

## KEMPSEY SHIRE COUNCIL

### RECOVERY OF UNPAID RATES, CHARGES AND OTHER DEBTS Procedure 5.4.1

Policy No. and Title	5.4	Financial Management and Control Policy
Procedure	5.4.1	Recovery of unpaid rates, charges and other debts
Version	3	
Date Adopted		<i>Draft</i>

#### **1 OBJECTIVES**

Payment of rates and charges is an important obligation of all property owners. Revenue collected from rates and charges is used to help provide a wide range of services and facilities for everyone that lives, works and visits the Shire. Without this revenue Council would not be able to function effectively or meet the needs of the local community.

At times rates, charges and other debts that are owed to Council are not paid and these accounts fall into arrears.

This procedure ensures all debtors not meeting their obligations to Council will be treated in a fair and consistent manner in line with the statutory requirements of the NSW Local Government Act 1993 (the Act) and the NSW Local Government (General) Regulation 2021.

#### **2 STATEMENT**

This Procedure formalises Council's debt recovery actions when managing overdue rates, water and sewer usage charges and other sundry charges.

Recovering debt will include a series of Council reminders, potentially followed by referral to a debt recovery agency, court action and ultimately enforced sale of property.

#### **3 DEBT RECOVERY INTENTIONS**

Council will act with integrity and fairness seeking to ensure the recovery of all debts as soon as possible, consistent with the ability of the debtor to pay.

Prior to involvement of external debt recovery services Council will use early-stage intervention to facilitate payment, seeking to negotiate voluntary repayment arrangements to address outstanding debts, and reduce the likelihood of moving to later debt recovery stages.

The basis of the debt recovery procedure involves a series of Council reminders, potentially followed by referral to a professional debt recovery agency, court action and ultimately enforced sale of property.

## **4 BILLING SCHEDULE**

- a) Council will raise and issue annual Rates and Charges on or before 29 July, where charges may include:
  - General property rates
  - Water access
  - Sewer access
  - Water usage
  - Waste (domestic, commercial, recycling)
  - Environmental levy
  - Stormwater levy
  - Onsite sewerage management
- b) Issuing of rate and charges notices will be by prepaid post with an allowance of two days for the delivery, unless the ratepayer has elected to receive the notice via email. In these cases, notices will be sent to the current email address held by Council.
- c) Further water usage charges will be levied and incorporated on instalment notices issued at the beginning of November, February and May.
- d) Rates and charges are issued on a thirty-day basis being due for payment on the last day of August, November, February and May.

### Other debts

- Wherever possible, Council will secure prepayment for the supply of all other services or delivery of external works.
- Where Council is unable to secure prepayment, accounts for raising these amounts will be issued as promptly as possible and will be due for payment within one month, at the expiration of which they will be considered to be overdue.

## **5 AMOUNT FOR WHICH DEBT RECOVERY WILL BE UNDERTAKEN**

### General provisions

- a) All debts in arrears of \$100 or more may trigger debt recovery action, in accordance with section 10 of this procedure, unless satisfactory, alternative arrangements have been approved and the arrangements are being complied with.
- b) Council reserves the right to take action for recovery of debts in arrears under \$100.

### Rates and Charges outstanding

- a) Recovery action will only be taken on that proportion of rates and charges overdue and subject to interest charges.
- b) Where previous year rates and charges are in arrears recovery action taken will include both arrears and overdue current rates and charges.

## 6. PAYMENT ARRANGEMENTS

Debtors who are unable to pay their accounts by the due dates may enter into a mutually agreed payment arrangement with Council.

These arrangements will be considered on case-by-case basis as negotiated initially with Council's Revenue Officers. Preferred arrangements are those that seek to finalise payment of outstanding amounts by 31 May in the current financial year.

In most cases, interest will be applied to the outstanding account balance at the interest rate adopted by Council annually in its Schedule of Fees and Charges<sup>1</sup>, in accordance with Section 566 of the Act. Council may choose to write off or reduce interest accrued on rates or charges in line with Section 564 of the Act if the debtor has complied with an agreed payment arrangement.

A schedule detailing the ratepayer's name, agreed amounts and due dates for payments, will be created for each arrangement and a copy provided to the debtor together with a covering letter detailing the outcomes should the ratepayer default on the arrangement.

### Payment Arrangement Guidelines

- Arrangement may refer to a one-off payment or agreed regular payments.
- Periodic payments should be regular amounts and remitted at regular intervals, at least monthly.
- If a one-off payment is proposed it must be made within ninety days of the arrangement date.
- Regular payments arrangements will aim to settle the outstanding rates and charges by the end of the financial year to which they relate. All payment arrangements must be re-entered in July at the start of each financial year once the rate notice for that financial year has been issued.
- Council will promote the use of Centrelink deductions, direct debit and Australia Post payment methods as part of the payment arrangement.
- Arrangements will be monitored by Revenue staff on a monthly basis to ensure compliance.

### Action taken on default of a payment arrangement

- Debtors who only partially meet the arrangement will be advised that their arrangement has defaulted and requested to make alternative arrangements or payment in full.
- Debtors who fail to make any payment for the first time will receive a letter advising of the proposed action that Council will be commencing, which may include debt recovery action.
- Debtors who default on three occasions during the course of an arrangement will be ineligible to continue on the arrangement and be required to settle their account in full within 14 days.

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<sup>1</sup> The rate of interest that is set by Council must not exceed the rate specified by the Minister for Local Government by notice in the Gazette.

- Where legal action has previously been initiated the debtor will be advised the amount due must be paid in full within seven days or legal action will recommence without further notice.

## **7. CONCESSIONAL TREATMENT FOR ELIGIBLE PENSIONERS**

Pensioner rebates and concessions on Council rates, water and sewer charges are available under Sections 575 – 584 of the Act. To be eligible, the ratepayer must be a war widow or wholly dependent partner to the Department of Veterans' Affairs income support supplement; or hold one of either Pensioner Concession Card, DVA Gold Card embossed with Totally Permanently Incapacitated (TPI) or Extreme Disablement Adjustment (EDA).

Maximum assistance provided to eligible pensioners as specified in Section 575 of the Act is:

- \$250 per annum reduction on ordinary rates and charges for domestic waste management services
- \$87.50 per annum reduction on rates or charges for all water supply
- \$87.50 per annum reduction on rates or charges for all sewerage supply

The following applies to pensioners who are eligible for a pensioner rate rebate as described above, only in respect of the property upon which a pension rebate is granted.

- If unable to meet the payment obligations after the rebate, pensioners are encouraged to negotiate repayment terms with Council's Revenue Officers prior to any debt recovery process having to be instigated. If recovery by repayment terms is unsuccessful then normal procedures will be followed for collecting the outstanding amount.
- Where Council has an existing hardship arrangement in place according to Section 712 of the Act, which allows the rates and charges of a pensioner to accumulate as a debt against the property, acknowledgement of the debt will be obtained from the ratepayer on an annual basis. If acknowledgement is not made, legal action will be taken in accordance with these guidelines.
- For charges relating to kerb and gutter or footpath construction relating to the property for which the person is an eligible pensioner, legal action will only be taken as a last resort when all other options for securing the funds have been exhausted.

## **8. CONCESSIONAL TREATMENT RELATED TO NATURAL DISASTERS**

When a natural disaster has been declared and categorised by State and Federal Governments there may be ratepayers who experience an extensive and ongoing recovery period. Council may provide fees and charges relief to property owners who have had a house, facility or outbuilding determined to be destroyed or damaged by the responsible government agency as a result of a natural disaster.

To minimise the financial strain on impacted ratepayers who do not have other cost recovery mechanisms such as insurance, Council may reduce or waive fees and charges including:

- Water and sewerage charges
- Waste management and tipping fees

- Development fees
- Interest on rates and charges

The extent of support offered in each natural disaster event will depend on the extent of damage and duration of the natural disaster event, the extent of additional support provided from other levels of government or external agencies and will be determined by the Director of Corporate and Commercial in consultation with the General Manager and Mayor.

## **9. HARDSHIP RELIEF**

Due to exceptional and unplanned circumstances, ratepayers may at times experience difficulty in paying rates and charges despite payment arrangements and processes being in place to reduce unpaid debts to Council.

In cases of genuine financial hardship, the Act includes a number of provisions for assistance as detailed in Council's Hardship Relief to Ratepayers Procedure.

Where an assessment is made by the Rates Review Committee, Chaired by the Director Corporate and Commercial and comprising senior Finance and Revenue staff as delegated by the General Manager, and grounds for declaring hardship are not granted, Council staff will continue to work with the ratepayer to confirm further steps to recover all outstanding rates and charges.

## **10. RECOVERY OF RATES AND CHARGES**

The following process will be implemented after the instalment due dates in August, November, February and May.

- a) A report will be created listing accounts with an outstanding balance of \$100 or more and detailing payments received and /or arrangements negotiated.
- b) Three days after the instalment due date an SMS message may be issued, for ratepayers for whom Council has a mobile phone number, advising the instalment has not been paid by the due date.
- c) Seven days after the instalment due date a first and final Reminder Notice will be issued showing the total amount overdue.
- d) If payment has not been received or a payment arrangement agreed within fourteen days after the first and final Reminder Notice a formal letter will be sent advising the ratepayer that the debt will be referred to Council's debt recovery agency for action within seven (7) days.
- e) On amounts over \$500, if payment or a suitable arrangement has not been received within seven days after the formal letter the debt will be referred to Council's external debt recovery agency. The agency will send an SMS message and letter informing the ratepayer that legal action will commence if payment is not received, or a suitable arrangement made, in fourteen days. Accounts under \$500 will go back into the debt recovery cycle and be sent further reminder letters.

- f) If payment or a suitable arrangement has not been received within fourteen days of the letter from the debt recovery agency a statement of claim will be raised.
- g) Further action such as early intervention, judgement, writ or garnishee will be raised if payment in full has not been received after issuing a statement of claim, or if a suitable arrangement has not been made. The debt recovery agency will guide Council through this process as there are time restrictions in this process.
- h) The following information will be forwarded to Council's debt recovery agent:
  - Account number
  - Name and address of ratepayers
  - Balance outstanding
  - Property details

## **11. RESTRICTION OF SUPPLY FOR WATER ACCOUNTS**

Where debt is unrecovered for **domestic water accounts**, restriction of supply is to be used for at least thirty days prior to referring the action for enforcement. This action may be skipped where the Director Corporate and Commercial or the General Manager are of the opinion that:

- Restricted water flow will have a significant negative health impact, or
- Where the Director Corporate and Commercial or the General Manager has directed in writing that progressing to enforcement is the most appropriate action.

Where debt is unrecovered for **commercial accounts** restriction of supply is to be used for at least thirty days prior to referring the action for enforcement. This action may be skipped where the Director Corporate and Commercial or the General Manager are of the opinion that:

- Restricted water flow will have a significant negative health impact on employees or customers.
- That the economic impacts on the business are likely to be higher than the cost of enforcement, or
- Where the Director Corporate and Commercial or the General Manager has directed in writing that progressing to the enforcement is the most appropriate action.

Action to restrict a water account will include the following steps:

- a) The Director Corporate and Commercial is to be advised in writing at least seven days prior to a restrictor being fitted or service being removed.
- b) Prior to a restriction notice being issued, Council will make reasonable attempts to agree a suitable payment arrangement.
- c) Debtors are to be provided with seven days' written notice that the supply will be restricted. Advice sent by Australia Post is considered received five working days after posting, and attempts should be made to contact the ratepayer by email and phone in addition to hard copy advice.
- d) Notice of entry and restriction is affected by hand-delivery to the debtor or occupier of the premises usually on the day or the day before the restriction is to occur.

- e) A notice is to include all outstanding amounts including the fees applicable to the restriction and reconnection.
- f) A stop restriction fee applies where employees or agents have mobilised on-site to affect the restriction and the restriction is not proceeded with because the outstanding account is settled.
- g) During delivery of the notice of entry and restriction, the debtor or occupier is to be advised that Council staff will return later in the day or the following day to restrict the water supply.
- h) Should there be an undertaking that the account will be settled as soon as possible, the instruction to restrict will be put on hold for no more than 24 hours.
- i) Should an initial undertaking to make payment in full or over time, not be adhered to, no further deferrals are to be allowed.
- j) Following the restriction, written advice is to be provided to the Manager Environmental Health.
- k) On the date that a debtor's supply is restricted a letter will be sent to the debtor confirming the action, meter read at the time and that the debtor remains responsible for the outstanding debts.

## **12. SALE OF LAND FOR UNPAID RATES**

In accordance with Section 713 of the Act, Council's final recourse to recover unpaid rates and charges is the enforced sale of property where the debt has been outstanding for more than five (5) years from the date on which it became due and payable and other attempts to collect the debt have failed. Due to the resources and cost involved, sale of such properties will be conducted in bulk lots.

This is not an action that is taken lightly and follows one year (vacant land) or five years (other land) of active debt recovery management including negotiations undertaken by Council's external debt recovery agent. Any sale of land for unpaid rates requires a resolution from Council and formal public notification of impending sale.

Proceeds for property sales are used to recover the debt to Council and the remaining funds are returned to the property owner or their representatives.

## **13. RECORDING OF ARRANGEMENTS AND INFORMATION**

All actions and arrangements agreed in relation to debt recovery will be recorded in the Council's financial system and linked to the account.

All correspondence will be recorded in the Council's records management system along with a record of notes taken or arrangements made.

The minimum data to be recorded for each notice sent out from Council will be:

- Date of reminder/action
- Stage of action
- Balance outstanding, and
- Action date (unless item has been referred to an external party).

#### **14. USE OF EXTERNAL DEBT RECOVERY AGENTS**

An experienced debt recovery agency that operates in accordance with Council's policies, procedures and values will be engaged to assist in the management of outstanding accounts on Council's behalf. The agency will seek full repayment of outstanding accounts, plus interest calculated at the adopted rate per annum by Council where agreed, plus their costs and any legal costs that may be associated with recovering the debt.

Where action has proceeded to the commencement of enforcement action, further legal action will only be deferred subject to payment of a minimum of 50% of the amount due and subject to a suitable arrangement, for the settlement of the balance, being made. The foregoing is subject to the discretion of Council following consideration of previous credit history.

#### **15. INTEREST**

Interest will be charged at the interest rate adopted by Council annually in its Schedule of Fees and Charges<sup>2</sup>, in accordance with Section 566 of the Act. Interest will apply to all amounts not paid on or before the due date and is added to outstanding accounts when and if the interest charges amount to \$1.00 or more.

In accordance with Section 564 of the Act, Council may write off or reduce interest accrued on rates or charges if the debtor has complied with an agreed payment arrangement.

#### **16. VARIATION**

The General Manager reserves the right to review, vary or revoke this procedure, which will be reviewed periodically to ensure it is relevant and appropriate.

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<sup>2</sup> The rate of interest that is set by Council must not exceed the rate specified by the Minister for Local Government by notice in the Gazette.