revenue and Property to conduct a Field call to the residential address of a ratepayer and/or to the property address \(if different to the residential address of the ratepayer\) at any of the steps 2 to 5, above, to assess or confirm circumstances.](#)

All debt recovery costs and fees associated with any course of action are to be borne by the owner of the debt and will subsequently remain a charge on the property until paid. The debt recovery costs and fees are to be charged in accordance with Council's *Annual Fees and Charges*.

Water Usage Charges

DUE DATES

Water meters ~~are read~~ readings are collected four times a year and accounts are sent to the property owners after each meter reading. The due date for payment is 21 days from the date of the Water Consumption Charge Notice.

OVERDUE AMOUNTS

Water usage accounts are considered overdue immediately following the due date.

SUITABLE ARRANGEMENTS

A ratepayer may make a suitable arrangement for the payment of their water usage charges, including those accounts already with the [DRPDMPR](#).

A suitable arrangement for payment will clear the total outstanding debt:

1. by the end of the month in which the next meter reading is scheduled; and where this cannot be achieved;
2. by the end of the month in which the subsequent meter reading is scheduled, provided that all subsequent water usage accounts that may become due in that time frame are paid or are incorporated into the total repayment amount.

Such arrangement may be approved by the [DRPDMPR](#) and/or Revenue and Customer Service staff. In the majority of case, a ratepayer will be required to negotiate a suitable arrangement directly with the [DRPDMPR](#). The [DRPDMPR](#) will record and monitor arrangements for compliance.

The General Manager is to approve arrangements for payment where the proposed payment arrangement will not clear the debt at b), above.

In accordance with Section 568 Local Government Act 1993, money paid in respect of charges levied on land is to be applied towards payment of those charges in the order in which they became due.

DEBT COLLECTIONMANAGEMENT

Debt Management ~~processes~~ procedures will be commenced immediately following the due date. Upon the referral of a debt to the DMRP, an initial reminder advice will be issued.

~~All debt recovery costs and fees associated with any course of action are to be borne by the owner of the debt and will subsequently remain a charge on the property until paid. The debt recovery costs and fees are to be charged in accordance with Council's *Annual Fees and Charges*.~~

The following procedure is to be employed by Council and Council's ~~DRP~~. [Supplementary Contact Procedures](#):

~~To supplement the procedures employed before~~At Debt Management stage and at Steps 1 to 6 of the Debt Recovery stage, below, Council's [DRPDMPR](#) may be

instructed by the Manager Revenue & Property to ~~use employ other multiple various~~ communication channels to remind, contact and negotiate payment arrangements with

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ratepayers ~~and customers~~. Options include, but are not limited to, [written correspondence delivered by post](#), telephone calls, email, SMS, Facebook, [field calls](#) and on-line chat.

DEBT RECOVERY

[Where the referral of the debt for Debt Management has not resulted in payment in full or a suitable payment arrangement negotiated in accordance with this Policy, the debt will be progressed and Debt Recovery procedures will apply.](#)

Step 1 – Overdue water reminder notice issued

At the expiration of 7 days after the due date of the Water Consumption Charge Notice, if an account remains unpaid and no satisfactory payment arrangement has been made, an overdue water reminder notice is issued by the [DRPDMRP](#) on Council letterhead.

Step 2 – Water restriction notice issued

At the expiration of ~~75~~ days after the due date of the ~~Overdue wWater rReminder N~~notice, if an account in excess of \$~~2400~~ remains unpaid or no satisfactory payment arrangement has been made, a water restriction notice is issued [on DMRP letterhead](#) by the ~~DRPDMRP~~ [during a field call or by post on DRP letterhead](#). ~~The due date for payment is 14 days from the date of the water restriction notice.~~

Step 3 – Notice of intention to restrict

At the expiration of ~~75~~ days after the due date of the ~~wWater Rrestriction n~~Notice, if no payment or satisfactory payment arrangement has been made, a notice of intention to restrict water supply is issued by Council on Council letterhead. A restriction action notice penalty, as per Council's *Fees and Charges*, applies to the issue of this notice.

Step 4 – Water restriction

On, or as soon as practicable after the nominated date appearing on the ~~Non~~notice of ~~in~~Intention to ~~R~~restrict, if no payment or a satisfactory arrangement has been made, the restriction device is to be fitted to the water meter connected to the property. [The restriction device will not be removed until full payment is received which includes the penalty fee.](#)

Step 5 – Water disconnected

At the expiration of ~~1430~~ days after the restriction device has been fitted to the water meter, if an account remains unpaid or no satisfactory payment arrangement has been made, a notice of intention to disconnect, authorised only by the General Manager, may be issued. The disconnection of the water meter connected to the property will occur on, or soon after a nominated date. A restriction/disconnection notice penalty, as per Council's *Annual Fees and Charges*, applies to the issue of this notice. A service disconnection/reconnection fee, as per Council's *Annual Fees and Charges* also applies.

Step 6– Referral to the [DRPDMRP](#)

If after water restrictions or disconnection have been put in place and the debt remains outstanding, the recovery of the debt may be forwarded back to Council's [DRPDMRP](#) for legal proceedings. In such instances, the debt collection procedures in Steps 2 to 5 as listed in the Rates and Charges section of this Policy are to apply.

FIELD CALLS

The DMRP may be instructed by the Manager Revenue and Property to conduct a Field call to the residential address of a ratepayer and/or to the property address (if different to the residential address of the ratepayer) at any of the steps 2 and 6, above, to assess or confirm circumstances.

All debt recovery costs and fees associated with any course of action are to be borne by the owner of the debt and will subsequently remain a charge on the property until paid. The debt recovery costs and fees are to be charged in accordance with Council's *Annual Fees and Charges*.

Sundry Debtors

This encompasses all amounts owing to Council excluding rates and charges, water usage accounts and government grants.

DUE DATES

Council issues debtor accounts for numerous services. These services include, but are not limited to, trade waste services, private works, staff uniforms, airport usage and property rentals.

Accounts are generally issued on a weekly, fortnightly or monthly basis. The trading term is 30 days from date of invoice, available to credit-approved applicants only. Services such as private works, facilities hire and cemetery fees generally require payment in advance, in accordance with individual service policies; refer to *Credit Policy*.

OVERDUE AMOUNTS

Sundry debtor accounts are considered overdue immediately following the due date.

Council reserves the right to deny access to Council facilities or suspend services or suspend credit terms to customers with overdue amounts; refer to *Credit Policy*.

SUITABLE ARRANGEMENTS

A debtor may make a suitable arrangement for the payment of their sundry debtor account, including those accounts already with the DRP/DMRP.

A suitable arrangement for payment will clear the total debt;

a) –within 60 days of making the arrangement.

The General Manager is to approve arrangements for payment where the proposed payment arrangement will not clear the debt at a), above.

In accordance with Section 568 Local Government Act 1993, money paid in respect of sundry debtor amounts is to be applied towards payment of those amounts in the order in which they became due.

DEBT COLLECTION MANAGEMENT

Debt Management processes/procedures will be commenced immediately following the due date. Upon the referral of a debt to the DMRP, an initial reminder advice will be issued.

The procedure for the collection of debts due to Council will follow those procedures outlined in Steps 4 to 5 of the Rates section of this Policy.

Supplementary Contact Procedures:

To supplement the procedures employed before At Debt Management stage and at Steps 4 to 5 of the Rates and Charges section of this Policy the Debt Recovery stage, below, Council's

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[DRPDMRP](#) may be instructed by the Manager Revenue & Property to [use employ other multiple various](#) communication channels to remind, contact and negotiate payment arrangements with [ratepayers and customers debtor](#). Options include, but are not limited to, [written correspondence delivered by post](#), telephone calls, email, SMS, Facebook, [field calls](#) and on-line chat.

DEBT RECOVERY

[Where the referral of the debt for Debt Management has not resulted in payment in full or a suitable payment arrangement negotiated in accordance with this Policy, the debt will be progressed and Debt Recovery procedures will apply.](#)

[The procedure for the collection of debts due to Council will follow those procedures outlined in Steps 1 to 5 of the Rates and Charges section of this Policy.](#)

FIELD CALLS

[The DMRP may be instructed by the Manager Revenue and Property to conduct a Field call to the residential address of a ratepayer and/or to the property address \(if different to the residential address of the ratepayer\) at any of the steps 2 to 5 of the Rates and Charges section of this Policy, to assess or confirm circumstances.](#)

Further considerations for the collection of Rates and Charges, Water Usage and Sundry Debtor debts

Where a matter proceeds to a pre-trial consultation or a hearing, Council's Solicitor is to be instructed to act on Council's behalf.

Interest is applied to all outstanding rates and water usage charges and sundry debtor fees and charges, where deemed, whether a suitable agreement is in place or not. The interest rate is determined by Council as part of adopting the Delivery Programme and Operational Plan. Interest commences to accrue on unpaid rates and charges and water usage charges and sundry debtor fees and charges, where deemed, as soon as practical after the due date.

Interest is applied to sundry debtors, where deemed, in accordance with the legislation under which the fee or charge is raised.

The General Manager has delegated authority to write-off rates and charges, fees, charges and other debts, in accordance with Section 131 of the Local Government (General) Regulation 2005, up to and including an amount resolved by Council. This amount is currently set at \$2,500.

The Manager Revenue & Property and Assistant Manager Revenue & Property have delegated authority to write off interest that has accrued on rates and charges, charges, fees and other debts up to \$10 where the ratepayer/s was unable to pay the rates and charges when they became due and payable for reasons beyond their control; (refer Sections 567(a) & (b) LGA).

The General Manager is to be advised by the Manager Revenue & Property or the Chief Financial Officer of any staff member or Councillor whose overdue account has been referred to Council's [DRPDMRP](#).

Council's Revenue Staff ~~be~~ [are](#) required to act as authorised officers in relation to the recovery of rates and charges where that nominated person is required to represent Council at Court.

[In accordance with s23A of the Local Government Act 1993, Council has considered the Office of Local Government's Debt Management and Hardship Guidelines issued on 27/11/2018 in formulating this Policy.](#)

Privacy

Personal information collected as a consequence of this Policy will only be used for the purposes of this Policy and will be managed by Council's Privacy Management Plan.

There are legal obligations under the Privacy and Personal Information Protection Act 1998 (PPIIP Act) which Council must abide by when it collects, stores, uses or discloses personal information. The 12 Information Protection Principles (IPPs) are as follows:-

Collection

1. LAWFUL

An agency must only collect personal information for a lawful purpose. It must be directly related to the agency's function or activities and necessary for that purpose.

2. DIRECT

An agency must only collect personal information directly from you, unless you have authorised collection from someone else, or if you are under the age of 16 and the information has been provided by a parent or guardian.

3. OPEN

An agency must inform you that the information is being collected, why it is being collected, and who will be storing and using it. You must also be told how you can access and correct your personal information, if the information is required by law or is voluntary, and any consequences that may apply if you decide not to provide it.

4. RELEVANT

An agency must ensure that your personal information is relevant, accurate, complete, up-to-date and not excessive. The collection should not unreasonably intrude into your personal affairs.

Storage

5. SECURE

An agency must store personal information securely, keep it no longer than necessary and dispose of it appropriately. It should also be protected from unauthorised access, use, modification or disclosure.

Access and accuracy

6. TRANSPARENT

An agency must provide you with details regarding the personal information they are storing, why they are storing it and what rights you have to access it.

7. ACCESSIBLE

An agency must allow you to access your personal information without excessive delay or expense.

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8. CORRECT

An agency must allow you to update, correct or amend your personal information where necessary.

Use

9. ACCURATE

An agency must ensure that your personal information is relevant, accurate, up to date and complete before using it.

10. LIMITED

An agency can only use your personal information for the purpose for which it was collected unless you have given consent, or the use is directly related to a purpose that you would expect, or to prevent or lessen a serious or imminent threat to any person's health or safety.

Disclosure

11. RESTRICTED

An agency can only disclose your information in limited circumstances if you have consented or if you were told at the time they collected it that they would do so. An agency can also disclose your information if it is for a directly related purpose and it can be reasonably assumed that you would not object, if you have been made aware that information of that kind is usually disclosed, or if disclosure is necessary to prevent a serious and imminent threat to any person's health or safety.

12. SAFEGUARDED

An agency cannot disclose your sensitive personal information without your consent, for example, information about ethnic or racial origin, political opinions, religious or philosophical beliefs, sexual activities or trade union membership. It can only disclose sensitive information without consent in order to deal with a serious and imminent threat to any person's health or safety.

As exemptions may apply in some instances, it is therefore suggested to contact Council's ? Officer or the Information and Privacy Commission for further advice.

Variation

Council reserves the right to vary the terms and conditions of this policy, subject to a report to Council.